

HOUSE BILL 72

Introduced by Brandewie, et al.

12/07 Introduced
12/07 Fiscal Note Requested
21/07 Referred to Education & Cultural Resources
12/07 First Reading
12/10 Hearing
12/10 Fiscal Note Received
12/10 Fiscal Note Printed
12/14 Committee Report--Bill Passed as Amended
12/15 2nd Reading Passed as Amended
12/15 3rd Reading Passed

Transmitted to Senate
12/15 First Reading
12/15 Referred to Taxation
12/17 Hearing
12/17 Tabled in Committee

1 *House* BILL NO. 72
2 INTRODUCED BY *Benedict Kennedy* *Burd* ORR
3 *Smith* *Technik* *Plunk* *Grady* *Benedict* *Tash*
4 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THE BOARD OF
5 LAND COMMISSIONERS AND THE DEPARTMENT OF STATE LANDS TO
6 OPTIMIZE REVENUE DERIVED FROM FORESTED STATE TRUST LANDS;
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REQUIRING SECURITY FOR LEGAL CHALLENGES TO TIMBER SALES FROM
FORESTED STATE TRUST LANDS; REQUIRING THE DEPARTMENT OF
STATE LANDS TO ACT TO MINIMIZE LOSS OF VALUE FROM SALVAGE
TIMBER; REQUIRING THE DEPARTMENT OF STATE LANDS TO ADOPT
RULES; AND PROVIDING EFFECTIVE DATES."

WHEREAS, section 11 of The Enabling Act and Article X,
section 11(2), of the Montana Constitution prohibit the
disposal of any interest in state trust lands unless the
state receives "the full market value of the estate or
interest disposed of"; and

WHEREAS, the Montana Attorney General has opined that
the State of Montana must compensate its school trust for
the full market value of any estate in school trust lands
that is sold or exchanged; and

WHEREAS, the sale of timber from public school lands and
other state trust lands constitutes an interest for which
the state must compensate the trusts at the full market
value; and

WHEREAS, the annual rate of return on the value of
forested trust lands is significantly lower than commonly
accepted rates of returns on other investments; and
WHEREAS, the Montana Legislature therefore recognizes
the need to compensate state land trusts for the optimum
value of the respective uses of state trust lands.

STATEMENT OF INTENT

A statement of legislative intent is necessary for this
bill because [sections 2(2) and 3] require the department of
state lands to adopt rules implementing [sections 2 and 3].

The legislature intends that the rules adopted by the
department specify the types of security allowable and
provide for objection to security by another party to the
proceedings.

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

NEW SECTION. Section 1. Board and department to
optimize revenue from forested trust lands. (1)
Notwithstanding other provisions of this title, the board
shall manage forested state trust lands in a manner that
will optimize revenue to the public schools and other trust
beneficiaries.

(2) The board and the department may not allow forested
state trust lands or proceeds from the sale or exchange of

an interest in forested state trust lands to be devalued. Except as otherwise provided by state or federal law, a decision by the board or department to prevent or reduce lawful income-producing activity on forested state trust lands to meet other societal goals or comply with other management techniques must be made to provide compensation to trust beneficiaries at full market value for the sale or exchange of any estate or interest in forested state trust lands.

NEW SECTION. Section 2. Security required for legal action delaying timber sales from forested trust lands. (1) In a civil action brought for the purpose of setting aside a sale of timber or delaying or preventing the cutting or removal of timber by a purchaser from forested state trust lands, the court shall require security from the person bringing the action in an amount equal to 10% of either the appraised value of the timber or the purchase price of the sale, whichever is greater. The amount must be deposited in the trust fund of the trust in which the timber is held. A copy of the security must be filed with the clerk of court. The court shall dismiss a complaint upon failure of a party to provide the security required by this section.

(2) The department shall adopt rules implementing this section. The rules must provide that in the event that the sale, cutting, or removal is approved by the court, the

amount deposited as security must be returned to the person making the deposit after subtraction of any costs to the trust, measured by the full market value of the sale, incurred as a result of the delay in the sale, cutting, or removal.

NEW SECTION. Section 3. Department to minimize loss of value from dead timber. The department shall act to minimize the loss of value from dead or dying timber and shall adopt rules providing for a categorical exclusion from the requirements of the Montana Environmental Policy Act of any sale of salvage timber not exceeding 500,000 board feet.

NEW SECTION. Section 4. Codification instruction. [Sections 1 through 3] are intended to be codified as an integral part of Title 77, chapter 5, and the provisions of Title 77, chapter 5, apply to [sections 1 through 3].

NEW SECTION. Section 5. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

NEW SECTION. Section 6. Effective dates. (1) [Sections 2(2) and 3 through 5 and this section] are effective on passage and approval.

(2) [Sections 1 and 2(1)] are effective July 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 HB0072, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION: An act requiring the Board of Land Commissioners and the Department of State Lands to optimize revenue derived from forested state trust lands; requiring security for legal challenges to timber sales from forested state trust lands; requiring the Department of State Lands to act to minimize loss of value from salvage timber; requiring the Department of State Lands to adopt rules; and providing effective dates.

ASSUMPTIONS:

1. Section 1 of this bill will have no fiscal impact on the operational budget of the Department of State Lands (DSL).
2. One sale per year will be subject to a legal challenge without this bill.
3. A security deposit requirement will discourage potential legal challenges by 50%.
4. With fewer lawsuits, DSL will increase output by one-half of a timber sale per year, beginning in FY95.
5. The average sale value is \$400,000.
6. DSL wins 50% of lawsuits, and will be awarded damages for entire amount of legal security deposits.
7. An additional 1,000,000 board feet will be sold per year which will generate \$300,000 additional revenue by categorically excluding salvage of timber up to 500,000 board feet.
8. Salvage revenue will be realized in FY95.

FISCAL IMPACT:

	FY '94			FY '95		
	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
Revenues:						
Security Deposit	0	10,000	10,000	0	10,000	10,000
Additional Volume	0	0	0	0	500,000	500,000
Total	0	10,000	10,000	0	510,000	510,000

TECHNICAL NOTES: The Section 2 requirement (page 3, line 18) to deposit the security deposit in the various trusts and later withdraw the refundable amount is not possible for the timber sale receipts that are distributed (e.g. Common Schools and Public Buildings). The DSL recommends the deposit be placed in an interest-earning holding account.

To the extent that Section 1(2) requires maximum harvesting within timber sale units, it may conflict with the concept of long-term sustained income.

David Lewis 12-10
 DAVID LEWIS, BUDGET DIRECTOR DATE
 Office of Budget and Program Planning

Ray Brandewie 12-10-93
 RAY BRANDEWIE, PRIMARY SPONSOR DATE
 Fiscal Note for HB0072, as introduced

HB 72

APPROVED BY COMM. ON EDUCATION
AND CULTURAL RESOURCES

HOUSE BILL NO. 72

INTRODUCED BY BRANDEWIE, KENNEDY, BOHARSKI, FISHER,
WISEMAN, BIRD, ORR, FELAND, SWIFT, KOEHNKE, VAUGHN,
GRADY, LARSON, BENEDICT, TASH, MCCLERNAN, SMITH,
HERTEL, PETERSON, STOVALL, SIMPKINS, KNOX, MASON,
PECK, SWYSGOOD, DEVLIN, RYE

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THE BOARD OF
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the full market value of any estate in school trust lands
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The legislature intends that the rules adopted by the
department specify the types of security allowable and
provide for objection to security by another party to the
proceedings.

WHEN ADOPTING RULES PURSUANT TO [SECTION 3], THE
DEPARTMENT SHALL COMPLY WITH ADMINISTRATIVE RULES ADOPTED
UNDER THE MONTANA ENVIRONMENTAL POLICY ACT FOR ESTABLISHING
CATEGORICAL EXCLUSIONS. IN ESTABLISHING CRITERIA FOR
DETERMINING WHEN A SALVAGE TIMBER SALE MAY AND MAY NOT BE
CATEGORICALLY EXCLUDED FROM REVIEW UNDER THE MONTANA

ENVIRONMENTAL POLICY ACT, THE DEPARTMENT SHALL DEFINE THE TERM "SALVAGE TIMBER" AND CONSIDER SIGNIFICANT IMPACTS ON THE ENVIRONMENT, INCLUDING THE IMPACT ON THREATENED AND ENDANGERED SPECIES AND THE IMPACT OF ROAD CONSTRUCTION.

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

NEW SECTION. Section 1. Board and department to optimize revenue from forested trust lands. (1) Notwithstanding other provisions of this title, the board shall manage forested state trust lands in a manner that will optimize revenue to the public schools and other trust beneficiaries.

(2) The board and the department may not allow forested state trust lands or proceeds from the sale or exchange of an interest in forested state trust lands to be devalued. Except as otherwise provided by state or federal law, a decision by the board or department to prevent or reduce lawful income-producing activity on forested state trust lands to meet other societal goals or comply with other management techniques must be made to provide compensation to trust beneficiaries at full market value for the sale or exchange of any estate or interest in forested state trust lands.

NEW SECTION. Section 2. Security required for legal action delaying timber sales from forested trust lands. (1)

In a civil action brought for the purpose of setting aside a sale of timber or delaying or preventing the cutting or removal of timber by a purchaser from forested state trust lands, the court shall require security from the person bringing the action in an amount equal to 10% of either the appraised value of the timber or the purchase price of the sale, whichever is greater. The amount must be deposited in the trust fund of the trust in which the timber is held. A copy of the security must be filed with the clerk of court. The court shall dismiss a complaint upon failure of a party to provide the security required by this section.

(2) The department shall adopt rules implementing this section. The rules must provide that in the event that the sale, cutting, or removal is approved by the court, the amount deposited as security must be returned to the person making the deposit after subtraction of any costs to the trust, measured by the full market value of the sale, incurred as a result of the delay in the sale, cutting, or removal.

NEW SECTION. Section 3. Department to minimize loss of value from dead timber. The department shall act to minimize the loss of value from dead or dying timber and shall adopt rules ~~providing--for--a--categorical--exclusion--from--the requirements--of--the--Montana--Environmental--Policy--Act--of--any sale--of--salvage--timber--not--exceeding--500,000--board--feet~~

1 ESTABLISHING THE CIRCUMSTANCES UNDER WHICH THE SALE OF
2 SALVAGE TIMBER NOT EXCEEDING 500,000 BOARD FEET MAY BE
3 CATEGORICALLY EXCLUDED FROM REVIEW UNDER THE MONTANA
4 ENVIRONMENTAL POLICY ACT, TITLE 75, CHAPTER 1, PARTS 1
5 THROUGH 3.

6 NEW SECTION. Section 4. Codification instruction.
7 [Sections 1 through 3] are intended to be codified as an
8 integral part of Title 77, chapter 5, and the provisions of
9 Title 77, chapter 5, apply to [sections 1 through 3].

10 NEW SECTION. Section 5. Saving clause. [This act] does
11 not affect rights and duties that matured, penalties that
12 were incurred, or proceedings that were begun before [the
13 effective date of this act].

14 NEW SECTION. Section 6. Effective dates. (1) [Sections
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