

HOUSE BILL 697

Introduced by Cohen, et al.

2/14	Introduced
2/14	Referred to Natural Resources
2/15	Fiscal Note Requested
2/17	Hearing
2/17	Tabled in Committee
2/20	Fiscal Note Received
2/22	Fiscal Note Printed

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2 INTRODUCED BY *House Bill No. 697*  
3 *Cohen Whalen Egle Yellowtail*  
4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE  
5 LICENSING BY THE DEPARTMENT OF STATE LANDS OF INDIVIDUALS  
6 WHO CONSTRUCT FOREST ROADS IN CRITICAL WATERSHED AREAS;  
7 REQUIRING THE DEPARTMENT TO PROVIDE INFORMATION RELEVANT TO  
8 OBTAINING A LICENSE; PROVIDING RULEMAKING AND ENFORCEMENT  
9 AUTHORITY TO THE DEPARTMENT WITH RESPECT TO THE OPERATION OF  
10 EARTHMOVING EQUIPMENT FOR THE CONSTRUCTION OF FOREST ROADS;  
11 AND PROVIDING AN EXEMPTION FROM THE SUNRISE AUDIT  
12 REQUIREMENT."

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14 STATEMENT OF INTENT

15 It is the intent of the legislature that the department  
16 of state lands adopt rules governing procedures,  
17 examinations, applications, and application fees for a  
18 forest road construction operator's license; defining  
19 critical watershed areas; establishing operating standards  
20 for earthmoving equipment in critical watershed areas;  
21 providing standards for the revocation or suspension of  
22 licenses; and providing an appeals process for individuals  
23 whose licenses are subject to revocation or suspension or  
24 who are in receipt of orders from the department for site  
25 rehabilitation.

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2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
3 NEW SECTION. **Section 1.** Purpose. The purpose of  
4 [sections 1 through 6] is to ensure that any individual  
5 operating earthmoving equipment for the construction of  
6 forest roads in critical watershed areas is properly trained  
7 in techniques for soil and watershed conservation.

8 NEW SECTION. **Section 2.** Definitions. As used in  
9 [sections 1 through 6], the following definitions apply:

10 (1) "Critical watershed area" means an area of forest  
11 land where, because of topography, landforms, soil types,  
12 hydrologic conditions, fisheries, aquatic ecosystem  
13 characteristics, vegetative cover, or other physical or  
14 biological features, disturbance of the land or vegetation  
15 through road construction could have a predominant and  
16 adverse impact on the water quality, hydrologic regime,  
17 stream channel condition, beneficial water uses, and other  
18 physical and biological conditions of a receiving river,  
19 stream, lake, or other body of water.

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

22 (3) "Earthmoving equipment" means a tractor, bulldozer,  
23 or other self-propelled mechanical equipment employed in the  
24 construction of forest roads and capable of moving large  
25 volumes of earth or vegetation.

(4) "Forest land" means any federal, state, or private land classified as forest land by any agency of government by virtue of its vegetative cover, suitability for timber growth, or close association with forested land.

(5) "Forest road" means any permanent or temporary road constructed on federal, state, or private forest land for the purpose of providing access to timber, minerals, recreation, or other forest resources. The term does not include a paved state or federal highway.

(6) "License" means the forest road construction operator's license provided for in [section 3].

(7) "Licensed operator" means an individual possessing a forest road construction operator's license.

**NEW SECTION. Section 3. Licensing of forest road construction operators.** (1) Any individual operating earthmoving equipment for the construction or reconstruction of a forest road in a critical watershed area shall possess a forest road construction operator's license issued by the department. It is the responsibility of the individual to determine whether or not he is operating in a critical watershed area. The individual may request assistance from the department to make this determination.

(2) To obtain a license, the individual shall successfully complete a written examination prepared and administered by the department and shall demonstrate,

through the written examination or other means as the department may select, an ability to properly operate earthmoving equipment. The written examination must test knowledge of equipment operation, forest watershed relationships, road construction and drainage techniques, soil characteristics, and the methods by which forest roads can be constructed with minimal environmental damage in critical watershed areas.

(3) The department shall schedule and provide public notice of examinations in a manner that provides reasonable opportunity for individuals to take the examination in a city or town in the vicinity of their residence.

(4) A license is valid for 3 years and may be renewed through successful completion of a written examination.

**NEW SECTION. Section 4. Department to provide information.** The department shall make available information on forest road construction and watershed management. This information must be sufficient to provide an individual with the knowledge necessary for the successful completion of the examination provided for in [section 3].

**NEW SECTION. Section 5. Rulemaking.** The department shall adopt rules:

(1) governing procedures, examinations, inspections, applications, and application fees for licensing. Application fees may be established by departmental rule to

1 help defray the costs of the licensing program.

2 (2) defining critical watershed areas, based on  
3 specific topography, landforms, soil types, hydrologic  
4 conditions, biological conditions, beneficial water uses,  
5 and other physical and biological features;

6 (3) providing standards for the revocation or  
7 suspension of licenses; and

8 (4) providing an appeals process for licensed operators  
9 whose licenses are subject to revocation or suspension or  
10 who are in receipt of orders from the department for site  
11 rehabilitation.

12 **NEW SECTION. Section 6. Penalties -- inspections --**  
13 **administrative citations and orders.** (1) An individual who  
14 operates earthmoving equipment for the construction or  
15 reconstruction of a forest road in a critical watershed area  
16 without a license or who violates any other provision of  
17 [sections 1 through 6], any rule adopted under [sections 1  
18 through 6], or an order issued under this section is guilty  
19 of a misdemeanor and shall be punished by a fine of not more  
20 than \$500. An individual convicted of a second or subsequent  
21 offense under this section is subject to a fine of not more  
22 than \$1,000, imprisonment in the county jail for not more  
23 than 6 months, or both. Each day of violation of an order  
24 issued under this section is a separate violation.

25 (2) The department may inspect the work of a licensed

1 operator or of any other individual operating earthmoving  
2 equipment for the construction or reconstruction of a forest  
3 road in a critical watershed area.

4 (3) (a) In the case of an operation that causes or  
5 threatens to cause severe or long-term erosion or stream  
6 sedimentation in a critical watershed area, the department  
7 shall notify the licensed operator that it intends to  
8 suspend or revoke his license.

9 (b) An operator notified of the department's intent to  
10 suspend or revoke his license may submit to the department a  
11 written request for a hearing. The department shall hold a  
12 hearing on the matter within 60 days of receiving the  
13 request. Based on the hearing record, the department shall  
14 carry out, modify, or rescind its intention to suspend or  
15 revoke the license. If the license is suspended or revoked,  
16 the department shall provide the operator with the  
17 opportunity to have the license reinstated or to apply for a  
18 new license within a period of 6 months to 3 years after the  
19 date of suspension or revocation, based on the severity of  
20 the offense.

21 (4) (a) When the department believes that a violation  
22 of [sections 1 through 6] or a rule adopted under [sections  
23 1 through 6] has resulted in an operation that meets the  
24 conditions provided in subsection (3)(a), it may serve a  
25 written order to the alleged violator to undertake necessary

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1 site rehabilitation within a reasonable period of time  
2 stated in the order. The order becomes final unless, within  
3 30 days after the notice is served, the person named submits  
4 a written request for a hearing before the department. On  
5 receipt of the request, the department shall schedule a  
6 hearing. Service by mail is complete on the date of mailing.

7 (b) If, after the hearing, the department finds that a  
8 violation has occurred and that the watershed damage  
9 warrants site rehabilitation, it shall either affirm or  
10 modify the order previously issued. If the department finds  
11 no violation has occurred or that site rehabilitation is not  
12 warranted, it shall rescind the order.

13 (c) If an operator is unable to complete site  
14 rehabilitation as required by the order to the satisfaction  
15 of the department, the operator shall contract or otherwise  
16 make arrangements with a person who can satisfactorily  
17 complete the work.

18 (d) This subsection (4) does not prevent the department  
19 from seeking voluntary compliance through warning,  
20 conference, or any other appropriate means.

21 NEW SECTION. Section 7. Exemption from sunrise audit  
22 requirement. [This act] is exempt from the legislative audit  
23 committee report provided for in 2-8-203.

-End-

## STATE OF MONTANA - FISCAL NOTE

Form RD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB697, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

HB697 would provide for the licensing by the Department of State Lands of individuals who construct forest roads in critical watershed areas, requiring the department to provide information relevant to obtaining a license, rulemaking and enforcement authority, and an exemption from the sunrise audit requirement.

ASSUMPTIONS:

1. The DSL would require 1.00 FTE, grade 14, for FY90 to develop and implement the program. This position could be reduced to 0.50 FTE thereafter, but 0.25 clerical support, grade 7, would be an ongoing requirement.
2. Operating expenses would be \$29,000 in FY90 and \$15,000 in FY91 for contracted services to develop the education and testing materials, development of rules, hearings, travel associated with education and testing, and hearings officers.
3. The DSL requests a computer in FY90 for communications and record keeping.
4. The estimated number of licensees is 500.
5. General fund support will be required for the program during the 1991 biennium.
6. The DSL wishes to study the proposed law prior to calculating an appropriate license fee for the three-year period in the bill and an appropriate renewal fee. (One example might be \$25 per year or \$75 for the initial license and \$15 per year or \$45 for renewal. Based on 300 licensees in FY90 and 200 licensees in FY91, this would generate \$22,500 and \$15,000 each year respectively. Because the 300 FY90 licensees would not be renewing until FY94, there would be very little revenue generated in the 1993 biennium.)

FISCAL IMPACT:Expenditures:

	Current	FY90		Current	FY91	
	Law	Proposed	Difference	Law	Proposed	Difference
Dept. of State Lands	\$ -0-	\$33,497	\$32,791	\$ -0-	\$20,580	\$20,580
Personal Services	-0-	29,000	29,000	-0-	15,000	13,000
Operating Expenses	-0-	3,800	3,800	-0-	-0-	-0-
Equipment	\$ -0-	\$66,297	\$66,297	\$ -0-	\$35,580	\$35,580
Total						
Funding:						
General Fund	\$ -0-	\$66,297	\$66,297	\$ -0-	\$35,580	\$35,580



RAY SHACKLEFORD, BUDGET DIRECTOR  
OFFICE OF BUDGET AND PROGRAM PLANNING

DATE 2/20/89



BEN COHEN, PRIMARY SPONSOR

DATE 2/21/89

Fiscal Note for HB697, as introduced

HB 697