

## SENATE BILL NO. 145

INTRODUCED BY J. SHOCKLEY

BY REQUEST OF THE ENVIRONMENTAL QUALITY COUNCIL

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING WILDFIRE PROTECTION LAWS; ESTABLISHING A STATE FIRE POLICY; PROVIDING DEFINITIONS; CONSOLIDATING AND CLARIFYING THE AUTHORITY OF THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION; STANDARDIZING TERMINOLOGY; REQUIRING THE DEPARTMENT TO APPOINT FIREWARDENS AND TO PRESCRIBE DUTIES FOR FIREWARDENS; ~~PROVIDING THAT FIREWARDENS ARE NOT CRIMINALLY LIABLE UNDER CERTAIN CIRCUMSTANCES~~; REMOVING PROVISIONS REQUIRING THE COUNTY TO LIST FOREST LANDS WITH THE DEPARTMENT; CLARIFYING THAT A PERMIT IS NOT NEEDED TO IGNITE CERTAIN RECREATIONAL FIRES DURING WILDFIRE SEASON; REVISING PENALTIES FOR FAILURE TO COMPLY WITH BURNING PERMITS, FAILURE TO EXTINGUISH RECREATIONAL FIRES, AND THROWING LIGHTED MATERIAL; EXTENDING TO ALL WILDLANDS CERTAIN PROVISIONS THAT PREVIOUSLY APPLIED ONLY TO FOREST LANDS; IMPOSING UPON OWNERS OF ALL LANDS THE DUTY TO PROTECT THE LANDS FROM WILDFIRE; ESTABLISHING A FORMULA FOR DETERMINING ASSESSMENTS FOR FIRE PROTECTION; REVISING THE DATE BY WHICH THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION SHALL CERTIFY TO THE DEPARTMENT OF REVENUE THE NAMES OF CERTAIN LANDOWNERS; AMENDING SECTIONS 45-6-203, 76-13-101, 76-13-102, 76-13-103, 76-13-104, 76-13-105, 76-13-110, 76-13-121, 76-13-122, 76-13-123, 76-13-124, 76-13-125, 76-13-126, 76-13-201, 76-13-202, 76-13-203, 76-13-204, 76-13-205, 76-13-206, 76-13-207, 76-13-208, 76-13-209, 76-13-210, 76-13-211, AND 77-5-103, MCA; REPEALING SECTIONS 76-11-101, 76-13-106, 76-13-109, 77-5-104, 77-5-105, AND 77-5-106, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

NEW SECTION. **Section 1. State fire policy.** The legislature finds and declares that:

- (1) the safety of the public and of firefighters is paramount in all wildfire suppression activities;
- (2) it is a priority to minimize property and resource loss resulting from wildfire and to minimize expense to Montana taxpayers, which is generally accomplished through an aggressive and rapid initial attack effort;
- (3) interagency cooperation and coordination among local, state, and federal agencies are intended and

encouraged, including cooperation when restricting activity or closing areas to access becomes necessary;

(4) fire prevention, hazard reduction, and loss mitigation are fundamental components of this policy;

(5) all property in Montana has wildfire protection from a recognized fire protection entity;

(6) all private property owners and federal and state public land management agencies have a responsibility to manage resources, mitigate fire hazards, and otherwise prevent fires on their property;

(7) sound forest management activities to reduce fire risk, such as thinning, prescribed burning, and insect and disease treatments, improve the overall diversity and vigor of forested landscapes and improve the condition of related water, wildlife, recreation, and aesthetic resources; and

(8) development of fire protection guidelines for the wildland-urban interface is critical to improving public safety and for reducing risk and loss.

**SECTION 2. SECTION 45-6-203, MCA, IS AMENDED TO READ:**

**"45-6-203. Criminal trespass to property.** (1) Except as provided in 15-7-139, ~~and 70-16-111, and~~ [section 7], a person commits the offense of criminal trespass to property if the person knowingly:

(a) enters or remains unlawfully in an occupied structure; or

(b) enters or remains unlawfully in or upon the premises of another.

(2) A person convicted of the offense of criminal trespass to property shall be fined not to exceed \$500 or be imprisoned in the county jail for any term not to exceed 6 months, or both."

**Section 3.** Section 76-13-101, MCA, is amended to read:

**"76-13-101. Purpose.** (1) ~~(a)~~ It is the purpose of ~~this part and part 2 and this part~~ and this part to provide for:

~~(i)~~ the protection and conservation of ~~forest~~ natural resources, range, and water; ~~AND~~

~~(ii)~~ the regulation of streamflow; and

~~(iii)~~ (ii) the prevention of soil erosion.

~~(b)~~ It is further the purpose of ~~this part and part 2 and this part~~ and this part to more adequately promote and facilitate the cooperation, financial and otherwise, between the state and public and private agencies ~~which~~ that are associated in ~~such~~ the work.

(2) To achieve the conservation of ~~forest~~ natural and watershed resources, the legislature encourages the use of best management practices in timber sale planning, associated road construction and reconstruction, timber harvesting, site preparation, and related activities and establishes a process to ensure that information on best management practices is provided to owners and operators engaged in forest practices on private land."

**Section 4.** Section 76-13-102, MCA, is amended to read:

**"76-13-102. Definitions.** Unless the context requires otherwise, in part 2 and this part, the following definitions apply:

~~(1) "Board" means the board of land commissioners provided for in Article X, section 4, of the Montana constitution.~~

~~————(2) "Conservation" means the protection and wise use of forest, forest range, forest water, and forest soil resources in keeping with the common welfare of the people of this state.~~

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

~~(4)(3) "Forest fire" means a fire burning uncontrolled on forest lands.~~

~~(5) "Forest fire protection" means the work of prevention, detection, and suppression of forest fires and includes training required to perform those functions.~~

~~————(6) "Forest fire protection district" means a definite forest land area, the boundaries of which are fixed and in which forest fire protection is provided through the medium of an agency recognized by the department.~~

~~————(7) "Forest fire season" means the period of each year beginning May 1 and ending September 30, inclusive.~~

~~————(8)(4) "Forest land" means land that has enough timber, standing or down, slash, or brush to constitute in the judgment of the department a fire menace to life or property. Grassland and agricultural areas are included when those areas are intermingled with or contiguous to and no further than one-half mile from areas of forest land.~~

~~(9)(5) (a) "Forest practices" means the harvesting of trees, road construction or reconstruction associated with harvesting and accessing trees, site preparation for regeneration of a timber stand, reforestation, and the management of logging slash.~~

~~(b) The term does not include activities for the purpose of:~~

~~(i) the operation of a nursery or Christmas tree farm;~~

~~(ii) the harvest of Christmas trees;~~

~~(iii) the harvest of firewood; or~~

~~(iv) the cutting of trees for personal use by an owner or operator.~~

~~(10) "Lands" for conservation purposes means all forest lands within this state that are officially classified by the department as forest lands under 76-13-107.~~

~~(11)(6) "Operator" means a person responsible for conducting forest practices. An operator may be the~~

owner, the owner's agent, or a person who, through contractual agreement with the landowner, is obligated to or entitled to conduct forest practices or to carry out a timber sale.

~~(12)~~(7) "Owner" means the person, firm, association, or corporation having the actual, beneficial ownership of forest land or timber other than an easement, right-of-way, or mineral reservation.

~~(13)~~(8) "Person" means an individual, corporation, partnership, or association of any kind.

~~(14)~~(9) "Recognized agency" means an agency organized for the purpose of providing ~~forest~~ fire protection and recognized by the department as giving adequate fire protection to ~~forest~~ lands in accordance with rules adopted by the department.

~~(15)~~(10) "Timber sale" means a series of forest practices designed to access, harvest, and regenerate trees on a defined land area.

(11) "Wildfire" means an unplanned, unwanted fire burning uncontrolled on wildland and consuming vegetative fuels.

(12) "Wildfire season" means the period of each year beginning May 1 and ending September 30, inclusive.

(13) "Wildland" means an area in which development is essentially nonexistent, except for roads, railroads, powerlines, and similar facilities, and in which structures, if any, are widely scattered.

(14) "Wildland fire protection" means the work of prevention, detection, and suppression of wildland fires and includes training required to perform those functions.

(15) "Wildland fire protection district" means a definite land area, the boundaries of which are fixed and in which wildland fire protection is provided through the medium of an agency recognized by the department.

(16) "Wildland-urban interface" means the line, area, or zone where structures and other human development meet or intermingle with undeveloped wildland or vegetative fuels."

**Section 5.** Section 76-13-103, MCA, is amended to read:

**"76-13-103. Applicability.** ~~This part and part 2~~ Part 2 and this part apply to all ~~forest~~ state and private lands within this state that are ~~officially classified by the department as forest lands according to the definition of forest land in 76-13-102~~ susceptible to wildfire, as determined by the department."

**Section 6.** Section 76-13-104, MCA, is amended to read:

**"76-13-104. Functions of department -- rulemaking.** (1) The department has the duty to ensure the protection of land under state and private ownership and to suppress wildfires on land under state and private

ownership. NO FEES MAY BE COLLECTED FOR THIS PURPOSE EXCEPT FEES PROVIDED FOR IN 76-13-201.

(2) (a) The department shall adopt rules to protect the natural resources of the state, especially the natural resources owned by the state, from destruction by fire and for that purpose, in declared emergencies, may employ personnel and incur other expenses when necessary.

(b) The department may adopt and enforce reasonable rules for the purpose of enforcing and accomplishing the provisions and purposes of part 2 and this part.

(3) The duty imposed on the department under this section is not exclusive to the department and does not absolve private property owners or LOCAL governmental fire agencies ORGANIZED UNDER TITLE 7, CHAPTER 33, from any fire protection or suppression responsibilities.

(4) The department may give technical and practical advice concerning forest, range, water, and soil conservation and the establishment and maintenance of woodlots, windbreaks, shelterbelts, and forest fire protection.

(2)(5) The department shall cooperate with all public and other agencies in the development, protection, and conservation of the forest, range, and water resources in this state.

(6) The department shall establish and maintain wildland fire control training programs.

(3) The department shall require an owner or operator to provide a notification prior to conducting forest practices as provided in 76-13-131, shall adapt as necessary any procedure used for notification with respect to an agreement under 76-13-408 to ensure that the operator provides information on the location of the forest practices in relation to watershed features, and shall conduct onsite consultations as provided for in 76-13-132.

(7) The department shall HAS THE AUTHORITY TO appoint STATE OR FEDERAL EMPLOYEES AS firewardens in the number and localities that it considers necessary; SUBJECT TO CONFIRMATION BY THE LOCAL COUNTY GOVERNMENT, FOR MEETING DEPARTMENT FIREFIGHTING RESPONSIBILITIES and shall adopt rules prescribing the qualifications and duties of firewardens that are in addition to those provided in [section 6 7]. LOCAL COUNTY GOVERNMENTS SHALL RETAIN SOLE AUTHORITY FOR DESIGNATION AND APPOINTMENT OF COUNTY FIRE CHIEFS OR FIREWARDENS."

NEW SECTION. Section 7. Duties of firewardens -- liability. (1) In addition to the duties prescribed by rule pursuant to 76-13-104(7), a firewarden appointed by the department shall promptly report all fires to the department, take immediate and active steps toward their extinguishment, report any violation of the provisions of Title 76, chapter 13, parts 1 and 2, and assist in apprehending and convicting offenders.

(2) A firewarden is not liable for civil action for trespass committed in the discharge of the firewarden's

duties, AND THE PROVISIONS OF 45-6-203 DO NOT APPLY TO A FIREWARDEN ACTING WITHIN THE COURSE AND SCOPE OF THE FIREWARDEN'S DUTIES.

~~(3) A firewarden is not criminally liable for acts that are committed within the course and scope of employment, as provided in Title 2, chapter 9.~~

~~(4)~~(3) A firewarden who has information that shows, with reasonable certainty, that a person has violated any provision of Title 76, chapter 13, parts 1 and 2, shall immediately take action against the offender by making complaint before the appropriate authority or by providing information to the appropriate county attorney and shall obtain all possible evidence pertaining to the violation.

**Section 8.** Section 76-13-105, MCA, is amended to read:

**"76-13-105. Protection of nonforest lands and improvements from fire.** (1) Nonforest lands and improvements may be protected by the department when requested by the landowner at rates determined by the department IN THOSE AREAS WHERE A RECOGNIZED AGENCY IS AVAILABLE.

(2) Land classified as forest land under 76-13-107 that is within a wildland fire protection district, as provided in 76-13-204, or that is otherwise under contract for fire protection by a recognized agency must be protected as provided in 76-13-201 and 76-13-207.

(3) Private and public land, whether classified as forest land or otherwise, that is not within a wildland fire protection district or under the protection of a recognized agency or a municipality must be protected by a county as provided in 7-33-2202. The county governing body shall either provide direct protection, as provided in 7-33-2202(3), or it shall enter into an agreement for protection with a recognized agency."

**Section 9.** Section 76-13-110, MCA, is amended to read:

**"76-13-110. Owner's right to board department hearing.** (1) An owner of forest land is entitled to a hearing before the ~~board~~ department, after a request ~~therefor~~ for a hearing, on any subject pertaining to the activities of ~~the board~~, the department; or any recognized agency as agent of the department affecting the owner's property. A request for a hearing before the ~~board~~ department may not have the effect of suspending the operations of ~~the board~~, the department; or any agent of the department undertaken pursuant to this chapter, but upon the hearing, the ~~board~~ department may terminate those operations if found unreasonable.

(2) A hearing pertaining to costs charged against the forest land of an owner for protection ~~thereof~~, as provided in 76-13-201, must be requested on or before August 15 each year."

**Section 10.** Section 76-13-121, MCA, is amended to read:

**"76-13-121. Permit for burning required.** (1) During the forest fire wildfire season or an expansion thereof of the wildfire season, a person may not ignite or set a forest fire, including a slash-burning fire, land-clearing fire, debris-burning fire, or, except as provided in subsection (2), an open fire within forest lands without an official written permit to ignite or set the fire from the recognized protection agency for that protection area. A permit is not required in order to build, set, or ignite a campfire within and upon a designated improved camping ground or upon a plot of land from which all vegetable and inflammable matter and debris have been removed to a point where it may not become ignited by the campfire or by sparks therefrom

(2) (a) If no restrictions are in place, a permit is not needed for recreational fires measuring less than 48 inches in diameter that are surrounded by a nonflammable AREA OR structure and for which a suitable source of extinguishing the fire is available.

(b) A recreational fire may not be ignited if special restrictions prohibiting recreational fires have been established by an authority having jurisdiction."

**Section 11.** Section 76-13-122, MCA, is amended to read:

**"76-13-122. Failure to comply with permit.** A person to whom a written permit is issued to set or ignite a fire ~~within forest lands during the forest protection season~~ shall comply strictly with the permit. A person who fails to comply with the permit, leaves the fire unattended, leaves the fire before it is totally extinguished, or negligently allows the fire to spread from or beyond the burning area defined by the permit is ~~guilty of a misdemeanor~~ subject to the penalty provided in 50-63-102 and is subject to the provisions of 50-63-103. The department shall prescribe the form and substance of ~~such the~~ permit."

**Section 12.** Section 76-13-123, MCA, is amended to read:

**"76-13-123. Failure to extinguish campfire recreational fire.** ~~Any A person who shall fail fails to extinguish any campfire a recreational fire that the person has set or ignited by him within any forest lands before leaving the same, who shall fail to extinguish any campfire used by him or left in his charge before leaving the same, or in which the person has been left in charge or who shall negligently allow such allows the fire to spread from the plot described in 76-13-121 shall be guilty of a misdemeanor is subject to the penalty provided in 50-63-102 and is subject to the provisions of 50-63-103."~~

**Section 13.** Section 76-13-124, MCA, is amended to read:

**"76-13-124. Throwing lighted materials.** A person who throws or places any lighted cigarette, cigar, ashes, or other material or flaming or glowing substance that may start a fire in or near any forest material is guilty of a misdemeanor is subject to the penalty provided in 50-63-102 and is subject to the provisions of 50-63-103."

**Section 14.** Section 76-13-125, MCA, is amended to read:

**"76-13-125. Spark arresters required.** ~~No~~ A person may not use, drive, or operate within ~~any forest lands~~ wildland any internal combustion engine that is not equipped with a modern, efficient, and adequate spark arrester ~~and with modern, efficient devices~~ to prevent the escape of sparks, coals, cinders, and other burning material from the exhaust of ~~any such~~ the engine."

**Section 15.** Section 76-13-126, MCA, is amended to read:

**"76-13-126. Restrictions on sawdust piles mill waste.** ~~(1) (1) Before each forest fire season, all~~ ALL BEFORE EACH WILDFIRE SEASON, ALL persons, firms, or corporations creating or responsible for mill waste ~~within the forest areas~~ WITHIN THE FOREST AREAS shall treat, dispose of, remove, or reduce the hazards created so that the accumulation of ~~sawmilling the~~ waste does not constitute a fire hazard.

~~(2) A sawmill located within or contiguous to forest lands may not accumulate in one pile sawdust in excess of an amount resulting from the sawing of 500,000 feet log scale of sawlogs. However, a larger sawdust pile may be accumulated when there is no reasonable danger of fire therefrom and a permit for the additional accumulation is granted by the department. If burning is the disposal method elected, each sawdust pile so accumulated shall be prepared for burning by cribbing the base of each pile with slabs and burned in accordance with rules adopted by the department.~~

(2) A SAWMILL LOCATED WITHIN OR CONTIGUOUS TO FOREST LANDS MAY NOT ACCUMULATE IN ONE PILE SAWDUST IN EXCESS OF AN AMOUNT RESULTING FROM THE SAWING OF 500,000 FEET LOG SCALE OF SAWLOGS. HOWEVER, A LARGER SAWDUST PILE MAY BE ACCUMULATED WHEN THERE IS NO REASONABLE DANGER OF FIRE FROM THE SAWDUST PILE AND A PERMIT FOR THE ADDITIONAL ACCUMULATION IS GRANTED BY THE DEPARTMENT. IF BURNING IS THE DISPOSAL METHOD ELECTED, EACH SAWDUST PILE MUST BE PREPARED FOR BURNING BY CRIBBING THE BASE OF EACH PILE WITH SLABS AND BURNED IN ACCORDANCE WITH RULES ADOPTED BY THE DEPARTMENT."

**NEW SECTION. Section 16. Duty of landowner to protect against fire.** (1) An owner of land shall protect against the starting or existence of fire and shall suppress the spread of fire on that land. This protection and suppression must be in conformity with reasonable rules and standards for adequate fire protection adopted



by the department.

(2) (a) The provisions of 76-13-201 apply to an owner of land that is classified as forest land under 76-13-107 and that is within a wildland fire protection district.

(b) If an owner of land does not provide for protection against the starting or existence of fire and for fire suppression and the land does not meet the criteria in subsection (2)(a), the owner may request that the department provide protection as provided in 76-13-105.

**Section 17.** Section 76-13-201, MCA, is amended to read:

**"76-13-201. Duty of owner to protect against Costs for protection from fire.** ~~(1) An owner of land classified as forest land by the department shall protect against the starting or existence and suppress the spread of fire on that land. This protection and suppression must be in conformity with reasonable rules and standards for adequate fire protection adopted by the department.~~

~~————(2) If the (1) An owner of land classified as forest land that is within a wildland fire protection district or that is otherwise under contract for fire protection by a recognized agency does not provide for the protection and suppression, the~~ is subject to the fees for fire protection provided in this section.

(2) The department may shall provide fire protection to the land described in subsection (1) at a cost to the landowner of not more than \$30 \$45 for each landowner in the protection district and of not more than an additional 20 25 cents per acre per year for each acre in excess of 20 acres owned by each landowner in each protection district, as necessary to yield the amount of money provided for in 76-13-207. The owner of the land shall pay the charge approved by the department in accordance with part 1 and this part to the department of revenue. Payments to the department of revenue are due on or before November 30 of each year Assessment, payment, and collection of the fire protection costs must be in accordance with 76-13-207.

(3) Other charges may not be assessed to a participating landowner except in cases of ~~proven~~ proved negligence on the part of the landowner or the landowner's agent or in the event of a violation of 50-63-103."

**Section 18.** Section 76-13-202, MCA, is amended to read:

**"76-13-202. Means by which department may provide protection.** The department may provide for ~~forest fire~~ wildfire protection of any ~~forest lands~~ wildlands through the department or by contract or any other feasible means, in cooperation with any federal, state, or other recognized agency."

**Section 19.** Section 76-13-203, MCA, is amended to read:

**"76-13-203. Extension of the forest fire wildfire season.** In the event of excessive or great fire danger, the period defined in ~~76-13-102(7)~~ 76-13-102(12) may be expanded when in the judgment of the department dangerous fire conditions exist. When expanded, the department shall give public notice."

**Section 20.** Section 76-13-204, MCA, is amended to read:

**"76-13-204. Creation, annexation of land into, and dissolution of forest wildland fire protection districts.** (1) In accordance with the provisions of subsections (2) and (3), the department may create, annex land to, or dissolve forest wildland fire protection districts.

(2) Before a district is created, land is annexed into a district, or a district is dissolved, the department shall hold a hearing in any county in which land affected by the proposed change is located.

(a) The department shall give notice at least 20 days in advance of the hearing to all property owners to be affected by the proposed change. Service of the notice ~~may~~ MUST be made by certified mail to each affected property owner ~~or~~ AND by publication of the notice in a newspaper published or generally circulated in the county in which the hearing is to be held.

(b) The department shall consider the arguments made for and against the proposed change in making a determination under this section.

(3) (a) A forest wildland fire protection district may not be created or dissolved unless approved in writing by a vote of not less than 51% of the owners representing at least 51% of the acreage to be involved in the affected forest wildland fire protection district.

(b) Land may not be annexed into a district unless approved by 51% of the owners representing at least 51% of the acreage to be annexed.

(4) Land annexed into a district may not be removed from that district unless that district is dissolved."

**Section 21.** Section 76-13-205, MCA, is amended to read:

**"76-13-205. Determination of boundaries of district.** In establishing boundaries of organized forest wildland fire protection districts ~~covering forest lands~~, the department may for the purpose of administrative convenience designate recognizable landmarks as boundaries."

**Section 22.** Section 76-13-206, MCA, is amended to read:

**"76-13-206. What constitutes compliance with duty to protect against fire for landowners within district.** An owner of forest ~~lands~~ land within an organized forest wildland fire protection district while a member

of or while participating in a recognized agency for ~~forest~~ wildland fire protection or within areas protected by a county ~~shall~~ must be considered to have fully complied with the requirements of ~~76-13-204~~ [section 15 16]."

**Section 23.** Section 76-13-207, MCA, is amended to read:

**"76-13-207. Determination and collection of costs of fire protection.** (1) The department shall prepare an annual operation assessment plan in which fire protection costs are determined. The department shall request the legislature to appropriate the state's portion of the cost. After the appropriation is made by the legislature, the department shall cause an assessment to be made on the owners of ~~classified forest~~ land, as specified in 76-13-105 and 76-13-201, sufficient to bring the total amount received from the landowners to no greater than one-third of the amount specified in the appropriation.

(2) On or before the ~~second Tuesday in August~~ first Tuesday in September of each year, the department shall certify in writing to the department of revenue the names of these owners of ~~forest lands~~ lands in each county, together with a description of their lands and a statement of the amount found to be due and owing by each of the owners to the department for ~~forest~~ wildland fire protection.

(3) Upon receiving the certificate from the department showing the amount due, the department of revenue shall extend the amounts upon the county tax rolls covering the lands, and the sums become obligations of the owner, to be paid and collected in the same manner and at the same time and subject to the same penalties as general state and county taxes upon the same property are collected."

**Section 24.** Section 76-13-208, MCA, is amended to read:

**"76-13-208. Nature of assessments for forest wildland fire protection.** All payments required of ~~owners of forest lands~~ landowners by ~~this part and~~ part 1 and this part are assessments for benefits actually received by those owners in the protection of their lands and are not a tax upon the property of ~~such~~ the owners."

**Section 25.** Section 76-13-209, MCA, is amended to read:

**"76-13-209. Disposition of assessments.** ~~All sums~~ Money collected by the county treasurer pursuant to 76-13-207 ~~shall~~ must be promptly deposited remitted to the state for deposit in the state special revenue fund."

**Section 26.** Section 76-13-210, MCA, is amended to read:

**"76-13-210. Payment under protest.** An owner who is required to pay to the county treasurer any sum for ~~forest~~ wildland fire protection as required by ~~this part or~~ part 1 or this part and who contends that ~~he~~ the owner

is not legally obligated to pay the sum or ~~some a part thereof~~ of the sum shall pay it to the county treasurer under written protest, stating the reasons for the protest. The payment under protest and all proceedings subsequent ~~thereto shall be in conformity to the payment must conform~~ with the law of this state providing for the payment of taxes under protest and action to recover the ~~same payment~~. In the hearing and determination of any action to recover the payment under protest, all questions of the legality and reasonableness of the proceedings of ~~the board and~~ the department may be reviewed and decided."

**Section 27.** Section 76-13-211, MCA, is amended to read:

**"76-13-211. Amount due for protection treated as lien.** (1) Whenever the department provides ~~forest wildland fire~~ protection ~~during a forest fire season~~ for any ~~forest land~~ wildland or timber not protected by the owner ~~thereof of the wildland or timber~~ as required by ~~this part or part 1~~ or this part, the amount due for the ~~forest~~ protection is a lien upon the ~~land~~ wildland or timber ~~which shall continue that continues~~ until ~~such time as~~ the amount due is paid.

(2) The lien has the same force, effect, and priority as general tax liens under the laws of the state and is subject and inferior only to tax liens on the lands. The county attorney of the county in which the land is situated shall on request of the department foreclose the lien in the name of the state and in the manner provided by law, or the county attorney upon the request of the department shall institute an action against the ~~forest~~ landowner in the name of the state in any district or justice court having jurisdiction to recover the debt. The state in the action is not required to pay any fees or costs to the clerk of the court or justice of the peace.

(3) The remedies provided by this section are cumulative and do not affect the other provisions of ~~this part or part 1~~ or this part for the payment and collection of amounts due to the department."

**Section 28.** Section 77-5-103, MCA, is amended to read:

**"77-5-103. Role of department.** (1) The department shall, under the direction and control of the board, do all the field work in the selection, location, examination, appraisalment, and reappraisalment of state timberlands.

(2) ~~†~~ The department shall do all acts required of it by the board, and under the direction of the board, it has general charge of the timberlands of the state.

(3) ~~†~~ The department shall, under the supervision of the board;:

(a) execute all matters pertaining to forestry within the jurisdiction of the state;

(b) ~~have charge of all firewardens of the state and direct and aid them in their duties;~~ direct the

protection, improvement, and condition of state forests;

(c) take ~~such~~ any action ~~as is~~ authorized by law to prevent and extinguish ~~forest, brush, and grass wildland~~ fires; and

(d) enforce the laws pertaining to forest and ~~brush~~ cover nonforest lands and prosecute for any violation of those laws.

~~(4) The department shall establish and maintain forest fire control training programs for state firefighters and other persons requiring training."~~

**NEW SECTION. SECTION 29. FORMULA TO SET LANDOWNER ASSESSMENTS FOR FIRE PROTECTION.** (1) THE DEPARTMENT SHALL, PURSUANT TO 76-13-207, SET THE ANNUAL FIRE ASSESSMENT FEE DUE FROM LANDOWNERS PURSUANT TO TITLE 76, CHAPTER 13, PARTS 1 AND 2. THE TOTAL OF ALL STATEWIDE LANDOWNER ASSESSMENTS MAY BE NO GREATER THAN ONE-THIRD OF THE AMOUNT APPROPRIATED BY THE LEGISLATURE TO FUND THE PROTECTION COSTS.

(2) THE INDIVIDUAL ASSESSMENTS MUST BE ESTABLISHED USING THE FOLLOWING CRITERIA:

(A) EACH PERSON OR CORPORATION WHO IS RESPONSIBLE FOR FIRE PROTECTION PURSUANT TO 76-13-108 AND 76-13-201 AND FOR WHOM THE DEPARTMENT PROVIDES FIRE PROTECTION MUST BE ASSESSED A PER CAPITA LANDOWNER FEE. THE TOTAL PER CAPITA LANDOWNER ASSESSMENTS STATEWIDE FROM PERSONS OR CORPORATIONS WHO OWN 20 ACRES OR LESS OF LAND FOR WHICH THE DEPARTMENT PROVIDES PROTECTION MUST BE AS CLOSE AS ADMINISTRATIVELY POSSIBLE TO 60% OF THE TOTAL PRIVATE LANDOWNER ASSESSMENTS.

(B) A PERSON OR CORPORATION WHO OWNS MORE THAN 20 ACRES OF LAND FOR WHICH THE DEPARTMENT PROVIDES PROTECTION SHALL, IN ADDITION TO THE FEE ASSESSED PURSUANT TO SUBSECTION (2)(A), PAY A PER-ACRE FEE FOR EACH WHOLE ACRE THAT THE PERSON OWNS IN EXCESS OF 20 ACRES. THE TOTAL OF ALL ASSESSMENTS STATEWIDE FROM PERSONS OR CORPORATIONS THAT OWN MORE THAN 20 ACRES MUST BE AS CLOSE AS ADMINISTRATIVELY POSSIBLE TO 40% OF THE TOTAL PRIVATE LANDOWNER ASSESSMENTS.

(3) (A) EXCEPT AS PROVIDED IN SUBSECTION (3)(B), THE PER CAPITA AND PER-ACRE FEES MUST REMAIN IN EFFECT FOR SUBSEQUENT YEARS.

(B) THE DEPARTMENT SHALL RESET THE PER CAPITA AND PER-ACRE FEES WHENEVER IT IS NECESSARY TO OBTAIN UP TO ONE-THIRD OF THE AMOUNT APPROPRIATED BY THE LEGISLATURE.

(C) WHENEVER THE DEPARTMENT RESETS THE FEES PURSUANT TO SUBSECTION (3)(B), IT SHALL DO SO IN ACCORDANCE WITH 76-13-201(2).

**NEW SECTION. Section 30. Repealer.** Sections 76-11-101, 76-13-106, 76-13-109, 77-5-104,

77-5-105, and 77-5-106, MCA, are repealed.

**NEW SECTION. Section 31. Codification instruction.** (1) [Sections 1 and 6 Z] are intended to be codified as an integral part of Title 76, chapter 13, part 1, and the provisions of Title 76, chapter 13, part 1, apply to [sections 1 and 6 Z].

(2) [~~Section SECTIONS 45 16 AND 29~~] is ARE intended to be codified as an integral part of Title 76, chapter 13, part 2, and the provisions of Title 76, chapter 13, part 2, apply to [~~section SECTIONS 45 16 AND 29~~].

**NEW SECTION. Section 32. Directions to code commissioner.** (1) If legislation is enacted that contains references to and definitions of "wildfire season", "wildland fire", "wildland fire protection", and "wildland fire protection district", then the code commissioner is instructed to change the terms "forest fire season", "forest fire", "forest fire protection", and "forest fire protection district" wherever they occur.

(2) Section 76-11-102 is intended to be renumbered and codified as an integral part of Title 76, chapter 13, part 1.

(3) Sections 76-13-131 through 76-13-135 are intended to be renumbered and codified as an integral part of Title 76, chapter 13, part 4.

**COORDINATION SECTION. Section 33. Coordination instruction.** If \_\_ Bill No. \_\_ [LC 423] and [this act] are both passed and approved and if they contain a section that amends 76-13-121, then the sections amending 76-13-121 are void and 76-13-121 must be amended as follows:

**"76-13-121. Permit for burning required.** (1) During the ~~forest fire~~ wildfire season or an expansion ~~thereof of the wildfire season~~, a person may not ignite or set a ~~forest fire~~, including a slash-burning fire, land-clearing fire, debris-burning fire, or, except as provided in subsection (2), an open fire ~~within forest lands~~ without an official written permit to ignite or set the fire from the recognized ~~protection~~ agency for that protection area. ~~A permit is not required in order to build, set, or ignite a campfire within and upon a designated improved camping ground or upon a plot of land from which all vegetable and inflammable matter and debris have been removed to a point where it may not become ignited by the campfire or by sparks therefrom. A permit may not be issued where a special burning restriction in a high fire hazard area has been imposed by a county governing body under [section 3 of LC 423] or by the department under [section 1 of LC 423].~~

(2) (a) If no restrictions are in place, a permit is not needed for recreational fires measuring less than 48 inches in diameter that are surrounded by a nonflammable AREA OR structure and for which a suitable source of

extinguishing the fire is available.

(b) A recreational fire may not be ignited if special restrictions prohibiting recreational fires have been established by an authority having jurisdiction."

COORDINATION SECTION. SECTION 34. COORDINATION INSTRUCTION. IF SENATE BILL NO. 51 AND [THIS ACT] ARE PASSED AND APPROVED AND [THIS ACT] REPEALS 76-13-109, THEN THE SECTION IN [THIS ACT] AMENDING 76-13-104 IS VOID AND 76-13-104 MUST BE AMENDED AS FOLLOWS:

"76-13-104. Functions of department -- rulemaking. (1) The department has the duty to ensure the protection of land under state and private ownership and to suppress wildfires on land under state and private ownership. No fees may be collected for this purpose except fees provided for in 76-13-201.

(2) (a) The department shall adopt rules to protect the natural resources of the state, especially the natural resources owned by the state, from destruction by fire and for that purpose, in declared emergencies, may employ personnel and incur other expenses when necessary.

(b) The department may adopt and enforce reasonable rules for the purpose of enforcing and accomplishing the provisions and purposes of part 2 and this part.

(3) The duty imposed on the department under this section is not exclusive to the department and does not absolve private property owners or local governmental fire agencies organized under Title 7, chapter 33, from any fire protection or suppression responsibilities.

(4) The department may give technical and practical advice concerning forest, range, water, and soil conservation and the establishment and maintenance of woodlots, windbreaks, shelterbelts, and forest fire protection.

(2)(5) The department shall cooperate with all public and other agencies in the development, protection, and conservation of the forest, range, and water resources in this state.

(6) The department shall establish and maintain wildland fire control training programs.

(3) The department shall require an owner or operator to provide a notification prior to conducting forest practices as provided in 76-13-131, shall adapt as necessary any procedure used for notification with respect to an agreement under 76-13-408 to ensure that the operator provides information on the location of the forest practices in relation to watershed features, and shall conduct onsite consultations as provided for in 76-13-132.

(7) The department shall appoint firewardens in the number and localities that it considers necessary, subject to confirmation by the local county government, and shall adopt rules prescribing the qualifications and duties of firewardens that are in addition to those provided in [section 7 of Senate Bill No. 145].

(8) By October 1, 2008, the department shall adopt rules addressing development within the wildland-urban interface, including but not limited to:

(a) best practices for development within the wildland-urban interface; and

(b) criteria for providing grant and loan assistance to local government entities to encourage adoption of best practices for development within the wildland-urban interface."

NEW SECTION. Section 35. Effective date. [This act] is effective June 1, 2007.

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