

## 1 SENATE BILL NO. 364

2 INTRODUCED BY J. BRENDEN

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THAT THE APPRAISAL VALUE OF STATE LAND  
5 BANKING PURCHASES OR SALES IS BASED ON THE LEVEL OF ACCESS PERTINENT TO THE STATE  
6 LAND; REQUIRING THE LAND BOARD TO SET THE MINIMUM BID AT THE APPRAISED VALUE; AMENDING  
7 SECTION 77-2-364, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

8

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

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11 **Section 1.** Section 77-2-364, MCA, is amended to read:

12 **"77-2-364. Land banking purchases.** (1) The board may select and purchase, lease, receive by  
13 donation, hold in trust, or in any manner acquire for and in the name of the state of Montana, in trust for the  
14 beneficiaries specified in sections 10 through 19 of The Enabling Act of Congress (approved February 22, 1889,  
15 25 Stat. 676), as amended, any interest in real property and improvements, tracts, and leaseholds of land that  
16 the board considers proper in order to best provide prudent, maximum, long-term revenue for the beneficiaries.

17 (2) Sales of state land may be initiated only by the board, by the department, or at the request of a  
18 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  
19 of the land sold is realized for each trust by using the appraisal, sale, advertising, and competitive bid procedures  
20 contained within 77-2-303, 77-2-321, 77-2-322, 77-2-323, and 77-2-324. The estimated fair market value must  
21 be determined by a Montana-licensed and Montana-certified appraiser. The appraisal value must be based on  
22 the level of access pertinent to the state land. If the state land lacks legal access, the appraisal must reflect the  
23 existing condition of the state land at the time of appraisal. The land board must set the minimum bid at the  
24 appraised value.

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

27 (4) When purchasing land, easements, or improvements for the existing trusts, the board shall develop  
28 and apply appraisal and revenue projection procedures to ensure that the land or easements proposed for  
29 purchase or that the improvements proposed to be acquired are likely to produce more net revenue for the  
30 affected trust than the revenue that was produced from the land that was sold. The board may not purchase land,

1 easements, or improvements pursuant to 77-2-361 through 77-2-367 unless it has first prudently determined that  
2 the land, easements, or improvements are likely to produce a greater or equal annual rate of return, as may be  
3 reasonably expected over a 20-year accounting period for Class 1, 3, and 4 lands and over a 60-year accounting  
4 period for Class 2 lands, as described in 77-1-401, with an acceptable level of risk for the affected trust, than the  
5 current annual rate of return from the state land that has been sold pursuant to 77-2-363. As guidance, the board  
6 shall use generally accepted accounting standards and the Uniform Appraisal Standards for Federal Land  
7 Acquisitions published by the U.S. department of justice and the appraisal institute.

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

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

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

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

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

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

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

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24 **NEW SECTION. Section 2. Effective date.** [This act] is effective on passage and approval.

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