

SENATE BILL NO. 269
INTRODUCED BY R. LAIBLE

A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING THE LEGISLATURE TO DECLARE A DISASTER IN CERTAIN AREAS OF THE NATIONAL FORESTS IN MONTANA; USING THE POLICE POWER OF THE STATE TO EMPOWER COUNTY BOARDS OF COMMISSIONERS TO TAKE ACTIONS NECESSARY TO REDUCE WILDFIRE HAZARDS AND REMOVE FIRE-DAMAGED TREES; LIMITING GOVERNMENTAL LIABILITY; AMENDING SECTION 10-3-303, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

WHEREAS, numerous citizens and government officials in the State of Montana have collectively and individually petitioned the United States Forest Service repeatedly at public meetings, through correspondence, and by telephone to request that the Forest Service take appropriate action to remove or eliminate the conditions that have created a state of emergency caused by a present risk to the lives of citizens and their property in and adjacent to national forests within Montana; and

WHEREAS, for all practical purposes, these petitions have been ignored or discounted by the United States Forest Service resulting in what can only be reasonably characterized as inaction on the part of the Forest Service to appropriately reduce, if not remove, the risk to the lives and property of the citizens of Montana; and

WHEREAS, the United States Forest Service has failed to exercise its responsibilities as a sovereign to protect the lives and property of the citizens of Montana and because it is a fundamental principle under the laws of any just society that the persistent failure of a sovereign to fulfill such basic obligations constitutes grounds for the forfeiture of jurisdictional supremacy and that the forfeiture must be recognized and declared; and

WHEREAS, the recognition and declaration of this forfeiture of jurisdictional supremacy results in the creation of a jurisdictional vacuum that requires the State of Montana to acknowledge its obligation as a sovereign power to protect the lives and property of its citizens and consequently to authorize any action it presently considers necessary to fill the vacuum created by the federal government by assuming jurisdiction to reduce to acceptable levels, if not remove, the threat of catastrophic fires posed by present conditions in national forests within its borders.

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

NEW SECTION. **Section 1. Findings.** The legislature finds that:

(1) devastating fires during the past several years within the national forests in this state, caused in large part by the failure to properly clear and thin forest undergrowth, have resulted in fire-damaged trees that constitute a hazard needing immediate attention;

(2) the federal government has been reluctant to act in clearing and thinning forests and in removing or logging the fire-damaged trees, and this reluctance could result in future fires causing additional severe economic harm to areas within this state; and

(3) it may become necessary for the state to exercise its police power to avoid additional damage to the public health, safety, and welfare.

NEW SECTION. Section 2. Declaration of disaster -- exercise of police power. The legislature may declare a disaster within those areas of the national forests of Montana that suffered severe fire damage during the past several years and within those areas of the national forests, as determined by the local board of county commissioners, where large amounts of forest undergrowth have created the potential for damaging fires in the future. This includes all counties in Montana with national forest lands including the counties of Beaverhead, Broadwater, Carbon, Carter, Cascade, Chouteau, Deer Lodge, Fergus, Flathead, Gallatin, Glacier, Golden Valley, Granite, Jefferson, Judith Basin, Lake, Lewis and Clark, Lincoln, Madison, Meagher, Mineral, Park, Pondera, Powder River, Powell, Ravalli, Rosebud, Sanders, Silver Bow, Stillwater, Sweet Grass, Teton, and Wheatland. The legislature may also declare that the disaster is of such magnitude that the police power of the state must be exercised to the extent necessary to provide the resources and services that will end the disaster and mitigate its effects.

NEW SECTION. Section 3. Local government action authorized -- immunity. (1) A board of county commissioners for a county in which a disaster has been declared pursuant to [section 2] may take action that is necessary to clear and thin undergrowth and to remove or log fire-damaged trees within the area of the declared disaster only after:

(a) consulting with the director of the department of natural resources and conservation and the United States regional forester;

(b) conducting any necessary surveys;

(c) holding public hearings as necessary; and

(d) developing a plan to mitigate the effects of the disaster.

(2) If the action results in the expenditure of public funds, a county may enter into an agreement with a

contractor, licensee, or other agent to carry out the purpose of this section only if:

- (a) the contractor, licensee, or other agent maintains its principal office in Montana; and
- (b) all of the employees of the contractor, licensee, or other agent performing work under the agreement are Montana residents.

(3) Employees, contractors, licensees, and other agents of the county must have unrestricted access to the national forests including the use of roads and trails in order to implement this section, and employees, contractors, licensees, and other agents may not be held liable for criminal or civil action for trespass or for damages for acts done while carrying out the purposes of this section.

NEW SECTION. **Section 4. Revenue -- disposition.** Money received by a county as royalties, license fees, or other compensation for activities allowed pursuant to [sections 1 through 4] must be used in the following order:

- (1) first, to reimburse the county for any expenses incurred in carrying out the provisions of [sections 1 through 4];
- (2) to deposit in a special county fund as much of the remaining balance from subsection (1) as is necessary for expenditures relating to the management of the national forests to avoid future disasters; and
- (3) if any funds remain, the excess must be forwarded to the federal government.

Section 5. Section 10-3-303, MCA, is amended to read:

"10-3-303. Declaration of disaster -- effect and termination. (1) A state of disaster may be declared;

- (a) by the governor when ~~he~~ the governor determines that a disaster has occurred; or
- (b) by the legislature pursuant to [section 2].

(2) An executive order or proclamation of a state of disaster ~~shall activate~~ activates the disaster response and recovery aspects of the state disaster and emergency plan and program applicable to the political subdivision or area and ~~be~~ constitutes authority for the deployment and use of any forces to which the plans apply and for the distribution and use of any supplies, equipment, and materials and facilities assembled, stockpiled, or arranged to be made available pursuant to parts 1 through 4 of this chapter or any other provision of law pertaining to disaster and disaster-related emergencies.

(3) ~~A~~ Except as provided in [section 2], a state of disaster may not continue for longer than 30 days unless continuing conditions of the state of disaster exist, which ~~shall~~ must be determined by a declaration of a major disaster by the president of the United States or by the declaration of the legislature by joint resolution of

continuing conditions of the state of disaster.

(4) ~~The~~ Except as provided in [section 2], the governor shall terminate a state of emergency or disaster when:

- (a) the emergency or disaster has passed;
- (b) the emergency or disaster has been dealt with to the extent that emergency or disaster conditions no longer exist; or
- (c) at any time the legislature terminates the state of emergency or disaster by joint resolution. However, after termination of the state of emergency or disaster, disaster and emergency services required as a result of the emergency or disaster may continue."

NEW SECTION. Section 6. Two-thirds vote required. Because [section 3] limits governmental liability, Article II, section 18, of the Montana constitution requires a vote of two-thirds of the members of each house of the legislature for passage.

NEW SECTION. Section 7. Codification instruction. [Sections 1 through 4] are intended to be codified as an integral part of Title 7, chapter 31, and the provisions of Title 7, chapter 31, apply to [sections 1 through 4].

NEW SECTION. Section 8. Effective date. [This act] is effective on passage and approval.

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