

HOUSE BILL NO. 223

INTRODUCED BY LAWSON, COONEY

BY REQUEST OF THE BOARD OF LAND COMMISSIONERS AND THE DEPARTMENT OF NATURAL
RESOURCES AND CONSERVATION

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE STATE LAND BANK FUND; REVISING THE LAWS RELATING TO THE SALE OF STATE TRUST LAND AND THE DISPOSITION OF PROCEEDS; PROHIBITING THE SALE OF LAND TO THE FEDERAL GOVERNMENT; AUTHORIZING THE BOARD OF LAND COMMISSIONERS TO ACQUIRE LANDS FOR THE FINANCIAL BENEFIT OF TRUST BENEFICIARIES; PROVIDING A STATUTORY APPROPRIATION FOR THE FUNDING OF STATE LAND BANK FUNCTIONS, INCLUDING THE ACQUISITION OF TRUST LANDS; PROHIBITING CREATION OF RIGHT OF ACCESS; PROVIDING A DEADLINE FOR LAND SALES UNDER THE LAND BANKING PROCESS; REQUIRING A REPORT TO THE ENVIRONMENTAL QUALITY COUNCIL; AMENDING SECTIONS 17-3-1003, 17-7-502, 18-2-107, 77-1-109, 77-2-301, 77-2-306, 77-2-309, 77-2-323, 77-2-328, AND 77-2-337, MCA; REPEALING SECTIONS 77-2-307 AND 77-2-312, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 17-3-1003, MCA, is amended to read:

"17-3-1003. Support of state institutions. (1) For the support and endowment of each state institution, there is annually and perpetually appropriated, after any deductions made under 77-1-109, ~~and~~ Title 77, chapter 1, part 6, and [section 12], the income from all permanent endowments for the institution and from all land grants as provided by law. All money received or collected in connection with permanent endowments by all higher educational institutions, reformatory, custodial and penal institutions, state hospitals, and sanitariums, for any purpose ~~whatever~~, except revenue pledged to secure the payment of principal and interest of obligations incurred for the purchase, construction, equipment, or improvement of facilities at units of the Montana university system and for the refunding of obligations or money that constitutes temporary deposits, all or part of which may be subject to withdrawal or repayment, must be paid ~~over~~ to the state treasurer who shall deposit the money to the credit of the proper fund.

(2) Except as provided in subsections (1) and (3), all money received from the investment of grants of a state institution and all money received from the leasing of lands granted to a state institution must be deposited

with the state treasurer of Montana for each institution, to the credit of the state special revenue fund.

(3) Except as provided in 77-1-109, all money received from the sale of timber from lands granted to a state institution must be deposited to the credit of the permanent trust fund for the support of the institution."

Section 2. Section 17-7-502, MCA, is amended to read:

"17-7-502. Statutory appropriations -- definition -- requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-15-151; 2-17-105; 5-13-403; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-1-113; 15-1-121; 15-23-706; 15-35-108; 15-36-324; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 17-3-106; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 17-7-304; 18-11-112; 19-3-319; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 20-8-107; 20-9-534; 20-9-622; 20-26-1503; 22-3-1004; 23-5-306; 23-5-409; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 37-43-204; 37-51-501; 39-71-503; 42-2-105; 44-12-206; 44-13-102; 50-4-623; 53-6-703; 53-24-206; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; [section 12]; 80-2-222; 80-4-416; 80-5-510; 80-11-518; 82-11-161; 87-1-513; 90-3-1003; 90-6-710; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to Ch. 422, L. 1997, the inclusion of 15-1-111 terminates on July 1, 2008, which is the date that section is repealed; pursuant to sec. 10, Ch. 360, L. 1999, the inclusion of 19-20-604 terminates when the amortization period for the teachers' retirement system's unfunded liability is 10 years or less; pursuant to sec. 4, Ch. 497, L. 1999, the inclusion of 15-38-202 terminates July 1, 2014; pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, the inclusion of 15-35-108 and 90-6-710 terminates

June 30, 2005; pursuant to sec. 17, Ch. 414, L. 2001, the inclusion of 2-15-151 terminates December 31, 2006; and pursuant to sec. 2, Ch. 594, L. 2001, the inclusion of 17-3-241 becomes effective July 1, 2003.)"

Section 3. Section 18-2-107, MCA, is amended to read:

"18-2-107. Deposit of capitol building grant revenue. (1) The state treasurer shall deposit in a capital projects fund all revenue from the capitol building land grant after any deductions made under 77-1-109, ~~and~~ Title 77, chapter 1, part 6, and [section 12].

(2) The funds must be held and dedicated for the purpose of constructing capitol buildings or additions to buildings in accordance with the provisions of section 12 of The Enabling Act."

Section 4. Section 77-1-109, MCA, is amended to read:

"77-1-109. Deposits of proceeds in trust land administration account. (1) The department shall, until the deposit equals the amount appropriated for the fiscal year pursuant to 77-1-108, deposit into the trust land administration account created by 77-1-108, the following:

(a) mineral royalties;

(b) the proceeds or income from the sale of easements and timber, except timber from public school and Montana university system lands; ~~and~~

(c) 5% of the interest and income annually credited to the public school fund in accordance with 20-9-341; and

(d) fees collected pursuant to 77-2-328.

(2) After the deposits in subsection (1) have been made, the remainder of the proceeds, other than proceeds from timber from Montana university system lands, must be deposited in the appropriate permanent fund and the capitol building land grant trust fund. Timber proceeds from university system lands must be paid over to the state treasurer, who shall deposit the money to the credit of the proper fund for use as provided in 17-3-1003(1).

(3) The amount of money that is deposited into the trust land administration account may not exceed 1 1/8% of the book value balance in each of the nine permanent funds administered by the department on the first day of January preceding the new biennium and 10% of the previous fiscal year revenue deposited into the capitol building land grant trust fund."

Section 5. Section 77-2-301, MCA, is amended to read:

"77-2-301. Sales of state land under board control. The board is hereby vested with the power and authority to may decide when sales of state ~~lands~~ land are to be held and what state lands are to be offered for sale, subject to the limitations of this title, as the best interests of the state may appear to require. ~~As a general rule and except as provided in 77-2-318, no sale of state lands shall be held unless applications have been made for the purchase of lands within one county by prospective purchasers representing at least 12 families."~~

Section 6. Section 77-2-306, MCA, is amended to read:

"77-2-306. Who may purchase. (1) ~~State lands shall~~ land may be sold only to citizens of the United States, persons who have declared their intentions to become citizens, corporations organized under the laws of this state, or towns, cities, counties, or consolidated local governments of this state. ~~No A person shall be qualified to purchase state land who has not reached the age of 18 years~~ of age may not purchase state land. ~~As far as it is possible to determine, the lands shall~~ land may be sold only to actual settlers or to persons who will improve the same land and not to persons who are likely to hold such lands ~~the land~~ for speculative purposes intending to resell the same land at a higher price without having added anything to their its value.

(2) ~~State lands~~ land may be sold to any ~~sovereign~~ state of the United States, including any agency or political subdivision of that state, or to any board of trustees or public corporation ~~or agency of such state created by such state as an agency or political subdivision thereof~~. ~~Said lands~~ State land may be purchased in the quantities set forth in 77-2-307 for use by ~~such~~ the state, board of trustees, public corporation, agency, or political subdivision for educational or scientific purposes.

(3) ~~State lands~~ land located wholly within the exterior boundaries of the tribal government's reservation as recognized by the federal government may be sold to a tribal government as defined in 18-11-102.

(4) ~~No A~~ sale involving land in excess of ~~the acreage limitations in 77-2-307~~ 160 acres may not be made under this section without first consulting with the board of county commissioners of the county or counties in which the lands to be sold are located.

(5) STATE LAND MAY NOT BE SOLD TO THE FEDERAL GOVERNMENT OR TO AN AGENCY OF THE FEDERAL GOVERNMENT, EXCEPT NOTHING IN THIS SECTION PROHIBITS THE SALE OF STATE LAND TO A TRIBAL GOVERNMENT AS DEFINED IN 18-11-102.

(6) STATE LAND MAY NOT BE SOLD TO ANY INTEREST UNLESS THE TITLE TO THE LAND INCLUDES A DEED RESTRICTION THAT PROHIBITS THE SALE OF THE LAND TO THE FEDERAL GOVERNMENT."

Section 7. Section 77-2-309, MCA, is amended to read:

"77-2-309. Discretion of board with respect to surveying and platting. ~~Except as provided in 77-2-312, it shall be entirely optional with the~~ The board has the option of determining whether or not state lands or any part thereof shall land must be surveyed, platted, and laid off into blocks and lots ~~as herein provided, as may appear to be for the best interests of the state.~~"

Section 8. Section 77-2-323, MCA, is amended to read:

"77-2-323. Sale procedure and limitation. (1) At the time fixed for the sale, ~~the lands~~ state land must be offered for sale at auction in the order that ~~they appear~~ the land appears in the notice of sale. Under the direction of the department, the ~~lands~~ state land must be sold to the highest qualified bidder ~~under the following restrictions:~~

~~—— (a) Lands~~ State land may not be sold for less than the value determined by the board after appraisal by a qualified land appraiser.

~~—— (b) Tillable lands~~ state land capable of producing agricultural crops may not be sold for less than \$10 an acre ~~the land's appraised value.~~

~~—— (c) Lands~~ State land principally valuable for grazing purposes may not be sold for less than \$5 an acre ~~the land's appraised value.~~

(2) The ~~lands~~ state land must be sold as nearly as practicable according to the subdivisions in which ~~they are~~ it is advertised, and care must be taken not to subdivide any tract in such a way as to separate remaining portions from a water supply or from section lines or public highways.

(3) The sale may be adjourned from day to day until all the ~~lands~~ state land advertised ~~have~~ has been offered for sale.

~~—— (4) If any successful bidder at a sale refuses or neglects to make the initial payment required to be made on the land purchased, the successful bidder shall forfeit to the state not less than \$50 or more than \$1,000, to be determined by the board according to the circumstances of the case. If the forfeiture is not paid when notice of the amount of the forfeiture has been served by the department, the attorney general shall sue for the recovery of the amount in the name of the state. The forfeiture amount must be deposited in the state general fund."~~

Section 9. Section 77-2-328, MCA, is amended to read:

"77-2-328. Additional rules -- deposit of fees. The board may prescribe any additional rules for the conduct of ~~these~~ sales of state land as in its judgment the interests of the state may demand. Any fees collected by a rule adopted pursuant to this section must be deposited in the ~~state general fund~~ trust land administration

account as provided in 77-1-108."

Section 10. Section 77-2-337, MCA, is amended to read:

"77-2-337. Disposition of sale proceeds. (1) ~~The~~ Except as provided in [section 12] and subsection (3) of this section, the proceeds from the ~~lands~~ state land sold, including all subsequent payments on the principal, ~~shall must~~ be credited to the permanent fund arising from the grant to which it belongs and ~~shall must~~ become and forever remain an inseparable and inviolable part ~~thereof~~ of the permanent fund.

(2) All payments on interest ~~shall must~~ be credited to the proper income fund and ~~shall must~~ be available for use as provided by law.

(3) (a) Proceeds from the sale of any state trust land, as authorized by [sections 11 through 14], may 17], MUST be deposited into the state land bank fund established in [section 12] to be used for the purposes described in [sections 12 and 14] for the long-term financial benefit of the beneficiaries for whom the funds were deposited.

(b) If the proceeds from the sale of state trust land, as authorized by [sections 11 through 14 17], are not used for the purposes described in [sections 12 and 14], the proceeds from the sale and any earnings on the proceeds must be deposited pursuant to subsection (1) of this section."

NEW SECTION. **Section 11. Definitions.** As used in [sections 11 through ~~14~~ 17], the following definitions apply:

(1) "Isolated parcel" means any state land not possessing a ~~full right of access by the public via public road.~~ LEGAL RIGHT OF ACCESS BY THE PUBLIC.

(2) "Land banking" means a process of selling various parcels of state land and using the proceeds from the sales to purchase other land, easements, or improvements that are likely to provide greater OR EQUAL trust revenue, as may be reasonably expected over a 20-year accounting period with an acceptable level of risk, for the affected trust and to diversify the land holdings of the various trusts.

NEW SECTION. **Section 12. State land bank fund -- statutory appropriation -- rules.** (1) There is a state land bank fund. The proceeds from the sale of state trust land authorized by [sections 11 through ~~14~~ 17] must be deposited into the state land bank fund. The purpose of the state land bank fund is to temporarily hold proceeds from the sale of trust land pending the purchase of other land, easements, or improvements for the benefit of the beneficiaries of the respective trusts. A separate record of the proceeds received from the sale of

trust land for each of the respective trusts must be maintained. Proceeds from the sale of lands that are part of a trust land grant may be used only to purchase land for the same trust.

(2) (a) Proceeds deposited in the state land bank fund, including earnings on those proceeds, are statutorily appropriated, as provided in 17-7-502, to the department for the purposes described in [sections 11 through ~~14~~ 17].

(b) Except as provided in subsection (2)(c), up to 10% of the proceeds in the state land bank fund may be used by the department to fund the transactional costs of buying, selling, appraising, or marketing real property. Transactional costs may include realtor's fees, title reports, title insurance, legal fees, and other costs that may be necessary to complete a conveyance of real property.

(c) Proceeds from the sale of lands held pursuant to the Morrill Act of 1862, 7 U.S.C. 301 through 308, and the Morrill Act of 1890, 7 U.S.C. 321 through 328, may not be used for any transactional costs or trust administration purposes for those lands.

(d) The department may hold proceeds from the sale of state land in the state land bank fund for a period not to exceed 10 years after the effective date of each sale. If, by the end of the 10th year, the proceeds from the subject land sale have not been encumbered to purchase other lands, easements, or improvements within the state, the proceeds from that sale must be deposited in the public school fund or in the permanent fund of the respective trust as required by law, along with any earnings on the proceeds from the land sale, unless the time period is extended by the legislature.

(3) The board ~~may~~ SHALL adopt rules providing for the implementation and administration of the state land bank fund, purchases, and sales.

NEW SECTION. Section 13. Land banking land sales and limitations. (1) The board may not cumulatively sell or dispose of more than ~~500,000~~ 100,000 acres of state land. ~~Fifty~~ SEVENTY-FIVE percent of the acreage cumulatively sold must be isolated parcels that do not have a ~~right of access by public road~~ LEGAL RIGHT OF ACCESS BY THE PUBLIC. At any one time during the life of the land banking process, the board may not sell more than 20,000 acres of state land unless the board has acted to use the revenue from that land to make purchases pursuant to [section 14].

(2) (a) A person bidding to purchase state land offered for sale shall 45 days prior to the day of auction deposit with the department a bid bond in the form of a certified check or cashier's check drawn on any Montana bank equal to at least 50% of the minimum sale price specified by the department pursuant to 77-2-323(1) to guarantee the bidder's payment of the purchase price.

(b) If the current lessee of the land to be sold has initiated the sale as authorized by [section 14], the lessee may cancel the sale by giving notice to the department at least 30 days prior to the day of the auction. When the sale is canceled by the lessee, the lessee shall pay the costs incurred by the department for the preparation of the sale including any costs incurred for preparation of documents required by 75-1-201.

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

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

(4) FOR A SALE INITIATED BY THE BOARD OR THE DEPARTMENT, THE LESSEE OF THE LAND MUST BE AFFORDED ALL THE RIGHTS AND PRIVILEGES TO MATCH THE HIGH BID, AS PROVIDED IN 77-2-324.

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

(2) Sales of state land may be initiated only by the board, the department, or at the request of a 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 of the land sold is realized for each trust by using the appraisal, sale, advertising, and competitive bid procedures contained within 77-2-303, 77-2-321, 77-2-322, 77-2-323, and 77-2-324.

(3) When it is not inconsistent with the purpose of the trust, the board shall purchase land possessing legal access for all legal purposes ~~or public easements affording motorized vehicle access to state land in order to increase public access to state land.~~

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

easements, or improvements pursuant to [sections 11 through ~~14~~ 17] unless it has first prudently determined that the land, easements, or improvements are likely to produce a greater OR EQUAL annual rate of return, as may be reasonably expected over a 20-year accounting period, with an acceptable level of risk for the affected trust, than the current annual rate of return from the state land that has been sold pursuant to [section 13]. As guidance, the board shall use generally accepted accounting standards and the Uniform Appraisal Standards for Federal Land Acquisitions published by the U.S. department of justice and the appraisal institute.

(5) Prior to purchasing any land, easements, or improvements, the board shall determine that the financial risks and benefits of the purchase are prudent, financially productive investments that are consistent with the board's fiduciary duty as a reasonably prudent trustee of a perpetual trust. For the purposes of implementing [sections 11 through ~~14~~ 17], that duty requires the board to:

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

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

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

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

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

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

NEW SECTION. SECTION 15. RIGHT OF ACCESS NOT CREATED. NOTHING IN [SECTIONS 11 THROUGH 17] CREATES ANY EXPRESS OR IMPLIED RIGHT OF ACCESS, RIGHT-OF-WAY, OR EASEMENT FOR THE BENEFIT OF THE BOARD, THE DEPARTMENT, OR ANY PURCHASER OF STATE LAND OVER OR THROUGH ANY OTHER PROPERTY.

NEW SECTION. SECTION 16. LAND BANKING PROCESS -- TIME LIMIT -- REPORT TO ENVIRONMENTAL QUALITY COUNCIL. (1) STATE LAND MAY NOT BE SOLD THROUGH THE LAND BANKING PROCESS PURSUANT TO [SECTIONS 11 THROUGH 17] AFTER OCTOBER 1, 2008. LAND BANKING PURCHASES UNDER [SECTION 14] MAY CONTINUE AFTER OCTOBER 1, 2008, UNTIL ALL THE PROCEEDS IN THE STATE LAND BANK FUND ARE EXPENDED OR REVERT TO THE PUBLIC SCHOOL FUND OR THE PERMANENT FUND OF THE RESPECTIVE TRUST PURSUANT TO [SECTION 12(2)(D)].

(2) THE DEPARTMENT SHALL PROVIDE A REPORT TO THE ENVIRONMENTAL QUALITY COUNCIL BY JULY 1, 2008, THAT DESCRIBES THE RESULTS OF THE LAND BANKING PROGRAM IN DETAIL. AT A MINIMUM, THE REPORT MUST SUMMARIZE THE SALE AND PURCHASE TRANSACTIONS MADE THROUGH THE PROGRAM BY TYPE, LOCATION, ACREAGE, VALUE, AND TRUST BENEFICIARY. THE ENVIRONMENTAL QUALITY COUNCIL SHALL MAKE ANY RECOMMENDATIONS THAT IT DETERMINES NECESSARY REGARDING THE IMPLEMENTATION OF THE STATE LAND BANKING PROCESS, INCLUDING RECOMMENDATIONS FOR LEGISLATION.

NEW SECTION. SECTION 17. ROAD EASEMENTS ON STATE LANDS. COUNTY ROADS OR EASEMENTS FOR COUNTY ROADS ON LANDS PURCHASED FROM THE STATE OF MONTANA ARE SUBJECT TO THE PROVISIONS OF TITLE 7, CHAPTER 14, PART 26, REGARDING THE ESTABLISHMENT, ALTERATION, OR ABANDONMENT OF COUNTY ROADS.

NEW SECTION. SECTION 18. Repealer. Sections 77-2-307 and 77-2-312, MCA, are repealed.

NEW SECTION. SECTION 19. Codification instruction. [Sections 11 through ~~44~~ 17] are intended to be codified as an integral part of Title 77, chapter 2, part 3, and the provisions of Title 77, chapter 2, part 3, apply to [sections 11 through ~~44~~ 17].

NEW SECTION. SECTION 20. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. SECTION 21. Effective date. [This act] is effective on passage and approval.

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