

HOUSE BILL NO. 55

INTRODUCED BY K. FUREY

BY REQUEST OF THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

A BILL FOR AN ACT ENTITLED: "AN ACT DEFINING THE TERMS "CARBON SEQUESTRATION" AND "ECOSYSTEM SERVICES"; AUTHORIZING THE LICENSING OR LEASING OF STATE TRUST LANDS FOR CARBON SEQUESTRATION OR OTHER ECOSYSTEM SERVICES; PROVIDING RULEMAKING AUTHORITY; ESTABLISHING PROCEDURES FOR SUBMITTING AND REVIEW OF APPLICATIONS; AND ALLOWING APPLICATION FEES AND BONDS."

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

NEW SECTION. Section 1. Definitions. As used in [sections 1 through 10], unless the context indicates otherwise, the following definitions apply:

(1) "Board" means the board of land commissioners provided for in Article X, section 4, of the Montana constitution.

(2) "Carbon sequestration" means the process of removing carbon dioxide from the atmosphere and converting it to stored compounds.

(3) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(4) "Ecosystem services" refers to functions or services that natural ecosystems provide, including but not limited to carbon sequestration, open space, air and water filtration, biodiversity, wildlife habitat, soil stabilization, and aesthetics.

NEW SECTION. Section 2. Licensing and leasing authorized. The board may license or lease state trust lands for a term of up to 99 years for the purposes of carbon sequestration or providing other ecosystem services.

NEW SECTION. Section 3. Rules. (1) The board may adopt rules related to carbon sequestration and other ecosystem services on state trust lands.

(2) Rules adopted by the board may include but are not limited to:

(a) defining and implementing principles and standards relating to the creation, measurement, accounting, marketing, verifying, registering, transferring, and selling of carbon sequestration units and other ecosystem services credits on state trust lands;

(b) setting standards to ensure that carbon sequestration or other ecosystem services credits to be marketed, registered, transferred, or sold are attainable and achieved as a result of state trust land management activities; and

(c) addressing qualifications for persons and agencies that provide third-party verification and registration of carbon sequestration and other ecosystem services.

NEW SECTION. Section 4. Application fees -- bonds. (1) The board may require the applicant to pay an application fee, bid bond, payment bond, or any combination of the three.

(2) The board may, at any time prior to the execution and delivery of a carbon sequestration or other ecosystem services license or lease or at any time during the life of the lease, require a lessee to file with the department a bond to protect the rights of the state. The bond must be in form and amount prescribed by the board. The board may at any time require new or additional bonds if the interests of the state will not adequately be protected by the bond previously filed.

NEW SECTION. Section 5. Application for license or lease. (1) The board may direct the department to invite applications for a carbon sequestration or other ecosystem services license or lease on any parcel of state trust land.

(2) Anyone qualified under 77-6-108 to hold a state lease may submit an application for a carbon sequestration or other ecosystem services license or lease on any parcel of state trust land.

(3) An application for a carbon sequestration or ecosystem services license or lease must:

(a) be in the form specified by the board;

(b) include any required application fees or bonds; and

(c) include a written proposal describing:

(i) the specific measures, practices, or activities involved;

(ii) the geographic scope and proposed term length of license or lease;

(iii) proposed reporting and third-party verification requirements;

(iv) proposed obligations of the department and of the licensee or lessee;

(v) potential impacts or restrictions to other uses of the land as well as financial and other nonpecuniary

benefits to the state; and

(vi) any other information considered necessary by the department or board.

NEW SECTION. Section 6. Evaluation of applications. (1) The department shall evaluate each application, including its potential for:

(a) providing for the proper management and use of state trust land;

(b) meeting legal requirements and management objectives of the board;

(c) conflicting with or impacting other uses of the land;

(d) meeting objectives of the board with respect to environmental quality and the management of timber, water, fisheries, wildlife, and cultural resources; and

(e) maximizing net financial contributions to the affected trusts.

(2) The board may:

(a) accept one or more applications for the same area;

(b) reject any or all applications; or

(c) request modifications to applications.

NEW SECTION. Section 7. Establishing market value -- bids. (1) The board may develop a process to establish the full market value of the license or lease. Market value for carbon sequestration or other ecosystem services credits may be established by a market analysis or other appraisal process approved by the board.

(2) Bids may be based on a lump sum or on a periodic payment schedule, a per-unit fee, a bonus offer, or some other payment mechanism.

NEW SECTION. Section 8. Award of license or lease. A carbon sequestration or other ecosystem services license or lease may be issued to the highest bidder if the board determines that the bid is in the state's best interest and that:

(1) the rental amount offered represents the full market value of the interest conveyed;

(2) the license or lease is in the best long-term financial interests of the affected trust beneficiaries compared to other possible uses of the land;

(3) the issuance of the license or lease is in compliance with the duties of a trustee under Title 72, chapter 34, part 1; and

(4) the license or lease does not conflict with or preclude the use, licensing, or leasing of the land for traditional uses and other compatible purposes.

NEW SECTION. Section 9. Lease or license agreements -- requirements -- contents. (1) The bidder selected by the board shall enter into an agreement with the department for a carbon sequestration or other ecosystem services license or lease.

(2) The bidder selected by the board shall submit any bonds or advance payments as determined by the department prior to issuing of the license or lease.

(3) A carbon sequestration or ecosystem services license or lease must:

(a) state the length of the license or lease;

(b) specify the geographic area to which the license or lease applies;

(c) require the licensee or lessee to pay to the state a specified lump sum or a periodic rental payment, per-unit fee, bonus, or other payment in the amount determined by the bidding process;

(d) require the licensee or lessee to comply with all rules established by the board for state trust lands and all other applicable laws;

(e) identify the specific rights conveyed, which may not preclude other legal and legitimate uses of the lease area; and

(f) require the licensee or lessee to implement the terms and conditions required by the license or lease.

(4) A carbon sequestration or other ecosystem services license or lease may include other terms and conditions as considered advisable by the board for the long-term financial benefit of the trust beneficiaries or preservation of the productive value of the trust lands.

NEW SECTION. Section 10. Cancellation of lease or license. If the department determines that the carbon sequestration or other ecosystem services licensee or lessee has not properly complied with its duties or has violated any of the conditions in 77-6-210, the license or lease may be canceled in accordance with the procedures set forth in 77-6-211.

NEW SECTION. Section 11. Codification instruction. [Sections 1 through 10] are intended to be codified as an integral part of Title 77, chapter 6, and the provisions of Title 77, chapter 6, apply to [sections 1 through 10].

NEW SECTION. **Section 12. 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.

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