SENATE TAXATION
EXHIBIT NO. 5 6
DATE 3.19.09
BILL NO. SB507

Section by section discussion of SB 507

Section 1. Findings and Purpose

The legislature is asserting its findings related to how the beds of navigable rivers have been treated historically and how they feel they should be treated into the future.

Sets up a process for existing and new "footprints" to be assessed for the use of state land – provided that the area where the footprint is located is below the low water mark and on a stream or river that has been determined to be navigable for title purposes.

Section 2. Definitions.

Clarifies what a footprint is and provides the "as provided by law" portion of Article X, section 11(2). The Board of Land Commissioners has responsibilities regarding the disposition of an interest in property – however it is not their sole responsibility. The legislature is simply provided the mechanism to be used by the board.

(2) No such land or any estate or interest therein shall ever be disposed of except in pursuance of general laws providing for such disposition, or until the full market value of the estate or interest disposed of, to be ascertained in such manner as may be provided by law, has been paid or safely secured to the state.

Section 3. Historic use of navigable river beds.

This process must be outlined in statute because the requirement for a lease, license, or easement has not be consistently applied across the state and across navigable rivers. School trust lands already recognize and provide for historic uses of the land – historic roadways have been granted. This statute is applying the same process to historic uses of navigable river beds.

This process provides the applicant with the latitude to choose whether a lease, license or easement works best for their particular situation.

Requires the applicant to pay full market value as required by the Constitution. (Article X, section 11)

Provides exemptions for (1) hunting, fishing, and trapping – who are already paying for their recreational use of state lands through their conservation license, (2) entities who hold a patent to the land from the federal government that predates statehood; and (3) those entities who have already paid a state agency for an easement on the property.

Section 4. Historic riverbed use account.
Necessary to provide for administrative funds based on the application fee. The revenue derived from a lease, license or easement may not be diverted from the school trust for administrative purposes.

Section 5. Navigable riverbed uses – lease, license, or easement required – challenges.

Provides the process that an applicant must go through in order to acquire a lease, license, or easement for a new structure.

Section still exempts hunting, fishing, and trapping because of conservation license payment.

Subsection (2) makes it clear that an applicant can still challenge whether or not the river is navigable for title purposes and whether or not their structure is or will be located below the low water mark. Makes it clear that if an entity follows the law by obtaining a lease, license, or easement it does not jeopardize their ability to challenge the navigability or low water mark in a court of competent jurisdiction.

Section 6. Easement transferable – relocation of structure – increased footprint.

As property ownership changes it is important that water right holders still be able to exercise their water right and therefore this section makes it clear that the easement may be transferred or assigned.

Because the use of a footprint such as an irrigation diversion is often contingent upon time it is absolutely necessary to allow for the expansion of the footprint provided the entity pays for that expanded size. This again, is the legislature providing the "as provided by law" portions of the Constitution.

Irrigators and other structure owners cannot wait months for an administrative action. These issues are very time limited and must be addressed within a number of days if not a number of hours.

Section 4. Board of land commissioners. *The governor, superintendent of public instruction, auditor, secretary of state, and attorney general constitute the board of land commissioners. It has the authority to direct, control, lease, exchange, and sell school lands and lands which have been or may be granted for the support and benefit of the various state educational institutions, under such regulations and restrictions as may be provided by law.* [Emphasis added]

Section 7. Board to adopt rules.

This section simply requires the board to adopt rules to implement the statutes. Requiring the board to adopt rules regarding what the board asserts is navigable for title provides the mechanism to require the Board to make clear what they believe is navigable so that streambed users can decide whether or not they want to or need to challenge that assertion.

Section 8. Easement for specific uses.

The Constitution recognizes that certain structures and uses are a public use. This amendment coordinates the statute with Article IX, section 3 (2) of the Constitution, making it clear that it is a public use for which an easement may be granted.

(2) The use of all water that is now or may hereafter be appropriated for sale, rent, distribution, or other beneficial use, the right of way over the lands of others for all ditches, drains, flumes, canals, and aqueducts necessarily used in connection therewith, and the sites for reservoirs necessary for collecting and storing water shall be held to be a public use.

Constitution of Montana -- Article IX -- ENVIRONMENT AND NATURAL RESOURCES

Section 3. Water rights. (1) All existing rights to the use of any waters for any useful or beneficial purpose are hereby recognized and confirmed.

(2) The use of all water that is now or may hereafter be appropriated for sale, rent, distribution, or other beneficial use, the right of way over the lands of others for all ditches, drains, flumes, canals, and aqueducts necessarily used in connection therewith, and the sites for reservoirs necessary for collecting and storing water shall be held to be a public use.

(3) All surface, underground, flood, and atmospheric waters within the boundaries of the state are the property of the state for the use of its people and are subject to appropriation for beneficial uses as provided by law.

(4) The legislature shall provide for the administration, control, and regulation of water rights and shall establish a system of centralized records, in addition to the present system of local records.

Constitution of Montana -- Article X -- EDUCATION AND PUBLIC LANDS

Section 4. Board of land commissioners. The governor, superintendent of public instruction, auditor, secretary of state, and attorney general constitute the board of land commissioners. It has the authority to direct, control, lease, exchange, and sell school lands and lands which have been or may be granted for the support and benefit of the various state educational institutions, under such regulations and restrictions as may be provided by law.

Constitution of Montana -- Article X -- EDUCATION AND PUBLIC LANDS

Section 11. Public land trust, disposition. (1) All lands of the state that have been or

may be granted by congress, or acquired by gift or grant or devise from any person or corporation, shall be public lands of the state. They shall be held in trust for the people, to be disposed of as hereafter provided, for the respective purposes for which they have been or may be granted, donated or devised.

(2) No such land or any estate or interest therein shall ever be disposed of except in pursuance of general laws providing for such disposition, or until the full market value of the estate or interest disposed of, to be ascertained in such manner as may be provided by law, has been paid or safely secured to the state.

(3) No land which the state holds by grant from the United States which prescribes the manner of disposal and minimum price shall be disposed of except in the manner and for at least the price prescribed without the consent of the United States.

(4) All public land shall be classified by the board of land commissioners in a manner provided by law. Any public land may be exchanged for other land, public or private, which is equal in value and, as closely as possible, equal in area.