

First Regular Session
Sixty-eighth General Assembly
STATE OF COLORADO

ENGROSSED

*This Version Includes All Amendments Adopted
on Second Reading in the House of Introduction*

LLS NO. 11-0903.02 Thomas Morris

SENATE BILL 11-267

SENATE SPONSORSHIP

Schwartz, Shaffer B., Bacon, Foster, Giron, Guzman, Heath, Hodge, Jahn, Johnston, King S., Nicholson, Roberts, Tochtrop, White, Williams S.

HOUSE SPONSORSHIP

Coram and Hamner, Court

Senate Committees

Agriculture, Natural Resources, and Energy
Legislative Council

House Committees

A BILL FOR AN ACT

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

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

The bill creates the "Forest Health Act of 2011". **Section 2** of the

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.

Capital letters indicate new material to be added to existing statute.

Dashes through the words indicate deletions from existing statute.

SENATE
Amended 2nd Reading
May 6, 2011

bill creates the Colorado forest biomass use work group. The work group is directed to prioritize its efforts to address critical forested areas of the state, including the wildland-urban interface, electric utility infrastructure, transportation corridors, and water supply and quality. The purpose of the work group is to:

- ! Identify:
 - ! Barriers to the creation of a sustainable, market-based model for active forest management and ecosystem health for Colorado's forests;
 - ! Ways to support Colorado's forest products industry through effective forest management;
 - ! Ways to promote the use of biomass to reduce the risk of severe insect and disease outbreaks and catastrophic wildfires;
 - ! The air quality benefits of using the cogeneration of heat and electricity from biomass as a fuel mitigation strategy versus using open burning of biomass; and
 - ! Currently available and potential public and private sources of funding for the development of biomass markets;
- ! Recommend ways to maximize the Colorado state forest service's effectiveness with regard to:
 - ! The service acting as an information resource for persons seeking to utilize woody biomass for energy development and the service's participation in the development of federal forest policies; and
 - ! The use of:
 - ! Stewardship contracts to achieve land management goals for the national forests and the public lands that support the forest products industry and meet local and rural community needs without competing with the private forest management industry; and
 - ! Colorado's good neighbor authority under federal law, including pursuant to stewardship contracts; and
 - ! Promoting projects to facilitate the cogeneration of heat and electricity at publicly owned facilities from the combustion of biomass harvested from a forest in Colorado that is located within a reasonable radius of the facilities; and
- ! Create an initial report by November 1, 2011, and submit a final report to the general assembly by January 1, 2012, that summarizes the work and findings of the work group

and includes recommendations for the private sector, regulators, the Colorado state forest service, and the general assembly.

Section 3 requires the state board of land commissioners, when it contracts with the Colorado state forest service, to direct the service to use the appropriate methods necessary to ensure proper management of state trust lands whenever it contracts for the disposition from state lands of timber that has been infested with bark beetles or 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 requests the public utilities commission to explore all aspects of biomass heat, electric, and gas energy production and to report its findings by January 1, 2012, to the general assembly.

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

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

4 (2) The general assembly hereby:

5 (a) Finds that:

6 (I) The Colorado state forest service is well-positioned, due to
7 experience in managing Colorado's forests and its understanding of
8 science-based, active forest management, to facilitate state government
9 participation in forest management on federal lands located within
10 Colorado;

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

15 (III) A collaborative relationship between the Colorado state
16 forest service, the federal government, other agencies of the executive
17 department, interested persons, and nongovernmental organizations may
18 restore the health, diversity, and resilience of federal forests by increasing

1 the information shared and by providing a variety of perspectives on
2 site-specific and landscape-level determinations;

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

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

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

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

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

22 **23-31-314. Colorado forest biomass use work group - repeal.**

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

27 (a) THE COLORADO STATE FORESTER OR THE STATE FORESTER'S

1 DESIGNEE, WHO SHALL CONVENE THE WORK GROUP;

2

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

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

9 (I) COLORADO'S FOREST PRODUCTS INDUSTRY;

10 (II) THE BIOMASS TECHNOLOGY INDUSTRY;

11 (III) ENERGY OR NATURAL RESOURCES;

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

14 (V) FOREST ECOLOGY;

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

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

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

24 (g) THE DIRECTOR OF COMPACT NEGOTIATIONS APPOINTED
25 PURSUANT TO SECTION 37-75-103, C.R.S., OR THE DIRECTOR'S DESIGNEE.

26 (2) THE WORK GROUP SHALL PRIORITIZE ITS EFFORTS TO PROTECT
27 CRITICAL FORESTED AREAS OF THE STATE, INCLUDING THE

1 WILDLAND-URBAN INTERFACE, ELECTRIC UTILITY INFRASTRUCTURE,
2 TRANSPORTATION CORRIDORS, WATER SUPPLY AND QUALITY, AND
3 WATERSHEDS. THE PURPOSE OF THE WORK GROUP IS TO:

4 (a) IDENTIFY:

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

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

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

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

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

25 (A) A PROGRAM ANALOGOUS TO THE COLORADO CLEAN ENERGY
26 FINANCE PROGRAM ESTABLISHED PURSUANT TO ARTICLE 38.7 OF TITLE 24,
27 C.R.S., TO FACILITATE ADEQUATE CAPITALIZATION OF THE FOREST

1 PRODUCTS INDUSTRY; AND

2 (B) TARGETED BUSINESS INCENTIVES, INCLUDING TAX CREDITS OR
3 EXEMPTIONS, FOR ECONOMICALLY VIABLE BIOMASS HARVESTING,
4 TRANSPORTATION, AND USE; AND

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

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

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

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

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

22 (II) THE SERVICE'S PARTICIPATION, TO THE EXTENT ALLOWED BY
23 STATE AND FEDERAL LAW, IN THE DEVELOPMENT OF FEDERAL FOREST
24 POLICIES AND THE FOREST MANAGEMENT PLANNING PROCESSES OF
25 FEDERAL AGENCIES TO INFLUENCE THOSE POLICIES AND PROCESSES TO
26 ADVANCE COLORADO'S BEST INTERESTS, INCLUDING THE PROTECTION OF
27 WATERSHEDS AND UTILITY INFRASTRUCTURE LOCATED IN NATIONAL

1 FORESTS, SPECIFICALLY INCLUDING NATURAL GAS, ELECTRIC, AND WATER
2 INFRASTRUCTURE;

3 (III) THE USE OF:

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

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

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

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

22 (3) THE WORK GROUP SHALL CREATE AN INITIAL REPORT BY
23 NOVEMBER 1, 2011, AND SUBMIT A FINAL REPORT TO THE HOUSE OF
24 REPRESENTATIVES COMMITTEE ON AGRICULTURE, LIVESTOCK, AND
25 NATURAL RESOURCES AND THE SENATE COMMITTEE ON AGRICULTURE,
26 NATURAL RESOURCES, AND ENERGY, OR THEIR SUCCESSOR COMMITTEES,
27 BY JANUARY 1, 2012. THE REPORT MUST SUMMARIZE THE WORK AND

1 FINDINGS OF THE WORK GROUP AND INCLUDE SPECIFIC LEGISLATIVE
2 RECOMMENDATIONS REGARDING THE ISSUES IDENTIFIED IN SUBSECTION (2)
3 OF THIS SECTION FOR THE PRIVATE SECTOR, REGULATORS, THE COLORADO
4 STATE FOREST SERVICE, BASIN ROUNDTABLES CREATED PURSUANT TO
5 SECTION 37-75-104 (1) (a), C.R.S., AND THE GENERAL ASSEMBLY.

6 (4) (a) THE COLORADO STATE FOREST SERVICE, THE DEPARTMENT
7 OF NATURAL RESOURCES, AND THE GOVERNOR'S ENERGY OFFICE MAY
8 ACCEPT PRIVATE GIFTS, GRANTS, AND DONATIONS FOR THE PURPOSE OF
9 PROVIDING SUPPORT TO THE WORK GROUP TO PERFORM ITS
10 RESPONSIBILITIES SPECIFIED IN THIS SECTION AND SHALL TRANSMIT SUCH
11 REVENUES TO THE STATE TREASURER, WHO SHALL DEPOSIT THEM IN A
12 SEPARATE ACCOUNT WITHIN THE HEALTHY FORESTS AND VIBRANT
13 COMMUNITIES FUND CREATED IN SECTION 23-31-313 (10), WHICH
14 ACCOUNT IS HEREBY CREATED. REVENUES IN THE ACCOUNT ARE
15 AVAILABLE TO THE COLORADO STATE FOREST SERVICE AND THE WORK
16 GROUP ONLY FOR THE PURPOSE OF CARRYING OUT THE WORK GROUP'S
17 DUTIES UNDER THIS SECTION. THE ACCOUNT ALSO CONSISTS OF MONEYS
18 APPROPRIATED AND TRANSFERRED TO THE ACCOUNT. ANY
19 UNENCUMBERED MONEYS REMAINING IN THE ACCOUNT AS OF JULY 1,
20 2012, REVERT TO THE HEALTHY FORESTS AND VIBRANT COMMUNITIES
21 FUND TO BE USED PURSUANT TO SECTION 23-31-313 (10).

22 (b) IT IS THE INTENT OF THE GENERAL ASSEMBLY THAT THE
23 COLORADO STATE FOREST SERVICE NOT BE REQUIRED TO SOLICIT GIFTS,
24 GRANTS, OR DONATIONS FROM ANY SOURCE FOR THE PURPOSES OF THIS
25 SECTION AND THAT NO GENERAL FUND MONEYS BE USED TO PAY FOR
26 GRANTS AWARDED PURSUANT TO THIS SECTION OR FOR ANY EXPENSES OF
27 THE WORK GROUP. THE WORK GROUP MAY ALSO ACCESS EXISTING

1 RESOURCES OF THE COLORADO STATE FOREST SERVICE, THE DEPARTMENT
2 OF NATURAL RESOURCES, AND THE GOVERNOR'S ENERGY OFFICE, TO THE
3 EXTENT THAT SUCH RESOURCES ARE LEGALLY AVAILABLE AND OTHERWISE
4 UNENCUMBERED.

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

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

8 **36-7-103. Disposition of timber on state lands.** (1) The state
9 board of land commissioners, referred to in this article as the "board", is
10 authorized to sell and otherwise dispose of timber on state lands; to secure
11 the maximum possible amount therefrom, based upon cruised and
12 appraised quantities thereon, location, accessibility, and market
13 conditions; to issue permits of authority for timber cuttings; and to require
14 cash deposits in advance to apply on such timber-cutting permits. In
15 cases in which the appraised value of timber involved in any proposed
16 sale exceeds five thousand dollars, competitive bids shall be received by
17 the board, after call for such bids has been advertised over a thirty-day
18 period in three issues of a newspaper of general circulation in each county
19 in which the timber is located.

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

25 (a) HAS BEEN INFESTED WITH BARK BEETLES; OR

26 (b) IS HARVESTED FROM A FOREST WHOSE HEALTH IS OTHERWISE
27 IN DECLINE OR FROM WHICH THE BOARD ANTICIPATES DECLINING

1 REVENUES DUE TO FOREST HEALTH FACTORS.

2 **SECTION 4. Biomass investigation by public utilities**

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

10 **SECTION 5. Safety clause.** The general assembly hereby finds,
11 determines, and declares that this act is necessary for the immediate
12 preservation of the public peace, health, and safety.