

1 SENATE BILL NO. 131

2 INTRODUCED BY J. COBB

3 BY REQUEST OF THE BOARD OF LAND COMMISSIONERS

4
 5 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAND BANKING LAWS; EXTENDING THE
 6 TERMINATION DATE FOR THE SALE OF STATE TRUST LAND AND PURCHASE OF REPLACEMENT
 7 PROPERTY THROUGH THE LAND BANKING PROGRAM; DECREASING THE TIMEFRAMES FOR POSTING
 8 OF A BID BOND; REDUCING THE PERCENTAGE USED FOR DETERMINING A MINIMUM BID BOND;
 9 REDUCING THE NUMBER OF DAYS PRIOR TO A SALE THAT A LESSEE MAY CANCEL A LAND BANKING
 10 SALE; PROVIDING FOR PAYMENT OF ESTIMATED SALE PREPARATION COSTS; PROVIDING FOR A
 11 60-YEAR ACCOUNTING PERIOD FOR FIGURING A REASONABLE ANNUAL RATE OF RETURN; AMENDING
 12 SECTIONS 77-2-363, 77-2-364, AND 77-2-366, MCA; AND PROVIDING AN EFFECTIVE DATE."
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14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
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16 **Section 1.** Section 77-2-363, MCA, is amended to read:

17 **"77-2-363. Land banking land sales and limitations -- sale preparation costs.** (1) The board may
 18 not cumulatively sell or dispose of more than 100,000 acres of state land. Seventy-five percent of the acreage
 19 cumulatively sold must be isolated parcels that do not have a legal right of access by the public. At any one time
 20 during the life of the land banking process, the board may not sell more than 20,000 acres of state land unless
 21 the board has acted to use the revenue from that land to make purchases pursuant to 77-2-364.

22 (2) (a) A person bidding to purchase state land offered for sale shall ~~45~~ 20 days prior to the day of
 23 auction deposit with the department a bid bond in the form of a certified check or cashier's check drawn on any
 24 Montana bank equal to at least ~~50%~~ 20% of the minimum sale price specified by the department pursuant to
 25 77-2-323(1) to guarantee the bidder's payment of the purchase price.

26 (b) If the current lessee of the land to be sold has initiated the sale as authorized by 77-2-364, the lessee
 27 may cancel the sale by giving notice to the department at least ~~30~~ 10 days prior to the day of the auction. When
 28 the sale is canceled by the lessee, the lessee shall pay the costs incurred by the department for the preparation
 29 of the sale, including any costs incurred for preparation of documents required by 75-1-201.

30 (c) The department shall retain the bid bond of the successful bidder and shall return the bid bonds of

1 the unsuccessful bidders. If the successful bidder fails to comply with the terms of the sale for any reason, the
2 successful bidder's bid bond must be forfeited and credited to the interest and income account of the proper trust.

3 (3) Except for a sale that is initiated by the lessee of the parcel of land proposed for sale, prior to the
4 proposed sale of any parcel of state land under the land banking process, the board shall give 60 days' notice
5 of the proposed sale to the lessee of the parcel to allow the lessee sufficient time to determine whether the lessee
6 wishes to propose an exchange of the land to the board.

7 (4) For a sale initiated by the board or the department, the lessee of the land must be afforded all the
8 rights and privileges to match the high bid, as provided in 77-2-324.

9 (5) (a) When the lessee has initiated a sale of land under this section, the lessee shall remit to the
10 department the estimated costs of preparing the parcel for sale, including but not limited to appraisals, cultural
11 surveys, environmental review pursuant to Title 75, chapter 1, parts 1 through 3, and land surveys. Payment
12 must be made within 10 days after the board has provided preliminary approval for the sale of the parcel.

13 (b) If the parcel is sold to the lessee, the funds remitted for the costs of the sale must be applied to the
14 actual costs at closing. If the parcel is sold to a party other than the lessee, the funds remitted by the lessee must
15 be refunded to the lessee and actual costs of preparing the parcel for sale must be assessed to the purchaser
16 at closing."

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18 **Section 2.** Section 77-2-364, MCA, is amended to read:

19 **"77-2-364. Land banking purchases.** (1) The board may select and purchase, lease, receive by
20 donation, hold in trust, or in any manner acquire for and in the name of the state of Montana, in trust for the
21 beneficiaries specified in sections 10 through 19 of The Enabling Act of Congress (approved February 22, 1889,
22 25 Stat. 676), as amended, any interest in real property and improvements, tracts, and leaseholds of land that
23 the board considers proper in order to best provide prudent, maximum, long-term revenue for the beneficiaries.

24 (2) Sales of state land may be initiated only by the board, by the department, or at the request of a
25 lessee, pursuant to 77-1-202, 77-1-301, 77-2-301, or 77-2-308. The board shall ensure that the full market value
26 of the land sold is realized for each trust by using the appraisal, sale, advertising, and competitive bid procedures
27 contained within 77-2-303, 77-2-321, 77-2-322, 77-2-323, and 77-2-324.

28 (3) When it is not inconsistent with the purpose of the trust, the board shall purchase land possessing
29 legal access for all legal purposes.

30 (4) When purchasing land, easements, or improvements for the existing trusts, the board shall develop

1 and apply appraisal and revenue projection procedures to ensure that the land or easements proposed for
 2 purchase or that the improvements proposed to be acquired are likely to produce more net revenue for the
 3 affected trust than the revenue that was produced from the land that was sold. The board may not purchase land,
 4 easements, or improvements pursuant to 77-2-361 through 77-2-367 unless it has first prudently determined that
 5 the land, easements, or improvements are likely to produce a greater or equal annual rate of return, as may be
 6 reasonably expected over a 20-year accounting period for Class 1, 3, and 4 lands and over a 60-year accounting
 7 period for Class 2 lands, as described in 77-1-401, with an acceptable level of risk for the affected trust, than the
 8 current annual rate of return from the state land that has been sold pursuant to 77-2-363. As guidance, the board
 9 shall use generally accepted accounting standards and the Uniform Appraisal Standards for Federal Land
 10 Acquisitions published by the U.S. department of justice and the appraisal institute.

11 (5) Prior to purchasing any land, easements, or improvements, the board shall determine that the
 12 financial risks and benefits of the purchase are prudent, financially productive investments that are consistent with
 13 the board's fiduciary duty as a reasonably prudent trustee of a perpetual trust. For the purposes of implementing
 14 77-2-361 through 77-2-367, that duty requires the board to:

15 (a) discharge its duties with the care, skill, prudence, and diligence that a prudent person acting in a
 16 similar capacity with the same resources and familiar with similar matters should exercise in the conduct of an
 17 enterprise of similar character and aims;

18 (b) diversify the land holdings of each trust to minimize the risk of loss and maximize the sustained rate
 19 of return;

20 (c) discharge its duties and powers solely in the interest of and for the benefit of the trust managed;

21 (d) discharge its duties subject to the fiduciary standards set forth in 72-34-114; and

22 (e) maintain, as closely as possible, the existing land base of each trust, consistent with the state's
 23 fiduciary duty.

24 (6) Prior to purchasing a parcel of land in excess of 160 acres in any particular county, the board shall
 25 consult with the county commissioners of the county in which the parcel is located."

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27 **Section 3.** Section 77-2-366, MCA, is amended to read:

28 **"77-2-366. Land banking process -- time limit -- report to environmental quality council.** (1) State
 29 land may not be sold through the land banking process pursuant to 77-2-361 through 77-2-367 after October 1,
 30 ~~2008~~ 2011. Land banking purchases under 77-2-364 may continue after October 1, ~~2008~~ 2011, until all the

1 proceeds in the state land bank fund are expended or revert to the public school fund or the permanent fund of
2 the respective trust pursuant to 77-2-362(2)(d).

3 (2) The department shall provide a report to the environmental quality council by July 1, 2008, that
4 describes the results of the land banking program in detail. At a minimum, the report must summarize the sale
5 and purchase transactions made through the program by type, location, acreage, value, and trust beneficiary.
6 The environmental quality council shall make any recommendations that it determines necessary regarding the
7 implementation of the state land banking process, including recommendations for legislation."

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9 NEW SECTION. **Section 4. Effective date.** [This act] is effective July 1, 2007.

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