

1 SENATE BILL NO. 137

2 INTRODUCED BY DEPRATU

3 BY REQUEST OF THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

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 5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE METHOD OF LEASING STATE
 6 TRUST LAND; AUTHORIZING THE LEASING OF STATE TRUST LAND FOR COMMERCIAL PURPOSES;
 7 ESTABLISHING PROCEDURES FOR COMMERCIAL LEASES; AUTHORIZING THE BOARD OF LAND
 8 COMMISSIONERS TO ADOPT RULES; REVISING CONSIDERATION FOR EASEMENTS; AMENDING
 9 SECTIONS 77-1-204, 77-2-106, 77-6-109, AND 77-6-503, MCA; AND PROVIDING AN EFFECTIVE DATE AND
 10 AN APPLICABILITY DATE."
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12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
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14 **NEW SECTION. Section 1. Declaration of policy and purpose.** (1) Pursuant to Article X of the
 15 Montana constitution, the legislature declares that it is the policy of the state that state TRUST land, ~~AS DESCRIBED~~
 16 ~~IN THE ENABLING ACT (APPROVED FEBRUARY 22, 1889, 25 STAT. 676)~~, is to be treated as a sacred trust and is
 17 subject to fiduciary principles in its management. It is the intent of the legislature that state TRUST land be
 18 managed in the best ~~long-term~~ financial interest of the CURRENT AND FUTURE individual beneficiaries for whom
 19 this land is managed and held.

20 (2) A purpose of this chapter is to implement Article X of the Montana constitution. To fulfill its
 21 commitment to the management of state TRUST land in the best long-term financial interests of the beneficiaries,
 22 the Montana legislature finds that the state can prudently maximize the long-term revenue accruing to the
 23 beneficiaries by issuing commercial leases on land where the chief value exists in its use for commercial
 24 purposes.
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26 **NEW SECTION. Section 2. Definitions.** As used in [sections 1 through 12], unless the context requires
 27 otherwise, the following definitions apply:

28 (1) "Cancellation" means the cessation of a lessee's possessory rights and privileges under a lease due
 29 to the lessee's breach of some term of the lease, applicable statutes, or applicable administrative rules.

30 (2) "Commercial lease" means a contract to use state TRUST land for a commercial purpose.

1 (3) (a) "Commercial purpose" means an industrial enterprise, retail sales outlet, business and
 2 professional office building, warehouse, motel, hotel, hospitality enterprise, commercial or concentrated
 3 recreational use, multifamily residential development, and other similar business.

4 (b) The term does not include the following uses:

5 (i) agriculture;

6 (ii) grazing;

7 (iii) exploration or development of oil and gas, mineral, and geothermal resources; ~~and~~

8 (iv) ~~single-family~~ SINGLE-FAMILY residences, home sites, and cabin sites; AND

9 (V) UTILITY RIGHTS-OF-WAY.

10 (4) "Termination" means the automatic completion or ending of the term of a contract according to its
 11 provisions. Upon termination, the lessee ceases to have any possessory rights or privileges under a lease.

12

13 **NEW SECTION. Section 3. Authority of board to determine development.** The board shall
 14 determine how the development of state TRUST land for commercial purposes is to proceed before any state
 15 TRUST land is offered for lease. In making this determination, the board may consider the following factors:

16 (1) the purpose of any development or development plan;

17 (2) the allocation and location of specific uses of the land, including residential, commercial, industrial,
 18 recreational, or other appropriate uses;

19 (3) the densities and intensities of designated land uses;

20 (4) the timing and rate of development; and

21 (5) the timely delivery of adequate facilities and services, including water, wastewater collection and
 22 treatment systems, parks and public recreational facilities, drainage facilities, school sites, roads, and
 23 transportation facilities.

24

25 **NEW SECTION. Section 4. Commercial leasing authorized.** (1) State TRUST land may be leased for
 26 a term not to exceed 99 years for commercial purposes to the highest and best bidder responding to a
 27 department request for proposals for commercial uses of a specified tract.

28 (2) The board may enter into contracts with lessees of state TRUST land for commercial purposes upon
 29 terms and conditions that the board may reasonably determine to be in the best interests of the beneficiary.

30 (3) A request for proposals for the commercial leasing of state TRUST land must reserve the board's right

1 to reject any and all bids and the right to reoffer the tract for lease if the bids received are not acceptable to the
2 board.

3

4 **NEW SECTION. Section 5. Rental provisions for commercial leasing -- payments and credits --**
5 **administration -- lease options.** (1) The first year's annual rental payment for state TRUST land leased for
6 commercial purposes must be paid by cashier's check, and payment is due upon execution of the lease. The
7 DEPARTMENT MAY REQUIRE THE lessee of state TRUST land for commercial purposes ~~shall also~~ TO pay the
8 department's cost of the request for proposals process, including publication and other reasonable expenses.
9 Failure to pay the first year's rental at the time of lease execution must result in the cancellation of the lease and
10 forfeiture of all money paid. In the event of cancellation OR IN THE EVENT THAT THE SUCCESSFUL PROPOSER IS
11 OFFERED AND DOES NOT ACCEPT THE LEASE, the board may enter into negotiations with other persons who
12 submitted a proposal for commercial purposes in response to the department request for proposals on that tract.

13 (2) The board shall specify in any commercial lease an annual rental equal to the full market rental
14 value of the land. The annual rent may not be less than the product of the appraised value of the land multiplied
15 by a rate that is 2 percentage points a year less than the rate of return of the unified investment program
16 administered by the board of investments pursuant to 17-6-201. The rate of return from the unified investment
17 program used in this subsection must be determined no less than 30 days prior to the execution of the
18 competitive bid. A commercial lease may include a rental adjustment formula established by the board that
19 periodically adjusts the annual rent provided for in the lease at frequencies specified in the lease. The board may
20 allow a credit against the annual rent due for payments made by the lessee on behalf of the state of Montana
21 for construction of structures and improvements, special improvement district assessments, annexation fees,
22 or other city or county fees attributable to the state's property interest in land leased for commercial purposes.
23 The board may accept as lawful consideration in-kind payments of services or materials equal to the full market
24 value of the rent calculated to be owed on any commercial lease. A lease issued under [sections 1 through 12]
25 may include an amortization schedule to be used to determine the value to the lessee of improvements when
26 the lease is terminated.

27 (3) The department may use up to 10% of the annual rent received from a commercial lease to contract
28 with realtors, property managers, surveyors, legal counsel, or lease administrators to administer the commercial
29 lease, either singly or in common with other leases, or to provide assistance to the department in the
30 administration of commercial leases.

1 (4) In anticipation of entering into a commercial lease, the board may issue an option to lease at a rental
 2 rate that the board determines to be appropriate. An option to lease may not exceed a term of 2 years. An option
 3 to lease may not be construed to grant a right of immediate possession or control over the land but may only
 4 preserve the optionholder's exclusive right to obtain a commercial lease on the land in the future.

5
 6 **NEW SECTION. Section 6. Requirements for commercial lease -- improvements.** (1) The board
 7 shall require, subject to the board's supervision and jurisdiction, that the lessee be solely responsible for the
 8 expense of maintenance and operation of the enterprise, business, or venture and all improvements made and
 9 constructed in support of any commercial purpose during the term of the lease. This requirement does not apply
 10 to the installation and construction by the lessee of infrastructure and improvements, such as public roads,
 11 parks, sewers, or utilities, if they were required by a local government as a condition of development.

12 (2) Upon expiration of the lease, the title to all PERMANENT improvements, ~~buildings, machinery, stock,~~
 13 ~~equipment,~~ and fixtures located on the leased property and used in the operation and maintenance of the
 14 enterprise, ~~business, or venture conducted on the property, together with the title to and goodwill of the business~~
 15 ~~or enterprise,~~ vest VESTS in the state. The lease must describe in detail the manner and subject matter of the
 16 transfer to the state.

17
 18 **NEW SECTION. Section 7. Qualifications for commercial lessees -- bonds.** (1) Before accepting
 19 any offer for a commercial lease, the board shall establish, to its satisfaction, the financial capability of the
 20 person seeking the commercial lease and the legal authority of the person to conduct business in the state. Prior
 21 to executing a commercial lease, the board may require the posting of bonds, sureties, guarantees, or a letter
 22 of credit sufficient to ensure that the commercial purposes will be conducted as proposed with no harm to the
 23 financial interests of the beneficiaries.

24 (2) ALL COMMERCIAL LEASES OF WHICH THE COMMERCIAL PURPOSE INCLUDES THE USE OF A HAZARDOUS
 25 SUBSTANCE AS DEFINED IN 75-10-602 MUST BE BONDED TO ENSURE A DEGREE OF CLEANUP OF THE HAZARDOUS
 26 SUBSTANCE THAT ENSURES PROTECTION OF PUBLIC HEALTH, SAFETY, AND WELFARE AND OF THE ENVIRONMENT IN A
 27 MANNER THAT PROTECTS THE LONG-TERM FINANCIAL INTEREST OF THE BENEFICIARIES.

28
 29 **NEW SECTION. Section 8. Land use license issuance following reclassification.** Following
 30 cancellation of a preexisting lease due to a reclassification pursuant to 77-1-401 through 77-1-403, the

1 department may issue a land use license for the commercial lands reclassified for a term the department
2 considers necessary to protect the income to the trust and to protect the state.

3
4 **NEW SECTION. Section 9. Cancellation or termination of commercial lease.** A commercial lease
5 may be ~~cancelled~~ **CANCELED** at the option of the board or its designated representative for any violation of a lease
6 provision. Upon cancellation or termination of a lease, the department may seek a new lessee in accordance
7 with [sections 1 through 12]. If the costs of the commercial development have not been recovered by the state
8 at the time of cancellation or termination, a subsequent lessee under this section shall reimburse the state for
9 development costs, assessments, or fees only to the extent that the proportionate part of the costs,
10 assessments, and fees to the state for obtaining the development have not been recovered.

11
12 **NEW SECTION. Section 10. Encumbrance on leased land.** (1) An encumbrance may not be placed
13 upon the state's interest in land leased for commercial purposes.

14 (2) A commercial lease of state TRUST land may contain provisions that will permit the encumbering of
15 the lessee's interest in the lease by mortgage or deed of trust.

16
17 **NEW SECTION. Section 11. Notice and payment of assessments.** (1) The lessee of a commercial
18 lease on state TRUST land shall furnish to the department:

19 (a) officially certified descriptions of all state TRUST land included within the boundaries of a city or
20 county improvement district that is the subject of the commercial lease; and

21 (b) a description and listing of the amount of assessments and charges of every character made against
22 the leasehold interest of the lessee and the leasehold interest of the state, as soon as the assessments or
23 charges are levied.

24 (2) A promise by the lessee to make timely payment of all assessment charges and an acknowledgment
25 of the assessment must be inserted in any lease for state TRUST land.

26 (3) If assessments have been levied against any state TRUST land prior to commercial lease, the board
27 shall require that all unpaid installments on assessments be paid to the improvement district before executing
28 a lease.

29 (4) If an installment on an assessment or charge against the leasehold interest of the lessee of land
30 subject to a commercial lease is not paid when due, the nonpayment constitutes a breach of the lease.

1

2 **NEW SECTION. Section 12. Rulemaking.** The board may adopt rules to:

- 3 (1) establish procedures for the issuance of requests for proposals for commercial purposes and the
4 commercial leasing of state TRUST land;
- 5 (2) prescribe the form and content of commercial leases; and
- 6 (3) develop any other procedures necessary to fulfill the purposes of [sections 1 through 12] or to
7 implement the commercial leasing of state TRUST land.

8

9 **Section 13.** Section 77-1-204, MCA, is amended to read:

10 **"77-1-204. Power to sell, lease, or exchange certain state TRUST lands.** (1) The board is authorized
11 to lease state TRUST lands for uses other than agriculture, grazing, timber harvest, or mineral production under
12 ~~such~~ terms and conditions ~~which that~~ best ~~meet~~ fulfill the duties of the board as specified in 77-1-202 and
13 77-1-203. The lease period for ~~such~~ these leases, except for power and school site leases, may not be for longer
14 than ~~40~~ 99 years.

15 (2) The board ~~shall have full power and authority to~~ may sell, exchange, or lease lands under its
16 jurisdiction by virtue of 77-1-214 when, in ~~its~~ the board's judgment, it is advantageous to the state to do so in the
17 highest orderly development and management of state ~~forests and state parks~~ TRUST land. ~~Said~~ The sale, lease,
18 or exchange ~~shall~~ may not be contrary to the terms of any contract ~~which it~~ that the board has entered into."

19

20 **Section 14.** Section 77-2-106, MCA, is amended to read:

21 **"77-2-106. Charge for granting of easement -- in-kind payments for easements.** (1) The board shall
22 charge and collect the full market value of the estate or interest disposed of through the granting of any
23 easement and also fix, charge, and collect the amount of the actual damages resulting to the remaining land ~~or~~
24 ~~lands~~ from the granting of an easement as nearly as the damages can be ascertained.

25 (2) The board may accept, as lawful consideration, in-kind payments of services and materials equal
26 to the full market value of any easement upon state TRUST land."

27

28 **Section 15.** Section 77-6-109, MCA, is amended to read:

29 **"77-6-109. Duration of agricultural or grazing lease.** Except as provided in 77-6-116, a lease for
30 agricultural or grazing lands may not be for a period other than 5 or 10 years. ~~Leases for city lots, town lots, and~~

1 ~~lands valuable for commercial development may not exceed 40 years."~~

2

3 **Section 16.** Section 77-6-503, MCA, is amended to read:

4 **"77-6-503. Leases of city lots, town lots, and commercial property.** ~~As to~~ The fair rental value of
 5 state-owned town lots, city lots, and land valuable for commercial development ~~owned by the state, the fair rental~~
 6 ~~value thereof shall~~ must be determined from time to time by the department with the approval of the board, and
 7 a record must be made of the values, thereof, and such State-owned town lots, city lots, or city property or land
 8 valuable for commercial development may be leased at ~~its~~ the current appraised rental value for terms not to
 9 exceed ~~40~~ 99 years."

10

11 NEW SECTION. **Section 17. Codification instruction.** [Sections 1 through 12] are intended to be
 12 codified as an integral part of Title 77, chapter 1, and the provisions of Title 77, chapter 1, apply to [sections 1
 13 through 12].

14

15 NEW SECTION. **Section 18. Saving clause.** [This act] does not affect rights and duties that matured,
 16 penalties that were incurred, or proceedings that were begun before [the effective date of this act].

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18 NEW SECTION. **Section 19. Severability.** If a part of [this act] is invalid, all valid parts that are
 19 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,
 20 the part remains in effect in all valid applications that are severable from the invalid applications.

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22 NEW SECTION. **Section 20. Effective date.** [This act] is effective July 1, 2003.

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24 NEW SECTION. **Section 21. Applicability.** [This act] applies to all leases for commercial purposes
 25 made or renewed on or after July 1, 2003.

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