FISCAL NOTE

Bill #:	HB0135	**Title:**	Public sale of surplus state lands and improvements
Primary Sponsor:	Stanley Fisher	**Status:**	As Introduced

Sponsor signature Date

Chuck Swysgood, Budget Director Date

Fiscal Summary

	FY2002 Difference	FY2003 Difference
Expenditures:		
General Fund	46,297	90,090
State Special Revenue	338,031	171,700
Revenue:		
General Fund	0	0
State Special Revenue	0	300,000
Federal Special Revenue	(220,631)	(220,631)
Net Impact on General Fund Balance:	**($46,297)**	**($90,090)**

Yes	No		Yes	No	
	X	Significant Local Gov. Impact	X		Technical Concerns
	X	Included in the Executive Budget		X	Significant Long-Term Impacts
X		Dedicated Revenue Form Attached		X	Family Impact Form Attached

Fiscal Analysis

ASSUMPTIONS:

Department of Natural Resources and Conservation

1. All existing statutes under Title 77 regarding state lands will apply to lands sold under this legislation. Therefore, all sales are subject to existing statutory provisions including, but not limited to: Land Board approval; advertisement of sale; compliance with MEPA and the Antiquities Act on each sale; all sales must be conducted through public auction; certain lands must be platted and subdivided before sale; and purchaser must pay 10% down at auction and the balance is due within 30 days.

2. This inventory function and FTE are included in Governor Martz's budget in the Trust Land Management Division as a new proposal Decision Package named Non-Trust State Land Inventory and Administration. The compilation of the inventory required will take a minimum of 1.00 FTE (grade 14) over the biennium to work with the other state agencies to compile a listing of the surplus real estate. Personal services (salary + benefits) of that grade 14 will be $26,560 + 6,730 (FY 2002) and $26,662 + 6,769 (FY 2003). Start up costs of $15,000 for FY 2002 and $10,000 for FY 2003 include operating costs for equipment and travel/ communications.
3. Costs of implementing the sales portion of this legislation are largely unknown due to the lack of knowledge of how much surplus real estate fits the definition. A 1.00 FTE (grade 14) will be required to carry out the actual sales beginning in FY 2003. The costs of that sale FTE (personal services, start up and travel/communications) would be the same as projected in 2 above. It is estimated that this FTE will process 15 sales annually. Additionally, the current operating costs (outside of personal services) to process a land sale under existing Title 77 statutes range from $1,400 to $14,000 depending on the size, location, and complexity of the sale. Using average values, an individual sale will cost $7,000 (advertising-$250; appraisals-$5,000; surveys-$1,500; and title reports- $250).
4. The proceeds that will be derived from the individual land sales are difficult to predict due to the wide variability in tract size, location and attributes of the individual properties. The department has assumed that the average annual sales will yield $300,000 in sale proceeds ($20,000 proceeds/sale x 15 estimated sales). However, it should be emphasized that this is an assumed average with no verifiable basis.
5. The Trust Land Management Division has included the inventory functions of this bill in the department's budget request. The funding provisions in Section 8(3)(a) only provide funding after sales have been conducted and proceeds have been received. Therefore, the department assumes it will require funding from another source for startup costs as a beginning fund balance to implement this legislation until sales actually occur. As this surplus real estate belongs to the state in fee, it is assumed that the general fund would be the source of funding for a beginning fund balance.
6. MCA 85-1-211 (5) expressly directs procedures for the sale or disposition of state water projects. Therefore, this act would not pertain to lands associated with state water projects.

Department of Environmental Quality and Department of Justice

7. As a part of the State/ARCO natural resource damages settlement, the state is acquiring $2 million in real estate in the Silver Bow Creek corridor for various purposes related to remediation of Silver Bow Creek and restoration of lost natural resources (replacement of lost recreational opportunities, wildlife habitat, etc.). Some of the parcels already have been transferred from ARCO to DEQ, with several remaining parcels to be transferred over the next year. Cleanup of these parcels will occur over the next ten to twelve years.
8. Properties which are transferred to the state to provide access for remediation and later to be used for recreational purposes (greenway trails and habitat) and properties which are acquired to be used for waste repository locations would not be considered surplus if the property is not "used" for remediation purposes within two years of acquisition.

Department of Revenue

9. Department of Revenue (DOR) will do 15 appraisals per year. The department appraises property for property tax purposes. The bill requires the DOR to conduct fee type appraisals like those that are conducted by lending institutions for residential and commercial properties. For the DOR to determine the current market value of property, appraisal research must be conducted and databases must be built and maintained. Per the bill, the DOR will be required to certify an appraiser to conduct this type of appraisal. It is estimated the combination of training, research and conducting the appraisals will require 1.00 FTE

appraiser (grade 15). Personal services cost are estimated to be $37,557 in FY 2002 and $37,557 in FY 2003. It is estimated that operating expenses would be $8,740 in FY 2002 and $2,918 in FY 2003.

Department of Fish, Wildlife and Parks

10. FWP currently has varying management control over 584 individual sites statewide. These sites encompass approximately 584,000 acres of which over 275,000 acres are fee title land interests with an unknown number of improvements on these sites that would be subject to this proposal.
11. FWP would be required to report annually to DNRC with an inventory listing of FWP real estate ownership including land and improvements, their present and anticipated future uses, and changes to land use and improvements.
12. Initially, this would require review of the status of each site's ownership interest, the improvements located thereon, and an extensive report of legal property descriptions. (2.00 FTE and $5,000 equipment cost)
13. In following years, it would require annual review of real estate status by regional personnel and reports to FWP central staff for relay to DNRC. (0.50 FTE)
14. Surplus property sales would be coordinated by DNRC and FWP to implement fee appraisals, surveys and title insurance (for land valued over $50,000), legal and title review, deed preparation and recordation, subdivision approval. Although not clear in the draft legislation, it is likely these costs would fall to FWP under rules promulgated for implementation. ($15,000 annual operating expenses)
15. Sale proceeds and accrued interest from sales would not be used to benefit FWP programs or offset FWP costs. Some sale proceeds are designated to DNRC to implement the legislation and to study water quality.

Department of Transportation

16. Under 77-1-701(3)(c), MCA, all lands inside Montana Department of Transportation (MDT) right of way are excluded from consideration.
17. To comply with Sec. 4, MDT would need on a one-time basis a staff of about 6.00 FTE (grade 14) to perform the necessary research.
18. After the initial work was complete, 1.00 FTE (grade 14) would be required to maintain the program.
19. Each FTE will require approximately $5,000 worth of operating expense to cover travel to various sites and small contracts for surveying.
20. This bill would supercede and negate MDT's existing program to dispose of excess land. Assuming the same levels of activity in the future, the current program has generated $236,070 and $256,353 in fiscal years 1999 and 2000 respectively (2 year average = 246,212). This money would not be available to MDT for state match or interest earnings per HB 540.

    Total interest lost: Average STIP rate of 6% with annual proceeds collected evenly through fiscal year: (246,212 / 2)x .06 = $7,386.

    Total loss to the state special revenue fund: loss sales + interest lost =$ 246,212 + 7,386 = $253,598
21. The Federal Highway Administration (FHWA) would require reimbursement at the appropriate federal aid/ state match. Reimbursement to FHWA would be made from the proceeds of the land sale. Assume an average match of 87% federal to 13% state.

    Total lost federal revenue: total loss to state special revenue fund x federal participation rate = $253,598 x .87 = $220,631

FISCAL IMPACT:

Department of Natural Resources and Conservation:

[In addition to Inventory DP in the Executive Budget]	FY2002 Difference	FY2003 Difference
FTE	0.00	1.00
Expenditures:		
Personal Services	0	34,615
Operating Expenses	0	115,000
TOTAL	$0	$149,615
Funding:		
General Fund (01)	0	49,615
State Special Revenue (02)	0	100,000
TOTAL	0	$149,615
Revenues:		
State Special Revenue (02)	0	300,000
State Special Revenue (from DOT)(02)	253,598	253,598
TOTAL	$253,598	$553,598
Net Impact to Fund Balance (Revenue minus Expenditure):		
General Fund (01)	$0	($49,615)
State Special Revenue (02)	$0	$200,000

Department of Revenue:

FTE	1.00	1.00
Expenditures:		
Personal Services	37,557	37,557
Operating Expenses	2,895	2,918
Equipment	5,845	0
TOTAL	$46,297	$40,475
Funding:		
General Fund (01)	$46,297	$40,475
Net Impact to Fund Balance (Revenue minus Expenditure):		
General Fund (01)	($46,297)	($40,475)

	FY 2002 Difference	FY 2003 Difference
Department of Fish, Wildlife and Parks:		
FTE	2.00	0.50
Expenditures:		
Personal Services	44,341	11,085
Operating Expenses	15,000	15,000
Equipment	5,000	0
TOTAL	$64,341	$26,085
Funding:		
State Special Revenue (02)	$64,341	$26,085
Net Impact to Fund Balance (Revenue minus Expenditure):		
State Special Revenue (02)	($64,341)	($28,085)

Department of Transportation:		
FTE	6.00	1.00
Expenditures:		
Personal Services	207,690	34,615
Operating Expenses	30,000	5,000
Equipment	36,000	6,000
TOTAL	$273,690	$45,615
Funding:		
State Special Revenue (02)	$273,690	$45,615
Revenues:		
State Special Revenue (02)	($253,598)	($253,598)
Federal Special Revenue (03)	($220,631)	($220,631)
Net Impact to Fund Balance (Revenue minus Expenditure):		
State Special Revenue (02)	($527,288)	($299,213)
Federal Special Revenue (03)	($220,631)	($220,631)

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

Department of Fish, Wildlife and Parks:

1. Increased county services would be required to provide survey and subdivision reviews and oversight for sales, displays and listing information that must be made available to the public and appraisal services by local DOR employees and for public record documentation research and updates.
2. No increase in tax base is anticipated as FWP currently makes "payments in lieu" equal to tax payments as well as SID & RID payments to counties and other local special assessment districts. Transfer of FWP real estate into private ownership would not reflect increases in local tax bases.

TECHNICAL NOTES:

Department of Natural Resources and Conservation:

1. The TLMD assumes the Definition of Real Estate, was meant to exclude from sale all trust lands which would include initial 1889 granted lands, in lieu selected lands, farm foreclosure lands, the beds of navigable waterways, abandoned navigable riverbeds, and islands within navigable waterways. The department recommends that the definition of real estate be written to coincide with the current language in 77-2-351, MCA ("…land that is not granted to or held by the state in trust for the support of the common schools, for a state institution, or for another specific purpose"….).
2. Section 5(2)(a) appears to conflict with Section 6.(2)(c). If a lease agreement is in place, and returning revenues, wouldn't that constitute the real estate being utilized by the state?
3. Section 6(2)(a) is not consistent with current departmental procedures for sale of non-trust land, which allows for the issuance of a Grant deed.
4. Under Section 6(2)(c) clarification is needed to explain how a lease agreement survives. Does this mean that all provisions of a lease agreement including rental and renewal provisions must survive? Requiring such lease provisions to survive may lower the sales value or totally deter any possible purchasers.
5. Section 6(2)(d) conflicts with 77-2-304, MCA, which requires the reservation of all mineral rights to the state in any sales.
6. Section 6(4). It is unclear as to where a real estate broker fits into the sale process if all other existing Title 77 sales statutes are followed. If the state is required to conduct the appraisals, surveys and other necessary reviews; provide listings; advertise; and sell real estate at public auctions, why would a real estate broker be entitled to a commission?
7. Section 7(1)(b). The Department of Commerce certifies appraisers in the State of Montana, rather than the Department of Revenue.
8. Section 7(1)&(3). Experience has shown that Department of Revenue (DOR) assessment of agricultural land values often do not accurately reflect the actual sale value. The basis of valuation of some classifications of land for property tax assessment is not based upon the sale of comparable property. Therefore, it is anticipated that the DNRC will be increasing the asking price of many properties above the DOR or county assessor values to ensure that the state will realize the optimum value of the real estate to be sold.
9. Section 8(3)(a). This provision only funds the department function of selling surplus properties if a sale is conducted and proceeds are received. The inventory function of HB 135 is a component of the Trust Land Management budget request and if funded as such would not require additional expenditure. The sale function is not part of the Trust Land Management budget request. Section 8(3)(a) provides funding for the sale function in FY2001 and FY2002 in arrears from sale proceeds should this be FY 2002 and FY 2003.
10. Surplus property would remain eligible for transfer to local government under the provisions of 77-2-351, MCA.

Department of Environmental Quality:

11. Section 5 requires lands to be declared as surplus if they will not be "required within" 2 years. Under the Silver Bow Creek settlement, DEQ is acquiring certain lands up to 10 years in advance of the actual cleanup of the parcels. The bill is not clear on whether these lands would be considered surplus lands.
12. Forced sale of the contaminated lands, as surplus properties prior to cleanup, would deprive the state of the economic benefit of the cleanup and result in a substantial windfall to the purchaser once the settlement funds are used to remediate the property. This would also frustrate the purpose of acquiring the lands through the settlement, providing a recreational corridor from Butte to Anaconda along the remediated Silver Bow Creek, as well as cause potential access problems when the remediation is implemented.
13. The surplus designation for any property not to be used within two years would prevent the acquisition of property as part of a long-range plan, and could force the sale and subsequent reacquisition of properties that will ultimately be needed for remediation purposes. This would cause unnecessary transaction costs as well as a potential increased acquisition price.
14. An amendment to remove the ambiguity by clearly exempting from the surplus designation those "lands acquired or held by the state for remediation, reclamation, or natural resource damage restoration purposes" would prevent these losses.

Department of Fish, Wildlife and Parks:

15. The proposed legislation is in conflict with current FWP statutes regarding the sale of property interests and use of proceeds (87-1-209 & 87-1-601).
16. The bill is in conflict with current federal statutes regarding sale of FWP property interest and use of proceeds. Use of sale proceeds received from the sale of property acquired with federal aid and license dollars is considered a diversion, possibly jeopardizing over $10 million in federal aid to agency annually.

Department of Justice

17. If the state were to sell these lands (i.e., the lands conveyed to the state from ARCO as a result of the settlement) the state would likely have to repurchase them, or at least part of them in order to restore the natural resources along Silver Bow Creek which have been lost or injured as a result of the mining contamination.
18. Also, using the proceeds from the sale of lands received in the ARCO settlement in the manner set forth in the bill would be contrary to the federal and state Superfund laws and be in violation of the Supreme Court's consent decree entered in Montana v. ARCO.

DEDICATION OF REVENUE:

a) Are there persons or entities that benefit from this dedicated revenue that do not pay? (please explain)

That portion of sale proceeds over $500,000 is left to the discretion of the Board of Land Commissioners to allocate.

b) What special information or other advantages exist as a result of using a state special revenue fund that could not be obtained if the revenue were allocated to the general fund?

Sale revenue under $500,000 is allocated to study water quality in Montana bodies of water.

c) Is the source of revenue relevant to current use of the funds and adequate to fund the program activity that is intended? ____Yes _X___No (if no, explain)

Land sale revenue is unrelated to water quality studies.

d) Does the need for this state special revenue provision still exist? _X__Yes ___No (Explain)

Sale proceeds are dedicated to a special revenue account by HB 135 as proposed.

e) Does the dedicated revenue affect the legislature's ability to scrutinize budgets, control expenditures, or establish priorities for state spending? (Please Explain)

Yes, discretion regarding allocation of sale proceeds over $500,000 is allocated to the Board of Land Commissioners.

f) Does the dedicated revenue fulfill a continuing, legislatively recognized need? (Please Explain)

g) How does the dedicated revenue provision result in accounting/auditing efficiencies or inefficiencies in your agency? (Please Explain. Also, if the program/activity were general funded, could you adequately account for the program/activity?)

A state special revenue account would be established for collection of sale proceeds. Accounting systems would need to be established to fund the water quality studies and other activities authorized by the Board of Land Commissioners.