



AN ACT GENERALLY REVISING LAWS RELATED TO WILDLAND FIRE; FINDING THAT CATASTROPHIC WILDLAND FIRE HAS THE POTENTIAL TO JEOPARDIZE MONTANANS' CONSTITUTIONAL RIGHT TO A CLEAN AND HEALTHFUL ENVIRONMENT; REQUIRING THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO ADVOCATE FOR AUTHORITY TO ENGAGE IN FOREST MANAGEMENT ACTIVITIES TO REDUCE FIRE RISK AND INTENSITY ON FEDERALLY MANAGED LAND LOCATED WITHIN THE WILDLAND-URBAN INTERFACE; AUTHORIZING THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION AND THE ATTORNEY GENERAL TO INTERVENE IN CERTAIN LITIGATION OR APPEALS; AND AMENDING SECTIONS 76-13-104 AND 76-13-115, MCA.

WHEREAS, Article II, section 3, of the Montana Constitution provides that all persons have a constitutional right to a clean and healthful environment; and

WHEREAS, sound forest management activities to reduce fire risk are critical to preventing catastrophic wildland fires that jeopardize the constitutional right to a clean and healthful environment;

WHEREAS, sound forest management activities to reduce fire risk are not occurring on some federally managed lands located within Montana's wildland-urban interface; and

WHEREAS, the state has the inherent power to enact reasonable legislation to protect the health, safety, and welfare of the public, which includes the protection of property in the wildland-urban interface from catastrophic wildland fire and the resulting devastation.

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

Section 1. Section 76-13-104, MCA, is amended to read:

"76-13-104. Functions of department -- rulemaking. (1) (a) 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. Fees may not be collected for this purpose except fees provided for in 76-13-201.

(b) The department may engage in wildfire initial attack on all lands if the fire threatens to move onto

state or private land.

(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 fire protection.

(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.

(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 76-13-116.

(8) 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.

(9) (a) The department shall advocate for the inclusion of Montana in federal legislation to establish a good neighbor policy that would allow the secretary of the interior or the secretary of agriculture to enter into a cooperating and coordinating agreement or contract that would authorize the state forester to engage in forest management and education activities to reduce wildland fire risk and intensity on federal land designated as wildland-urban interface under 76-13-145.

(b) Forest management activities to reduce wildland fire risk and intensity included in the good neighbor policy must include the authority to:

- (i) treat insect-infested trees;
- (ii) reduce hazardous fuels; and
- (iii) any other activities to improve the overall diversity and vigor of forested landscapes.

(10) The department has the authority to intervene in litigation or appeals on federal forest management projects that involve reduction of hazardous fuels or other activities to mitigate the risk of wildland fire in the wildland-urban interface."

Section 2. Federal forest management projects -- attorney general authority to intervene. The attorney general has the authority to intervene in litigation or appeals on federal forest management projects.

Section 3. Section 76-13-115, MCA, is amended to read:

"76-13-115. 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; and
- (9) catastrophic wildland fire in wildland-urban interface areas resulting from inadequate federal land management activities to reduce fire risk has the potential to jeopardize Montanans' inalienable right to a clean and healthful environment guaranteed in Article II, section 3, of the Montana constitution."

Section 4. Codification instruction. [Section 2] is 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 [section 2].

Section 5. Coordination instruction. If both Senate Bill No. 201 and Senate Bill No. 217 are passed and approved and if both contain a section authorizing the attorney general to intervene in litigation on federal forest management projects, then those sections are void and the new [section 2 of Senate Bill No. 201] must read as follows:

"NEW SECTION. Section 2. Federal forest management projects -- attorney general authority to intervene. (1) The attorney general has the authority to intervene in litigation or appeals on federal forest management projects.

(2) The authority provided in subsection (1) includes the authority to fulfill the purposes of Title 76, chapter 13, to intervene in litigation or appeals on federal forest management projects that could affect watershed protection or restoration."

- END -

I hereby certify that the within bill,
SB 0201, originated in the Senate.

Secretary of the Senate

President of the Senate

Signed this _____ day
of _____, 2013.

Speaker of the House

Signed this _____ day
of _____, 2013.

SENATE BILL NO. 201

INTRODUCED BY HAMLETT, CONNELL

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