

HOUSE BILL NO. 678

INTRODUCED BY GILBERT, HALLIGAN, HANNAH,
DRISCOLL, HARPER, WEEDING, TVEIT, BECK

BY REQUEST OF THE ENVIRONMENTAL QUALITY COUNCIL

IN THE HOUSE

FEBRUARY 13, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON NATURAL RESOURCES.
FEBRUARY 14, 1989	FIRST READING.
FEBRUARY 18, 1989	COMMITTEE RECOMMEND BILL DO PASS. REPORT ADOPTED.
FEBRUARY 20, 1989	PRINTING REPORT.
	SECOND READING, DO PASS AS AMENDED.
FEBRUARY 21, 1989	ENGROSSING REPORT.
	THIRD READING, PASSED. AYES, 98; NOES, 0.
	TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 28, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON NATURAL RESOURCES.
	FIRST READING.
MARCH 16, 1989	COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED.
MARCH 17, 1989	SECOND READING, CONCURRED IN.
MARCH 20, 1989	THIRD READING, CONCURRED IN. AYES, 34; NOES, 14.
	RETURNED TO HOUSE.

IN THE HOUSE

MARCH 21, 1989

RECEIVED FROM SENATE.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 *HOUSE* BILLY NO. *678*
 2 INTRODUCED BY *Gilbert Wilson*
 3 BY REQUEST OF THE ENVIRONMENTAL QUALITY COUNCIL
 4 *Insight Hays* *Wendy Truitt*
 5 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING NOTIFICATION
 6 BY AN OWNER OR OPERATOR PRIOR TO CONDUCTING FOREST PRACTICES
 7 ON PRIVATE LAND; PROVIDING FOR ONSITE CONSULTATION BETWEEN
 8 THE DEPARTMENT OF STATE LANDS AND THE OPERATOR; AMENDING
 9 SECTIONS 76-13-101, 76-13-102, 76-13-104, AND 76-13-408,
 10 MCA; AND PROVIDING A DELAYED EFFECTIVE DATE AND AN
 11 APPLICABILITY DATE."
 12

13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

14 **Section 1.** Section 76-13-101, MCA, is amended to read:

15 "76-13-101. Purpose. (1) It is the purpose of this
 16 part and part 2 to provide for the protection and
 17 conservation of forest resources, range, and water; the
 18 regulation of streamflow; and the prevention of soil
 19 erosion. It is further the purpose of this part and part 2
 20 to more adequately promote and facilitate the cooperation,
 21 financial and otherwise, between the state and public and
 22 private agencies which are associated in such work.

23 (2) To achieve the conservation of forest and
 24 watershed resources, the legislature encourages the use of
 25 best management practices in timber sale planning,

1 associated road construction and reconstruction, timber
 2 harvesting, site preparation, and related activities and
 3 establishes a process to ensure that information on best
 4 management practices is provided to owners and operators
 5 engaged in forest practices on private land."

6 **Section 2.** Section 76-13-102, MCA, is amended to read:

7 "76-13-102. Definitions. Unless the context requires
 8 otherwise, in this part and part 2 the following definitions
 9 apply:

10 (1) "Board" means the board of land commissioners
 11 provided for in Article X, section 4, of the Montana
 12 Constitution.

13 (2) "Conservation" means the protection and wise use
 14 of forest, forest range, forest water, and forest soil
 15 resources in keeping with the common welfare of the people
 16 of this state.

17 (3) "Department" means the department of state lands
 18 provided for in Title 2, chapter 15, part 32.

19 (4) "Forest fire" means a fire burning uncontrolled on
 20 forest lands.

21 (5) "Forest fire protection" means the work of
 22 prevention, detection, and suppression of forest fires and
 23 includes training required to perform those functions.

24 (6) "Forest fire season" means the period of each year
 25 beginning on May 1 and ending on September 30, inclusive.



(7) "Forest fire protection district" means a definite forest land area, the boundaries of which are fixed and wherein forest fire protection is provided through the medium of an agency recognized by the board.

(8) "Forest land" means land which has enough timber, standing or down, slash, or brush to constitute in the judgment of the department a fire menace to life or property. Grassland and agricultural areas are included when those areas are intermingled with or contiguous to and no further than one-half mile from areas of forest land.

(9) "Forest practices" means the harvesting of trees, road construction or reconstruction associated with harvesting and accessing trees, site preparation for regeneration of a timber stand, reforestation, and the management of logging slash. Activities undertaken in the operation of a nursery or the harvest of Christmas trees are not forest practices.

(10) "Lands" for conservation purposes means all forest lands within this state which are officially classified by the department as forest lands under 76-13-107.

(11) "Operator" means a person responsible for conducting forest practices. An operator may be the owner, the owner's agent, or a person who, through contractual agreement with the landowner, is obligated to or entitled to

conduct forest practices or to carry out a timber sale.

(12) "Owner" means the person, firm, association, or corporation having the actual, beneficial ownership of forest land or timber other than an easement, right-of-way, or mineral reservation.

(13) "Person" means an individual, corporation, partnership, or association of any kind.

(14) "Recognized agency" means an agency organized for the purpose of providing forest fire protection and recognized by the board as giving adequate fire protection to forest lands in accordance with rules adopted by the board.

(15) "Timber sale" means a series of forest practices designed to access, harvest, and regenerate trees on a defined land area."

Section 3. Section 76-13-104, MCA, is amended to read:

"76-13-104. Functions of department. (1) The department may give technical and practical advice concerning forest, range, water, and soil conservation and the establishment and maintenance of woodlots, windbreaks, shelterbelts, and forest fire protection.

(2) The department shall cooperate with all public and other agencies in the development, protection, and conservation of the forest, range, and water resources in this state.

1 (3) The department shall require an owner or operator
 2 to provide a notification prior to conducting forest
 3 practices as provided in [section 4], shall adapt as
 4 necessary any procedure used for notification with respect
 5 to an agreement under 76-13-408 to ensure that the operator
 6 provides information on the location of the forest practices
 7 in relation to watershed features, and shall conduct onsite
 8 consultations as provided for in [section 4]."

9 **NEW SECTION. Section 4. Notification prior to forest**
 10 **practices -- department response -- onsite consultation. (1)**
 11 An operator or, pursuant to subsection (3), an owner shall
 12 notify the department prior to conducting forest practices.
 13 The notification may be provided as part of the notification
 14 made with respect to an agreement under 76-13-408.

15 (2) (a) Except as provided in subsection (3), within 5
 16 working days, but not exceeding 7 calendar days, of
 17 receiving notification of forest practices, the department
 18 shall mail to the operator and, if an address has been
 19 provided, to the owner a receipt of notification,
 20 information on best management practices for forestry,
 21 information on conservation district permit requirements
 22 related to stream crossings, and any other information the
 23 department believes would assist the operator or the owner
 24 with conducting forest practices.

25 (b) The receipt of notification must include a

1 statement that:

2 (i) forest practices may proceed; or

3 (ii) an onsite consultation is required prior to
 4 conducting forest practices.

5 (3) (a) An owner may submit to the department a notice
 6 providing an annual, semiannual, or quarterly operating plan
 7 that indicates the estimated starting date of forest
 8 practices for each timber sale planned by the owner during
 9 the operating period. The plan must be submitted no less
 10 than 15 days before the beginning of the operating period
 11 covered.

12 (b) Upon receipt of an operating plan, the department
 13 may:

14 (i) meet with the owner to review the proposed timber
 15 sales, discuss watershed concerns, and schedule onsite
 16 consultations at appropriate sites; or

17 (ii) provide a receipt of notification, as described in
 18 subsection (2)(b), for individual timber sales. If the
 19 department requires an onsite consultation for any of the
 20 timber sales, it shall notify the owner of this requirement
 21 as soon as possible but no less than 10 calendar days prior
 22 to the estimated starting date of forest practices
 23 associated with the timber sale. The onsite consultation
 24 must then be scheduled according to the provisions of
 25 subsections (5) through (7).

1 (4) The department shall make its decision on whether
2 or not to require an onsite consultation based on whether:

3 (a) the proposed timber sale is in a high-priority
4 location for watershed resources;

5 (b) a consultation could contribute to improved
6 watershed management; and

7 (c) the department has sufficient resources to conduct
8 the consultation.

9 (5) The department shall schedule an onsite
10 consultation at a time mutually agreeable to the operator,
11 the owner (if he can be contacted and wishes to
12 participate), and the department. Unless otherwise agreeable
13 to the operator and a participating owner, a consultation
14 must be held no later than:

15 (a) 10 calendar days after the mailing of the notice
16 by the department, if the site is accessible; or

17 (b) if the site is temporarily inaccessible due to
18 road conditions, weather conditions, or other factors, 10
19 calendar days after the operator indicates the site is
20 accessible.

21 (6) The onsite consultation must include
22 representatives of the department, the operator, and, if the
23 owner desires representation, the owner. Representatives of
24 the department of health and environmental sciences, the
25 department of fish, wildlife, and parks, and the local

1 conservation district may also participate but must meet the
2 consultation schedule established under subsection (3)(b) or
3 (5).

4 (7) If the department and the operator are not able to
5 schedule an onsite consultation within the time limits
6 provided in subsection (5)(a) or (5)(b) or at another
7 mutually agreeable time, the requirement for a consultation
8 is terminated. The operator may then proceed with forest
9 practices immediately upon the expiration of the time limits
10 provided in subsection (5)(a) or (5)(b).

11 (8) The onsite consultation provided for in this
12 section is intended only for the purpose of providing
13 information to owners and operators and does not confer upon
14 the department or any other agency of state or local
15 government authority to compel an owner or operator to
16 undertake or refrain from undertaking specific management
17 practices that are not otherwise regulated by law or rule.

18 (9) The department does not incur any obligation or
19 liability by virtue of a decision to conduct or not conduct
20 an onsite consultation.

21 (10) (a) Except as provided in subsection (10)(b), the
22 department may require only one notification for each timber
23 sale, even though multiple forest practices may be
24 conducted.

25 (b) If an operator modifies his proposed forest

1 practices in a manner that substantially alters the
2 potential watershed disturbance, he shall submit a revised
3 notification to the department.

4 (11) Nothing in this section precludes an operator from
5 undertaking any forest practice in an emergency to prevent
6 watershed damage or the loss of timber resources.

7 (12) To the extent practicable, the department shall
8 evaluate the application of forest practices as part of an
9 onsite inspection relating to the control of timber slash
10 and debris, conducted under the provisions of Title 76,
11 chapter 13, part 4.

12 **Section 5.** Section 76-13-408, MCA, is amended to read:

13 "76-13-408. Fire hazard reduction agreement and bond.

14 (1) Before cutting any forest product, constructing or
15 reconstructing any road in contemplation of forest product
16 cutting, or conducting timber stand improvement, such as but
17 not limited to thinning, weeding, or pruning, upon private
18 lands within the state, the person conducting such the
19 practice shall provide for the reduction or management of
20 the fire hazard to be created by entering into a fire hazard
21 reduction agreement with the department and by posting a
22 bond to the state in such a form and for such an amount as
23 may be prescribed by the department, conditioned upon full
24 and faithful compliance with all requirements under this
25 part and the faithful reduction or management of the fire

1 hazard in the manner prescribed by law and by rules adopted
2 by the board.

3 (2) The bond shall be released upon completion of the
4 work done in compliance with the terms of the agreement."

5 NEW SECTION. **Section 6.** Extension of authority. Any
6 existing authority to make rules on the subject of the
7 provisions of [this act] is extended to the provisions of
8 [this act].

9 NEW SECTION. **Section 7.** Codification instruction.
10 [Section 4] is intended to be codified as an integral part
11 of Title 76, chapter 13, part 1, and the provisions of Title
12 76, chapter 13, part 1, apply to [section 4].

13 NEW SECTION. **Section 8.** Applicability. [This act]
14 applies to timber sales that begin after December 31, 1989.

15 NEW SECTION. **Section 9.** Effective date. [This act] is
16 effective January 1, 1990.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB678, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

HB678 would require notification by an owner or operator prior to conducting forest practices on private land and require the Department of State Lands to mail receipt of notification and forestry management practices information, providing for onsite consultation between the department and the operator.

ASSUMPTIONS:

1. There will be 900 individual timber harvest operations on non-industrial private forest lands and approximately 1,200 cutting units on industrial private lands each year of the 1991 biennium.
2. Each of these projected 2,100 timber operations will require a review to determine whether an onsite consultation is required. An additional 1.80 FTE foresters, grade 12, and 0.25 FTE clerical, grade 8, will be required to conduct the review, mail the information and provide the onsite consultation and evaluation. It is assumed that mailed information will suffice for 75% and that 25% will require onsite assistance.
3. The remainder of the evaluation required under Section 4 (12) will be done in conjunction with the currently required hazard reduction inspection by existing personnel.
4. For the 1991 biennium, there will also be an additional 1.25 FTE to develop, organize and implement educational programs and training workshops on best management practices for timber operators, landowners, timber sale contract administrators, conservation district personnel and others, including publishing brochures, a handbook and video-taped instructional materials.
5. Although the effective date of the bill is January 1, 1990, the additional positions will need to be hired July 1, 1989 in order to develop the program and complete the internal training necessary for implementation.
6. The balance of the additional workload relates to existing DSL programs and will be accomplished as part of the ongoing responsibilities.
7. There is no fiscal impact on the Environmental Quality Council, the Department of Fish, Wildlife and Parks or the Department of Health and Environmental Sciences.
8. The increased DSL costs will be paid with general fund; there will be no increase in federal or other special revenue to implement the proposed law.

Ray Shackelford

DATE 2/21/89

RAY SHACKLEFORD, BUDGET DIRECTOR
OFFICE OF BUDGET AND PROGRAM PLANNING

DATE 2/27/89

BOB GILBERT, PRIMARY SPONSOR

Fiscal Note for HB678, as introduced

HB 678

Fiscal Note Request HB678, as introduced

Form BD-15

Page 2

FISCAL IMPACT:

Expenditures:

DSL:	Current	FY90		Current	FY91	
	Law	Law	Difference	Law	Law	Difference
Personal Services	\$ -0-	\$ 78,586	\$ 78,586	\$ -0-	\$ 78,586	\$ 78,586
Operating Expenses	-0-	21,875	21,875	-0-	21,875	21,875
Equipment	-0-	22,000	22,000	-0-	-0-	-0-
Total	\$ -0-	\$122,461	\$122,461	\$ -0-	\$100,461	\$100,461

Funding:

General Fund	\$ -0-	\$122,461	\$122,461	\$ -0-	\$100,461	\$100,461
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LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

If the number of forest practices covered by this proposed law increase significantly, additional resources will be required to continue to carry out the intent.

HB 678

APPROVED BY COMM. ON
NATURAL RESOURCES

1 *HOUSE* BILL NO. *678*
2 INTRODUCED BY *Gilbert Kellogg Hand*
3 BY REQUEST OF THE ENVIRONMENTAL QUALITY COUNCIL
4 *Michael Hager, Michael Hand, Tim Burt*
5 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING NOTIFICATION
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19 erosion. It is further the purpose of this part and part 2
20 to more adequately promote and facilitate the cooperation,
21 financial and otherwise, between the state and public and
22 private agencies which are associated in such work.

23 (2) To achieve the conservation of forest and
24 watershed resources, the legislature encourages the use of
25 best management practices in timber sale planning,

1 associated road construction and reconstruction, timber
2 harvesting, site preparation, and related activities and
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8 otherwise, in this part and part 2 the following definitions
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12 Constitution.

13 (2) "Conservation" means the protection and wise use
14 of forest, forest range, forest water, and forest soil
15 resources in keeping with the common welfare of the people
16 of this state.

17 (3) "Department" means the department of state lands
18 provided for in Title 2, chapter 15, part 32.

19 (4) "Forest fire" means a fire burning uncontrolled on
20 forest lands.

21 (5) "Forest fire protection" means the work of
22 prevention, detection, and suppression of forest fires and
23 includes training required to perform those functions.

24 (6) "Forest fire season" means the period of each year
25 beginning on May 1 and ending on September 30, inclusive.

1 (7) "Forest fire protection district" means a definite
2 forest land area, the boundaries of which are fixed and
3 wherein forest fire protection is provided through the
4 medium of an agency recognized by the board.

5 (8) "Forest land" means land which has enough timber,
6 standing or down, slash, or brush to constitute in the
7 judgment of the department a fire menace to life or
8 property. Grassland and agricultural areas are included when
9 those areas are intermingled with or contiguous to and no
10 further than one-half mile from areas of forest land.

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12 road construction or reconstruction associated with
13 harvesting and accessing trees, site preparation for
14 regeneration of a timber stand, reforestation, and the
15 management of logging slash. Activities undertaken in the
16 operation of a nursery or the harvest of Christmas trees are
17 not forest practices.

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19 forest lands within this state which are officially
20 classified by the department as forest lands under
21 76-13-107.

22 (11) "Operator" means a person responsible for
23 conducting forest practices. An operator may be the owner,
24 the owner's agent, or a person who, through contractual
25 agreement with the landowner, is obligated to or entitled to

1 conduct forest practices or to carry out a timber sale.

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3 or corporation having the actual, beneficial ownership of
4 forest land or timber other than an easement, right-of-way,
5 or mineral reservation.

6 (13) "Person" means an individual, corporation,
7 partnership, or association of any kind.

8 (14) "Recognized agency" means an agency organized
9 for the purpose of providing forest fire protection and
10 recognized by the board as giving adequate fire protection
11 to forest lands in accordance with rules adopted by the
12 board.

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14 designed to access, harvest, and regenerate trees on a
15 defined land area."

16 **Section 3.** Section 76-13-104, MCA, is amended to read:

17 "76-13-104. Functions of department. (1) The
18 department may give technical and practical advice
19 concerning forest, range, water, and soil conservation and
20 the establishment and maintenance of woodlots, windbreaks,
21 shelterbelts, and forest fire protection.

22 (2) The department shall cooperate with all public and
23 other agencies in the development, protection, and
24 conservation of the forest, range, and water resources in
25 this state.

(3) The department shall require an owner or operator to provide a notification prior to conducting forest practices as provided in [section 4], shall adapt as necessary any procedure used for notification with respect to an agreement under 76-13-408 to ensure that the operator provides information on the location of the forest practices in relation to watershed features, and shall conduct onsite consultations as provided for in [section 4]."

NEW SECTION. Section 4. Notification prior to forest practices -- department response -- onsite consultation. (1) An operator or, pursuant to subsection (3), an owner shall notify the department prior to conducting forest practices. The notification may be provided as part of the notification made with respect to an agreement under 76-13-408.

(2) (a) Except as provided in subsection (3), within 5 working days, but not exceeding 7 calendar days, of receiving notification of forest practices, the department shall mail to the operator and, if an address has been provided, to the owner a receipt of notification, information on best management practices for forestry, information on conservation district permit requirements related to stream crossings, and any other information the department believes would assist the operator or the owner with conducting forest practices.

(b) The receipt of notification must include a

statement that:

(i) forest practices may proceed; or

(ii) an onsite consultation is required prior to conducting forest practices.

(3) (a) An owner may submit to the department a notice providing an annual, semiannual, or quarterly operating plan that indicates the estimated starting date of forest practices for each timber sale planned by the owner during the operating period. The plan must be submitted no less than 15 days before the beginning of the operating period covered.

(b) Upon receipt of an operating plan, the department may:

(i) meet with the owner to review the proposed timber sales, discuss watershed concerns, and schedule onsite consultations at appropriate sites; or

(ii) provide a receipt of notification, as described in subsection (2)(b), for individual timber sales. If the department requires an onsite consultation for any of the timber sales, it shall notify the owner of this requirement as soon as possible but no less than 10 calendar days prior to the estimated starting date of forest practices associated with the timber sale. The onsite consultation must then be scheduled according to the provisions of subsections (5) through (7).

1 (4) The department shall make its decision on whether
2 or not to require an onsite consultation based on whether:

3 (a) the proposed timber sale is in a high-priority
4 location for watershed resources;

5 (b) a consultation could contribute to improved
6 watershed management; and

7 (c) the department has sufficient resources to conduct
8 the consultation.

9 (5) The department shall schedule an onsite
10 consultation at a time mutually agreeable to the operator,
11 the owner (if he can be contacted and wishes to
12 participate), and the department. Unless otherwise agreeable
13 to the operator and a participating owner, a consultation
14 must be held no later than:

15 (a) 10 calendar days after the mailing of the notice
16 by the department, if the site is accessible; or

17 (b) if the site is temporarily inaccessible due to
18 road conditions, weather conditions, or other factors, 10
19 calendar days after the operator indicates the site is
20 accessible.

21 (6) The onsite consultation must include
22 representatives of the department, the operator, and, if the
23 owner desires representation, the owner. Representatives of
24 the department of health and environmental sciences, the
25 department of fish, wildlife, and parks, and the local

1 conservation district may also participate but must meet the
2 consultation schedule established under subsection (3)(b) or
3 (5).

4 (7) If the department and the operator are not able to
5 schedule an onsite consultation within the time limits
6 provided in subsection (5)(a) or (5)(b) or at another
7 mutually agreeable time, the requirement for a consultation
8 is terminated. The operator may then proceed with forest
9 practices immediately upon the expiration of the time limits
10 provided in subsection (5)(a) or (5)(b).

11 (8) The onsite consultation provided for in this
12 section is intended only for the purpose of providing
13 information to owners and operators and does not confer upon
14 the department or any other agency of state or local
15 government authority to compel an owner or operator to
16 undertake or refrain from undertaking specific management
17 practices that are not otherwise regulated by law or rule.

18 (9) The department does not incur any obligation or
19 liability by virtue of a decision to conduct or not conduct
20 an onsite consultation.

21 (10) (a) Except as provided in subsection (10)(b), the
22 department may require only one notification for each timber
23 sale, even though multiple forest practices may be
24 conducted.

25 (b) If an operator modifies his proposed forest

1 practices in a manner that substantially alters the
2 potential watershed disturbance, he shall submit a revised
3 notification to the department.

4 (11) Nothing in this section precludes an operator from
5 undertaking any forest practice in an emergency to prevent
6 watershed damage or the loss of timber resources.

7 (12) To the extent practicable, the department shall
8 evaluate the application of forest practices as part of an
9 onsite inspection relating to the control of timber slash
10 and debris, conducted under the provisions of Title 76,
11 chapter 13, part 4.

12 **Section 5.** Section 76-13-408, MCA, is amended to read:

13 **"76-13-408. Fire hazard reduction agreement and bond.**

14 (1) Before cutting any forest product, constructing or
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18 lands within the state, the person conducting such the
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22 bond to the state in such a form and for such an amount as
23 may be prescribed by the department, conditioned upon full
24 and faithful compliance with all requirements under this
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1 hazard in the manner prescribed by law and by rules adopted
2 by the board.

3 (2) The bond shall be released upon completion of the
4 work done in compliance with the terms of the agreement."

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7 provisions of [this act] is extended to the provisions of
8 [this act].

9 NEW SECTION. **Section 7. Codification instruction.**
10 [Section 4] is intended to be codified as an integral part
11 of Title 76, chapter 13, part 1, and the provisions of Title
12 76, chapter 13, part 1, apply to [section 4].

13 NEW SECTION. **Section 8. Applicability.** [This act]
14 applies to timber sales that begin after December 31, 1989.

15 NEW SECTION. **Section 9. Effective date.** [This act] is
16 effective January 1, 1990.

-End-

HOUSE BILL NO. 678

INTRODUCED BY GILBERT, HALLIGAN, HANNAH,

DRISCOLL, HARPER, WEEDING, TVEIT, BECK

BY REQUEST OF THE ENVIRONMENTAL QUALITY COUNCIL

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING NOTIFICATION BY AN OWNER OR OPERATOR PRIOR TO CONDUCTING FOREST PRACTICES ON PRIVATE LAND; PROVIDING FOR ONSITE CONSULTATION BETWEEN THE DEPARTMENT OF STATE LANDS AND THE OPERATOR; AMENDING SECTIONS 76-13-101, 76-13-102, 76-13-104, AND 76-13-408, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE AND AN APPLICABILITY DATE."

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(2) To achieve the conservation of forest and watershed resources, the legislature encourages the use of

best management practices in timber sale planning, associated road construction and reconstruction, timber harvesting, site preparation, and related activities and establishes a process to ensure that information on best management practices is provided to owners and operators engaged in forest practices on private land."

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(2) "Conservation" means the protection and wise use of forest, forest range, forest water, and forest soil resources in keeping with the common welfare of the people of this state.

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(4) "Forest fire" means a fire burning uncontrolled on forest lands.

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(6) "Forest fire season" means the period of each year

beginning on May 1 and ending on September 30, inclusive.

(7) "Forest fire protection district" means a definite forest land area, the boundaries of which are fixed and wherein forest fire protection is provided through the medium of an agency recognized by the board.

(8) "Forest land" means land which has enough timber, standing or down, slash, or brush to constitute in the judgment of the department a fire menace to life or property. Grassland and agricultural areas are included when those areas are intermingled with or contiguous to and no further than one-half mile from areas of forest land.

(9) (A) "Forest practices" means the harvesting of trees, road construction or reconstruction associated with harvesting and accessing trees, site preparation for regeneration of a timber stand, reforestation, and the management of logging slash. Activities--undertaken--in--the operation-of-a-nursery-or-the-harvest-of-Christmas-trees-are not-forest-practices.

(B) THE TERM DOES NOT INCLUDE ACTIVITIES FOR THE PURPOSE OF:

(I) THE OPERATION OF A NURSERY OR CHRISTMAS TREE FARM;

(II) THE HARVEST OF CHRISTMAS TREES;

(III) THE HARVEST OF FIREWOOD; OR

(IV) THE CUTTING OF TREES FOR PERSONAL USE BY AN OWNER

OR OPERATOR.

~~(9)~~(10) "Lands" for conservation purposes means all forest lands within this state which are officially classified by the department as forest lands under 76-13-107.

(11) "Operator" means a person responsible for conducting forest practices. An operator may be the owner, the owner's agent, or a person who, through contractual agreement with the landowner, is obligated to or entitled to conduct forest practices or to carry out a timber sale.

~~(10)~~(12) "Owner" means the person, firm, association, or corporation having the actual, beneficial ownership of forest land or timber other than an easement, right-of-way, or mineral reservation.

(13) "Person" means an individual, corporation, partnership, or association of any kind.

~~(11)~~(14) "Recognized agency" means an agency organized for the purpose of providing forest fire protection and recognized by the board as giving adequate fire protection to forest lands in accordance with rules adopted by the board.

(15) "Timber sale" means a series of forest practices designed to access, harvest, and regenerate trees on a defined land area."

Section 3. Section 76-13-104, MCA, is amended to read:

"76-13-104. Functions of department. (1) The

1 department may give technical and practical advice
2 concerning forest, range, water, and soil conservation and
3 the establishment and maintenance of woodlots, windbreaks,
4 shelterbelts, and forest fire protection.

5 (2) The department shall cooperate with all public and
6 other agencies in the development, protection, and
7 conservation of the forest, range, and water resources in
8 this state.

9 (3) The department shall require an owner or operator
10 to provide a notification prior to conducting forest
11 practices as provided in [section 4], shall adapt as
12 necessary any procedure used for notification with respect
13 to an agreement under 76-13-408 to ensure that the operator
14 provides information on the location of the forest practices
15 in relation to watershed features, and shall conduct onsite
16 consultations as provided for in [section 4]."

17 **NEW SECTION. Section 4. Notification prior to forest**
18 **practices -- department response -- onsite consultation. (1)**
19 **An operator or, pursuant to subsection (3), an owner shall**
20 **notify the department prior to conducting forest practices.**
21 **The notification may be provided as part of the notification**
22 **made with respect to an agreement under 76-13-408.**

23 (2) (a) Except as provided in subsection (3), within 5
24 working days, but not exceeding 7 calendar days, of
25 receiving notification of forest practices, the department

1 shall mail to the operator and, if an address has been
2 provided, to the owner a receipt of notification,
3 information on best management practices for forestry,
4 information on conservation district permit requirements
5 related to stream crossings, and any other information the
6 department believes would assist the operator or the owner
7 with conducting forest practices.

8 (b) The receipt of notification must include a
9 statement that:

10 (i) forest practices may proceed; or

11 (ii) an onsite consultation is required prior to
12 conducting forest practices.

13 (3) (a) An owner may submit to the department a notice
14 providing an annual, semiannual, or quarterly operating plan
15 that indicates the estimated starting date of forest
16 practices for each timber sale planned by the owner during
17 the operating period. The plan must be submitted no less
18 than 15 days before the beginning of the operating period
19 covered.

20 (b) Upon receipt of an operating plan, the department
21 may:

22 (i) meet with the owner to review the proposed timber
23 sales, discuss watershed concerns, and schedule onsite
24 consultations at appropriate sites; or

25 (ii) provide a receipt of notification, as described in

1 subsection (2)(b), for individual timber sales. If the
 2 department requires an onsite consultation for any of the
 3 timber sales, it shall notify the owner of this requirement
 4 as soon as possible but no less than 10 calendar days prior
 5 to the estimated starting date of forest practices
 6 associated with the timber sale. The onsite consultation
 7 must then be scheduled according to the provisions of
 8 subsections (5) through (7).

9 (4) The department shall make its decision on whether
 10 or not to require an onsite consultation based on whether:

11 (a) the proposed timber sale is in a high-priority
 12 location for watershed resources;

13 (b) a consultation could contribute to improved
 14 watershed management; and

15 (c) the department has sufficient resources to conduct
 16 the consultation.

17 (5) The department shall schedule an onsite
 18 consultation at a time mutually agreeable to the operator,
 19 the owner (if he can be contacted and wishes to
 20 participate), and the department. Unless otherwise agreeable
 21 to the operator and a participating owner, a consultation
 22 must be held no later than:

23 (a) 10 calendar days after the mailing of the notice
 24 by the department, if the site is accessible; or

25 (b) if the site is temporarily inaccessible due to

1 road conditions, weather conditions, or other factors, 10
 2 calendar days after the operator indicates the site is
 3 accessible.

4 (6) The onsite consultation must include
 5 representatives of the department, the operator, and, if the
 6 owner desires representation, the owner. Representatives of
 7 the department of health and environmental sciences, the
 8 department of fish, wildlife, and parks, and the local
 9 conservation district may also participate but must meet the
 10 consultation schedule established under subsection (3)(b) or
 11 (5).

12 (7) If the department and the operator are not able to
 13 schedule an onsite consultation within the time limits
 14 provided in subsection (5)(a) or (5)(b) or at another
 15 mutually agreeable time, the requirement for a consultation
 16 is terminated. The operator may then proceed with forest
 17 practices immediately upon the expiration of the time limits
 18 provided in subsection (5)(a) or (5)(b).

19 (8) The onsite consultation provided for in this
 20 section is intended only for the purpose of providing
 21 information to owners and operators and does not confer upon
 22 the department or any other agency of state or local
 23 government authority to compel an owner or operator to
 24 undertake or refrain from undertaking specific management
 25 practices that are not otherwise regulated by law or rule.

(9) The department does not incur any obligation or liability by virtue of a decision to conduct or not conduct an onsite consultation.

(10) (a) Except as provided in subsection (10)(b), the department may require only one notification for each timber sale, even though multiple forest practices may be conducted.

(b) If an operator modifies his proposed forest practices in a manner that substantially alters the potential watershed disturbance, he shall submit a revised notification to the department.

(11) Nothing in this section precludes an operator from undertaking any forest practice in an emergency to prevent watershed damage or the loss of timber resources.

(12) To the extent practicable, the department shall evaluate the application of forest practices as part of an onsite inspection relating to the control of timber slash and debris, conducted under the provisions of Title 76, chapter 13, part 4.

Section 5. Section 76-13-408, MCA, is amended to read:

"76-13-408. Fire hazard reduction agreement and bond.

(1) Before cutting any forest product, constructing or reconstructing any road in contemplation of forest product cutting, or conducting timber stand improvement, such as but not limited to thinning, weeding, or pruning, upon private

lands within the state, the person conducting such the practice shall provide for the reduction or management of the fire hazard to be created by entering into a fire hazard reduction agreement with the department and by posting a bond to the state in such a form and for such an amount as may be prescribed by the department, conditioned upon full and faithful compliance with all requirements under this part and the faithful reduction or management of the fire hazard in the manner prescribed by law and by rules adopted by the board.

(2) The bond shall be released upon completion of the work done in compliance with the terms of the agreement."

NEW SECTION. **Section 6.** Extension of authority. Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

NEW SECTION. **Section 7.** Codification instruction. [Section 4] is intended to be codified as an integral part of Title 76, chapter 13, part 1, and the provisions of Title 76, chapter 13, part 1, apply to [section 4].

NEW SECTION. **Section 8.** Applicability. [This act] applies to timber sales that begin after December 31, 1989.

NEW SECTION. **Section 9.** Effective date. [This act] is effective January 1, 1990.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB678, on third reading.

DESCRIPTION OF PROPOSED LEGISLATION:

HB678 would require notification by a timber owner or operator prior to conducting forest practices on private land, require the Department of State Lands to mail receipt of notification and information on best management practices and provide for on-site consultation between the department and the operator.

ASSUMPTIONS:

1. There will be 900 individual timber harvest operations on non-industrial private forest lands and approximately 1,200 cutting units on industrial forest lands each year of the 1991 biennium.
2. Each of these projected 2,100 timber operations will require a review to determine whether or not an on-site consultation is required. In addition, a limited number of the operations will be sampled in conjunction with the slash inspection in order to evaluate the application of best management practices (BMPs). An additional 1.55 FTE foresters (grade 12) and 0.25 FTE clerical (grade 8) will be required to conduct the review, mail the information, provide the on-site consultation (if necessary), and conduct the limited post-sale evaluations. It is estimated that mailed information will suffice for 90% of the operations and that 10% will require on-site assistance.
3. An additional 0.20 FTE forester (grade 15) and 0.25 FTE clerical (grade 7) will be required for program administration, organization of field audits, and preparation and distribution of BMP materials to field offices statewide.
4. The balance of the additional workload relates to existing DSL programs and will be accomplished as part of ongoing responsibilities.
5. Salaries are calculated on the FY89 pay matrix, no step increases are included and benefits are assumed to be 21% of salaries.
6. The increased DSL costs will be paid for with general fund; there will be no increase in federal or other special revenue to implement the proposed law.
7. There is no fiscal impact on the Environmental Quality Council, the Department of Fish, Wildlife and Parks or the Department of Health and Environmental Sciences.

FISCAL IMPACT:Expenditures:

	Current	FY90 Proposed		Current	FY91 Proposed	
DSL:	Law	Law	Difference	Law	Law	Difference
Personal Services	\$ -0-	\$23,763	\$23,763	\$ -0-	\$47,524	\$47,524
Operating Expenses	-0-	8,000	8,000	-0-	10,000	10,000
Equipment	-0-	11,000	11,000	-0-	-0-	-0-
Total	\$ -0-	\$42,763	\$42,763	\$ -0-	\$57,524	\$57,524

Funding:

General Fund	\$ -0-	\$42,763	\$42,763	\$ -0-	\$57,524	\$57,524
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Dave Lewis

DATE 3/14/89

DAVE LEWIS, BUDGET DIRECTOR

OFFICE OF BUDGET AND PROGRAM PLANNING

Rep Bob Gilbert

DATE 3-21-89

BOB GILBERT, PRIMARY SPONSOR

Fiscal Note for HB678, on third reading.3rd Rdy. - HB 678

Fiscal Note Request HB678, on third reading.

Form BD-15

Page 2

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

If the number of forest practices covered by this act increase significantly, additional resources will be required to continue to carry out the intent of the proposed law.

HB 678

1 HOUSE BILL NO. 678

2 INTRODUCED BY GILBERT, HALLIGAN, HANNAH,

3 DRISCOLL, HARPER, WEEDING, TVEIT, BECK

4 BY REQUEST OF THE ENVIRONMENTAL QUALITY COUNCIL

5
6 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING NOTIFICATION
7 BY AN OWNER OR OPERATOR PRIOR TO CONDUCTING FOREST PRACTICES
8 ON PRIVATE LAND; PROVIDING FOR ONSITE CONSULTATION BETWEEN
9 THE DEPARTMENT OF STATE LANDS AND THE OPERATOR; AMENDING
10 SECTIONS 76-13-101, 76-13-102, 76-13-104, AND 76-13-408,
11 MCA; AND PROVIDING A DELAYED EFFECTIVE DATE AND AN
12 APPLICABILITY DATE."

13
14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

15 Section 1. Section 76-13-101, MCA, is amended to read:

16 "76-13-101. Purpose. (1) It is the purpose of this
17 part and part 2 to provide for the protection and
18 conservation of forest resources, range, and water; the
19 regulation of streamflow; and the prevention of soil
20 erosion. It is further the purpose of this part and part 2
21 to more adequately promote and facilitate the cooperation,
22 financial and otherwise, between the state and public and
23 private agencies which are associated in such work.

24 (2) To achieve the conservation of forest and
25 watershed resources, the legislature encourages the use of

1 best management practices in timber sale planning,
2 associated road construction and reconstruction, timber
3 harvesting, site preparation, and related activities and
4 establishes a process to ensure that information on best
5 management practices is provided to owners and operators
6 engaged in forest practices on private land."

7 Section 2. Section 76-13-102, MCA, is amended to read:

8 "76-13-102. Definitions. Unless the context requires
9 otherwise, in this part and part 2 the following definitions
10 apply:

11 (1) "Board" means the board of land commissioners
12 provided for in Article X, section 4, of the Montana
13 Constitution.

14 (2) "Conservation" means the protection and wise use
15 of forest, forest range, forest water, and forest soil
16 resources in keeping with the common welfare of the people
17 of this state.

18 (3) "Department" means the department of state lands
19 provided for in Title 2, chapter 15, part 32.

20 (4) "Forest fire" means a fire burning uncontrolled on
21 forest lands.

22 (5) "Forest fire protection" means the work of
23 prevention, detection, and suppression of forest fires and
24 includes training required to perform those functions.

25 (6) "Forest fire season" means the period of each year

1 beginning on May 1 and ending on September 30, inclusive.

2 (7) "Forest fire protection district" means a definite
3 forest land area, the boundaries of which are fixed and
4 wherein forest fire protection is provided through the
5 medium of an agency recognized by the board.

6 (8) "Forest land" means land which has enough timber,
7 standing or down, slash, or brush to constitute in the
8 judgment of the department a fire menace to life or
9 property. Grassland and agricultural areas are included when
10 those areas are intermingled with or contiguous to and no
11 further than one-half mile from areas of forest land.

12 (9) (A) "Forest practices" means the harvesting of
13 trees, road construction or reconstruction associated with
14 harvesting and accessing trees, site preparation for
15 regeneration of a timber stand, reforestation, and the
16 management of logging slash. Activities--undertaken--in--the
17 operation-of-a-nursery-or-the-harvest-of-Christmas-trees-are
18 not-forest-practices.

19 (B) THE TERM DOES NOT INCLUDE ACTIVITIES FOR THE
20 PURPOSE OF:

21 (I) THE OPERATION OF A NURSERY OR CHRISTMAS TREE FARM;

22 (II) THE HARVEST OF CHRISTMAS TREES;

23 (III) THE HARVEST OF FIREWOOD; OR

24 (IV) THE CUTTING OF TREES FOR PERSONAL USE BY AN OWNER
25 OR OPERATOR.

1 {9}(10) "Lands" for conservation purposes means all
2 forest lands within this state which are officially
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4 76-13-107.

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6 conducting forest practices. An operator may be the owner,
7 the owner's agent, or a person who, through contractual
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9 conduct forest practices or to carry out a timber sale.

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11 or corporation having the actual, beneficial ownership of
12 forest land or timber other than an easement, right-of-way,
13 or mineral reservation.

14 (13) "Person" means an individual, corporation,
15 partnership, or association of any kind.

16 {11}(14) "Recognized agency" means an agency organized
17 for the purpose of providing forest fire protection and
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20 board.

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22 designed to access, harvest, and regenerate trees on a
23 defined land area."

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25 "76-13-104. Functions of department. (1) The

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2 concerning forest, range, water, and soil conservation and
3 the establishment and maintenance of woodlots, windbreaks,
4 shelterbelts, and forest fire protection.

5 (2) The department shall cooperate with all public and
6 other agencies in the development, protection, and
7 conservation of the forest, range, and water resources in
8 this state.

9 (3) The department shall require an owner or operator
10 to provide a notification prior to conducting forest
11 practices as provided in [section 4], shall adapt as
12 necessary any procedure used for notification with respect
13 to an agreement under 76-13-408 to ensure that the operator
14 provides information on the location of the forest practices
15 in relation to watershed features, and shall conduct onsite
16 consultations as provided for in [section 4]."

17 **NEW SECTION. Section 4.** Notification prior to forest
18 practices -- department response -- onsite consultation. (1)
19 An operator or, pursuant to subsection (3), an owner shall
20 notify the department prior to conducting forest practices.
21 The notification may be provided as part of the notification
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23 (2) (a) Except as provided in subsection (3), within 5
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25 receiving notification of forest practices, the department

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2 provided, to the owner a receipt of notification,
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4 information on conservation district permit requirements
5 related to stream crossings, and any other information the
6 department believes would assist the operator or the owner
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9 statement that:

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12 conducting forest practices.

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14 providing an annual, semiannual, or quarterly operating plan
15 that indicates the estimated starting date of forest
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17 the operating period. The plan must be submitted no less
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25 (ii) provide a receipt of notification, as described in

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2 department requires an onsite consultation for any of the
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7 must then be scheduled according to the provisions of
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21 to the operator and a participating owner, a consultation
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5 representatives of the department, the operator, and, if the
6 owner desires representation, the owner. Representatives of
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8 department of fish, wildlife, and parks, and the local
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10 consultation schedule established under subsection (3)(b) or
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13 schedule an onsite consultation within the time limits
14 provided in subsection (5)(a) or (5)(b) or at another
15 mutually agreeable time, the requirement for a consultation
16 is terminated. The operator may then proceed with forest
17 practices immediately upon the expiration of the time limits
18 provided in subsection (5)(a) or (5)(b).

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20 section is intended only for the purpose of providing
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22 the department or any other agency of state or local
23 government authority to compel an owner or operator to
24 undertake or refrain from undertaking specific management
25 practices that are not otherwise regulated by law or rule.

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lands within the state, the person conducting such the practice shall provide for the reduction or management of the fire hazard to be created by entering into a fire hazard reduction agreement with the department and by posting a bond to the state in such a form and for such an amount as may be prescribed by the department, conditioned upon full and faithful compliance with all requirements under this part and the faithful reduction or management of the fire hazard in the manner prescribed by law and by rules adopted by the board.

(2) The bond shall be released upon completion of the work done in compliance with the terms of the agreement."

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-End-