

2007 Montana Legislature

**DRAFT**

\*\*\* Bill No. \*\*\*???????

Introduced By \*\*\*\*\*

By Request of the Department of Natural Resources and  
Conservation

A Bill for an Act entitled: "An Act defining terms for the contract harvesting and direct sale of forest products from state lands; authorizing the contract harvesting of timber and forest products on state lands; authorizing the direct sale of forest products by the Department of Natural Resources and Conservation; authorizing the creation of the contract harvesting revolving account for the deposit of gross proceeds from contract harvesting sales and the payment of contract harvesting costs; authorizing rulemaking to implement this program; amending sections 20-9-620, 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. Definitions.** As used in this part [Title 77, Chapter 5, Part 2], unless the context indicates otherwise, the following definitions apply:

- (1) "Contract harvesting" means a timber operation occurring on state lands by which the department contracts with a firm or individual to perform all necessary work to harvest and process trees into merchantable forest products sorted by department specifications including the transportation and ultimate sale of such products to forest product purchasers.
- (2) "Decked" means a pile of logs or other merchantable products prepared for sale and placed upon a landing.
- (3) "Department" means the Department of Natural Resources and Conservation (DNRC).
- (4) "Board" means the State Board of Land Commissioners.
- (5) "Director" means the director of the Department of Natural Resources and Conservation.
- (6) "Scaled" means the measured volume, weight, or other measurement of a log or load of logs or other products.
- (7) "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.

- (8) "Saw logs" means merchantable timber prepared and sorted as decked scaled logs and sold F.O.B. at a designated location, expressed in terms of dollars per thousand board feet or dollars per ton.
- (9) "Contract Harvesting Costs" are those expenses related to the production of log sorts or other merchantable products from a stand of timber and the transportation of such products to point-of-sale locations. These expenses typically involve sale preparation, road building and maintenance; labor for felling, bucking, yarding and loading; and the transporting of sorted logs and other merchantable products from the harvest site to forest product purchasers.
- (10) "Timber" means any wood growth on state 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. The term does not include cultivated Christmas trees.

**NEW SECTION. Section 2. Contract Harvesting Authorized.**

(1) The department is authorized to contract with firms and individuals for the removal of timber and forest products from state lands, the preparation of those materials into merchantable form, or the transportation of those materials to a point of sale.

(2) The department may conduct contract harvesting on state lands up to 10% of its annual sustained yield. However, volume harvested utilizing contract harvesting while addressing forest health issues as outlined in Section 3(2) will not be counted as part of the 10% annual limit for contract harvesting nor will it count towards the department's annual sustained yield level.

**NEW SECTION. Section 3. Application of Contract Harvesting.**

(1) The application of contract harvesting provides potential revenue benefits to the trust beneficiaries and more flexible management options when addressing forest health or other environmentally sensitive issues.

(2) Forest health concerns are defined as overcrowded and/or stagnate stands; wildland/urban interface areas where timber harvest or other stand treatment is necessary to prevent catastrophic or other damage to forests,

livestock, buildings and other infrastructure; fire fuels build-up and treatment; stands susceptible to imminent or repeated insect and/or disease attack and timber degradation; highly decadent and/or rapidly deteriorating stands; forested lands with both high recreational use and high degradation risk; and drought stress. Contract harvesting will allow the department to manage these stands while maintaining a high level of oversight, which allows for timely on-the-ground adaptations to changing conditions. The ability to address these issues promptly while not having the harvested volume count toward the annual sustained yield will allow the department to act prudently and quickly without disruption of its green sale program. Forest health treatments would fall outside the scope of the normal salvage timber program described in §77-5-207.

(3) All contract harvesting sales meant to address specific forest health issues must be tailored to: improve the overall health, productivity and long-term revenue potential of the specific stand(s); be consistent with the State Forest Land Management Plan (SFLMP); and comply with all applicable state laws, rules and regulations.

NEW SECTION. **Section 4. Rules.** (1) The board may adopt rules to implement the contract harvesting of timber and forest products on state lands that, in the board's judgment, 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.

(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. These rules shall describe the procedures necessary to ensure that the trust beneficiaries receive the full market value of the forest products.

NEW SECTION. **Section 5. Creation of Contract Harvesting Revolving Account.** (1) A new account, called the Contract Harvesting Revolving Account, will be created to deposit gross revenues and to pay for expenditures associated with contract harvesting sales. All receipts from the gross proceeds of the sale of forest products from a contract harvesting sale must be deposited into the account. Expenditures from the account may be used for the payment of sale preparation, road building, harvesting, marketing and transportation costs incurred on contract harvesting

sales. The costs directly related to department personnel (personnel services costs) are not deductible.

(2) When forest products from a contract harvesting sale are sold, the gross proceeds must be deposited into the contract harvesting revolving account. Monies equal to the harvesting costs must be retained in the account and be deducted from the gross proceeds to determine the net proceeds. The net proceeds from the sale of the forest products must then be distributed to the appropriate trust beneficiary. The final receipt of gross proceeds on a contract harvesting sale must be retained in the contract harvesting revolving account until all required costs for that sale have been paid.

(3) To create the initial account balance of \$500,000 in the contract harvesting revolving account, an amount equal to this will be transferred from the forest improvement account.

(4) If the department permanently discontinues the use of contract harvesting sales, any balance in excess of the original \$500,000 in the contract harvesting revolving account will be distributed to the appropriate trust beneficiaries. The original \$500,000 that was deposited into the contract harvesting revolving account from the

forest improvement account will be transferred back to the forest improvement account.

**Section 6.** Section 20-9-620, MCA, is amended to read:

**" 20-9-620. Definition.** (1) As used in 20-9-621, 20-9-622, and this section, "distributable revenue" means, except for that portion of revenue described in 20-9-343(4)(a)(ii) and available on or after July 1, 2003, 77-1-607, and 77-1-613, 95% of all net revenue from the management of school trust lands and the permanent fund, including net timber sale proceeds and net revenues from the direct sale of forest products, lease fees, interest, dividends, and net realized capital gains.

(2) The term does not include mineral royalties or land sale proceeds that are deposited directly in the permanent fund or net unrealized capital gains that remain in the permanent fund until realized."

{*Internal References to 20-9-620: None* }

**Section 7.** 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. Any timber or forest products sold from state lands may be sold by a stumpage method or directly marketed by the state.

(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 fire, insect, fungus, parasite, or blowdown 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)."

{Internal References to 77-5-201: None }

**Section 8.** 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, or forest products removed from state lands, at a per unit price, when in the board's judgment, 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 forest products is granted, the value of the forest products 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, when appropriate, of all merchantable forest products.

(4) In addition to the price of the forest products established under subsection (1), the board may require a timber 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) reforesting, thinning, and otherwise improving the condition and income potential of forested state lands;  
~~and~~

(d) complying with legal requirements for timber harvesting-;

(e) contract harvesting of timber and forest products on state lands;

(f) transportation of forest products to a point of sale;

(g) marketing of forest products and administration of harvesting contracts;

(h) scaling of forest products prior to transporting to a point of sale; and

(i) sale development costs."

{*Internal References to 77-5-204:*  
x77-5-208 }

NEW SECTION. Section 9. 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 10. Codification.** [Sections 1 through 4] 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 4].

NEW SECTION. **Section 11. Effective date.** [This act] is effective on passage and approval.

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