

## 1 SENATE BILL NO. 3

2 INTRODUCED BY J. ESSMANN

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4 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING ALTERNATIVE VALUATIONS FOR STATE LAND  
5 PROPOSED FOR SALE IN THE LAND BANKING PROGRAM IF THE STATE LAND DOES NOT HAVE A LEGAL  
6 RIGHT OF PUBLIC ACCESS; PROVIDING FOR A STATE LIEN FOR CERTAIN PARCELS OF STATE LAND  
7 THAT DOES NOT HAVE A LEGAL RIGHT OF PUBLIC ACCESS THAT ARE SOLD AS PART OF THE LAND  
8 BANKING PROGRAM; AMENDING SECTIONS 77-2-363 AND 77-2-364, MCA; AND PROVIDING AN  
9 IMMEDIATE EFFECTIVE DATE."

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11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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13 **Section 1.** Section 77-2-363, MCA, is amended to read:

14 **"77-2-363. Land banking land sales and limitations -- lien -- sale preparation costs.** (1) (a) The  
15 board may not cumulatively sell or dispose of more than 100,000 acres of state land. Seventy-five percent of the  
16 acreage cumulatively sold must be isolated parcels that do not have a legal right of access by the public. At any  
17 one time during the life of the land banking process, the board may not sell more than 20,000 acres of state land  
18 unless the board has acted to use the revenue from that land to make purchases pursuant to 77-2-364.

19 (b) The estimated fair market value must be determined by a Montana-licensed and Montana-certified  
20 appraiser. If the tract of state land involved in the proposal does not have a legal right of public access, the  
21 estimated fair market value of the tract must be determined as the tract:

22 (i) currently exists; and23 (ii) would be currently valued if a legal right of public access to the tract existed.

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

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

1 the sale, including any costs incurred for preparation of documents required by 75-1-201.

2 (c) The department shall retain the bid bond of the successful bidder and shall return the bid bonds of  
3 the unsuccessful bidders. If the successful bidder fails to comply with the terms of the sale for any reason, the  
4 successful bidder's bid bond must be forfeited and credited to the interest and income account of the proper trust.

5 (d) If the land sold does not have a legal right of public access and the purchase price is less than the  
6 amount determined under subsection (1)(b)(ii), then the state has a lien on the land for the difference between  
7 the amount determined under subsection (1)(b)(ii) and the purchase price. The lien is enforceable if the land  
8 purchased is sold within 10 years after the sale by the state. The lien is enforceable for an amount up to the sale  
9 price at the second sale if that amount is less than the value of the lien. The state shall release the lien after the  
10 10-year period.

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

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

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

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

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

27 **"77-2-364. Land banking purchases.** (1) The board may select and purchase, lease, receive by  
28 donation, hold in trust, or in any manner acquire for and in the name of the state of Montana, in trust for the  
29 beneficiaries specified in sections 10 through 19 of The Enabling Act of Congress (approved February 22, 1889,  
30 25 Stat. 676), as amended, any interest in real property and improvements, tracts, and leaseholds of land that

1 the board considers proper in order to best provide prudent, maximum, long-term revenue for the beneficiaries.

2 (2) Sales of state land may be initiated only by the board, by the department, or at the request of a  
3 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  
4 of the land sold is realized for each trust by using the appraisal, sale, advertising, and competitive bid procedures  
5 contained within 77-2-303, 77-2-321, 77-2-322, 77-2-323, and 77-2-324. The estimated fair market value must  
6 be determined by a Montana-licensed and Montana-certified appraiser as provided in 77-2-363(1)(b).

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

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

20 (5) Prior to purchasing any land, easements, or improvements, the board shall determine that the  
21 financial risks and benefits of the purchase are prudent, financially productive investments that are consistent with  
22 the board's fiduciary duty as a reasonably prudent trustee of a perpetual trust. For the purposes of implementing  
23 77-2-361 through 77-2-367, that duty requires the board to:

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

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

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

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

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

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

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6 NEW SECTION. **Section 3. Effective date.** [This act] is effective on passage and approval.

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