

## 1 HOUSE BILL NO. 73

2 INTRODUCED BY MOOD

3 BY REQUEST OF THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION  
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT TRANSFERRING RULEMAKING AUTHORITY FROM THE STATE  
6 BOARD OF LAND COMMISSIONERS TO THE DEPARTMENT OF NATURAL RESOURCES AND  
7 CONSERVATION TO ENSURE THAT RULEMAKING AUTHORITY FOR FIRE PROTECTION, PROTECTION OF  
8 FOREST RESOURCES, FIRE PROTECTION SERVICES, AND CONTROL OF TIMBER AND DEBRIS IS  
9 CONSISTENT WITH RULEMAKING AUTHORITY IN THE DEPARTMENT'S OTHER FORESTRY PROGRAMS;  
10 CLARIFYING THE RESPONSIBILITIES OF THE DEPARTMENT CONCERNING THE PROTECTION OF FOREST  
11 RESOURCES, THE PROVISIONS FOR FIRE PROTECTION SERVICES, AND THE CONTROL OF TIMBER  
12 SLASH AND DEBRIS; AMENDING SECTIONS 76-11-101, 76-13-102, 76-13-103, 76-13-109, 76-13-112,  
13 76-13-201, 76-13-204, 76-13-205, 76-13-403, 76-13-408, AND 76-13-414, MCA; AND PROVIDING AN  
14 IMMEDIATE EFFECTIVE DATE."

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16 STATEMENT OF INTENT

17 A statement of intent is required for this bill because [section 4] transfers rulemaking authority from  
18 the state board of land commissioners to the department of natural resources and conservation. It is the  
19 intent of [section 4] to transfer the administration of protection of natural resources from fire, protection  
20 of forest resources, fire protection services, and control of timber slash and debris from the state board of  
21 land commissioners to the department of natural resources and conservation.  
22

23 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
2425 **Section 1.** Section 76-11-101, MCA, is amended to read:

26 **"76-11-101. Protection of natural resources from fire.** The department of natural resources and  
27 conservation, ~~under rules adopted by the state board of land commissioners,~~ shall adopt rules to protect  
28 the natural resources of the state, especially the natural resources owned by the state, from destruction  
29 by fire and for that purpose, in emergencies, may employ personnel and incur other expenses when  
30 necessary."

INTRODUCED BILL

1           **Section 2.** Section 76-13-102, MCA, is amended to read:

2           **"76-13-102. Definitions.** Unless the context requires otherwise, in part 2 and this part, the  
3 following definitions apply:

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

6           (2) "Conservation" means the protection and wise use of forest, forest range, forest water, and  
7 forest soil resources in keeping with the common welfare of the people of this state.

8           (3) "Department" means the department of natural resources and conservation provided for in Title  
9 2, chapter 15, part 33.

10           (4) "Forest fire" means a fire burning uncontrolled on forest lands.

11           (5) "Forest fire protection" means the work of prevention, detection, and suppression of forest fires  
12 and includes training required to perform those functions.

13           (6) "Forest fire protection district" means a definite forest land area, the boundaries of which are  
14 fixed and in which forest fire protection is provided through the medium of an agency recognized by the  
15 ~~board~~ department.

16           (7) "Forest fire season" means the period of each year beginning May 1 and ending September 30,  
17 inclusive.

18           (8) "Forest land" means land that has enough timber, standing or down, slash, or brush to  
19 constitute in the judgment of the department a fire menace to life or property. Grassland and agricultural  
20 areas are included when those areas are intermingled with or contiguous to and no further than one-half  
21 mile from areas of forest land.

22           (9) (a) "Forest practices" means the harvesting of trees, road construction or reconstruction  
23 associated with harvesting and accessing trees, site preparation for regeneration of a timber stand,  
24 reforestation, and the management of logging slash.

25           (b) The term does not include activities for the purpose of:

26           (i) the operation of a nursery or Christmas tree farm;

27           (ii) the harvest of Christmas trees;

28           (iii) the harvest of firewood; or

29           (iv) the cutting of trees for personal use by an owner or operator.

30           (10) "Lands" for conservation purposes means all forest lands within this state that are officially

1 classified by the department as forest lands under 76-13-107.

2 (11) "Operator" means a person responsible for conducting forest practices. An operator may be  
3 the owner, the owner's agent, or a person who, through contractual agreement with the landowner, is  
4 obligated to or entitled to conduct forest practices or to carry out a timber sale.

5 (12) "Owner" means the person, firm, association, or corporation having the actual, beneficial  
6 ownership of forest land or timber other than an easement, right-of-way, or mineral reservation.

7 (13) "Person" means an individual, corporation, partnership, or association of any kind.

8 (14) "Recognized agency" means an agency organized for the purpose of providing forest fire  
9 protection and recognized by the ~~board~~ department as giving adequate fire protection to forest lands in  
10 accordance with rules adopted by the ~~board~~ department.

11 (15) "Timber sale" means a series of forest practices designed to access, harvest, and regenerate  
12 trees on a defined land area."  
13

14 **Section 3.** Section 76-13-103, MCA, is amended to read:

15 "76-13-103. **Applicability.** This part and part 2 apply to all forest lands within this state ~~which~~ that  
16 are officially classified by the ~~board~~ department as forest lands according to the definition of forest land  
17 in 76-13-102."  
18

19 **Section 4.** Section 76-13-109, MCA, is amended to read:

20 "76-13-109. **Rules.** The ~~board~~ department may adopt and enforce ~~through the department~~  
21 reasonable rules for the purpose of enforcing and accomplishing the provisions and purposes of this part  
22 and part 2."  
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24 **Section 5.** Section 76-13-112, MCA, is amended to read:

25 "76-13-112. **Penalty for violation.** Unless otherwise provided by this part or part 2, a person who  
26 violates this part or part 2 or any rule adopted ~~by the board or department~~ pursuant to this part or part 2  
27 is guilty of a misdemeanor and shall be punished by a fine of not more than \$500 or imprisonment in a  
28 county jail for not more than 6 months or both."  
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30 **Section 6.** Section 76-13-201, MCA, is amended to read:

1           **"76-13-201. Duty of owner to protect against fire.** (1) An owner of forest land classified as such  
2 by the department shall protect against the starting or existence and suppress the spread of fire on that  
3 land. This protection and suppression ~~shall~~ must be in conformity with reasonable rules and standards for  
4 adequate fire protection adopted by the ~~board~~ department.

5           (2) If the owner does not provide for the protection and suppression, the department may provide  
6 it at a cost to the landowner of not more than \$30 for each landowner in the protection district and of not  
7 more than an additional 20 cents per acre per year for each acre in excess of 20 acres owned by each  
8 landowner in each protection district, as necessary to yield the amount of money provided for in  
9 76-13-207. The owner of the land shall pay to the county treasurer of the county in which the land is  
10 situated the charge for the same approved by the department in accordance with this part and part 1.

11           (3) No other charges may be assessed those landowners participating except in cases of proven  
12 negligence on the part of the landowner or ~~his~~ the landowner's agent."

13

14           **Section 7.** Section 76-13-204, MCA, is amended to read:

15           **"76-13-204. Creation, annexation of land into, and dissolution of forest fire protection districts.**

16           (1) In accordance with the provisions of subsections (2) and (3), the ~~board~~ department may create, annex  
17 land to, or dissolve forest fire protection districts.

18           (2) Before a district is created, land is annexed into a district, or a district is dissolved, the ~~board~~  
19 department shall hold a hearing in any county in which land affected by the proposed change is located.

20           (a) The department shall give notice at least 20 days in advance of the hearing to all property  
21 owners to be affected by the proposed change. Service of the notice may be made by certified mail to each  
22 affected property owner or by publication of the notice in a newspaper published or generally circulated  
23 in the county in which the hearing is to be held.

24           (b) The department shall ~~report to the board~~ consider the arguments made for and against the  
25 proposed change ~~and shall make a recommendation to the board~~ in making a determination under this  
26 section.

27           (3) (a) A forest fire protection district may not be created or dissolved unless approved in writing  
28 by a vote of not less than 51% of the owners representing at least 51% of the acreage to be involved in  
29 the affected forest fire protection district.

30           (b) Land may not be annexed into a district unless approved by 51% of the owners representing

1 at least 51% of the acreage to be annexed.

2 (4) Land annexed into a district may not be removed from that district unless that district is  
3 dissolved."

4

5 **Section 8.** Section 76-13-205, MCA, is amended to read:

6 "**76-13-205. Determination of boundaries of district.** In establishing boundaries of organized forest  
7 fire protection districts covering forest lands, the ~~board~~ department may for the purpose of administrative  
8 convenience designate recognizable landmarks as boundaries."

9

10 **Section 9.** Section 76-13-403, MCA, is amended to read:

11 "**76-13-403. Supervision by department.** The department, ~~under rules adopted by the board,~~  
12 adopt and enforce rules to supervise and inspect the fire hazard reduction or management of all fire hazards  
13 created by forest products harvesting, timber stand improvement, and right-of-way clearing on private land  
14 in the state."

15

16 **Section 10.** Section 76-13-408, MCA, is amended to read:

17 "**76-13-408. Fire hazard reduction agreement and bond.** (1) Before cutting any forest product,  
18 constructing or reconstructing any road in contemplation of cutting any forest product, or conducting timber  
19 stand improvement, such as but not limited to thinning, weeding, or pruning, upon private lands within the  
20 state, the person conducting the work shall provide for the reduction or management of the fire hazard to  
21 be created by entering into a fire hazard reduction agreement or a master fire hazard reduction agreement  
22 with the department, providing for the full and faithful compliance with all requirements under this part and  
23 the faithful reduction or management of the fire hazard in the manner prescribed by law and by rules  
24 adopted ~~by the board~~ under this part.

25 (2) Either the person conducting the work or the purchaser, as provided in 76-13-409(2), shall post  
26 a bond to the state in a form and for an amount as may be prescribed by the department, but the amount  
27 may not exceed \$6 for each 1,000 board feet (log scale) or the equivalent if forest products other than logs  
28 are cut.

29 (3) Either the person conducting the work or the purchaser, as provided in 76-13-409(2), shall pay  
30 15 cents for each 1,000 board feet (log scale) or equivalent measure if forest products other than logs are

1 cut. The assessment may not exceed \$20,000 a year. The full amount of this money must be deposited  
2 in the forestry extension service account provided for in 76-13-415.

3 (4) The agreement must provide that:

4 (a) all fire hazard reduction or management work comprising nonburning methods and preparations  
5 for burning must be completed within 18 months of commencement of cutting in the area covered by the  
6 agreement; and

7 (b) all burning work must be completed as specified in the agreement and in compliance with rules  
8 adopted ~~by the board~~ under this part.

9 (5) The bond must be released upon the issuance of the certificate of clearance."  
10

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

12 **"76-13-414. Fees.** (1) In addition to any bond, the department shall charge the contractor fees  
13 for administration, inspections, and enforcement work conducted in the exercise of its duties under this  
14 part. The fees must be deposited in the state special revenue fund to the credit of the department.

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

17 (b) In addition, a fee of 60 cents for each 1,000 board feet (log scale) must be charged or an  
18 equivalent fee must be charged if products other than logs are cut. This fee must be withheld by the  
19 purchaser as provided in 76-13-409(2), except that any fee money withheld for product volumes exceeding  
20 500,000 board feet per agreement in a calendar year must be returned to the contractor by the department.

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

24 (b) In addition, each contractor with a master fire hazard reduction agreement shall pay to the  
25 department 15 cents for each 1,000 board feet (log scale) or equivalent measure if forest products other  
26 than logs are cut. The assessment may not exceed \$20,000 a year for each master fire hazard attachment.  
27 The full amount of this money must be deposited in the forestry extension service account provided for in  
28 76-13-415.

29 (c) The fee required under subsection (3)(b) must be paid annually in conjunction with the fee paid  
30 under subsection (3)(a). The ~~board~~ department may, in its discretion, conduct an audit to determine the

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

4

5 NEW SECTION. Section 12. Effective date. [This act] is effective on passage and approval.

6

-END-

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17 A statement of intent is required for this bill because [section 4] transfers rulemaking authority from  
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21 land commissioners to the department of natural resources and conservation.

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23 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
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25 Section 1. Section 76-11-101, MCA, is amended to read:

26 "76-11-101. Protection of natural resources from fire. The department of natural resources and  
27 conservation, ~~under rules adopted by the state board of land commissioners,~~ shall adopt rules to protect  
28 the natural resources of the state, especially the natural resources owned by the state, from destruction  
29 by fire and for that purpose, in emergencies, may employ personnel and incur other expenses when  
30 necessary."

1           **Section 2.** Section 76-13-102, MCA, is amended to read:

2           **"76-13-102. Definitions.** Unless the context requires otherwise, in part 2 and this part, the  
3 following definitions apply:

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

6           (2) "Conservation" means the protection and wise use of forest, forest range, forest water, and  
7 forest soil resources in keeping with the common welfare of the people of this state.

8           (3) "Department" means the department of natural resources and conservation provided for in Title  
9 2, chapter 15, part 33.

10          (4) "Forest fire" means a fire burning uncontrolled on forest lands.

11          (5) "Forest fire protection" means the work of prevention, detection, and suppression of forest fires  
12 and includes training required to perform those functions.

13          (6) "Forest fire protection district" means a definite forest land area, the boundaries of which are  
14 fixed and in which forest fire protection is provided through the medium of an agency recognized by the  
15 ~~board~~ department.

16          (7) "Forest fire season" means the period of each year beginning May 1 and ending September 30,  
17 inclusive.

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19 constitute in the judgment of the department a fire menace to life or property. Grassland and agricultural  
20 areas are included when those areas are intermingled with or contiguous to and no further than one-half  
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24 reforestation, and the management of logging slash.

25           (b) The term does not include activities for the purpose of:

26           (i) the operation of a nursery or Christmas tree farm;

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1 classified by the department as forest lands under 76-13-107.

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19 **Section 4.** Section 76-13-109, MCA, is amended to read:

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18           (2) Before a district is created, land is annexed into a district, or a district is dissolved, the ~~board~~  
 19 department shall hold a hearing in any county in which land affected by the proposed change is located.

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1 at least 51% of the acreage to be annexed.

2 (4) Land annexed into a district may not be removed from that district unless that district is  
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10 **Section 9.** Section 76-13-403, MCA, is amended to read:

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13 created by forest products harvesting, timber stand improvement, and right-of-way clearing on private land  
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16 **Section 10.** Section 76-13-408, MCA, is amended to read:

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27 may not exceed \$6 for each 1,000 board feet (log scale) or the equivalent if forest products other than logs  
28 are cut.

29 (3) Either the person conducting the work or the purchaser, as provided in 76-13-409(2), shall pay  
30 15 cents for each 1,000 board feet (log scale) or equivalent measure if forest products other than logs are

1 cut. The assessment may not exceed \$20,000 a year. The full amount of this money must be deposited  
2 in the forestry extension service account provided for in 76-13-415.

3 (4) The agreement must provide that:

4 (a) all fire hazard reduction or management work comprising nonburning methods and preparations  
5 for burning must be completed within 18 months of commencement of cutting in the area covered by the  
6 agreement; and

7 (b) all burning work must be completed as specified in the agreement and in compliance with rules  
8 adopted ~~by the board~~ under this part.

9 (5) The bond must be released upon the issuance of the certificate of clearance."  
10

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

12 **"76-13-414. Fees.** (1) In addition to any bond, the department shall charge the contractor fees  
13 for administration, inspections, and enforcement work conducted in the exercise of its duties under this  
14 part. The fees must be deposited in the state special revenue fund to the credit of the department.

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

17 (b) In addition, a fee of 60 cents for each 1,000 board feet (log scale) must be charged or an  
18 equivalent fee must be charged if products other than logs are cut. This fee must be withheld by the  
19 purchaser as provided in 76-13-409(2), except that any fee money withheld for product volumes exceeding  
20 500,000 board feet per agreement in a calendar year must be returned to the contractor by the department.

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

24 (b) In addition, each contractor with a master fire hazard reduction agreement shall pay to the  
25 department 15 cents for each 1,000 board feet (log scale) or equivalent measure if forest products other  
26 than logs are cut. The assessment may not exceed \$20,000 a year for each master fire hazard attachment.  
27 The full amount of this money must be deposited in the forestry extension service account provided for in  
28 76-13-415.

29 (c) The fee required under subsection (3)(b) must be paid annually in conjunction with the fee paid  
30 under subsection (3)(a). The ~~board~~ department may, in its discretion, conduct an audit to determine the



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

4

5 NEW SECTION. **Section 12. Effective date.** [This act] is effective on passage and approval.

6

-END-