

NOTE: This bill has been prepared for the signature of the appropriate legislative officers and the Governor. To determine whether the Governor has signed the bill or taken other action on it, please consult the legislative status sheet, the legislative history, or the Session Laws.

An Act

SENATE BILL 11-267

BY SENATOR(S) Schwartz, Shaffer B., Bacon, Foster, Giron, Guzman, Heath, Hodge, Jahn, Johnston, King S., Nicholson, Roberts, Tochtrop, White, Williams S., Aguilar, Boyd, Morse, Newell;
also REPRESENTATIVE(S) Coram and Hamner, Court, Baumgardner, Fischer, Gerou, Hullinghorst, Jones, Kefalas, Labuda, Lee, McCann, Nikkel, Pace, Schafer S., Todd, Wilson.

CONCERNING MEASURES TO PROMOTE FOREST HEALTH, AND, IN CONNECTION THEREWITH, CREATING THE COLORADO FOREST BIOMASS USE WORK GROUP AND PROMOTING THE CREATION OF SUSTAINABLE MARKET-BASED MODELS FOR ACTIVE FOREST MANAGEMENT AND WOODY BIOMASS ENERGY DEVELOPMENT.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Short title - legislative declaration. (1) This act shall be known and may be cited as the "Forest Health Act of 2011".

(2) The general assembly hereby:

(a) Finds that:

(I) The Colorado state forest service is well-positioned, due to

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

experience in managing Colorado's forests and its understanding of science-based, active forest management, to facilitate state government participation in forest management on federal lands located within Colorado;

(II) The department of natural resources has expertise with fish and wildlife habitat and the department of public health and environment has expertise with water quality, and both departments have an important role to play in the management of federal forests located within Colorado;

(III) A collaborative relationship between the Colorado state forest service, the federal government, other agencies of the executive department, interested persons, and nongovernmental organizations may restore the health, diversity, and resilience of federal forests by increasing the information shared and by providing a variety of perspectives on site-specific and landscape-level determinations;

(IV) In cooperation with the Colorado state forest service and the federal government, many communities in wildfire-prone areas have completed a community wildfire protection plan that identifies priority areas for hazardous fuel removal from private, state, and federal lands; and

(V) The federal government has provided opportunities for agencies of the executive department to become involved, to a greater extent, in the management of federal lands;

(b) Determines that the executive branch and the general assembly must act to address serious and imminent threats to the health of Colorado's forests and the welfare of communities, watersheds, and infrastructure at risk from wildfires, including the bark beetle infestation and the decline of Colorado's forest products industry; and

(c) Declares that this act is necessary to avert these threats, in part, by developing technology and markets for woody biomass that also recognize the opportunities presented by the energy potential of biomass.

SECTION 2. Part 3 of article 31 of title 23, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

23-31-314. Colorado forest biomass use work group - repeal.

(1) THERE IS HEREBY CREATED THE COLORADO FOREST BIOMASS USE WORK GROUP. THE WORK GROUP SHALL INVITE AN EMPLOYEE OF THE UNITED STATES FOREST SERVICE TO PARTICIPATE IN THE WORK GROUP'S PROCEEDINGS. THE WORK GROUP CONSISTS OF:

(a) THE COLORADO STATE FORESTER OR THE STATE FORESTER'S DESIGNEE, WHO SHALL CONVENE THE WORK GROUP;

(b) AN EMPLOYEE OF THE DEPARTMENT OF NATURAL RESOURCES APPOINTED BY ITS EXECUTIVE DIRECTOR;

(c) NO MORE THAN SEVEN MEMBERS APPOINTED JOINTLY BY THE MEMBERS SPECIFIED IN PARAGRAPHS (a) AND (b) OF THIS SUBSECTION (1) WHO HAVE DEMONSTRATED EXPERTISE IN NO LESS THAN ONE OF THE FOLLOWING AREAS:

(I) COLORADO'S FOREST PRODUCTS INDUSTRY;

(II) THE BIOMASS TECHNOLOGY INDUSTRY;

(III) ENERGY OR NATURAL RESOURCES;

(IV) UTILITY INFRASTRUCTURE OR RIGHTS-OF-WAY IN FORESTED LANDS; AND

(V) FOREST ECOLOGY;

(d) A MEMBER OF THE COLORADO FOREST HEALTH ADVISORY COUNCIL CREATED BY EXECUTIVE ORDER;

(e) THE DIRECTOR OF THE GOVERNOR'S ENERGY OFFICE CREATED IN SECTION 24-38.5-101, C.R.S., OR THE DIRECTOR'S DESIGNEE, WHOSE PARTICIPATION IS LIMITED TO IDENTIFYING MECHANISMS THAT ARE COST-NEUTRAL TO CONSUMERS;

(f) THE DIRECTOR OF THE OFFICE OF ECONOMIC DEVELOPMENT, CREATED IN SECTION 24-48.5-101, C.R.S., OR THE DIRECTOR'S DESIGNEE; AND

(g) THE DIRECTOR OF COMPACT NEGOTIATIONS APPOINTED

PURSUANT TO SECTION 37-75-103, C.R.S., OR THE DIRECTOR'S DESIGNEE.

(2) THE WORK GROUP SHALL PRIORITIZE ITS EFFORTS TO PROTECT CRITICAL FORESTED AREAS OF THE STATE, INCLUDING THE WILDLAND-URBAN INTERFACE, ELECTRIC UTILITY INFRASTRUCTURE, TRANSPORTATION CORRIDORS, WATER SUPPLY AND QUALITY, AND WATERSHEDS. THE PURPOSE OF THE WORK GROUP IS TO:

(a) IDENTIFY:

(I) BARRIERS TO THE CREATION OF A SUSTAINABLE, MARKET-BASED MODEL FOR ACTIVE FOREST MANAGEMENT AND ECOSYSTEM HEALTH FOR COLORADO'S FORESTS, INCLUDING RESPONSIBLE TIMBER HARVEST AND BIOMASS UTILIZATION;

(II) WAYS TO SUPPORT COLORADO'S FOREST PRODUCTS INDUSTRY THROUGH EFFECTIVE FOREST MANAGEMENT;

(III) WAYS TO PROMOTE THE USE OF BIOMASS TO REDUCE THE RISK OF SEVERE INSECT AND DISEASE OUTBREAKS AND CATASTROPHIC WILDFIRES;

(IV) IN CONJUNCTION WITH THE STAFF OF THE AIR QUALITY CONTROL COMMISSION, THE AIR QUALITY BENEFITS OF USING THE COGENERATION OF HEAT AND ELECTRICITY FROM BIOMASS AS A FUEL MITIGATION STRATEGY WITHOUT INTENDING THEREBY TO IMPAIR THE USE OF OPEN BURNING OF SLASH OR BRUSH TO ADDRESS CRITICAL FIRE MITIGATION EFFORTS;

(V) CURRENTLY AVAILABLE AND POTENTIAL PUBLIC AND PRIVATE SOURCES OF FUNDING FOR THE DEVELOPMENT OF BIOMASS MARKETS, INCLUDING ENERGY MARKETS, THAT HARVEST OR USE FOREST BIOMASS UNSUITABLE FOR LUMBER, PULP, OR PAPER PRODUCTS AS A PRIMARY SOURCE OF RAW MATERIAL, INCLUDING:

(A) A PROGRAM ANALOGOUS TO THE COLORADO CLEAN ENERGY FINANCE PROGRAM ESTABLISHED PURSUANT TO ARTICLE 38.7 OF TITLE 24, C.R.S., TO FACILITATE ADEQUATE CAPITALIZATION OF THE FOREST PRODUCTS INDUSTRY; AND

(B) TARGETED BUSINESS INCENTIVES, INCLUDING TAX CREDITS OR EXEMPTIONS, FOR ECONOMICALLY VIABLE BIOMASS HARVESTING,

TRANSPORTATION, AND USE; AND

(VI) BEST FOREST MANAGEMENT PRACTICES REGARDING WATERSHED MANAGEMENT, WATER SUPPLY, AND WATER QUALITY;

(b) RECOMMEND WAYS TO MAXIMIZE THE COLORADO STATE FOREST SERVICE'S EFFECTIVENESS WITH REGARD TO THE FOLLOWING ISSUES:

(I) THE SERVICE ACTING AS AN INFORMATION RESOURCE, IN COORDINATION WITH THE DEPARTMENT OF NATURAL RESOURCES AND THE GOVERNOR'S ENERGY OFFICE, FOR PERSONS SEEKING TO UTILIZE WOODY BIOMASS FOR ENERGY DEVELOPMENT, INCLUDING BY MAINTAINING AND UPDATING EXISTING DATA REGARDING:

(A) A MAP THAT RANKS THE RELATIVE AVAILABILITY OF LANDS CAPABLE OF PRODUCING WOODY BIOMASS AND RANKS THE COUNTIES THAT ARE MOST VULNERABLE TO THE RISKS OF CATASTROPHIC FIRE; AND

(B) AN INTEGRATED BIOMASS INVENTORY, INCLUDING PRIVATE, PUBLIC, AND AGRICULTURAL LANDS AND WASTE FEEDSTOCK, TO FACILITATE THE LOCATION AND SIZING OF BIOMASS PROJECTS SPECIFICALLY FOR COMMUNITY THERMAL AND ELECTRICITY PRODUCTION;

(II) THE SERVICE'S PARTICIPATION, TO THE EXTENT ALLOWED BY STATE AND FEDERAL LAW, IN THE DEVELOPMENT OF FEDERAL FOREST POLICIES AND THE FOREST MANAGEMENT PLANNING PROCESSES OF FEDERAL AGENCIES TO INFLUENCE THOSE POLICIES AND PROCESSES TO ADVANCE COLORADO'S BEST INTERESTS, INCLUDING THE PROTECTION OF WATERSHEDS AND UTILITY INFRASTRUCTURE LOCATED IN NATIONAL FORESTS, SPECIFICALLY INCLUDING NATURAL GAS, ELECTRIC, AND WATER INFRASTRUCTURE;

(III) THE USE OF:

(A) STEWARDSHIP CONTRACTS WITH THE UNITED STATES FOREST SERVICE, THE FEDERAL BUREAU OF LAND MANAGEMENT, OR BOTH, PURSUANT TO SECTION 323 OF PUBLIC LAW 108-7, TO SUPPORT COLORADO'S FOREST PRODUCTS INDUSTRY BY PERFORMING SERVICES TO ACHIEVE LAND MANAGEMENT GOALS FOR THE NATIONAL FORESTS AND THE PUBLIC LANDS THAT MEET LOCAL AND RURAL COMMUNITY NEEDS WITHOUT COMPETING

WITH THE PRIVATE FOREST MANAGEMENT INDUSTRY; AND

(B) COLORADO'S GOOD NEIGHBOR AUTHORITY, AS DEFINED IN SECTION 23-31-313 (3), TO THE GREATEST EXTENT POSSIBLE IN FOREST PROJECTS, INCLUDING PURSUANT TO STEWARDSHIP CONTRACTS; AND

(IV) PROMOTING COST COMPETITIVE PROJECTS TO FACILITATE THE COGENERATION OF HEAT AND ELECTRICITY AT A PRISON, JAIL, SCHOOL, HOSPITAL, OR OTHER PUBLICLY OWNED FACILITY FROM THE COMBUSTION OF BIOMASS HARVESTED FROM A FOREST IN COLORADO THAT IS LOCATED WITHIN A REASONABLE RADIUS OF SUCH FACILITY; AND

(c) SUBMIT A REPORT PURSUANT TO SUBSECTION (3) OF THIS SECTION.

(3) THE WORK GROUP SHALL CREATE AN INITIAL REPORT BY NOVEMBER 1, 2011, AND SUBMIT A FINAL REPORT TO THE HOUSE OF REPRESENTATIVES COMMITTEE ON AGRICULTURE, LIVESTOCK, AND NATURAL RESOURCES AND THE SENATE COMMITTEE ON AGRICULTURE, NATURAL RESOURCES, AND ENERGY, OR THEIR SUCCESSOR COMMITTEES, BY JANUARY 1, 2012. THE REPORT MUST SUMMARIZE THE WORK AND FINDINGS OF THE WORK GROUP AND INCLUDE SPECIFIC LEGISLATIVE RECOMMENDATIONS REGARDING THE ISSUES IDENTIFIED IN SUBSECTION (2) OF THIS SECTION FOR THE PRIVATE SECTOR, REGULATORS, THE COLORADO STATE FOREST SERVICE, BASIN ROUNDTABLES CREATED PURSUANT TO SECTION 37-75-104 (1) (a), C.R.S., AND THE GENERAL ASSEMBLY.

(4)(a) THE COLORADO STATE FOREST SERVICE, THE DEPARTMENT OF NATURAL RESOURCES, AND THE GOVERNOR'S ENERGY OFFICE MAY ACCEPT PRIVATE GIFTS, GRANTS, AND DONATIONS FOR THE PURPOSE OF PROVIDING SUPPORT TO THE WORK GROUP TO PERFORM ITS RESPONSIBILITIES SPECIFIED IN THIS SECTION AND SHALL TRANSMIT SUCH REVENUES TO THE STATE TREASURER, WHO SHALL DEPOSIT THEM IN A SEPARATE ACCOUNT WITHIN THE HEALTHY FORESTS AND VIBRANT COMMUNITIES FUND CREATED IN SECTION 23-31-313 (10), WHICH ACCOUNT IS HEREBY CREATED. REVENUES IN THE ACCOUNT ARE AVAILABLE TO THE COLORADO STATE FOREST SERVICE AND THE WORK GROUP ONLY FOR THE PURPOSE OF CARRYING OUT THE WORK GROUP'S DUTIES UNDER THIS SECTION. THE ACCOUNT ALSO CONSISTS OF MONEYS APPROPRIATED AND TRANSFERRED TO THE ACCOUNT. ANY UNENCUMBERED MONEYS REMAINING IN THE ACCOUNT AS OF JULY 1, 2012,

REVERT TO THE HEALTHY FORESTS AND VIBRANT COMMUNITIES FUND TO BE USED PURSUANT TO SECTION 23-31-313 (10).

(b) IT IS THE INTENT OF THE GENERAL ASSEMBLY THAT THE COLORADO STATE FOREST SERVICE NOT BE REQUIRED TO SOLICIT GIFTS, GRANTS, OR DONATIONS FROM ANY SOURCE FOR THE PURPOSES OF THIS SECTION AND THAT NO GENERAL FUND MONEYS BE USED TO PAY FOR GRANTS AWARDED PURSUANT TO THIS SECTION OR FOR ANY EXPENSES OF THE WORK GROUP. THE WORK GROUP MAY ALSO ACCESS EXISTING RESOURCES OF THE COLORADO STATE FOREST SERVICE, THE DEPARTMENT OF NATURAL RESOURCES, AND THE GOVERNOR'S ENERGY OFFICE, TO THE EXTENT THAT SUCH RESOURCES ARE LEGALLY AVAILABLE AND OTHERWISE UNENCUMBERED.

(5) THIS SECTION IS REPEALED, EFFECTIVE JULY 1, 2012.

SECTION 3. 36-7-103, Colorado Revised Statutes, is amended to read:

36-7-103. Disposition of timber on state lands. (1) The state board of land commissioners, referred to in this article as the "board", is authorized to sell and otherwise dispose of timber on state lands; to secure the maximum possible amount therefrom, based upon cruised and appraised quantities thereon, location, accessibility, and market conditions; to issue permits of authority for timber cuttings; and to require cash deposits in advance to apply on such timber-cutting permits. In cases in which the appraised value of timber involved in any proposed sale exceeds five thousand dollars, competitive bids shall be received by the board, after call for such bids has been advertised over a thirty-day period in three issues of a newspaper of general circulation in each county in which the timber is located.

(2) THE BOARD, WHEN CONTRACTING WITH THE COLORADO STATE FOREST SERVICE, SHALL DIRECT THE SERVICE TO USE THE APPROPRIATE METHODS NECESSARY TO ENSURE PROPER MANAGEMENT OF STATE TRUST LANDS WHENEVER THE BOARD CONTRACTS FOR THE DISPOSITION FROM STATE LANDS OF TIMBER THAT:

(a) HAS BEEN INFESTED WITH BARK BEETLES; OR

(b) IS HARVESTED FROM A FOREST WHOSE HEALTH IS OTHERWISE IN DECLINE OR FROM WHICH THE BOARD ANTICIPATES DECLINING REVENUES DUE TO FOREST HEALTH FACTORS.

SECTION 4. Biomass investigation by public utilities commission. The general assembly hereby requests the public utilities commission to explore all aspects of biomass heat, electric, and gas energy production. The commission is encouraged to assist the Colorado forest biomass use work group created in section 23-31-314, Colorado Revised Statutes, and the general assembly on options for mitigating fire hazards and fully utilizing Colorado's biomass resources in the production of energy within the regulated markets.

SECTION 5. Safety clause. The general assembly hereby finds,

determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Brandon C. Shaffer
PRESIDENT OF
THE SENATE

Frank McNulty
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Cindi L. Markwell
SECRETARY OF
THE SENATE

Marilyn Eddins
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

APPROVED _____

John W. Hickenlooper
GOVERNOR OF THE STATE OF COLORADO