

SENATE BILL NO. 323

INTRODUCED BY J. FIELDER

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A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING STATE INTERVENTION IN LITIGATION THAT DELAYS FEDERAL FOREST MANAGEMENT PROJECTS WHERE THE DELAY CAUSES ECONOMIC HARM, ENDANGERS INFRASTRUCTURE, OR THREATENS THE HEALTH, SAFETY, AND WELFARE OF CITIZENS; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 2-15-501, 76-13-104, 76-13-154, AND 76-13-702, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 2-15-501, MCA, is amended to read:

"2-15-501. General duties. It is the duty of the attorney general:

(1) to prosecute or defend all causes in the supreme court in which the state or any officer of the state in the officer's official capacity is a party or in which the state has an interest;

(2) to represent the state in all bankruptcy proceedings in which the state's interest may be affected and in other debt collection proceedings at the request of a state agency;

(3) after judgment in any of the causes referred to in subsections (1) and (2), to direct the issuing of a process as may be necessary to carry the judgment into execution;

(4) to keep a register of all cases prosecuted or defended by the attorney general. The register must be open to the inspection of the public during business hours. The attorney general shall deliver the register to the attorney general's successor in office.

(5) to exercise supervisory powers over county attorneys in all matters pertaining to the duties of their offices and from time to time require of them reports as to the condition of public business entrusted to their charge. The supervisory powers granted to the attorney general by this subsection include the power to order and direct county attorneys in all matters pertaining to the duties of their office. The county attorney shall, when ordered or directed by the attorney general, promptly institute and diligently prosecute in the proper court and in the name of the state of Montana any criminal or civil action or special proceeding.

(6) when required by the public service or directed by the governor, to assist the county attorney of any county in the discharge of the county attorney's duties or to prosecute or defend appropriate cases in which the

1 state or any officer of the state in the officer's official capacity is a party or in which the state has an interest;
 2 (7) to give an opinion in writing, without fee, to the legislature or either house of the legislature, to any
 3 state officer, board, or commission, to any county attorney, to the city attorney of any city or town, or to the board
 4 of county commissioners of any county of the state when required upon any question of law relating to their
 5 respective offices. The attorney general shall give the opinion within 3 months following the date that it is
 6 requested unless the attorney general certifies in writing to the requesting party that the question is of sufficient
 7 complexity to require additional time. If an opinion issued by the attorney general conflicts with an opinion issued
 8 by a city attorney, county attorney, or an attorney employed or retained by any state officer, board, commission,
 9 or department, the attorney general's opinion is controlling unless overruled by a state district court or the
 10 supreme court.

11 (8) to discharge the duties of a member of the board of examiners and state board of land
 12 commissioners;

13 (9) to enforce the provisions of 76-13-104, 76-13-154, and 76-13-702 regarding intervening in litigation
 14 regarding federal forest management; and

15 ~~(9)~~(10) to perform all other duties as required by law."
 16

17 **Section 2.** Section 76-13-104, MCA, is amended to read:

18 **"76-13-104. Functions of department -- rulemaking.** (1) (a) The department has the duty to ensure
 19 the protection of land under state and private ownership and to suppress wildfires on land under state and private
 20 ownership. Fees may not be collected for this purpose except fees provided for in 76-13-201.

21 (b) The department may engage in wildfire initial attack on all lands if the fire threatens to move onto
 22 state or private land.

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

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

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

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

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

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

6 (7) The department shall appoint firewardens in the number and localities that it considers necessary
7 and shall adopt rules prescribing the qualifications and duties of firewardens that are in addition to those provided
8 in 76-13-116.

9 (8) The department shall adopt rules addressing development within the wildland-urban interface,
10 including but not limited to:

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

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

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

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

21 (i) treat insect-infested trees;

22 (ii) reduce hazardous fuels; and

23 (iii) conduct any other activities to improve the overall diversity and vigor of forested landscapes.

24 (10) ~~The~~ IF THE DEPARTMENT DETERMINES A PROJECT IS OF A HIGH PRIORITY PURSUANT TO SUBSECTION (11),
25 THE department ~~has the authority to~~ shall intervene;

26 (a) in litigation or appeals on federal forest management projects that involve reduction of hazardous fuels
27 or other activities to mitigate the risk of wildland fire in the wildland-urban interface;

28 (b) in litigation or appeals on federal forest management projects that interfere with timber production or
29 that would result in a reduction in access for emergency response or multiple use recreation; and

30 (c) in any litigation or appeals that halt or delay federal forest projects that unless completed would cause

1 economic harm, endanger infrastructure, including economic and industrial, or threaten the health, safety, and
2 welfare of citizens.

3 (11) THE DEPARTMENT SHALL PRIORITIZE FEDERAL FOREST MANAGEMENT PROJECTS FOR POSSIBLE
4 INTERVENTION PURSUANT TO SUBSECTION (10) IN CONSULTATION WITH THE COUNTIES IN WHICH ANY PART OF THE
5 FEDERAL FOREST MANAGEMENT PROJECT IS LOCATED. THE DEPARTMENT MAY ADOPT RULES TO IMPLEMENT THIS
6 SUBSECTION (11)."

7
8 **Section 3.** Section 76-13-154, MCA, is amended to read:

9 **"76-13-154. Federal forest management projects -- attorney general authority to intervene.** (1) The
10 attorney general ~~has the authority to~~ shall intervene in litigation or appeals on federal forest management projects.

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

14
15 **Section 4.** Section 76-13-702, MCA, is amended to read:

16 **"76-13-702. Duties -- authority.** To implement the policy of 76-13-701, the department of natural
17 resources and conservation:

18 (1) shall support sustainable forest management practices, including forest restoration, on public forests
19 in Montana consistent with all applicable laws and administrative requirements;

20 (2) shall provide technical information and educational assistance to nonindustrial, private forest
21 landowners;

22 (3) shall promote forest management activities within and adjacent to the wildland-urban interface and
23 promote the implementation of community wildfire protection plans;

24 (4) shall promote a viable forest and wood products industry and other businesses and individual
25 activities that rely on public forest lands;

26 (5) shall represent the state's interest in the federal forest management planning and policy process,
27 including establishing cooperative agency status and coordination with federal agencies;

28 (6) shall advocate that Montana be included in federal legislation to establish a good neighbor policy that
29 would allow the secretary of the interior or the secretary of agriculture to enter into a cooperative agreement or
30 contract that would authorize the state forester to provide watershed restoration and protection services on

1 federal land. Watershed restoration and protection services included in the good neighbor policy must include
2 the authority to:

- 3 (a) treat insect-infested trees;
- 4 (b) reduce hazardous fuels; and
- 5 (c) conduct any other activities to restore or improve forest, rangeland, and watershed health, including
6 fish and wildlife habitat.

7 (7) may assist local government entities in establishing cooperative agency status and coordination with
8 federal agencies;

9 (8) shall promote the development of an independent, long-term sustained yield calculation on Montana's
10 federal forests;

11 (9) ~~has the authority to~~ shall, IF THE DEPARTMENT DETERMINES A PROJECT IS OF A HIGH PRIORITY PURSUANT
12 TO SUBSECTION (12), intervene in litigation or appeals on federal forest management projects that:

- 13 (a) comply with the policy in 76-13-701 and in which local and state interests are clearly involved; ~~or~~
- 14 (b) involve fuel-loading conditions that the department considers to be a significant threat to public health
15 and safety or to hamper watershed restoration and protection; or
- 16 (c) unless completed would cause economic harm, endanger infrastructure, including economic and
17 industrial, or threaten the health, safety, and welfare of citizens;

18 (10) has the authority to enter into agreements with federal agencies to participate in forest management
19 activities on federal lands; ~~and~~

20 (11) shall participate in and facilitate collaboration between traditional forest interests in reaching
21 consensus-based solutions on federal land management issues; AND

22 (12) SHALL PRIORITIZE FEDERAL FOREST MANAGEMENT PROJECTS FOR POSSIBLE INTERVENTION PURSUANT TO
23 SUBSECTION (9) IN CONSULTATION WITH THE COUNTIES IN WHICH ANY PART OF THE FEDERAL FOREST MANAGEMENT
24 PROJECT IS LOCATED. THE DEPARTMENT MAY ADOPT RULES TO IMPLEMENT THIS SUBSECTION (12)."

25

26 NEW SECTION. Section 5. Effective date. [This act] is effective on passage and approval.

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