



2017 LEGISLATIVE ACTIVITY



*Supporting non-industrial private forest owners (family forests)
in their rightful and responsible use, management and
enjoyment of their forested lands*

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Following is a summary of the bills that Montana Forest Owners Association worked to influence in 2017.

Prescribed burning

Presently, anyone who undertakes burning in Montana (prescribed or otherwise) which gets out of hand and harms property of others, is liable for the loss to others. This means that the party who lights the match is liable for any and all harm caused from the resulting fire. A bill was introduced attempting to create a sea change in liability. See HB587.

HB587 – a bill allowing for release of liability (except for negligence) from a person performing a prescribed burn if that person used a prescribed burn plan, prescribed fire burn boss, and prescribed fire manager (yet undefined) approved by the Department of Natural Resources and Conservation (DNRC). MFOA testified against this bill because the bill failed to describe in sufficient detail the steps a lighter of the match would have to take to enjoy this reduced liability. MFOA told the legislative committee that MFOA supported prescribed burning as a forest management tool; however, the bill needed considerable more thought and detail on what one must undertake to achieve reduced liability. The bill was tabled in the House Natural Resources committee and will not proceed.

Property taxation

The Montana Code Annotated specifies different classes of property for assessment purposes. Land under residential, commercial and industrial buildings is class four. Agricultural land is class three. Forest land is class ten. The Department of Revenue is responsible for classifying each parcel of land. Forest lands enjoy low taxation in relation to other lands. Class four property is assessed at market value. For decades the Department of Revenue has extracted one acre of forest land that has a residence, and changed its classification from class ten to class four property, leaving the remaining property as class ten (so long as there remained 15 acres). The Department of Revenue has also extracted forest land under commercial and industrial buildings and reclassified the real estate from class ten to class four property. This land reclassification resulted in higher property taxes for the extracted land under the residential, commercial or industrial buildings. This has been the practice of the Department of Revenue for decades, but last December the Montana Tax Appeal Board ruled that the Department of Revenue had no legal authority to reclassify one acre under residential property, and the acreage extracted under commercial and industrial properties. See HB583.

HB583 – a bill allowing for change of class of assessment if designated forest lands are being used as other than forest lands. If the lands contain a residence, one acre is to be allocated as class four (market value) for the residence. Other uses are to be allocated on the actual acreage used (such as ¼ acre under a commercial building). MFOA testified that the “one acre” size under a residence was arbitrary, and that the actual acreage should be determined by the footprint of the residence. MFOA also suggested excluding reclassification of forest lands that were being used “for associated forest land management practices.” The Senate Taxation committee did not accept MFOA’s request to not use an arbitrary “one acre” under a residence. However, the Senate Taxation committee did amend the bill to not reclassify property being used for “associated forest land management.” (Such land might include a shed for a tractor and winch, weed spray equipment, or tools for

forest land management.) The revised bill passed the Senate and House and was signed by the Governor on May 4, 2017. On September 4, 2017, MFOA attended a Department of Revenue meeting regarding how to define “associated forest land management use” in the Administrative Rules of Montana. MFOA’s suggested that “associated forest land management use” means the primary intended use of a structure is to support the health, maintenance, growth or harvest of the forest on the subject property. This is more inclusive than the definition suggested by the Department of Revenue which was “associated forest land management use” means the intended use of a structure is to support the growth and harvest of timber on the subject property. The Department of Revenue has not announced its decision.

Access

Access across private property to reach public or private properties remains contentious and probably will intensify with the ever-changing landownership. There is a push-and-pull between those who think they have legal access, and the property owners who disagree. Today, if someone has a dispute and he cannot resolve it, he may file a suit to determine whether he has a prescriptive easement, or whether the road is actually public. A bill was introduced in the Senate in an attempt to have these issues resolved by the board of county commissioners. See SB262.

SB262 – a bill prohibiting the restriction of public access on certain roads. This bill restricts a person from installing a fence, other barrier, or sign intended to prevent vehicular travel by the public on a road or right-of-way that has no proven legal status, that is used for normal vehicular travel by the public, and that appears to meet the conditions necessary to qualify for a prescriptive easement or other public road designation, unless the person first applies to and receives permission from the board of county commissioners. MFOA testified against this bill as an infringement of property rights. Further, MFOA contended that any such disagreement would ultimately end up in court, and that getting the county involved was not beneficial. This bill was tabled in the Senate Highways and Transportation committee and will not proceed.

Rural improvement districts

Montana Code Annotated 7-12-2102 allows for the creation of a rural improvement district if all landowners in such district-to-be petition to create such district. Once a district is created, the costs are assessed to all landowners in that district. Rural roads are otherwise maintained by the owners or homeowner associations. See SB79.

SB79 – a bill allowing for the creation of a rural improvement district solely for road maintenance upon petition of the owners of more than 60% of the area in the proposed district. During the legislative proceedings, the 60% requirement was changed to 85%. MFOA advised and warned its members of a possible legislative maneuver to take action on the House floor to change the 85% back to 60%. The bill passed at 85%. Further, the bill was restricted to residential subdivisions. MFOA is working to keep additional taxes from being charged to its forestland members who may not agree with the creation of a rural improvement district.. Hopefully, such a district, if created, will indeed be desired by all the landowners. The bill was signed by the Governor on April 3, 2017.

Fire Assessments

Montana Code Annotated 76-13-201 provides for the collection of a fire fighting assessment on the real estate tax bill for “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...” This is not a tax, but instead a fee for fire protection. If your property is in a Fire Protection District you may see an assessment such as “State Forester” or “Fire Assessment” on your real estate tax bill. Different counties list the assessment under different names. See SB72.

SB72 – a bill creating a fund for firefighters’ disease benefits. Version 2 of this bill included \$125,000 of funding from the wildland fire protection districts. This could have resulted in increased assessments to forest land owners. MFOA started watching this bill after the bill was amended to use funding from wildland fire protection districts. MFOA supports a fund for fire fighters but it opposes the potential assessments to forest

land owners. MFOA was prepared to testify against this bill; however, a committee amended the bill to use other funds. Later, the bill was tabled in the House Business and Labor committee and will not proceed.

Noxious weeds and public access

Noxious weeds and public access go hand-in-hand, and usually not in a good way. That is way MFOA was concerned about a last minute attempt by the Senate to slip public access requirements into a good noxious weed bill.

HB434 – a bill using federal funds to combat noxious weeds and thus improving wildlife habitat. The Senate amended this bill to add language from HB651 which died by not passing the second reading. The added language regarding improving public access, setting up a public access advisory council, identifying opportunities to increase public access, proposing access projects with an emphasis on land exchanges, an procuring access easements. MFOA opposed the public access amendment. MFOA testified against the Senate amendment. The bill was revised to remove the public access wording. The bill passed and was signed by the Governor on May 7, 2017.