

HOUSE BILL NO. 599

INTRODUCED BY D. HAINES

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A BILL FOR AN ACT ENTITLED: "AN ACT DEFINING "MINIMUM SLASH HAZARD"; PROVIDING AN EXEMPTION FROM THE FIRE HAZARD REDUCTION AGREEMENT AND BOND UNLESS THE PERSON CLAIMING TO HAVE CREATED A MINIMUM SLASH HAZARD FAILS TO COMPLY WITH THE PROVISIONS RELATING TO MINIMUM SLASH HAZARDS; AND AMENDING SECTIONS 76-13-401, 76-13-408, AND 76-13-410, MCA."

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

Section 1. Section 76-13-401, MCA, is amended to read:

"76-13-401. Definitions. As used in this part, the following definitions apply:

(1) "Certificate of clearance" means a certificate issued by the department acknowledging that the fire hazard has been reduced or managed in accordance with this part and the fire hazard reduction agreement or agreements.

(2) "Contractor" means the person who executes the fire hazard reduction agreement and is responsible to fulfill the obligations established by the agreement.

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

(4) "Exemption certificate" means an exemption from the provisions of this part that must be granted by the department for the harvest of merchantable trees within the boundaries of an incorporated city or town.

(5) "Fire hazard" means slash and debris resulting from timber cutting, timber stand improvement, or right-of-way clearing operations that produce a cover of flammable material in which fire could spread through a cutting or adjacent area.

(6) "Fire hazard reduction agreement" means a contract made to ensure compliance with this part and with the rules adopted under 76-13-403 for fire hazard reduction or management on private forest lands.

(7) "Fire hazard reduction or management" means the abatement of a fire hazard on private forest

1 lands by methods that include but are not limited to separation, removal, scattering, lopping, crushing,
2 piling and burning, broadcast burning, burying, or chipping.

3 (8) "Forest product" means trees or their component parts, including but not limited to logs, poles,
4 branches, or bark.

5 (9) "Master fire hazard reduction agreement" means a fire hazard reduction agreement between
6 the department and persons engaged in continuing cutting operations of sufficient number and size to
7 warrant covering these operations under a single agreement and a single bond.

8 (10) "Minimum slash hazard" means an amount of slash and debris generated by noncommercial
9 activities, which may include but are not limited to weeding, pruning, or clearing on private land within the
10 state.

11 ~~(10)~~(11) "Person" means an individual, association, partnership, corporation, estate, or any other
12 entity.

13 ~~(11)~~(12) "Private forest lands" means all lands of whatever character containing merchantable
14 timber that are not owned by the state, a political subdivision of the state, the United States, any agency
15 of the United States, or an Indian tribe.

16 ~~(12)~~(13) "Purchaser" means a person who purchases or contracts to purchase any forest products
17 cut from private forest lands within the state. The term includes persons who purchase products
18 manufactured on the cutting area."

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20 **Section 2.** Section 76-13-408, MCA, is amended to read:

21 **"76-13-408. Fire hazard reduction agreement and bond -- bond release and penalty -- exemption.**

22 (1) Before cutting any forest product, constructing or reconstructing any road in contemplation of cutting
23 any forest product, or conducting timber stand improvement, such as but not limited to precommercial
24 thinning, weeding, or pruning, upon private forest lands within the state, the person conducting the work
25 must be issued an exemption certificate by the department or shall provide for the reduction or
26 management of the fire hazard to be created, except where a minimum slash hazard would exist, by
27 entering into a fire hazard reduction agreement or a master fire hazard reduction agreement with the
28 department, providing for the full and faithful compliance with all requirements under this part and the
29 faithful reduction or management of the fire hazard in the manner prescribed by law and by rules adopted
30 under this part.

1 (2) Either the person conducting the work or the purchaser, as provided in 76-13-409(2), shall
2 post a bond to the state in a form and for an amount as may be prescribed by the department, but the
3 amount may not exceed \$6 for each 1,000 board feet (log scale) or the equivalent if forest products other
4 than logs are cut. Bond amounts for master fire hazard reduction agreements are calculated to cover the
5 potential cost to the department for fire hazard abatement in case of default and are based on the average
6 annual volume of uncompleted abatement. Master fire hazard reduction agreement bonds are to be
7 administered as nonsite-specific umbrella bonds, for which the entire bond or any portion of the bond may
8 be collected to pay for unabated fire hazards on any or all sites covered by the bond. The department shall
9 review master fire hazard reduction agreement bond amounts at least annually. The bonds must be
10 adjusted according to the volume of timber harvested and the level of compliance of the bond provider.

11 (3) The agreement must provide that:

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

15 (b) all burning work must be completed as specified in the agreement and in compliance with rules
16 adopted under this part.

17 (4) The bond must be released upon the issuance of the certificate of clearance. At the request
18 of the fire hazard reduction agreement holder, cash bonds for fire hazard reduction agreements exceeding
19 200,000 board feet, or the equivalent, must be partially released upon satisfactory completion of slash
20 piling if the fire hazard reduction agreement holder has a record of compliance with the provisions of
21 76-13-407 or this section. The department may inspect the sites for which release or partial release is
22 being requested, or it may rely on the submittal of a signed affidavit and relevant site photographs
23 provided by the person posting the bond. A person that submits a fraudulent affidavit or photographs is
24 subject to the penalty provisions of 45-7-202, may have other fire hazard reduction agreements revoked,
25 or may be denied the issuance of fire hazard reduction agreements in the future.

26 (5) If a minimum slash hazard will be created, the activity is exempt from the provisions of this
27 part."

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29 **Section 3.** Section 76-13-410, MCA, is amended to read:

30 **"76-13-410. Failure to comply.** (1) If a person fails, refuses, or neglects to properly reduce or

1 manage the fire hazard in accordance with the requirements of 76-13-407 and 76-13-408, the person may
2 be enjoined from further cutting, clearing, and construction operations until the department has found the
3 person to be in compliance with 76-13-407 and 76-13-408. The department may initiate the proceedings
4 and may obtain a temporary restraining order, injunction, or writ of mandate. The proceedings must be
5 conducted in the district court of the county where the land is located.

6 (2) If a person claims to have a minimum slash hazard but the department's inspection determines
7 otherwise, the hazard reduction requirements of this part apply.

8 ~~(2)~~(3) If a person fails to comply with 76-13-407 or 76-13-408 and fails to comply within 30 days
9 after being notified to do so by the department, the department may complete, direct, or authorize the fire
10 hazard reduction or management at the expense of the contractor or of the owner of the timber or other
11 forest products cut or produced from the land upon which the unabated fire hazard remains.

12 ~~(3)~~(4) The cost and expense of the fire hazard reduction or management work, plus 20% of the
13 cost and expense of the work as a penalty, constitute a lien upon the forest products cut or produced from
14 the land and upon the real and personal property of the contractor. If payment of the sum demanded is
15 not made to the department within 15 days of its written demand, the performance bond required by
16 76-13-408 and 76-13-409, upon notice to the contractor, must be automatically forfeited to the extent
17 needed to cover the cost and expenses of reducing or managing the fire hazard, plus a penalty of 20%
18 of the cost and expenses. If the bond is insufficient to cover the cost, expenses, and penalty, the
19 department may bring legal action on behalf of the state to recover the cost, expenses, and penalty.

20 ~~(4)~~(5) In addition to other remedies provided in this part, the department may, after notice, require
21 a person to show cause why the department should not withhold the issuance of any further fire hazard
22 reduction agreement or exemption certificate to a person that:

23 (a) harvests timber without a valid fire hazard reduction agreement; or

24 (b) has forfeited the performance bond on a fire hazard reduction agreement within the 2
25 preceding years and fails, refuses, or neglects to properly reduce or manage the fire hazard in accordance
26 with 76-13-407 or 76-13-408 within 30 days after being notified by the department.

27 ~~(5)~~(6) If the person fails to show sufficient cause as required by subsection ~~(4)~~ (5), the department
28 may withhold the issuance of any further fire hazard reduction agreement or exemption certificate for a
29 period not to exceed 3 years."

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