

SENATE BILL NO. 96

INTRODUCED BY K. GEBHARDT

BY REQUEST OF THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

A BILL FOR AN ACT ENTITLED: "AN ACT DEFINING TERMS FOR THE SALE OF TIMBER AND SAW LOGS FROM STATE LANDS; AUTHORIZING THE CONTRACT HARVESTING OF TIMBER AND SAW LOGS ON STATE LANDS; PROVIDING FOR RULES; ALLOWING THE DIRECT SALE OF SAW LOGS BY THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION; AUTHORIZING THE DEPOSIT OF A PORTION OF SAW LOG SALE REVENUE INTO THE TRUST LAND ADMINISTRATION ACCOUNT; REVISING THE RESTRICTIONS ON WHO MAY LEASE OR PURCHASE STATE LAND AND TIMBER; PROVIDING FOR THE ASSESSMENT OF FOREST IMPROVEMENT FEES ON THE SALE OF SAW LOGS; AMENDING SECTIONS 17-3-1003, 20-9-620, 77-1-109, 77-1-113, 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. Definitions.** As used in this part, unless the context indicates otherwise, the following definitions apply:

(1) "Contract harvesting" means a process by which the department hires a firm or individual by contract to perform all work necessary to harvest timber or to harvest, process, and sort timber into saw logs for future sale by the department.

(2) "Decked" means a pile of logs in merchantable condition prepared for sale and placed upon a landing.

(3) "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.

(4) "Scaled" means the measured volume or weight of a log or load of logs.

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

(6) (a) "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 wood products.

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

NEW SECTION. Section 2. Contract harvesting authorized. The department is authorized to contract with firms and individuals for the harvesting of timber from state lands, the processing of timber into saw logs or residual products from the production of saw logs, or the transportation of timber or saw logs or residual products to a point of sale.

NEW SECTION. Section 3. Rules. (1) The board may adopt rules to allow for and implement the contract harvesting of timber 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.

(2) The board may adopt rules that impose specific appraisal requirements and sale procedures for saw logs that are directly marketed and sold by the department. These rules must describe the procedures necessary to ensure that the trust beneficiaries receive the full market value of the saw logs.

Section 4. Section 17-3-1003, MCA, is amended to read:

"17-3-1003. Support of state institutions. (1) For the support and endowment of each state institution, there is annually and perpetually appropriated, after any deductions made under 77-1-109, Title 77, chapter 1, part 6, and 77-2-362, the income from all permanent endowments for the institution and from all land grants as provided by law. All money received or collected in connection with permanent endowments by all higher educational institutions, reformatory, custodial and penal institutions, state hospitals, and sanitariums, for any purpose, except revenue pledged to secure the payment of principal and interest of obligations incurred for the purchase, construction, equipment, or improvement of facilities at units of the Montana university system and for the refunding of obligations or money that constitutes temporary deposits, all or part of which may be subject to withdrawal or repayment, must be paid to the state treasurer who shall deposit the money to the credit of the proper fund.

(2) Except as provided in subsections (1) and (3), all money received from the investment of grants of a state institution and all money received from the leasing of lands granted to a state institution must be deposited with the state treasurer of Montana for each institution, to the credit of the state special revenue fund.

(3) Except as provided in 77-1-109, all money received from the sale of timber and saw logs from lands granted to a state institution must be deposited to the credit of the permanent trust fund for the support of the institution."

Section 5. 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 revenue from the management of school trust lands and the permanent fund, including timber sale proceeds, revenue from the sale of saw logs and residual products from the production of saw logs, 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."

Section 6. Section 77-1-109, MCA, is amended to read:

"77-1-109. Deposits of proceeds in trust land administration account. (1) The department shall, until the deposit equals the amount appropriated for the fiscal year pursuant to 77-1-108, deposit into the trust land administration account created by 77-1-108 the following:

(a) mineral royalties;

(b) the proceeds or income from the sale of easements, ~~and timber,~~ and saw logs, except timber and saw logs from public school and Montana university system lands;

(c) 5% of the interest and income annually credited to the public school fund in accordance with 20-9-341; and

(d) fees collected pursuant to 77-2-328.

(2) After the deposits in subsection (1) have been made, the remainder of the proceeds, other than proceeds from timber from Montana university system lands and other than those purchased pursuant to 17-6-340, must be deposited in the appropriate permanent fund and the capitol building land grant trust fund. Timber proceeds from university system lands must be paid over to the state treasurer, who shall deposit the money to the credit of the proper fund for use as provided in 17-3-1003(1). Royalty payments purchased pursuant to 17-6-340 must be used as provided in that section and 20-9-622.

(3) The amount of money that is deposited into the trust land administration account may not exceed 1 1/8% of the book value balance in each of the nine permanent funds administered by the department on the first day of January preceding the new biennium and 10% of the previous fiscal year revenue deposited into the capitol building land grant trust fund."

Section 7. Section 77-1-113, MCA, is amended to read:

"77-1-113. Restrictions on who may buy or lease state lands. It is unlawful for ~~any member of the board, any person appraising lands or in the employ of the state for the selection, classification, appraisal, sale, or leasing of any state lands or the timber on state lands, or any officer or employee of the department~~ public officers and public employees to purchase or lease, directly or indirectly, any state lands or to purchase any timber on state lands in violation of Title 2, chapter 2."

Section 8. Section 77-1-613, MCA, is amended to read:

"77-1-613. Deduction of portion of income received from sale of timber and saw logs 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 and revenue from the sale of saw logs removed from 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 and contract harvesting preparation and documentation, transportation of saw logs, harvesting, scaling, or contract administration.

(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 9. 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 sold from state lands may be sold by a stumpage method or directly marketed as saw logs.

(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)."

Section 10. Section 77-5-204, MCA, is amended to read:

"77-5-204. Sale of timber or saw logs -- fee for forest improvement. (1) The board may sell timber on state lands; or saw logs removed from state lands at a price per 1,000 board feet or at a price per ton, when appropriate, that, in the board's judgment, is in the best interest of the state, ~~provided that live.~~ Live timber is not may not be 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 or saw logs is granted, the value of the timber or saw logs 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 value per 1,000 board feet or value per ton, when appropriate, of all merchantable timber.

(4) In addition to the price of the timber established under subsection (1), the board may require a timber purchaser to pay a fee for forest improvement. Revenue from the fee, including any revenue from the assessment of a forest improvement fee on the sale of saw logs, 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;
- (e) contract harvesting of timber and saw logs on state lands;
- (f) transportation of saw logs and residual products from the production of saw logs to a point of sale;
- (g) marketing of saw logs and administration of harvesting contracts;
- (h) scaling of saw logs prior to transporting to a point of sale; and
- (i) sale development costs."

NEW SECTION. **Section 11. 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 12. Codification instruction.** [Sections 1 through 3] 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 3].

NEW SECTION. **Section 13. Effective date.** [This act] is effective on passage and approval.

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