

63rd Legislature

SENATE BILL NO. 18
INTRODUCED BY B. HAMLETT

Proposed Amendments to Introduced Version

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE OWNERSHIP OF A CHANNEL AND FORMER CHANNEL OF A NAVIGABLE RIVER OR STREAM FOLLOWING AN AVULSION; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 77-1-102 AND 77-1-103, MCA; REPEALING SECTION 70-18-202, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

NEW SECTION. Section 1. Sudden change in bed of navigable river or stream.

~~(1) Subject to subsections (2) and (3),~~ if a navigable river or stream abandons its channel and forms a new channel as a result of an avulsion, the land constituting the old channel belongs to the owner of the shores through which the old channel flowed or, if the shores are owned by different owners, to the owners on two sides, divided by an imaginary line drawn through the middle of the old river or stream channel.

(2) An affected owner seeking to clarify title to the land described in subsection (1) shall may notify the department of natural resources and conservation and describe with particularity the event that resulted in the formation of the ~~new~~ abandoned channel. The affected owner's notification shall include ~~also provide the department with~~ a survey and any other information the department considers necessary.

(3) Upon receiving the information from the affected owner, the department shall verify the information and determine whether the ~~new~~ abandoned channel was created by an avulsion. ~~The department shall also verify whether the land constituting the old channel is in equal value and, as closely as possible, equal in area to the land constituting the new channel. If the land constituting the old channel is greater in value or area, the affected owner shall pay the full market value of the difference upon the~~

~~transfer of title. Ownership may not vest in the affected owner unless the board of land commissioners approves the exchange or sale.~~

(4) If the department determines the abandoned channel was created by avulsion, and uUpon approval by the board, the board shall issue a disclaimer of interest for the abandoned channel. Tthe affected owner may utilize any such disclaimer of interest to support its ownership claims in any quiet title action filed in district court to clarify the ownership of the abandoned channel. Upon obtaining any quiet title judgment or declaration in its favor, the owner may shall notify the department of revenue and the clerk and recorder of the county in which the affected property is located of the change in ownership and submit any information necessary to update the applicable ownership records.

(5) Except for those portions determined to be owned by the state, Tthe land constituting the old channel is subject to property taxation payable by the affected owner from the date a district court issues a judgment determining title to the property the board approves the transfer or sale.

(6) The department of natural resources and conservation and the department of revenue may adopt rules to implement the provisions of this section.

~~(7) Ownership remains unchanged for land that constituted an island before the avulsion occurred and that is not wholly surrounded by water after the river abandoned the old channel.~~

~~(8) If the affected owner described in subsection (1) receives title to the old channel, the land under the water of the new channel belongs to the state pursuant to 70-1-202.~~

(9) For purposes of this section:

(a) "avulsion" means a sudden and perceptible change in the course of a river or stream that creates a new river or stream channel and that results in an abandoned bed as defined in 77-1-102 along the course of the old channel;

(b) "navigable river" has the same meaning as defined in 85-1-112 ~~means a river or stream adjudicated as navigable for title purposes by a court of competent jurisdiction.~~

Section 2. Section 77-1-102, MCA, is amended to read:

"77-1-102. Ownership of certain islands, abandoned riverbeds, and riverbeds.

(1) The Except as provided in [section 1] and subsection (2) of this section and subject to Title 70, chapter 18, part 2, the following lands belong to the state of Montana to be held in trust for the benefit of the public schools of the state:

~~(a) all lands lying and being in and forming a part of the abandoned bed of any navigable stream or lake in this state and lying between the meandered lines of the stream or lake as shown by the United States survey of the stream or lake;~~

~~(ba) all islands existing in the navigable streams or lakes in this state that have not been surveyed by the government of the United States; and~~

~~(eb) all lands that at any time in the past constituted an island or part of an island in a navigable stream or lake, except those lands that are occupied by and belong to the adjacent landowners as accretions.~~

(2) This section does not apply to lands that are occupied by and belong to riparian landowners if the lands were formed by accretions.

(2)(3) State-owned riverbeds are public lands of the state that are held in trust for the people as provided in Article X, section 11, of the Montana constitution. The state owns the active beds of all navigable rivers, streams, and lakes from low-water mark to low-water mark, although their location may vary over time due to geological processes, including accretion, erosion, and avulsion.

(4) For purposes of this section:

(a) "abandoned bed" means a that portion of a navigable riverbed, streambed, or lakebed not covered by water when the navigable river, stream, or lake is at a low-water level;

(b) "navigable rivers, streams, or lakes" have the same meanings as defined in 85-1-112."

Section 3. ~~Section 77-1-103, MCA, is amended to read:~~

~~"77-1-103. Administration of lands. (1) The board shall sell lands under [section 1] and 77-1-102(1) in the same manner as other school lands of the state are sold.~~

~~(2) The board may sell the lands under 77-1-102(1) or lease the lands under 77-1-102 without having them surveyed, unless the board considers it to be to the best interests of the state to have the lands surveyed as in 77-1-104.~~

~~(3) The proceeds from the leasing and sale of the lands under [section 1] and 77-1-102 must be disposed of in the same manner as disposition is made of the proceeds from the leasing and sale of school lands of the state.~~

~~(4) The income received from the leasing, licensing, or other use of lands under 77-1-102(1) or riverbeds under 77-1-102(2)(3) must be deposited in accordance with 17-3-1003(5)."~~

NEW SECTION. Section 4. Repealer. The following section of the Montana Code Annotated is repealed:

70-18-202. Sudden removal of bank -- right of owner to reclaim.

NEW SECTION. Section 5. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 70, chapter 18, part 2, and the provisions of Title 70, chapter 18, part 2, apply to [section 1].

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

NEW SECTION. Section 7. Applicability. [This act] applies to avulsions and other geologic process occurring on navigable waters on or after [the effective date of this act].

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