

HOUSE BILL 54

Introduced by Benedict

12/02	Introduced
12/02	Referred to Appropriations
12/02	First Reading
12/03	Fiscal Note Requested
12/09	Hearing
12/09	Fiscal Note Received
12/09	Fiscal Note Printed
12/13	Committee Report--Bill Passed as Amended
	Died in Process

1 House BILL NO. 54
2 INTRODUCED BY Bond
3 BY REQUEST OF THE DEPARTMENT OF STATE LANDS AND
4 THE OFFICE OF BUDGET AND PROGRAM PLANNING
5

6 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING AND
7 STREAMLINING THE FIRE HAZARD REDUCTION LAWS; ELIMINATING
8 FIRE HAZARD REDUCTION AGREEMENTS AND BONDS; AUTHORIZING
9 CIVIL PENALTIES AND INJUNCTIONS; AMENDING SECTIONS
10 76-13-104, 76-13-131, 76-13-401, 76-13-402, 76-13-403,
11 76-13-407, 76-13-408, 76-13-409, 76-13-412, 76-13-413,
12 76-13-414, AND 76-13-415, MCA; REPEALING SECTIONS 76-13-405,
13 76-13-406, 76-13-410, AND 76-13-411, MCA; AND PROVIDING
14 EFFECTIVE DATES AND AN APPLICABILITY DATE."
15

16 STATEMENT OF INTENT

17 A statement of intent is required for this bill because
18 76-13-402 and [section 14] grant the board of land
19 commissioners rulemaking authority. It is the intent of the
20 legislature that the board adopt rules to implement the
21 provisions of this bill, including rules to establish
22 standards and guidelines for fire hazard reduction or
23 management by operators, to provide criteria for determining
24 which operators qualify as large-scale operators, and to
25 provide criteria for determination of the amount of civil

1 penalties assessed for violations based upon the seriousness
2 of the violation, the history of previous violations, and
3 the good faith shown in abating the violation in a timely
4 manner. In adopting these rules, the board should seek to
5 minimize the potential for fire danger while also
6 streamlining the fire hazard reduction or management
7 process.
8

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

10 **Section 1.** Section 76-13-104, MCA, is amended to read:

11 **"76-13-104. Functions of department.** (1) The department
12 may give technical and practical advice concerning forest,
13 range, water, and soil conservation and the establishment
14 and maintenance of woodlots, windbreaks, shelterbelts, and
15 forest fire protection.

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

20 (3) The department shall require an owner or operator
21 to provide a notification prior to conducting forest
22 practices as provided in 76-13-131, ~~shall adapt as necessary~~
23 ~~any procedure used for notification with respect to an~~
24 ~~agreement under 76-13-408 to ensure that the operator~~
25 provides shall require the owner or operator to provide

information on the location of the forest practices in relation to watershed features, and shall conduct onsite consultations as provided for in 76-13-132."

Section 2. Section 76-13-131, MCA, is amended to read:

"76-13-131. Notification prior to forest practices -- department response. (1) An operator or, pursuant to subsection (3), an owner shall notify the department prior to conducting forest practices on private land. The notification must be in writing on a form provided by the department and signed by the operator. A separate notification is required for each timber sale. At the time of notification, the operator or, pursuant to subsection (3), the owner shall pay the hazard reduction administrative fee required pursuant to 76-13-414. 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 and payment of the administrative fee, if applicable, the department shall mail to the operator and, if an address has been provided, to the owner:

- (i) a receipt of notification;
- (ii) information on best management practices for forestry;

(iii) information on conservation district permit requirements related to stream crossings; and

(iv) information on the requirements of part 4 of this chapter regarding fire hazard reduction or management;

(v) a separate hazard reduction identification number for each notice. However, the department may not issue a hazard reduction identification number until it first has issued a notice to proceed pursuant to subsection (2)(b)(i).

(vi) 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; or
- (iii) forest practices may not proceed because the operator or the owner has an unabated violation of the fire hazard reduction and management requirements of part 4 of this chapter or an unpaid civil penalty pursuant to 76-13-412, unless the civil penalty or order is under administrative or judicial review. Before forest practices may proceed, the operator or the owner must receive certification from the department that the violation has been abated, the penalty has been paid, or an administrative

1 or judicial proceeding has been instituted. If the
 2 department determines that the issuance of a notice that
 3 forest practices may not proceed would create undue hardship
 4 on the owner or the operator or would not significantly
 5 assist in obtaining compliance or payment, the department,
 6 in its discretion, may issue a notice pursuant to subsection
 7 (2)(b)(i) that forest practices may proceed.

8 (c) Whenever the department has not assigned a hazard
 9 reduction identification number because it has issued a
 10 notice pursuant to subsection (2)(b)(ii) or (2)(b)(iii), it
 11 shall issue a number immediately after the onsite
 12 consultation, expiration of the time for an onsite
 13 consultation if none is held, abatement of the violation, or
 14 payment of the penalty.

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

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

24 (i) meet with the owner to review the proposed timber
 25 sales, discuss watershed concerns, and schedule onsite

1 consultations at appropriate sites; or

2 (ii) provide a receipt of notification, as described in
 3 subsection (2)(b), for individual timber sales.

4 (c) If the department requires an onsite consultation
 5 for any of the timber sales, it shall notify the owner of
 6 this requirement as soon as possible but no less than 10
 7 calendar days prior to the estimated starting date of forest
 8 practices associated with the timber sale. The onsite
 9 consultation must then be scheduled according to the
 10 provisions of 76-13-132(2) through (4)."

11 **Section 3.** Section 76-13-401, MCA, is amended to read:

12 "76-13-401. Definitions. As used in this part, the
 13 following definitions apply:

14 (1) "Board" means the board of land commissioners
 15 provided for in Article X, section 4, of the Montana
 16 constitution.

17 (2) "Cutting operations" means cutting any forest
 18 product, constructing or reconstructing any road in
 19 contemplation of cutting a forest product, or conducting
 20 timber stand improvements, including but not limited to
 21 thinning, weeding, or pruning. ~~"Certification-of-clearance"~~
 22 ~~means-a-certification-issued-by-the-department-acknowledging~~
 23 ~~that--the--fire--hazard--has--been--reduced--or--managed--in~~
 24 ~~accordance--with--this--part--and--the--fire-hazard-reduction~~
 25 ~~agreement-or-agreements.~~

1 {3}--"Contractor" means the person who executes the fire
2 hazard reduction agreement and is responsible to fulfill the
3 obligations established by the agreement.

4 {4}(3) "Department" means the department of state lands
5 provided for in Title 2, chapter 15, part 32.

6 {5}(4) "Fire hazard" means slash and debris resulting
7 from timber cutting, timber stand improvement, or
8 right-of-way clearing operations that produce a cover of
9 flammable material in which fire could spread through a
10 cutting or adjacent area.

11 {6}--"Fire hazard reduction agreement" means a contract
12 made to ensure compliance with this part and with the rules
13 adopted under 76-13-403 for fire hazard reduction or
14 management.

15 {7}(5) "Fire hazard reduction or management" means the
16 abatement of a fire hazard by methods that include but are
17 not limited to separation, removal, scattering, lopping,
18 crushing, piling and burning, broadcast burning, burying, or
19 chipping.

20 {8}(6) "Forest product" means trees or their component
21 parts, including but not limited to logs, poles, branches,
22 or bark.

23 {7} "Large-scale operator" means an owner who engages
24 in multiple cutting operations that:

25 (a) produce slash;

1 (b) are on the owner's land;

2 (c) continuously exceed 500,000 board feet of timber
3 harvested per calendar year; and

4 (d) are supervised by a professional forester employed
5 by or under contract to the owner.

6 {9}--"Master fire hazard reduction agreement" means a
7 fire hazard reduction agreement between the department and
8 persons engaged in continuing cutting operations of
9 sufficient number and size to warrant covering these
10 operations under a single agreement and a single bond.

11 {8} "Operator" means either a person responsible for
12 conducting or a person who conducts cutting operations that
13 produce slash. An operator may be the owner, the owner's
14 agent, a large-scale operator, or a person who, through
15 contractual agreement with the landowner, is obligated to or
16 entitled to conduct cutting operations.

17 {9} "Owner" means the person, firm, association, or
18 corporation having the actual, beneficial ownership of
19 timber or forest land other than an easement, right-of-way,
20 or mineral reservation.

21 {10} "Person" means an individual, association,
22 partnership, corporation, estate, or any other entity.

23 {11} "Purchaser" means a person who purchases or
24 contracts to purchase any forest products cut from private
25 forest lands within the state. The term includes persons who

1 purchase products manufactured on the cutting area.

2 (12) "Slash" means the woody debris that is dropped to
 3 the forest floor during cutting operations or operations
 4 subject to 76-13-407."

5 **Section 4.** Section 76-13-402, MCA, is amended to read:

6 "76-13-402. Basis for management of fire hazards. The
 7 fire hazard reduction or management referred to in this part
 8 ~~shall must~~ be carried--on--by-the-department conducted in
 9 keeping with modern and progressive forest practices and
 10 effective forest fire protection, ~~and may include but is not~~
 11 ~~limited--to--the--taking--of--protective--measures--to--prevent~~
 12 ~~injury or the destruction of forest resources without actual~~
 13 ~~abatement of the hazard~~ The board shall adopt rules to
 14 implement fire hazard reduction or management requirements
 15 and the provisions of this part."

16 **Section 5.** Section 76-13-403, MCA, is amended to read:

17 "76-13-403. ~~Supervision~~ Inspection by department. The
 18 department, ~~--under rules adopted by the board,~~ may supervise
 19 and enter private land at any reasonable time to inspect the
 20 fire hazard reduction or management of all fire hazards
 21 created by cutting operations, forest products harvesting,
 22 timber stand improvement, and right-of-way clearing on
 23 private land in the state."

24 **Section 6.** Section 76-13-407, MCA, is amended to read:

25 "76-13-407. Reduction of slash and debris along

1 right-of-way. (1) A person clearing right-of-way for any
 2 railroad, public highway, public trail, private road, trail,
 3 ditch, dike, pipeline or wire lines, or any other
 4 transmission or transportation utility right-of-way, except
 5 temporary roads located within the boundaries of the cutting
 6 area and ~~which~~ that are used in the actual logging
 7 operations, ~~shall,~~ in accordance with rules adopted by the
 8 board, reduce the hazard resulting from the clearing or from
 9 the cutting of material for the construction of the public
 10 or private utility unless exempted by the department. ~~At~~
 11 ~~least 10 days--before--commencement--of--the--clearing,--the~~
 12 ~~person--conducting--the--clearing--shall--notify--the--department~~
 13 ~~of commencement of the clearing in the form and--manner--the~~
 14 ~~department provides.~~

15 (2) Hazard reduction, excluding burning ~~where~~ when this
 16 method is used, ~~shall must~~ be done as rapidly as cutting or
 17 clearing progresses.

18 (3) This section applies to all clearing of
 19 rights-of-way across private land and on behalf of the
 20 state, county, highway districts, and road districts,
 21 whether the work is done by day labor or by contract, and
 22 unless unavoidable emergency prevents, provision ~~shall must~~
 23 be made by the proper officials conducting, directing, or
 24 letting the work for withholding until it is complete a
 25 sufficient portion of the payment to ~~assure~~ ensure

1 compliance with this part."

2 **Section 7.** Section 76-13-408, MCA, is amended to read:

3 "76-13-408. Fire hazard reduction agreement-and-bond.
4 {1}-Before--cutting--any--forest--product,--constructing--or
5 reconstructing--any--road--in--contemplation--of--cutting--any
6 forest-product,--or--conducting--timber-stand-improvement,--such
7 as-but-not-limited-to--thinning,--weeding,--or--pruning, After
8 conducting cutting operations upon private lands within the
9 state, the person operator conducting the work shall provide
10 for-the-reduction-or-management-of reduce or manage the fire
11 hazard to--be--created--by--entering--into--a--fire--hazard
12 reduction--agreement--or--a--master--fire--hazard--reduction
13 agreement-with-the-department,--providing-for--the--full--and
14 faithful--compliance--with--all-requirements-under-this-part
15 and-the-faithful-reduction-or-management-of-the-fire--hazard
16 in--the-manner-prescribed-by-law-and-by-rules-adopted-by-the
17 board in accordance with the standards set in rules adopted
18 pursuant to 76-13-402.

19 {2}--Either--the--person--conducting--the--work--or--the
20 purchaser,--as-provided-in-76-13-409(2),--shall-post-a-bond-to
21 the--state--in-a-form-and-for-an-amount-as-may-be-prescribed
22 by-the-department,--but-the-amount-may-not-exceed-\$6-for-each
23 17000-board-feet-(log-scale)-or--the--equivalent--if--forest
24 products-other-than-logs-are-cut.

25 {3}--Either--the--person--conducting--the--work--or--the

1 purchaser,--as--provided-in-76-13-409(2),--shall-pay-15-cents
2 for-each-17000-board-feet-(log-scale)-or-equivalent--measure
3 if--forest--products-other-than-logs-are-cut.-The-assessment
4 may-not-exceed-\$20,000-a-year.-The-full-amount-of-this-money
5 must-be-deposited-in-the-forestry-extension-service--account
6 provided-for-in-76-13-415.

7 {4}--The-agreement-must-provide-that:

8 {a}--~~all~~ All fire hazard reduction or management work
9 comprising nonburning methods and preparations for burning
10 must be completed within 18 months of commencement of the
11 cutting operation that produced the fire hazard cutting--in
12 the-area-covered-by-the-agreement,--and

13 {b}--~~all~~ burning-work-must-be-completed-as-specified-in
14 the-agreement-and-in-compliance-with-rules--adopted--by--the
15 board.

16 {5}--The--bond-must-be-released-upon-the-issuance-of-the
17 certificate-of-clearance."

18 **Section 8.** Section 76-13-409, MCA, is amended to read:

19 "76-13-409. Duty of purchaser to ensure compliance --
20 statement -- bond. (1) The initial purchaser of forest
21 products which that have been cut or are about to be cut
22 from any private lands within the state shall, before making
23 the purchase or contract to purchase, determine ensure that
24 the person engaged or about to engage in the cutting of
25 these forest products has provided--for-the-reduction-or

management-of-the-fire-hazard-by-entering-into-a-fire-hazard reduction-agreement-as-provided-in-76-13-408 obtained from the department a hazard reduction identification number pursuant to 76-13-131.

(2) The Except for purchases from a large-scale operator, the purchaser shall withhold sufficient money to meet-the-requirements-of-the-bond-provided-for-in--76-13-408 plus pay the fees for forestry extension and for administration, inspection, and enforcement by the department as provided in the--hazard--reduction--agreement 76-13-414(2). The purchaser shall transmit all money and fees-that-are withheld and a report of volumes of products purchased to the department on or before the 15th day of the following month, clearly identifying by hazard reduction number the cutting operation fire-hazard-reduction-agreement to which the withheld money,--fees, and product volumes pertain. The purchaser shall keep accurate records of the purchase and the amounts withheld, which may be inspected by the department at any reasonable time.

{3}--If-forest-products-are-not-received-or-purchased-in a-given-month, a-report-showing-a-zero-balance--and--stating that--products--were--not-purchased-must-be-submitted-to-the department.

{4}{3} The department may require the purchaser to post a bond to the state in a form and for an amount as may be

prescribed by the department to ensure faithful compliance with this part."

Section 9. Section 76-13-412, MCA, is amended to read:

"76-13-412. Violations -- remedies. A-person--convicted of--violating-this-part-is-guilty-of-a-misdemeanor-and-shall be-fined-not-less-than-\$100-or-more-than-\$1,000- (1) (a) The department may assess for each violation a civil penalty, not to exceed \$10,000, against a person who violates a provision of this part, a rule adopted under this part, or an order issued under this section.

(b) The department shall notify the person of the violation and penalty. The person is entitled, by filing a written request within 20 days of receipt of the notice of violation, to a hearing on the issues of whether the alleged violation has occurred and whether the penalty is proper. After the hearing or after the period for requesting a hearing has expired, the department shall enter findings of fact, issue a written decision as to the occurrence of the violation and the amount of the penalty warranted, and order the payment of the penalty in that amount.

(c) The person shall remit the amount of the penalty within 30 days of the order. If the person wishes to obtain judicial review of the assessment, a statement that the penalty is being paid under protest must accompany the payment. The department shall hold a payment made under

protest in escrow until judicial review is complete. A person who fails to request and submit testimony at the hearing or who fails to pay the penalty under protest within 30 days of the order assessing the penalty forfeits the right to seek judicial review of the violation or penalty determinations.

(d) The department may recover a penalty in an action brought before the district court of the first judicial district of this state or in the district court of the county in which the alleged violation occurred.

(e) Penalties paid pursuant to this section must be deposited in the general fund. A penalty assessed pursuant to this section constitutes a lien upon the real property of the person against whom the penalty is assessed.

(2) When the department determines that a person has violated a provision of this part or rules adopted pursuant to this part, the department may issue an order requiring the person to undertake necessary fire hazard reduction or management within a reasonable period of time. The order must specify the nature of the violation, the fire hazard reduction or management practices required, and the time for abatement. The order becomes final 20 days after the notice is served, unless the person requests in writing a hearing before the department. After the hearing, the department shall enter findings of fact, issue a written decision as to

the occurrence of the violation and the appropriateness of the abatement ordered, and affirm, modify, or terminate the order previously issued. The department may include in the order a requirement that the person immediately cease further activity at the site and take immediate action to reduce the fire hazard.

(3) (a) If after the issuance of a final order pursuant to subsection (2) the person refuses or fails to comply with the order or if the department determines that a person has failed to give notification of forest practices pursuant to 76-13-131(1) or has conducted forest practices in violation of 76-13-131(2)(b)(iii), the department may bring an action:

(i) to enjoin the person from conducting further cutting operations at the site;

(ii) to enjoin the person from engaging in further fire hazard reduction or management that the department believes violates the standards of this part or rules adopted pursuant to this part; or

(iii) for a mandatory injunction requiring compliance with this part and rules adopted pursuant to this part.

(b) Actions by the department may be brought before the district court of the first judicial district of this state or in the district court of the county in which the alleged violation occurred."

Section 10. Section 76-13-413, MCA, is amended to read:

"76-13-413. Failure to submit withholding -- remedy.

(1) If a purchaser does not submit withheld money and required reports on or before the 15th day of the following month as provided in 76-13-409, he the purchaser must be notified by certified mail ~~that--he---is---in~~ of the noncompliance and be given 15 days to submit all money and reports then due. If he the purchaser fails to submit all money due within the required time, the department may initiate a lien upon the real property of the purchaser and may initiate proceedings to enjoin further processing of all wood products until all money due is paid in full and all required reports are submitted.

(2) If payment and reports are not received by the department within the 15-day period after notification as provided in subsection (1), a penalty of 5% of the payment amount due must be assessed. The department may abate the penalty if the purchaser establishes that the failure to submit the amount due or the reports as required was due to reasonable cause and was not due to neglect on his the purchaser's part. The department, in addition to the penalty, may impose interest at the rate of 10% a year on any balance remaining unpaid.

(3) All money withheld by a purchaser ~~for--the contractor's-bond-and~~ for department fees is considered to be excise taxes withheld for the benefit of the state within

the meaning of 11 U.S.C. 507."

Section 11. Section 76-13-414, MCA, is amended to read:

"76-13-414. Fees. (1) At the time of notification pursuant to 76-13-131, an operator or an owner, except a large-scale operator, proposing to conduct forest practices on private land shall include with each notification a hazard reduction administrative fee of \$25. In--addition--to any--bond,--the--department-shall-charge-the-contractor-fees for--administration,--inspections,--and---enforcement---work conducted-in-the-exercise-of-its-duties-under-this-part. The fees--must-be-deposited-in-the-state-special-revenue-fund-to the-credit-of-the-department.

~~(2)--(a)-The-fee-for-a-fire-hazard--reduction--agreement is-\$25-and-must-be-collected-by-the-department-upon-issuance of-the-agreement.~~

~~(b)--In-addition,--a~~

(2) (a) In addition to the fee provided for in subsection (1), the department shall charge each person, except a large-scale operator, who notifies the department pursuant to 76-13-131(1) or (3) of an intent to conduct forest practices a fee for the administration and enforcement of this part of 60 cents for each 1,000 board feet (log scale) must-be-charged or an equivalent fee must be-charged if products other than logs are cut. This fee must be withheld by the purchaser as provided in

1 76-13-409(2) ~~7-except-that-any-fee~~ Fee money withheld for
2 product volumes exceeding 500,000 board feet per agreement
3 hazard reduction identification number in a calendar year
4 must be returned to the contractor operator by the
5 department.

6 (b) Either the operator, except a large-scale operator,
7 or the purchaser, as provided in 76-13-409, shall pay to the
8 department a forestry extension fee of 15 cents for each
9 1,000 board feet (log scale), or equivalent measure, if
10 forest products other than logs are cut. The assessment may
11 not exceed \$20,000 per year.

12 (3) (a) ~~The---fee---for---master---fire---hazard---reduction~~
13 ~~agreements---must---be~~ The department shall charge each
14 large-scale operator a fee equal to 100% of the department's
15 actual costs incurred in the administration, inspection, and
16 enforcement of each agreement, this part for that operator's
17 cutting operations, and the department shall bill the
18 contractor operator annually to collect such fees the fee.

19 (b) In addition, each ~~contractor---with-a-master-fire~~
20 ~~hazard-reduction-agreement~~ large-scale operator shall pay to
21 the department a forestry extension fee of 15 cents for each
22 1,000 board feet (log scale), or equivalent measure, if
23 forest products other than logs are cut. The assessment may
24 not exceed \$20,000 a year for each master---fire---hazard
25 attachment large-scale operator. The---full-amount-of-this

1 ~~money-must-be-deposited-in-the---forestry---extension---service~~
2 ~~account-provided-for-in-76-13-415-~~

3 ~~(c)---The~~ This fee required under subsection (3)(b) must
4 be paid annually in conjunction with the administrative fee
5 paid under subsection (3)(a).

6 (c) A large-scale operator shall annually report the
7 volume of forest products harvested by location at a time
8 and on a form specified by the department.

9 (d) The board department may, in its discretion,
10 conduct an audit to determine the volume of forest products
11 harvested by a contractor large-scale operator. If the board
12 conducts an audit, the contractor The large-scale operator
13 shall cooperate and make available to the board department
14 all requested records, inventories, and other information
15 relevant to the audit.

16 (4) The fees assessed pursuant to subsections (1),
17 (2)(a), and (3)(a) must be deposited in the state special
18 revenue account to the credit of the department and must be
19 used for the administration and enforcement of this part.
20 The full amount of the fees collected under subsections
21 (2)(b) and (3)(b) must be deposited in the forestry
22 extension service account provided for in 76-13-415."

23 **Section 12.** Section 76-13-415, MCA, is amended to read:
24 **"76-13-415. Forestry extension service account --**
25 **purpose -- appropriation. (1) There is a forestry extension**

1 service account in the current restricted fund provided for
2 in 17-2-102.

3 (2) There must be deposited in the account:

4 (a) ~~all revenue from the fire hazard reduction~~
5 ~~agreement provided for in 76-13-408(3);~~

6 (b) all revenue collected pursuant to 76-13-414(2)(b)
7 and (3)(b) from the master fire hazard reduction agreement
8 provided for in 76-13-414(3)(b); and

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

13 (3) Money in the account is available to the Montana
14 university system by appropriation for the uses set forth in
15 subsection (4). Any unencumbered and unexpended balance of
16 this account remaining at the end of a fiscal year does not
17 lapse but must be carried forward for the purposes of this
18 section until expended or appropriated.

19 (4) Except as provided in subsection (5), money in the
20 account may be used by the university system only to fund
21 forestry services through the Montana cooperative extension
22 service of Montana state university. The forestry services
23 must be conducted at Montana state university, the
24 university of Montana, and Flathead Valley community
25 college.

1 (5) The use of money in this account by the Montana
2 university system is contingent upon the university system
3 funding the extension service's forestry and natural
4 resources program at a biennial level of at least \$108,000
5 from sources other than the account."

6 NEW SECTION. Section 13. Duty to report. A person who,
7 during a calendar month, purchases a forest product cut from
8 state or federal lands within the state but does not
9 purchase forest products from private lands during that
10 calendar month shall file, on or before the 15th day of the
11 next month, a report showing a zero balance and stating that
12 forest products were not purchased from private land.

13 NEW SECTION. Section 14. Authority to adopt temporary
14 rules. The board of land commissioners may, in order to
15 implement [section 4] prior to [the effective date of
16 [section 7]], adopt temporary rules using abbreviated notice
17 and hearing requirements.

18 NEW SECTION. Section 15. Repealer. Sections 76-13-405,
19 76-13-406, 76-13-410, and 76-13-411, MCA, are repealed.

20 NEW SECTION. Section 16. Codification instruction.
21 [Section 13] is intended to be codified as an integral part
22 of Title 77, chapter 13, part 4, and the provisions of Title
23 77, chapter 13, part 4, apply to [section 13].

24 NEW SECTION. Section 17. Saving clause. [This act]
25 does not affect rights and duties that matured, penalties

1 that were incurred, or proceedings that were begun before
2 [the effective date of this act].

3 NEW SECTION. **Section 18. Applicability.** [This act]
4 applies to all cutting operations and fire hazard reduction
5 or management that occur after January 31, 1994. An initial
6 purchaser who has withheld money pursuant to 76-13-409(2)
7 prior to February 1, 1994, shall forward the money to the
8 department of state lands on or before February 15, 1994.
9 All fire hazard reduction agreements or master fire hazard
10 reduction agreements in effect on January 31, 1994, are
11 terminated effective February 1, 1994. The department shall,
12 on or before June 30, 1994, return bond money it held
13 pursuant to those agreements.

14 NEW SECTION. **Section 19. Effective dates.** (1)
15 [Sections 4, 14, and this section] are effective on passage
16 and approval.

17 (2) [Sections 1 through 3, 5 through 13, and 15 through
18 18] are effective February 1, 1994.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15


In compliance with a written request, there is hereby submitted a Fiscal Note for HB0054, as introduced.

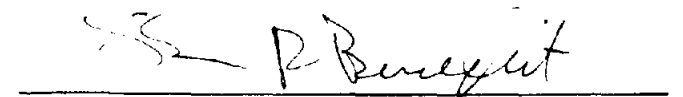
DESCRIPTION OF PROPOSED LEGISLATION: An act generally revising and streamlining the fire hazard reduction law; eliminating fire hazard reduction agreements and bonds; and authorizing civil penalties and injunctions.

ASSUMPTIONS:

1. The fire hazard reduction law or "slash law" requires abatement of fire hazards created by slash from forest cutting operations on private land.
2. This bill is required to achieve specific general fund savings identified in the Governor's budget proposal.
3. The specific fiscal intent of this bill is to define a program that can operate solely on the revenue provided by the existing fee structure and rates, without any reliance on general funds.
4. The effect of the proposed law would be to streamline the methods used by the Department of State Lands for administering the slash law, and thereby reduce the department's operating costs.
5. For each individual case (new logging operation on private land), a savings of almost 50% of the work performed by field foresters would be achieved, primarily by eliminating the inspection and clearance procedures required under the current system of hazard reduction agreements (HRAs).
6. The present caseload is running at more than 200% of the budgeted level, due to the extremely high rate of new logging operations on nonindustrial private lands. (Budgeted caseload is 1025 new operations per year; FY94 actual caseload is projected to easily exceed 2,000 new operations by fiscal year end.)
7. The resources needed to administer the proposed law are the same as those currently budgeted. (Work per case is halved; caseload is doubled; total work is the same.)
8. Estimates of earmarked special revenues from administrative fees are based on the following assumptions:
 - a) 2,000 new cases per year, each paying the base fee of \$25;
 - b) an average of 3,500 open cases at any point in time;
 - c) an average revenue of \$57.23/open case/year from the variable fee of 60 cents per 1,000 board feet; and
 - d) fee payments totalling \$26,000 per year from large-scale operators.
8. General fund revenue from fines would be negligible due to emphasis on corrective action for violations.

(continued on next page)


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


STEVE BENEDICT, PRIMARY SPONSOR DATE
Fiscal Note for HB0054, as introduced

HB 54

FISCAL IMPACT

	FY '94			FY '95		
	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
<u>Revenues:</u>						
General Fund	69,121	-0-	(69,121)	79,119	-0-	(74,119)
State Special	<u>296,931*</u>	<u>366,052*</u>	<u>69,121</u>	<u>300,659*</u>	<u>374,778*</u>	<u>74,119</u>
Total	366,052	366,052	-0-	374,778	374,778	-0-
<u>Net Impact General Fund (01)</u>			(69,121)			(74,119)

* Revenue figures for state special consist of \$276,305 in anticipated fee revenue each fiscal year and prior year account balances.

EFFECT ON COUNTY OR OTHER LOCAL REVENUE OR EXPENDITURES:

Under the proposed law, compliance with slash standards might decline due to less direct supervision and control by the department. This in turn might contribute to forest fires becoming larger or more difficult to suppress. If such fires were to occur in areas protected by county governments, county expenditures would increase by some unknown amount.

DEDICATION OF REVENUE:

- a) Are there persons or entities that benefit from this dedicated revenue that do not pay?
(Please explain.)

Yes, the general public benefits from the prevention of costly and destructive forest fires through the work financed slash dedicated revenue (fees). However, the fire hazards controlled by this program would not exist but for the activities of those paying the fee.

- b) What special information or other advantages exist as a result of using a state special revenue fund that could not be obtained if the revenue were allocated to the General Fund?

The primary advantage of allocating slash administrative fee revenue to an earmarked special revenue account is that revenues available in that account are always in proportion to the amount of work required to administer the law--they go up and down with the caseload and the market.

- c) Is the source of revenue relevant to current use of the funds and adequate to fund the program/activity that is intended? X Yes No (If no, explain.)

- d) Does the need for this state special revenue provision still exist? X Yes No (Explain.)

Yes, the need for this state special revenue provision still exists, as long as the Department has the duty of

administering and enforcing a slash law.

- e) Does the dedicated revenue affect the legislature's ability to scrutinize budgets, control expenditures, or establish priorities for state spending? (Please explain.)

No, the dedicated-revenue feature of the slash law does not prevent the legislature from scrutinizing budgets, controlling expenditures or establishing priorities.

- f) Does the dedicated revenue fulfill a continuing, legislatively recognized need? (Please explain.)

Yes, the dedicated revenue fulfills a continuing, legislatively recognized need: administering and enforcing the slash law.

- g) How does the dedicated revenue provision result in accounting/auditing efficiencies or inefficiencies in your agency? (Please explain. Also, if the program/activity were General Funded, could you adequately account for the program/activity?)

The slash administrative fee creates an accounting workload of 1.00 FTE and operating budget, the cost of which is equal to about 10% of the total revenue. This work avoids the need for a general fund expenditure ten times greater than the cost of the accounting. Also, if the program were general funded, the Department would lose the ability to easily monitor the level of logging activity on individual sites, of which the monthly fee revenue is a direct indicator.

APPROVED BY COMMITTEE
ON APPROPRIATIONS

HOUSE BILL NO. 54

INTRODUCED BY BENEDICT

BY REQUEST OF THE DEPARTMENT OF STATE LANDS AND
THE OFFICE OF BUDGET AND PROGRAM PLANNING

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING--AND
STREAMLINING--THE--FIRE--HAZARD--REDUCTION--LAWS;--ELIMINATING
FIRE--HAZARD--REDUCTION--AGREEMENTS--AND--BONDS;--AUTHORIZING
CIVIL--PENALTIES--AND--INJUNCTIONS;--AMENDING--SECTIONS
76-13-104;--76-13-131;--76-13-401;--76-13-402;--76-13-403;
76-13-407;--76-13-408;--76-13-409;--76-13-412;--76-13-413;
76-13-414;--AND--76-13-415;--MCA;--REPEALING--SECTIONS--76-13-405;
76-13-406;--76-13-410;--AND--76-13-411;--MCA;--AND--PROVIDING
EFFECTIVE--DATES--AND--AN--APPLICABILITY--DATE;" "AN ACT
INCREASING THE FEE FOR ENFORCEMENT AND ADMINISTRATION OF THE
FIRE HAZARD REDUCTION PROGRAM; AMENDING SECTION 76-13-414,
MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A
TERMINATION DATE."

STATEMENT-OF-INTENT

A statement of intent is required for this bill because
76-13-402--and--{section--14}--grant--the--board--of--land
commissioners rulemaking authority; it is the intent of the
legislature--that--the--board--adopt--rules--to--implement--the
provisions--of--this--bill;--including--rules--to--establish

standards--and--guidelines--for--fire--hazard--reduction--or
management by operators; to provide criteria for determining
which operators qualify as large-scale operators; and to
provide criteria for determination of the amount of civil
penalties assessed for violations based upon the seriousness
of the violation; the history of previous violations; and
the good faith shown in abating the violation in a timely
manner; in adopting these rules, the board should seek to
minimize the potential for fire danger while also
streamlining the fire hazard reduction or management
process.

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

(Refer to Introduced Bill)

Strike everything after the enacting clause and

insert:

Section 1. Section 76-13-414, MCA, is amended to read:

"76-13-414. Fees. (1) In addition to any bond, the
department shall charge the contractor fees for
administration, inspections, and enforcement work conducted
in the exercise of its duties under this part. The fees must
be deposited in the state special revenue fund to the credit
of the department.

(2) (a) The fee for a fire hazard reduction agreement
is \$25 and must be collected by the department upon issuance

1 of the agreement.

2 (b) In addition, a fee of ~~60~~ 75 cents for each 1,000
3 board feet (log scale) must be charged or an equivalent fee
4 must be charged if products other than logs are cut. This
5 fee must be withheld by the purchaser as provided in
6 76-13-409(2), except that any fee money withheld for product
7 volumes exceeding 500,000 board feet per agreement in a
8 calendar year must be returned to the contractor by the
9 department.

10 (3) (a) The fee for master fire hazard reduction
11 agreements must be equal to 100% of the department's actual
12 costs incurred in the administration, inspection, and
13 enforcement of each agreement, and the department shall bill
14 the contractor annually to collect such fees.

15 (b) In addition, each contractor with a master fire
16 hazard reduction agreement shall pay to the department 15
17 cents for each 1,000 board feet (log scale) or equivalent
18 measure if forest products other than logs are cut. The
19 assessment may not exceed \$20,000 a year for each master
20 fire hazard attachment. The full amount of this money must
21 be deposited in the forestry extension service account
22 provided for in 76-13-415.

23 (c) The fee required under subsection (3)(b) must be
24 paid annually in conjunction with the fee paid under
25 subsection (3)(a). The board may, in its discretion, conduct

1 an audit to determine the volume of forest products
2 harvested by a contractor. If the board conducts an audit,
3 the contractor shall cooperate and make available to the
4 board all requested records, inventories, and other
5 information relevant to the audit."

6 NEW SECTION. **Section 2. Termination.** [This act]
7 terminates September 30, 1995.

8 NEW SECTION. **Section 3. Effective date.** [This act] is
9 effective on passage and approval.

-End-