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
	Fiscal Note Received
	Fiscal Note Printed
	Committee ReportBill Passed as Amended
	2nd Reading Passed as Amended
	3rd Reading Passed
•	-
	Transmitted to Senate
12/15	First Reading
12/15	Referred to Taxation
12/17	Hearing
	Tabled in Committee
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proceedings.

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1	House BILL NO. 72
2.	THERODOCED BY June Comedy & Bud
3	French Hugh Dudy Burner Benedict
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;
7	REQUIRING SECURITY FOR LEGAL CHALLENGES TO TIMBER SALES FROM
8	FORESTED STATE TRUST LANDS; REQUIRING THE DEPARTMENT OF
9	STATE LANDS TO ACT TO MINIMIZE LOSS OF VALUE FROM SALVAGE
10	TIMBER; REQUIRING THE DEPARTMENT OF STATE LANDS TO ADOPT
11	RULES; AND PROVIDING EFFECTIVE DATES."
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13	WHEREAS, section 11 of The Enabling Act and Article X,
14	section 11(2), of the Montana Constitution prohibit the
15	disposal of any interest in state trust lands unless the
16	state receives "the full market value of the estate or
17	interest disposed of"; and
18	WHEREAS, the Montana Attorney General has opined that
19	the State of Montana must compensate its school trust for
20	the full market value of any estate in school trust lands
21	that is sold or exchanged; and
22	WHEREAS, the sale of timber from public school lands and
23	other state trust lands constitutes an interest for which
24	the state must compensate the trusts at the full market

1	WHEREAS, the annual rate of return on the value of
2	forested trust lands is significantly lower than commonly
3	accepted rates of returns on other investments; and
4	WHEREAS, the Montana Legislature therefore recognizes
5	the need to compensate state land trusts for the optimum
6	value of the respective uses of state trust lands.
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8	STATEMENT OF INTENT
9	A statement of legislative intent is necessary for this
10	bill because [sections 2(2) and 3] require the department of
11	state lands to adopt rules implementing [sections 2 and 3].
12	The legislature intends that the rules adopted by the
13	department specify the types of security allowable and
14	provide for objection to security by another party to the

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

LC 0166/01

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

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- 10 NEW SECTION. Section 2. Security required for legal
- 11 action delaying timber sales from forested trust lands. (1)
- 12 In a civil action brought for the purpose of setting aside a
- 13 sale of timber or delaying or preventing the cutting or
- 14 removal of timber by a purchaser from forested state trust
- 15 lands, the court shall require security from the person
- 16 bringing the action in an amount equal to 10% of either the
- 17 appraised value of the timber or the purchase price of the
- 18 sale, whichever is greater. The amount must be deposited in
- 19 the trust fund of the trust in which the timber is held. A
- 20 copy of the security must be filed with the clerk of court.
- 21 The court shall dismiss a complaint upon failure of a party
- 22 to provide the security required by this section.
- 23 (2) The department shall adopt rules implementing this
- 24 section. The rules must provide that in the event that the
- 25 sale, cutting, or removal is approved by the court, the

- amount deposited as security must be returned to the person
- 2 making the deposit after subtraction of any costs to the
- 3 trust, measured by the full market value of the sale,
- incurred as a result of the delay in the sale, cutting, or
- 5 removal.
- 6 NEW SECTION. Section 3. Department to minimize loss of
- 7 value from dead timber. The department shall act to minimize
- 8 the loss of value from dead or dying timber and shall adopt
- 9 rules providing for a categorical exclusion from the
- 10 requirements of the Montana Environmental Policy Act of any
- 11 sale of salvage timber not exceeding 500,000 board feet.
- 12 NEW SECTION. Section 4. Codification instruction.
- 13 (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].
- 16 NEW SECTION. Section 5. Saving clause. [This act] does
- 17 not affect rights and duties that matured, penalties that
- 18 were incurred, or proceedings that were begun before [the
- 19 effective date of this act).
- 20 NEW SECTION. Section 6. Effective dates. (1) [Sections
- 21 2(2) and 3 through 5 and this section are effective on
- 22 passage and approval.
- 23 (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			
	<u>Current Law</u>	Proposed Law	Difference	<u>Current Law</u>	Proposed Law	<u>Difference</u>
Revenues:						
Security Deposit	0	10,000	10,000	0	10,000	10,000
Additional Volume	<u>o</u>	0	0	0	<u>500,000</u>	<u>500,000</u>
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, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

AY BRANDEWIE, PRIMARY SPONSOR

DATE

Fiscal Note for HB0072, as introduced

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HB 0072/02

APPROVED BY COMM. ON EDUCATION AND CULTURAL RESOURCES

2	INTRODUCED BY BRANDEWIE, KENNEDY, BOHARSKI, FISHER,
3	WISEMAN, BIRD, ORR, FELAND, SWIFT, KOEHNKE, VAUGHN,
4	GRADY, LARSON, BENEDICT, TASH, MCCLERNAN, SMITH,
5	HERTEL, PETERSON, STOVALL, SIMPKINS, KNOX, MASON,
6	PECK, SWYSGOOD, DEVLIN, RYE
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8	A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THE BOARD OF
9	LAND COMMISSIONERS AND THE DEPARTMENT OF STATE LANDS TO
10	OPTIMIZE REVENUE DERIVED FROM FORESTED STATE TRUST LANDS;
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14	TIMBER; REQUIRING THE DEPARTMENT OF STATE LANDS TO ADOPT
15	RULES; AND PROVIDING EFFECTIVE DATES."
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17	WHEREAS, section 11 of The Enabling Act and Article X,
18	section 11(2), of the Montana Constitution prohibit the
19	disposal of any interest in state trust lands unless the
20	state receives "the full market value of the estate or
21	interest disposed of"; and
22	WHEREAS, the Montana Attorney General has opined that
23	the State of Montana must compensate its school trust for
24	the full market value of any estate in school trust lands
25	that is sold or exchanged; and

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1	WHEREAS, the sale of timber from public school lands and
2	other state trust lands constitutes an interest for which
3	the state must compensate the trusts at the full market
4	value; and
5	WHEREAS, the annual rate of return on the value of
6	forested trust lands is significantly lower than commonly
7	accepted rates of returns on other investments; and
8	WHEREAS, the Montana Legislature therefore recognizes
9	the need to compensate state land trusts for the optimum
10	value of the respective uses of state trust lands.
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12	STATEMENT OF INTENT
13	A statement of legislative intent is necessary for this
14	bill because [sections 2(2) and 3] require the department of
15	state lands to adopt rules implementing [sections 2 and 3].
16	The legislature intends that the rules adopted by the
17	department specify the types of security allowable and
18	provide for objection to security by another party to the
19	proceedings.
20	WHEN ADOPTING RULES PURSUANT TO [SECTION 3], THE
21	DEPARTMENT SHALL COMPLY WITH ADMINISTRATIVE RULES ADOPTED
22	UNDER THE MONTANA ENVIRONMENTAL POLICY ACT FOR ESTABLISHING
23	CATEGORICAL EXCLUSIONS. IN ESTABLISHING CRITERIA FOR
24	DETERMINING WHEN A SALVAGE TIMBER SALE MAY AND MAY NOT BE

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CATEGORICALLY EXCLUDED FROM REVIEW UNDER

THE

MONTANA

HB 0072/02

HB 0072/02

- 1 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.

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- 6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
- NEW SECTION. Section 1. Board and department 7 to
- 8 optimize revenue from forested trust lands. (1)
- Notwithstanding other provisions of this title, the board 9
- shall manage forested state trust lands in a manner that 10
- will optimize revenue to the public schools and other trust 11
- beneficiaries. 12
- 13 (2) The board and the department may not allow forested
 - state trust lands or proceeds from the sale or exchange of
- 15 an interest in forested state trust lands to be devalued.
- Except as otherwise provided by state or federal law, a 16
- decision by the board or department to prevent or reduce 17
- lawful income-producing activity on forested state trust 18
- lands to meet other societal goals or comply with other 19
- management techniques must be made to provide compensation
- to trust beneficiaries at full market value for the sale or
- 22 exchange of any estate or interest in forested state trust
- 23 lands.
- NEW SECTION. Section 2. Security required for legal 24
- action delaying timber sales from forested trust lands. (1) 25

- In a civil action brought for the purpose of setting aside a 1
- sale of timber or delaying or preventing the cutting or 2
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- appraised value of the timber or the purchase price of the
- sale, whichever is greater. The amount must be deposited in 7
- 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 10
- to provide the security required by this section. 11
- (2) The department shall adopt rules implementing this 1.2
- section. The rules must provide that in the event that the 13
- sale, cutting, or removal is approved by the court, the 14
- amount deposited as security must be returned to the person 15
- making the deposit after subtraction of any costs to the 16
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- sale-of-salvage-timber--not--exceeding--5007000--board--feet 25

- 1 ESTABLISHING THE CIRCUMSTANCES UNDER WHICH THE SALE OF
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- 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
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- 10 NEW SECTION. Section 5. Saving clause. [This act] does
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- 12 were incurred, or proceedings that were begun before [the
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- 15 2(2) and 3 through 5 and this section) are effective on
- 16 passage and approval.
- 17 (2) [Sections 1 and 2(1)] are effective July 1, 1994.

-End-

HB 0072/03

53rd Legislature Special Session 11/93

1	HOUSE BILL NO. 72
2	INTRODUCED BY BRANDEWIE, KENNEDY, BOHARSKI, FISHER,
3	WISEMAN, BIRD, ORR, FELAND, SWIFT, KOEHNKE, VAUGHN,
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- 9 OF THE DAMAGE THAT MAY BE SUFFERED BY THE TRUST FUND IF THE
- 10 TIMBER SALE IS FOUND TO HAVE BEEN WRONGFULLY DELAYED. The
- 11 amount must be deposited in the trust fund of the trust in
- 12 which the timber is held. A copy of the security must be
- 13 filed with the clerk of court. The court shall dismiss a
 - complaint upon failure of a party to provide the security
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