

HOUSE BILL 790

Introduced by Cohen, et al.

3/22	Introduced
3/22	Fiscal Note Requested
3/23	Referred to Taxation
3/28	Hearing
3/28	Fiscal Note Received
3/28	Committee Report--Bill Not Passed
3/29	Adverse Committee Report Adopted

1 HOUSE BILL NO. 790  
2 INTRODUCED BY Chas Ream  
3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING A  
5 SEVERANCE TAX ON TIMBER CUT IN MONTANA; ESTABLISHING A  
6 FOREST PRACTICES SPECIAL REVENUE ACCOUNT FOR THE DEPARTMENT  
7 OF STATE LANDS; STATUTORILY APPROPRIATING THE ACCOUNT;  
8 AMENDING SECTION 17-7-502, MCA; AND PROVIDING AN IMMEDIATE  
9 EFFECTIVE DATE AND AN APPLICABILITY DATE."

11 STATEMENT OF INTENT

12 It is the intent of the legislature that the department  
13 of revenue adopt rules necessary, under its authority in  
14 15-1-201, to achieve the fair and efficient collection of  
15 the timber severance tax provided for in [sections 1 through  
16 9]. To the extent practicable, the rules must provide for  
17 this collection in a manner compatible with the collection  
18 of funds related to the fire hazard reduction agreements and  
19 bonds provided for in Title 76, chapter 13, part 4.

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

22 NEW SECTION. Section 1. Definitions. As used in  
23 [sections 1 through 9], the following definitions apply:

24 (1) "Department" means the department of revenue  
25 provided for in 2-15-1301.

1 (2) "Initial purchaser" means the first person to  
2 purchase timber that has been cut or is about to be cut from  
3 any lands within the state, regardless of where the purchase  
4 is made or the location of the purchaser's place of  
5 business.

6 (3) "Seller" means the person owning timber that has  
7 been cut or is about to be cut and that is offered for sale  
8 to an initial purchaser, including but not limited to the  
9 holder of a timber sale contract or, as applicable, the  
10 owner of the lands where timber has been cut or is about to  
11 be cut.

12 (4) "Tax" means the timber severance tax provided for  
13 in [section 2].

14 (5) "Timber volume" means the amount of timber cut in  
15 units of 1,000 board feet (log scale) or, if timber in a  
16 form other than logs is cut, the equivalent of that amount.

17 NEW SECTION. Section 2. Timber severance tax. (1)  
18 There is a timber severance tax on all timber cut within the  
19 state, including timber from state lands, privately owned  
20 lands, and lands managed by the federal government. The tax  
21 attaches at the time of purchase by the initial purchaser.  
22 The tax must be collected by the initial purchaser from the  
23 seller of the timber and must be paid to the department by  
24 the initial purchaser as provided in [section 3].

25 (2) The rate of the tax is 20 cents per 1,000 board

1 feet (log scale) or, if timber in a form other than logs is  
2 cut, the equivalent of that amount.

3 NEW SECTION. **Section 3. Quarterly payment of tax.** The  
4 initial purchaser of timber shall pay the tax in quarterly  
5 installments for the periods ending March 31, June 30,  
6 September 30, and December 31 of each year. The tax for each  
7 quarterly period must be paid to the department within 60  
8 days after the end of the period.

9 NEW SECTION. **Section 4. Tax return and payment --**  
10 **records.** (1) Each initial purchaser of timber shall, within  
11 60 days after the end of each quarter, prepare and submit on  
12 forms prescribed by the department a return showing the  
13 timber volume purchased during each month of the quarter and  
14 during the whole quarter, together with the total amount of  
15 tax due the state for the quarter. The return must be signed  
16 by the individual or the president, vice-president,  
17 treasurer, or managing agent of the business, partnership,  
18 corporation, or other entity covered by the return. A person  
19 engaged in purchasing timber at more than one location  
20 within or outside of the state may include all purchases in  
21 one return.

22 (2) The department shall examine each return and  
23 compute the amount of the tax assessed against and payable  
24 by the person filing the return. If the tax due is greater  
25 than the amount paid, the taxpayer shall pay the excess to

1 the department within 10 days after a written notice of the  
2 deficiency is mailed by the department to the taxpayer. If  
3 the tax imposed is less than the amount paid, the difference  
4 must be applied as a credit against tax liability for  
5 subsequent quarters or refunded if there is no subsequent  
6 tax liability.

7 (3) Each initial purchaser of timber shall keep  
8 receipts, invoices, and other pertinent records that the  
9 department may require, shall produce them for inspection by  
10 the department at any time during normal business hours, and  
11 shall keep them for at least 3 years from the due date of  
12 the return.

13 NEW SECTION. **Section 5. Department determination of**  
14 **tax in absence of return -- penalty and interest -- warrant**  
15 **for distraint.** (1) If a person fails, neglects, or refuses  
16 to file a return as required and within the time limits  
17 established by [section 4], the department shall,  
18 immediately after the time has expired, proceed to determine  
19 the timber volume purchased by the person in this state  
20 during the quarter and the tax due the state from the person  
21 for the quarter.

22 (2) The department shall add to the amount of the tax  
23 a 10% penalty plus interest at the rate of 1% a month or  
24 fraction of a month computed on the tax and penalty.  
25 Interest must be computed from the date the tax was due to

1 the date of payment.

2 (3) The department shall mail to the person  
3 responsible for the tax payment a letter setting forth the  
4 amount of tax, penalty, and interest due and informing him  
5 that a warrant for distraint may be filed if payment is not  
6 made.

7 (4) If all or part of the tax imposed by this part is  
8 not paid when due, the department may issue a warrant for  
9 distraint as provided in Title 15, chapter 1, part 7.

10 NEW SECTION. Section 6. Penalty for violations. A  
11 person who fails, neglects, or refuses to file a return in  
12 the manner or within the time required, who falsifies a  
13 return or other information required under [sections 1  
14 through 9], or who violates any other provision of [sections  
15 1 through 9] or rules adopted to implement [sections 1  
16 through 9] is guilty of a misdemeanor punishable by a fine  
17 not exceeding \$1,000, imprisonment not to exceed 6 months,  
18 or both.

19 NEW SECTION. Section 7. Deficiency assessment --  
20 hearing -- interest. (1) When the department determines that  
21 the tax due is greater than the amount disclosed by the  
22 return filed pursuant to [section 4], the department shall  
23 mail to the taxpayer a notice of the additional tax proposed  
24 to be assessed. Within 30 days after the department mails  
25 the notice, the taxpayer may file with the department a

1 written protest against the proposed additional tax that  
2 sets forth the grounds upon which the protest is based and  
3 may request a hearing. If a protest is not filed, the amount  
4 of the additional tax proposed to be assessed becomes final  
5 upon the expiration of the 30-day period. If a protest is  
6 filed, the department shall hold a hearing, if requested by  
7 the taxpayer, and may reconsider the proposed assessment.  
8 After consideration of the protest and evidence presented,  
9 the department shall take final action upon the protest and  
10 mail notice of its action to the taxpayer.

11 (2) If a deficiency is sustained by final action of  
12 the department, the department shall mail a notice and  
13 demand for payment to the taxpayer. The tax is due at the  
14 expiration of 10 days from the date of the notice. A  
15 deficiency assessment must bear interest at the rate of 1% a  
16 month or fraction of a month, computed from the original due  
17 date of the return required by [section 4].

18 NEW SECTION. Section 8. Statute of limitations. (1)  
19 Except as otherwise provided in this section, a deficiency  
20 may not be assessed with respect to the year for which a  
21 return is filed unless the notice of additional tax is  
22 mailed within 5 years from the date the return was filed.  
23 For the purposes of this section, a return filed before the  
24 last day prescribed for filing is considered as filed on the  
25 last day. If the taxpayer, before the expiration of the

period prescribed for assessment of the tax, consents in writing to an assessment after that time, the tax may be assessed at any time prior to the expiration of the period agreed upon.

(2) A refund or credit may not be paid or allowed with respect to the year for which a return is filed after 5 years from the last day prescribed for filing the return or after 1 year from the date of the overpayment, whichever is later, unless before the expiration of the period the taxpayer files a claim or the department has determined the existence of the overpayment and has approved the refund or credit. If the taxpayer has agreed in writing under the provisions of subsection (1) to extend the time within which the department may propose an additional assessment, the period within which a claim for refund or credit may be filed or allowed is automatically extended.

(3) If a return is required to be filed and the taxpayer fails to file the return, the tax may be assessed or an action to collect the tax may be brought at any time. If a return is required to be filed and the taxpayer files a fraudulent return, the 5-year period provided for in subsection (1) does not begin until discovery of the fraud by the department.

**NEW SECTION. Section 9. Disposition of tax.** The tax collected under [sections 1 through 9] must be deposited in

the forest practices account administered by the department of state lands and provided for in [section 10].

**NEW SECTION. Section 10. Forest practices account -- purpose -- appropriation.** (1) There is a forest practices account in the state special revenue fund provided for in 17-2-102.

(2) There must be deposited in the account:

(a) all revenue from the timber severance tax provided for in [section 2]; and

(b) money received by the department in the form of legislative appropriations, reimbursements, gifts, federal funds, or appropriations from any source intended to be used for the purposes of this account.

(3) The account is statutorily appropriated to the department and may be used by the department only to promote and oversee the use of best management practices by persons involved in timber sale planning, associated road construction and reconstruction, timber harvesting, site preparation, and related activities.

(4) The department shall use 50% of the account to implement [House Bill No. 678]. The remaining 50% of the account shall be used for the purposes contained in subsection (3).

**Section 11.** Section 17-7-502, MCA, is amended to read:

"17-7-502. Statutory appropriations -- definition --

requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105; 2-18-812; 10-3-203; 10-3-312; 10-3-314; 10-4-301; 13-37-304; 15-25-123; 15-31-702; 15-36-112; 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411; 17-3-212; 17-5-404; 17-5-424; 17-5-804; 19-8-504; 19-9-702; 19-9-1007; 19-10-205; 19-10-305; 19-10-506; 19-11-512; 19-11-513; 19-11-606; 19-12-301; 19-13-604; 20-4-109; 20-6-406; 20-8-111; 23-5-610; 23-5-1027; 33-31-212; 33-31-401; 37-51-501; 39-71-2504; 53-6-150; 53-24-206; 67-3-205; 75-1-1101; 75-7-305; 76-12-123; 80-2-103; 80-2-228; 82-11-136; 90-3-301; 90-3-302; 90-3-412; 90-4-215; 90-9-306; 90-15-103; [section 10]; section 13, House Bill No. 861, Laws of 1985;

and section 1, Chapter 454, Laws of 1987.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for such payments. (In subsection (3): pursuant to sec. 15, Ch. 607, L. 1987, the inclusion of 15-65-121 terminates June 30, 1989; pursuant to sec. 10, Ch. 664, L. 1987, the inclusion of 39-71-2504 terminates June 30, 1991; and pursuant to sec. 6, Ch. 454, L. 1987, the inclusion of sec. 1, Ch. 454, L. 1987, terminates July 1, 1988.)"

**NEW SECTION. Section 12.** 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 13.** Codification instruction. (1) [Sections 1 through 9] are intended to be codified as an integral part of Title 15 and the provisions of Title 15 apply to [sections 1 through 9].

LC 0807/01

1       (2) [Section 10] is intended to be codified as an  
2 integral part of Title 76, chapter 13, part 1, and the  
3 provisions of Title 76, chapter 13, part 1, apply to  
4 [section 10].

5       NEW SECTION. **Section 14. Effective date.** [This act]  
6 is effective on passage and approval.

7       NEW SECTION. **Section 15. Applicability.** [This act]  
8 applies to forest products cut after June 30, 1989.

-End-

## STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB790, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act establishing a severance tax on timber cut in Montana; establishing a forest practices special revenue account for the Department of State Lands; statutorily appropriating the account; and providing an immediate effective date and an applicability date.

ASSUMPTIONS:

1. It is estimated that 1,086,919 M.B.F. (thousands of board feet) will be cut each year of the biennium. (Based on a report from U.S. Forest Service Region 1, July 14, 1988. John R. Naumann.)
2. The first collections would not be received until the second quarter of FY90.
3. At \$0.20 per one thousand board feet the revenue generated would be \$163,038 for FY90; and \$217,038 for FY91 and each subsequent year. All revenue generated would be deposited in the forest practices account in the state special revenue fund.
4. The filers would be timber processors. There are approximately 200 processors utilizing Montana timber.

Department of Revenue

5. The data processing development costs would be \$5,500 for operating costs and \$70,000 for personal services. The annual operating costs would be \$1,050 for FY90 and \$1,400 for FY91.
6. One grade 14 FTE would need to be hired to administer the timber severance tax at an approximate cost of \$25,000 per year.

Department of State Lands

7. No additional Department of State Lands expenditures are required by this bill. This bill provides funding for the Department's expenditures under HB678.

FISCAL IMPACT:Revenue Impact:

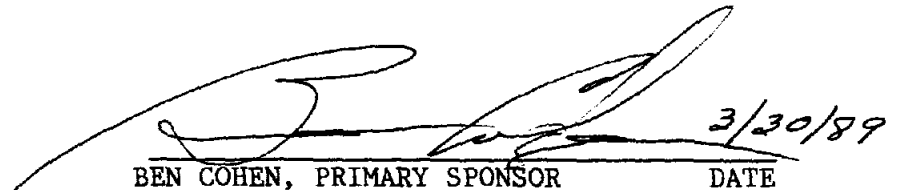
	FY90			FY91		
	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
Timber Severance Tax	\$ 0	\$ 163,038	\$ 163,038	\$ 0	\$ 217,384	\$ 217,384

Expenditure Impact: (State Special Revenue Fund)Department of Revenue

Personal Services	\$ 0	\$ 95,000	\$ 95,000	\$ 0	\$ 25,000	\$ 25,000
Operating Expenses	0	6,550	6,550	0	1,400	1,400
Total	\$ 0	\$ 101,550	\$ 101,550	\$ 0	\$ 26,400	\$ 26,400



DAVE LEWIS, BUDGET DIRECTOR      DATE  
Office of Budget and Program Planning



BEN COHEN, PRIMARY SPONSOR      DATE 3/30/89

Fiscal Note for HB790, as introduced

**HB 790**



Fiscal Note Request HB790, as introduced

Form BD-15

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TECHNICAL NOTES:

1. The definitions provided for initial purchaser and seller are unclear. If "seller" can be interpreted to mean the owner of standing timber who sells to a logger or contractor, then there is a potential legal conflict. This would make the tax payable by the federal government and the State of Montana, since both "sell" a considerable volume of timber each year. Similarly, if the "initial purchaser" can be interpreted to be the logger or contractor who "purchases" the timber on the stump from the landowner, then that person(s) must collect and pay the tax to the Department of Revenue. This conflicts with the intent of the bill, which states that the tax should be collected "... in a manner compatible with the collection of funds related to the fire hazard reduction agreements and bonds provided for in Title 76, chapter 13, part 4." Hazard reduction bonds are collected by the primary processing facility (mill).
2. More importantly, taxation of a state asset certainly violates section 15-6-201, MCA, and where school trust lands are involved, such taxation probably violates Montana's Constitution (Art X, Sec. 11) and Montana's Enabling Act, which both state that all income derived from the school trust asset may only go to support the common schools.
3. In many cases, timber is delivered from company-owned lands to company-owned processing plants. It is unclear who the initial purchaser is in this situation, and who has the responsibility to collect and report the tax.
4. Measurement of commercial timber (scaling, weighing) in Montana is done in a manner which best fits the needs of the parties in the transaction, and the needs of the primary processors (mills). It is not regulated except by individual contract, nor are there any uniform standards for conversions to board-foot volume when other measures are used. In other words, there is no standard or uniform manner in which boardfoot volume is calculated in Montana.
5. The bill requires that the Department of State Lands use 50% of the revenue generated by the tax to implement HB 678. It is estimated that this will amount to \$81,519 in FY90 and \$108,692 in FY91, considerably more than is necessary to fund the expenses under HB 678. Also, the intent for expenditures relating to the remaining 50% of the revenue is unclear.