

1 HOUSE BILL NO. 39

2 INTRODUCED BY J. PRICE

3 BY REQUEST OF THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING USE OF ELECTRONIC FUNDS TRANSFERS FOR
6 CERTAIN PAYMENTS RELATED TO THE SALE AND LEASE OF STATE TRUST LAND; AND AMENDING
7 SECTIONS 77-1-905 AND 77-2-363, MCA."

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

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11 **Section 1.** Section 77-1-905, MCA, is amended to read:

12 **"77-1-905. Rental provisions for commercial leasing -- payments and credits -- administration --**
13 **lease options.** (1) The first year's annual rental payment for state trust land leased for commercial purposes must
14 be paid by cashier's check or electronic funds transfer, as defined in 32-6-103, and payment is due upon
15 execution of the lease. The department may require the lessee of state trust land for commercial purposes to pay
16 the department's cost of the request for proposals process, including publication and other reasonable expenses.
17 Failure to ~~pay~~ make the first year's rental payment at the time of lease execution must result in the cancellation
18 of the lease and forfeiture of all money paid. In the event of cancellation or in the event that the successful
19 proposer is offered and does not accept the lease, the board may enter into negotiations with other persons who
20 submitted a proposal for commercial purposes in response to the department request for proposals on that tract.

21 (2) The board shall specify in any commercial lease an annual rental payment equal to the full market
22 rental value of the land. The annual ~~rent~~ rental payment may not be less than the product of the appraised value
23 of the land multiplied by a rate that is 2 percentage points a year less than the rate of return of the unified
24 investment program administered by the board of investments pursuant to 17-6-201. The rate of return from the
25 unified investment program used in this subsection must be determined no less than 30 days prior to the
26 execution of the competitive bid. A commercial lease may include a rental adjustment formula established by the
27 board that periodically adjusts the annual ~~rent~~ rental payment provided for in the lease at frequencies specified
28 in the lease. The board may allow a credit against the annual ~~rent due~~ rental payment for payments made by the
29 lessee on behalf of the state of Montana for construction of structures and improvements, special improvement
30 district assessments, annexation fees, or other city or county fees attributable to the state's property interest in

1 land leased for commercial purposes. The board may accept as lawful consideration in-kind payments of services
 2 or materials equal to the full market rental value of the rent calculated to be owed on for any commercial lease.
 3 A lease issued under this part may include an amortization schedule to be used to determine the value to the
 4 lessee of improvements when the lease is terminated.

5 (3) The department may use funds appropriated from the trust land administration account provided for
 6 in 77-1-108 to contract with realtors, property managers, surveyors, legal counsel, or lease administrators to
 7 administer the commercial lease, either singly or in common with other leases, or to provide assistance to the
 8 department in the administration of commercial leases.

9 (4) In anticipation of entering into a commercial lease, the board may issue an option to lease at a rental
 10 rate that the board determines to be appropriate. An option to lease may not exceed a term of 2 years. An option
 11 to lease may not be construed to grant a right of immediate possession or control over the land but may only
 12 preserve the optionholder's exclusive right to obtain a commercial lease on the land in the future."
 13

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

15 **"77-2-363. Land banking land sales and limitations -- sale preparation costs.** (1) (a) The board may
 16 not cumulatively sell or dispose of more than 250,000 acres of state land. Seventy-five percent of the acreage
 17 cumulatively sold must be isolated parcels that do not have a legal right of access by the public. At any one time
 18 during the life of the land banking process, the board may not sell more than 20,000 acres of state land unless
 19 the board has acted to use the revenue from that land to make purchases pursuant to 77-2-364.

20 (b) The estimated fair market value must be determined by a Montana-licensed and Montana-certified
 21 appraiser.

22 (2) (a) A person bidding to purchase state land offered for sale shall 20 days prior to the day of auction
 23 deposit with the department a bid bond in the form of a certified check or cashier's check drawn on any Montana
 24 bank or an electronic funds transfer, as defined in 32-6-103, equal to at least 20% of the minimum sale price
 25 specified by the department pursuant to 77-2-323(1) to guarantee the bidder's payment of the purchase price.
 26 Bid bonds submitted to secure a bid on a parcel formerly leased as a cabin or home site need only be equal to
 27 5% of the minimum sale price as specified by the department.

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

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

11 (5) (a) Except as provided in subsection (6), when the lessee has initiated a sale of land under this
12 section, the lessee shall remit to the department the estimated costs of preparing the parcel for sale, including
13 but not limited to appraisals, cultural surveys, environmental review pursuant to Title 75, chapter 1, parts 1
14 through 3, and land surveys, if necessary. Payment must be made within 10 days after the board has provided
15 preliminary approval for the sale of the parcel.

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

20 (6) For the sale of a parcel formerly leased as a cabin or home site:

21 (a) the department shall assume the cost of the land survey; and

22 (b) the sale is exempt from the provisions of Title 75, chapter 1, parts 1 through 3."

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