

SENATE BILL NO. 25
INTRODUCED BY L. LARSON
BY REQUEST OF THE ENVIRONMENTAL QUALITY COUNCIL

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE CONTRACT HARVESTING PROGRAM; DEFINING TERMS FOR THE CONTRACT HARVESTING AND SALE OF FOREST PRODUCTS FROM STATE TRUST LANDS; AUTHORIZING CONTRACT HARVESTING OF TIMBER AND FOREST PRODUCTS ON STATE TRUST LANDS; AUTHORIZING THE SALE OF FOREST PRODUCTS BY THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION; CREATING A CONTRACT HARVESTING SUBACCOUNT FOR THE DEPOSIT OF GROSS PROCEEDS FROM CONTRACT HARVESTING SALES AND THE PAYMENT OF CONTRACT HARVESTING COSTS; PROVIDING RULEMAKING AUTHORITY FOR THE BOARD OF LAND COMMISSIONERS TO IMPLEMENT THE CONTRACT HARVESTING PROGRAM; AMENDING SECTIONS 77-1-613, 77-5-201, AND 77-5-204, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

NEW SECTION. **Section 1. Statement of policy.** (1) The application of contract harvesting on Montana's trust lands provides an opportunity to improve forest health and long-term productivity, increase options for managing forests in environmentally sensitive areas, and provide potential revenue benefits for trust beneficiaries.

(2) It is important that the department has clear authorization and direction for conducting contract harvesting, including marketing and selling log sorts and other forest products.

(3) A clear funding mechanism addressing the receipt of revenue and payment for costs associated with contract harvesting projects provides the transparent process that allows beneficiaries to understand the costs and benefits associated with contract harvesting.

(4) Contract harvesting has the potential to result in increased bidder activity, better use and merchandising of products, improved harvesting results and environmental protection, and quicker completion of projects when time constraints are a factor.

~~(5) CONTRACT HARVESTING PROVIDES MORE MANAGEMENT FLEXIBILITY FOR ADDRESSING OVERCROWDED OR STAGNANT FORESTS, INSECT AND DISEASE PROBLEMS, AND FIRE FUEL BUILDUP IN SENSITIVE AREAS SUCH AS THE WILDLAND URBAN INTERFACE, IN AREAS OF HIGH RECREATIONAL USE, OR IN AREAS THAT POSE A THREAT TO HUMAN~~

SAFETY:

NEW SECTION. Section 2. Definitions. As used in this part, unless the context indicates otherwise, the following definitions apply:

(1) "Contract harvesting" means a timber harvest or timber sale occurring on state trust lands by which:

- (a) the department solicits bids and contracts with a firm or individual awarded the bid to:
 - (i) perform all necessary work to harvest and process trees into merchantable forest products;
 - (ii) sort trees pursuant to contract specifications and department use standards; and
 - (iii) transport and deliver the products to forest product purchasers; and
- (b) the department sells the forest products to one or more forest product purchasers through the competitive bidding process pursuant to 77-5-201(1) and (2).

(2) "Contract harvesting costs" means expenses related to the production of log sorts or other merchantable products from a stand of timber and the transportation of the products to point-of-sale locations.

These expenses may include but are not limited to:

- (a) sale preparation and development costs;
- (b) marketing of forest products and administration of contract harvesting contracts;
- (c) road building and maintenance;
- (d) labor for felling, bucking, yarding, and loading;
- (e) scaling of forest products; and
- (f) the transportation of sorted logs and other merchantable products from the harvest site to a point of sale.

(3) "Decked" means a pile of logs or other merchantable forest products that have been prepared for sale or shipment and placed upon a landing.

~~————(4) "Forest health concerns" means issues that can be addressed through management or harvest of merchantable or nonmerchantable trees and includes:~~

- ~~————(a) forested lands that are overcrowded or stagnant and that are showing declining annual growth;~~
- ~~————(b) wildland/urban interface areas where timber harvest or forest management is necessary to prevent catastrophic or other damage to forested lands, livestock, buildings, or other infrastructure;~~
- ~~————(c) fire fuel buildup and treatment on forested lands;~~
- ~~————(d) forested lands susceptible to imminent or repeated insect or disease attack and timber degradation;~~
- ~~————(e) forested lands that are in a high state of decline or decay or are rapidly deteriorating;~~

~~_____ (f) forested lands with high recreational use and high degradation risk; and~~

~~_____ (g) forested lands under drought stress.~~

(4) "FOREST HEALTH CONCERNS" MEANS ISSUES THAT CAN BE ADDRESSED THROUGH MANAGEMENT OR HARVEST OF MERCHANTABLE OR NONMERCHANTABLE TREES AND INCLUDES:

(A) FORESTED LANDS THAT ARE OVERCROWDED OR STAGNANT AND THAT ARE SHOWING DECLINING ANNUAL GROWTH;

(B) WILDLAND/URBAN INTERFACE AREAS WHERE TIMBER HARVEST OR FOREST MANAGEMENT IS NECESSARY TO PREVENT CATASTROPHIC OR OTHER DAMAGE TO FORESTED LANDS, LIVESTOCK, BUILDINGS, OR OTHER INFRASTRUCTURE;

(C) FIRE FUEL BUILDUP AND TREATMENT ON FORESTED LANDS;

(D) FORESTED LANDS SUSCEPTIBLE TO IMMINENT OR REPEATED INSECT OR DISEASE ATTACK AND TIMBER DEGRADATION;

(E) FORESTED LANDS THAT ARE IN A HIGH STATE OF DECLINE OR DECAY OR ARE RAPIDLY DETERIORATING;

(F) FORESTED LANDS WITH HIGH RECREATIONAL USE AND HIGH DEGRADATION RISK; AND

(G) FORESTED LANDS UNDER DROUGHT STRESS.

~~(5)(4)(5)~~ "Forest products" means any product produced from the forest that the department can sell through competitive bid or direct negotiation.

~~(6)(5)(6)~~ "Log sorts" means trees or portions of trees that are grouped and sorted into various product categories, including but not limited to pulp logs, saw logs, and house logs.

~~(7)(6)(7)~~ "Saw logs" means merchantable timber prepared and sorted as decked, scaled logs and sold f.o.b., as defined in 30-2-319, at a designated location, expressed in terms of dollars per thousand board feet or dollars per ton.

~~(8)(7)(8)~~ "Scaled" means the measured volume, weight, or other measurement of a log, load of logs, or other products.

~~(9)(8)(9)~~ "Stumpage" means the value of timber as it exists, uncut, within a harvest unit, expressed in terms of dollars per thousand board feet, dollars per ton, or other appropriate value per unit designation.

~~(10)(9)(10)~~ (a) "Timber" means any wood growth on state trust land, mature or immature, alive or dead, standing or down, that is capable of furnishing merchantable raw material used in the manufacture of lumber or other forest products.

(b) The term does not include cultivated Christmas trees.

NEW SECTION. Section 3. Contract harvesting authorized. (1) Under direction of the board and

after submitting the various portions of the sale for bid, as described in 77-5-201, the department is authorized to sell timber and forest products from contract harvesting sales through the competitive bidding process pursuant to 77-5-201(1) and (2) and to contract with firms and individuals for the removal of timber and forest products from state trust lands, the preparation of those materials into merchantable form, the transportation of those materials to a point of sale, and other purposes that the department determines to be necessary.

(2) Except as provided in subsection (3), the department may not conduct contract harvesting on state trust lands in an amount greater than 10% of the annual sustained yield.

~~———— (3) (a) If the department is addressing forest health concerns as provided in [section 4], the amount harvested may not be counted against the 10% maximum provided for in subsection (2) and may not be counted toward the department's annual sustained yield level.~~

~~———— (b) The department may not exceed 10% of the annual sustained yield when conducting contract harvesting or management activities that address forest health concerns.~~

~~———— (3) THE DEPARTMENT MAY EXCEED THE ANNUAL SUSTAINED HARVEST LEVEL BY UP TO 5% USING CONTRACT HARVESTING, PROVIDED THAT THE CONTRACT HARVEST VOLUME IN EXCESS OF THE ANNUAL SUSTAINED HARVEST LEVEL CONTAINS NO MORE THAN 25% MERCHANTABLE SAW LOG VOLUME.~~

~~———— (3) (A) IF THE DEPARTMENT IS ADDRESSING FOREST HEALTH CONCERNS AS PROVIDED IN [SECTION 4], THE AMOUNT HARVESTED MAY NOT BE COUNTED AGAINST THE 10% MAXIMUM PROVIDED FOR IN SUBSECTION (2) AND MAY NOT BE COUNTED TOWARD THE DEPARTMENT'S ANNUAL SUSTAINED YIELD LEVEL.~~

~~———— (B) THE DEPARTMENT MAY NOT EXCEED 5% OF THE ANNUAL SUSTAINED YIELD WHEN CONDUCTING CONTRACT HARVESTING OR MANAGEMENT ACTIVITIES THAT ADDRESS FOREST HEALTH CONCERNS.~~

(3) IF THE DEPARTMENT IS ADDRESSING FOREST HEALTH CONCERNS AS PROVIDED IN [SECTION 4], THE DEPARTMENT MAY EXCEED THE ANNUAL SUSTAINED HARVEST LEVEL BY UP TO 5% USING CONTRACT HARVESTING, PROVIDED THAT THE CONTRACT HARVEST VOLUME IN EXCESS OF THE ANNUAL SUSTAINED HARVEST LEVEL CONTAINS NO MORE THAN 25% MERCHANTABLE SAW LOG VOLUME.

NEW SECTION. SECTION 4. CONTRACT HARVESTING TO ADDRESS FOREST HEALTH CONCERNS. ALL CONTRACT HARVESTING SALES MEANT TO ADDRESS SPECIFIC FOREST HEALTH CONCERNS MUST BE DESIGNED TO:

(1) IMPROVE THE OVERALL HEALTH, PRODUCTIVITY, AND LONG-TERM REVENUE POTENTIAL FOR THE TIMBER STAND;

(2) BE CONSISTENT WITH THE STATE FOREST LAND MANAGEMENT PLAN; AND

(3) COMPLY WITH ALL APPLICABLE STATE LAWS, RULES, AND REGULATIONS.

~~NEW SECTION. Section 4. Contract harvesting to address forest health concerns. All contract harvesting sales meant to address specific forest health concerns must be designed to:~~

- ~~(1) improve the overall health, productivity, and long-term revenue potential for the timber stand;~~
- ~~(2) be consistent with the state forest land management plan; and~~
- ~~(3) comply with all applicable state laws, rules, and regulations.~~

NEW SECTION. Section 5. Rules. (1) (a) The board may adopt rules to implement the contract harvesting program. ~~The board shall evaluate each proposed contract harvest to determine if, in the board's judgment, contract harvesting will fulfill its duty to prudently obtain the maximum long-term revenue for the trust beneficiaries or to address forest health or other environmental concerns.~~ THE BOARD SHALL EVALUATE EACH PROPOSED CONTRACT HARVEST TO DETERMINE IF, IN THE BOARD'S JUDGMENT, CONTRACT HARVESTING WILL FULFILL ITS DUTY TO PRUDENTLY OBTAIN THE MAXIMUM LONG-TERM REVENUE FOR THE TRUST BENEFICIARIES OR TO ADDRESS FOREST HEALTH CONCERNS OR OTHER ENVIRONMENTAL CONCERNS.

(b) The board shall adopt rules describing the procedures necessary to ensure that the trust beneficiaries receive the full market value of the forest products.

(2) The board may adopt rules that impose specific appraisal requirements and sale procedures for any forest products directly marketed and sold by the department.

NEW SECTION. Section 6. Contract harvesting account -- authorized expenditures -- termination.

(1) An account, called the contract harvesting account, must be created as a subaccount of the timber sale account established in 77-1-613, in which to deposit gross revenue and for the payment of expenditures associated with contract harvesting sales. All proceeds of the sale of forest products from a contract harvesting sale must be deposited into this account and must be retained in the account to be used to pay for all contract harvesting costs, as provided in subsection (2).

(2) Expenditures may be credited against the account for contract harvesting costs. Personnel services costs for state employees may not be credited against the account.

(3) An amount equal to the contract harvesting costs must be retained in the account and must be deducted from the gross proceeds to determine the net proceeds. The net proceeds from the sale of the forest products must be distributed to the appropriate trust.

(4) An initial account balance must be created by transferring up to \$500,000 into the contract harvesting

account from the timber sale account.

(5) If the contract harvesting program is terminated or discontinued for more than 10 years, any balance remaining in the contract harvesting account in excess of \$500,000 must be distributed to the appropriate trust. The remaining balance up to \$500,000 must be transferred back to the timber sale account provided for in 77-1-613.

Section 7. Section 77-1-613, MCA, is amended to read:

"77-1-613. Deduction of portion of income received from sale of timber from state trust lands -- creation of account. (1) There is an account in the state special revenue fund called the state timber sale account. Money in the account may be appropriated by the legislature for use by the department in the manner set out in this section to enhance the revenue creditable to the trusts. There must be placed in the account an amount from timber sales on state lands each fiscal year equal to the amount appropriated from the account for the corresponding fiscal year.

(2) Timber sale program funds deducted under subsection (1) must be directly applied to timber sale preparation, ~~and timber sale~~ documentation, and contract harvesting costs as provided in [section 6 5 6].

(3) In order to increase the volume of timber sold at the earliest possible time while continuing to meet the requirements of applicable state and federal laws and in order to avoid unnecessary delays and extra costs that would result from increasing its permanent staff, the department may contract for services that will enable achievement of the purposes of this section and that will achieve the highest net return to the trusts.

(4) To maximize overall return to the trusts, the timely salvage of timber must be considered. However, salvage timber sales may not adversely affect the implementation of green timber sales programs."

Section 8. Section 77-5-201, MCA, is amended to read:

"77-5-201. Sale of timber. (1) Under the direction of the board, the department may sell the timber crop and other crops of the forests after examination, estimate, appraisal, and report and under any rules established by the board. Timber or forest products sold from state trust lands may be sold by a stumpage method or a lump-sum method or marketed by the state through contract harvesting as provided in [sections 1 through 6 5 6].

(2) Timber proposed for sale in excess of 100,000 board feet must be advertised in a paper of the county in which the timber is situated for a period of at least 30 days, during which time the department must receive sealed bids up to the hour of the closing of the bids, as specified in the notice of sale.

(3) (a) In cases of emergency ~~due to~~ because of fire, insect, fungus, parasite, or blowdown ~~or to address forest health concerns~~ OR TO ADDRESS FOREST HEALTH CONCERNS or in cases when the department is required to act immediately to take advantage of access granted by permission of an adjoining landowner, timber proposed for sale not in excess of 1 million board feet may be advertised by invitation to bid for a period of not less than 10 days. The department may reject any ~~or all~~ bids, upon approval of the board, or it shall award the sale to the highest responsible bidder.

(b) (i) In cases when the department is required to act immediately to take advantage of access granted by permission of an adjoining landowner and there is only one potential buyer with legal access, the department may negotiate a sale of timber not in excess of 1 million board feet without offering the timber for bid if the sale is for fair market value.

(ii) The provisions of subsection (3)(b)(i) do not apply to situations when the only access is totally controlled by a potential purchaser of the timber, in which case the department shall seek to negotiate permanent, reciprocal access.

(c) In the situations described in subsections (3)(a) and (3)(b)(i), the department is not required to comply with the provisions of 75-1-201(1) to the extent that compliance is precluded by limited time available to take advantage of the sales opportunities described by this subsection (3)."

Section 9. Section 77-5-204, MCA, is amended to read:

"77-5-204. Sale of timber -- fee for forest improvement. (1) The board may sell timber on state lands; ~~at a price per 1,000 board feet, when appropriate, that, or other forest products removed from state lands, as provided in [sections 1 through 6 5 6].~~ at a per unit price when, in the board's judgment, it is in the best interest of the state, provided that live timber is not sold for less than full market value.

(2) Timber sold or cut from state lands must be cut and removed under rules that may be prescribed by the board for standing timber preservation and fire prevention. In all cases, the board shall require the person cutting the timber to pile and burn or otherwise dispose of the brush and slash in the manner that may be prescribed by the board.

(3) Before the sale of timber is granted, the value of the timber must be appraised under the direction of the department, upon the request and subject to the approval of the board. An appraisal must show as nearly as possible the per unit value per 1,000 board feet, when appropriate, of all merchantable timber forest products.

(4) In addition to the price of the timber forest products established under subsection (1), the board may require a timber or other forest product purchaser to pay a fee for forest improvement. Revenue from the fee must

be deposited in the state special revenue fund to the credit of the department and, as appropriated by the legislature, may be used only for:

- (a) disposing of logging slash;
- (b) acquiring access and maintaining roads necessary for timber harvesting on state lands;
- (c) reforestation, thinning, and otherwise improving the condition and income potential of forested state lands; and
- (d) complying with legal requirements for timber harvesting."

COORDINATION SECTION. SECTION 10. COORDINATION INSTRUCTION. IF EITHER HOUSE BILL NO. 231 OR SENATE BILL NO. 75 AND [THIS ACT] ARE PASSED AND APPROVED AND IF THEY CONTAIN A SECTION THAT AMENDS 77-1-613, THEN THE SECTIONS AMENDING 77-1-613 ARE VOID AND 77-1-613 MUST BE AMENDED AS FOLLOWS:

"77-1-613. Deduction of portion of income received from Administrative costs associated with sale of timber from state trust lands -- creation of account. (1) ~~There is an account in the state special revenue fund called the state timber sale account. Money in the account may be appropriated by the legislature for use by the department in the manner set out in this section to enhance the revenue creditable to the trusts. There must be placed in the account an amount from timber sales on state lands each fiscal year equal to the amount appropriated from the account for the corresponding fiscal year. The department may use funds appropriated from the trust land administration account, provided for in 77-1-108, for timber sale preparation, timber sale documentation, and contract harvesting costs as provided in [section 6 of Senate Bill No. 25].~~

~~(2) Timber sale program funds deducted under subsection (1) must be directly applied to timber sale preparation and documentation.~~

~~(3)~~(2) In order to increase the volume of timber sold at the earliest possible time while continuing to meet the requirements of applicable state and federal laws and in order to avoid unnecessary delays and extra costs that would result from increasing its permanent staff, the department may contract for services that will enable achievement of the purposes of this section and that will achieve the highest net return to the trusts.

~~(4)~~(3) To maximize overall return to the trusts, the timely salvage of timber must be considered. However, salvage timber sales may not adversely affect the implementation of green timber sales programs conducted pursuant to 77-5-201."

COORDINATION SECTION. SECTION 11. COORDINATION INSTRUCTION. IF EITHER HOUSE BILL NO. 231 OR SENATE BILL NO. 75 AND [THIS ACT] ARE PASSED AND APPROVED, THEN [SECTION 6 OF THIS ACT] MUST READ AS

FOLLOWS:**NEW SECTION. Section 6. Contract harvesting account -- authorized expenditures -- termination.**

(1) An account, called the contract harvesting account, must be created as a subaccount of the trust land administration account established in 77-1-108, in which to deposit gross revenue and for the payment of expenditures associated with contract harvesting sales. All proceeds of the sale of forest products from a contract harvesting sale must be deposited into this account and must be retained in the account to be used to pay for all contract harvesting costs, as provided in subsection (2).

(2) Expenditures may be credited against the account for contract harvesting costs. Personnel services costs for state employees may not be credited against the account.

(3) An amount equal to the contract harvesting costs must be retained in the account and must be deducted from the gross proceeds to determine the net proceeds. The net proceeds from the sale of the forest products must be distributed to the appropriate trust.

(4) An initial account balance must be created by transferring up to \$500,000 of timber harvest revenue into the contract harvesting account from the trust land administration account.

(5) If the contract harvesting program is terminated or discontinued for more than 10 years, any balance remaining in the contract harvesting account in excess of \$500,000 must be distributed to the appropriate trust. The remaining balance up to \$500,000 must be transferred back to the trust land administration account provided for in 77-1-108."

NEW SECTION. Section 12. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. Section 13. Codification instruction. [Sections 1 through 6 ~~5~~ 6] are intended to be codified as an integral part of Title 77, chapter 5, part 2, and the provisions of Title 77, chapter 5, part 2, apply to [sections 1 through 6 ~~5~~ 6].

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

- END -

