

HOUSE BILL NO. 231  
INTRODUCED BY R. RIPLEY

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS GOVERNING THE ADMINISTRATION OF STATE TRUST LAND; PROVIDING STATUTORY APPROPRIATIONS FOR FUNDING STATE TRUST LAND ADMINISTRATION; CLARIFYING DISTRIBUTION OF TIMBER PROCEEDS FROM MONTANA UNIVERSITY LAND; ELIMINATING CERTAIN ACCOUNTS; REQUIRING THAT CERTAIN COSTS BE PAID OUT OF THE TRUST LAND ADMINISTRATION ACCOUNT; AMENDING PROVISIONS RELATING TO ADMINISTRATION BY THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS AND THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION WITH REGARD TO RECREATIONAL USE OF STATE LANDS, COMMERCIAL LEASING, AND PROCEEDS IN THE STATE LAND BANK FUND; ALLOWING FOR THE USE OF FUNDS APPROPRIATED FROM THE TRUST LAND ADMINISTRATION ACCOUNT TO BE USED FOR VARIOUS PURPOSES; PROVIDING FOR THE TRANSFER OF UNENCUMBERED FUND BALANCES IN THE ELIMINATED ACCOUNTS TO THE APPROPRIATE TRUST; AMENDING SECTIONS 17-3-1003, 17-7-502, 18-2-107, 20-9-341, 20-9-601, 20-9-620, 20-25-422, 77-1-108, 77-1-125, 77-1-613, 77-1-802, 77-1-808, 77-1-809, 77-1-810, 77-1-815, 77-1-905, 77-2-328, AND 77-2-362, MCA; REPEALING SECTIONS 77-1-109, 77-1-602, 77-1-604, 77-1-605, 77-1-606, 77-1-607, 77-1-608, AND 77-1-609, MCA; AND PROVIDING AN EFFECTIVE DATE."

WHEREAS, Article X, section 5, of the Montana Constitution provides that 95% of all the interest and income from the public school fund is to be equitably apportioned annually to public elementary and secondary school districts as provided by law; and

WHEREAS, Article X, section 5, of the Montana Constitution also provides that the remaining 5% of all interest and income received from the leasing of school lands and all other income from the public school fund must annually be added to the public school fund and become and forever remain an inseparable and inviolable part the fund; and

WHEREAS, the federal Enabling Act and the federal Morrill Act provided land for various purposes, including public schools, public buildings, university purposes, a school of mines, a normal school, an agricultural college, a state reform school, and a deaf and dumb asylum; and

WHEREAS, the federal Enabling Act and the federal Morrill Act contained conditions on the acceptance of the land, including the use of proceeds from the sale or rental of the land; and

WHEREAS, the Legislature has a fiduciary responsibility to the beneficiaries of the various trusts to ensure that the trusts are managed in a way that returns the greatest potential revenue to the beneficiary while considering other competing interests; and

WHEREAS, the Legislature has a duty to adequately fund the management and administration of both the property portion and cash portion of the various trusts in order to ensure the exercise of the fiduciary responsibility.

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~~ statutorily appropriated, as provided in 17-7-502, after any deductions made under 77-1-109, Title 77, chapter 1, part 6, and 77-2-362, 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, 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 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~~ subsection (4), 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.

(4) The board of regents shall designate whether the timber sale proceeds from Montana university system lands must be distributed to the beneficiaries or placed in the permanent fund."

**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: 2-17-105; 5-11-407; 5-13-403; 10-2-603; 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; 15-31-906; 15-35-108; 15-36-332; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 15-70-369; 15-70-601; 16-11-509; 17-3-106; 17-3-212; 17-3-222; 17-3-241; 17-3-1003; 17-6-101; 17-7-304; 18-11-112; 19-3-319; 19-6-404; 19-6-410; 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; 23-4-105; 23-4-202; 23-4-204; 23-4-302; 23-4-304; 23-5-306; 23-5-409; 23-5-612; 23-7-301; 23-7-402; 37-43-204; 37-51-501; 39-71-503; 41-5-2011; 42-2-105; 44-1-504; 44-12-206; 44-13-102; 50-4-623; 53-1-109; 53-6-703; 53-24-108; 53-24-206; 60-11-115; 61-3-415; 69-3-870; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 77-1-108; 77-2-362; 80-2-222; 80-4-416; 80-5-510; 80-11-518; 82-11-161; 87-1-513; 90-1-115; 90-1-205; 90-3-1003; 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, and secs. 3 and 6, Ch. 481, L. 2003, the inclusion of 15-35-108 terminates June 30, 2010; pursuant to sec. 7, Ch. 314, L. 2005, the inclusion of 23-4-105, 23-4-202, 23-4-204, 23-4-302, and 23-4-304 becomes effective July 1, 2007; and pursuant to sec. 17, Ch. 593, L. 2005, the inclusion of 15-31-906 terminates January 1, 2010.)"

**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, Title 77, chapter 1, part 6, and 77-2-362.~~

(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 20-9-341, MCA, is amended to read:

**"20-9-341. Definition of interest and income money.** (1) As used in this title, the term "interest and income money" means the total of the following revenue, as provided for by Article X, section 5, of the 1972 Montana constitution:

(a) 95% of the interest received from the investment of the public school fund;

(b) 95% of the interest received from the investment of any other school funds held in trust by the state board of land commissioners;

(c) 95% of the income received from the leasing of or sale of timber from state school lands ~~after any deductions that may be made under the provisions of Title 77, chapter 1, part 6;~~ and

(d) 95% of any other income derived from any other covenant affecting the use of state school lands.

(2) The remaining 5% of the revenue described in subsections (1)(a) through (1)(d) must be annually credited to the public school fund ~~after any deductions made under 77-1-109."~~

**Section 5.** Section 20-9-601, MCA, is amended to read:

**"20-9-601. Public school fund.** The public school fund must be maintained by the state treasurer as a fund in the permanent fund type, and the principal amount of the fund is irreducible and permanent. The following money must be credited to the fund as an addition to the irreducible and permanent principal amount:

(1) appropriations and donations by the state;

(2) donations and bequests by individuals to the state or schools;

(3) the proceeds of land and other property that revert to the state by escheat and forfeiture;

(4) the proceeds of all property granted to the state, when the purpose of the grant is not specified or is uncertain;

(5) funds accumulated in the treasury of the state for the disbursement of which provision has not been made by law;

(6) ~~except as provided in 77-1-109~~, the proceeds of the sale of stone, materials, or other property from school lands other than those granted for specific purposes and all money other than rental recovered from persons trespassing on the lands;

(7) the principal of all money arising from the sale of lands and other property that has been and may be granted to the state for the support of common schools;

(8) ~~except as provided in 77-1-109~~, the amount earmarked for deposit in this fund under the provisions of 20-9-341; and

(9) other money as may be provided by the legislature."

**Section 6.** Section 20-9-620, MCA, is amended to read:

**"20-9-620. Definition.** (1) As used in 20-9-621, 20-9-622, and this section, "distributable revenue" means, except for that portion of revenue described in 20-9-343(4)(a)(ii), ~~and available on or after July 1, 2003, 77-1-607, and 77-1-613~~, 95% of all revenue from the management of school trust lands and the permanent fund, including timber sale proceeds, lease fees, interest, dividends, and net realized capital gains.

(2) The term does not include mineral royalties or land sale proceeds that are deposited directly in the permanent fund or net unrealized capital gains that remain in the permanent fund until realized."

**Section 7.** Section 20-25-422, MCA, is amended to read:

**"20-25-422. Support of university system.** (1) For the support and endowment of the university, there is annually and perpetually appropriated:

(a) the university fund income, the proceeds and revenue from the grant of any estate or interest disposed of pursuant to 20-25-307, and all other sums of money appropriated by law to the university fund ~~after any deductions made under 77-1-109 and Title 77, chapter 1, part 6~~;

(b) all tuition and matriculation fees; and

(c) all contributions derived from public or private bounty.

(2) The entire income of all the funds must be placed at the disposal of the board of regents by transfer to its treasurer and must be kept separate and distinct from all other funds. The income must be used solely for the support of the colleges and departments of the university or those connected with the colleges and departments.

(3) All means derived from other public or private bounty must be exclusively devoted to the specific objects designated by the donor."

**Section 8.** Section 77-1-108, MCA, is amended to read:

**"77-1-108. Trust land administration account.** (1) There is a trust land administration account in the state special revenue fund. Money in the account is available to the department by appropriation and must be used to pay the costs of administering state trust lands.

(2) (a) The amount of 15% of gross revenue generated by the trusts in the previous biennium is statutorily appropriated, as provided in 17-7-502, from the general fund to the department for the purposes of administering the state trust land granted to the state pursuant to the Morrill Act of 1862, 7 U.S.C. 301 through 308, the Morrill Act of 1890, 7 U.S.C. 321 through 329 and The Enabling Act of Congress, approved February 22, 1889, 25 Stat. 676, as amended. The statutorily appropriated amount must be deposited in the account, and any unexpended portion of the statutory appropriation may be retained in the account and used for the administration of trust lands.

(b) At the end of each fiscal year, the department shall pay from the statutory appropriation in subsection (4)(a) to the board of investments an amount calculated to be the cost of administering the investment of the funds derived from the trusts provided for in the federal Morrill Act and The Enabling Act of Congress, approved February 22, 1889, 25 Stat. 676, as amended. Appropriations from the account for each fiscal year may not exceed the sum of 1 1/8% of the book value balance in the nine permanent funds administered by the department on the first day of January preceding the new biennium and 10% of the revenue deposited in the capitol building land grant trust fund in the last completed fiscal year prior to the new biennium.

~~———— (3) Unreserved funds remaining in the account at the end of a fiscal year must be transferred to each of the permanent funds in proportionate shares to each fund's contribution to the account as calculated in 77-1-109(3)."~~

**Section 9.** Section 77-1-125, MCA, is amended to read:

**"77-1-125. Liability for unauthorized installation or construction of facility or structure on state trust land -- penalty.** (1) A person, other than the lessee of the affected state trust land, may not, ~~after September 30, 1997:~~

(a) install or construct a road, pipeline, ditch, utility line, fence, building, or other facility or structure on state trust land without obtaining an easement, lease, license, or other written permission of the department; or

(b) disturb state trust land in anticipation of the installation or construction of the facility or structure.

(2) A person who violates subsection (1) is liable to the department for a civil penalty in an amount determined by the board. The penalty may be an amount up to three times the full market value of the land disturbed or affected or \$500, whichever is greater. The department shall deposit the amount received in penalty

payment in the permanent fund of the trust whose land was damaged.

(3) In addition to the penalty provided for in subsection (1), a person who installs or constructs a facility or structure on state trust land without permission is liable for any permanent damage to the state trust land and may be required to remove the facility or structure and to reclaim the disturbed land to the satisfaction of the department or to pay the department's cost of removal and reclamation.

(4) If the department allows the facility or structure to remain on state trust land, the department shall also require payment of full market value of any easement, lease, or license required for the facility or structure.

(5) The penalties provided in this section do not apply to the lessee of the affected state trust land. The remedies and penalties provided in a state trust easement, lease, or license and the statutes and regulations under which the easement, lease, or license was entered are the exclusive remedies and penalties that may be applied to a lessee.

(6) The penalties provided in this section do not apply to persons who have inadvertently installed or constructed pipelines or utility lines within 20 feet of the easement boundaries granted by the state.

(7) The penalties provided in this section do not apply to facilities or structures installed on lands acquired by the state through exchange or purchase that were authorized with the permission of the previous landowner or through authority granted by an appropriate government agency."

**Section 10.** Section 77-1-613, MCA, is amended to read:

**"77-1-613. ~~Deduction of portion of income received from~~ Administrative costs associated with sale of timber from state trust lands -- creation of account.** (1) ~~There is an account in the state special revenue fund called the state timber sale account. Money in the account may be appropriated by the legislature for use by the department in the manner set out in this section to enhance the revenue creditable to the trusts. There must be placed in the account an amount from timber sales on state lands each fiscal year equal to the amount appropriated from the account for the corresponding fiscal year. The department may use funds appropriated from the trust land administration account, provided for in 77-1-108, for timber sale preparation and documentation.~~

~~(2) Timber sale program funds deducted under subsection (1) must be directly applied to timber sale preparation and documentation.~~

~~(3)~~(2) In order to increase the volume of timber sold at the earliest possible time while continuing to meet the requirements of applicable state and federal laws and in order to avoid unnecessary delays and extra costs that would result from increasing its permanent staff, the department may contract for services that will enable

achievement of the purposes of this section and that will achieve the highest net return to the trusts.

~~(4)~~(3) To maximize overall return to the trusts, the timely salvage of timber must be considered. However, salvage timber sales may not adversely affect the implementation of green timber sales programs conducted pursuant to 77-5-201."

**Section 11.** Section 77-1-802, MCA, is amended to read:

**"77-1-802. (Temporary) Recreational use -- fee.** (1) The fee for recreational use on state trust land must attain full market value whether the license is sold on an individual basis or on a group basis through an agreement with the department of fish, wildlife, and parks as provided in 77-1-815.

(2) Money received by the department from the sale of recreational use licenses must be ~~credited as follows:~~

~~———(a) Except as provided in subsection (2)(b), license fees must be~~ apportioned on a pro rata basis to the land trusts; in proportion to the respective trust's percentage of acreage in the total acreage of all state land trusts.

~~(b) Two dollars from the fee for each license, less 50 cents to be returned to the license dealer as a commission, must be deposited in the state lands recreational use account established by 77-1-808.~~

(3) The department shall pay, from the trust land administration account, provided for in 77-1-108, 50 cents to the license dealer as a commission for each recreational use license sold.

~~(3)~~(4) The department may contract with the department of fish, wildlife, and parks for the distribution and sale of recreational use licenses through the license agents appointed by and the administrative offices of the department of fish, wildlife, and parks and in accordance with the provisions of Title 87, chapter 2, part 9. (Void on occurrence of contingency--sec. 8, Ch. 596, L. 2003.)

**77-1-802. (Effective on occurrence of contingency) Recreational use license -- fee.** (1) The fee for a recreational use license must attain full market value.

(2) Money received by the department from the sale of recreational use licenses must be ~~credited as follows:~~

~~———(a) Except as provided in subsection (2)(b), license fees must be~~ apportioned on a pro rata basis to the land trusts, in proportion to the respective trust's percentage contribution to the total acreage of all state land trusts.

~~(b) Two dollars from the fee for each license, less 50 cents to be returned to the license dealer as a commission, must be deposited in the state lands recreational use account established by 77-1-808.~~

(3) The department shall pay, from the trust land administration account, provided for in 77-1-108, 50



cents to the license dealer as a commission for each recreational use license sold.

~~(3)(4)~~ The department may contract with the department of fish, wildlife, and parks for the distribution and sale of recreational use licenses through the license agents appointed by and the administrative offices of the department of fish, wildlife, and parks and in accordance with the provisions of Title 87, chapter 2, part 9."

**Section 12.** Section 77-1-808, MCA, is amended to read:

**"77-1-808. (Temporary) State lands recreational use account.** ~~(1) There is a state lands recreational use account in the state special revenue fund provided for in 17-2-102.~~

~~———— (2) There must be deposited in the account:~~

~~———— (a) all revenue received from the recreational use license established by 77-1-802;~~

~~———— (b) 10% of the revenue received as a result of an agreement with the department of fish, wildlife, and parks for the use and impacts of hunting, fishing, and trapping as provided in 77-1-815; and~~

~~———— (c) money received by the department in the form of legislative appropriations, reimbursements, gifts, federal funds, or appropriations from any source intended to be used for the purposes of this account.~~

~~———— (3) Money deposited in the appropriated for the purpose of managing state lands recreational use account of state lands must be used by the department for the following purposes:~~

~~(a)(1)~~ compensation pursuant to 77-1-809 for damage to the improvements of leases that has been proved to be caused by recreational users;

~~(b)(2)~~ assistance in weed control management necessary as a result of recreational use of state lands;

~~(c)(3)~~ protection of the resource value of the trust assets;

~~(d)(4)~~ administration and management for the implementation of recreational use of state lands; and

~~(e)(5)~~ maintenance of roads necessary for public recreational use of state trust land. (Void on occurrence of contingency--sec. 8, Ch. 596, L. 2003.)

**77-1-808. (Effective on occurrence of contingency) State lands recreational use account.** ~~(1) There is a state lands recreational use account in the state special revenue fund provided for in 17-2-102.~~

~~———— (2) There must be deposited in the account:~~

~~———— (a) all revenue received from the recreational use license established by 77-1-802; and~~

~~———— (b) money received by the department in the form of legislative appropriations, reimbursements, gifts, federal funds, or appropriations from any source intended to be used for the purposes of this account.~~

~~———— (3) Money deposited in the appropriated for the purpose of managing state lands recreational use account of state lands must be used by the department for the following purposes:~~

- (a)(1) compensation pursuant to 77-1-809 for damage to the improvements of leases that has been proved to be caused by recreational users;
- (b)(2) assistance in weed control management necessary as a result of recreational use of state lands;
- (c)(3) protection of the resource value of the trust assets; and
- (d)(4) administration and management for the implementation of recreational use of state lands."

**Section 13.** Section 77-1-809, MCA, is amended to read:

**"77-1-809. Compensation for damage to improvements, growing crops, or livestock.** A lessee may apply to the department for reimbursement of documented costs of repair to or replacement of improvements, growing crops, or livestock damaged by recreational users of state lands. The application must include an affidavit by the applicant setting forth the nature of the loss, allegations and reasonable proof supporting the involvement of recreational users, and documentation of repair or replacement costs. Upon review of the application and supporting proof and upon additional investigation as required, the department shall grant, modify, or deny the claim. The department, by reason of payment to the lessee for damage to improvements, is entitled to be subrogated to the rights of the lessee to recover the amount paid from the party causing the damage. Payments under this section must be made from appropriations from the ~~state lands recreational use~~ trust land administration account established by ~~77-1-808~~ 77-1-108, and the liability of the department for damage payments is limited to ~~the available appropriation~~ 10% of revenue received from the recreational use fee. Claim applications are to be considered in the order they are received."

**Section 14.** Section 77-1-810, MCA, is amended to read:

**"77-1-810. Weed control management.** (1) The department shall establish a weed control management program for the control of noxious weeds reasonably proved to be caused by the recreational use of state lands. The department may by rule establish a noxious weed management program that may include direct compensation for noxious weed control activities or participation in district and county weed control projects or department-initiated weed control activities.

(2) Funding for this program must come from appropriations from the ~~state lands recreational use~~ trust land administration account pursuant to ~~77-1-808~~ 77-1-108 provided for in 77-1-108."

**Section 15.** Section 77-1-815, MCA, is amended to read:

**"77-1-815. (Temporary) Recreational use agreement for hunting, fishing, and trapping on legally**

**accessible state trust land.** (1) The board is authorized to enter into an agreement with the department of fish, wildlife, and parks to compensate state trust land beneficiaries for the use and impacts associated with hunting, fishing, and trapping on legally accessible state trust land as defined in department rule. The department may impose restrictions it considers necessary to coordinate the uses of state trust land or to preserve the purposes of the various trust lands. Hunting, fishing, and trapping on state trust land must be conducted in accordance with rules and provisions provided in this part.

(2) An agreement may be issued to the department of fish, wildlife, and parks for a term of up to 10 years. Through this agreement, the board shall recover for the beneficiaries of the trust the full market value for the use and impacts associated with hunting, fishing, and trapping on legally accessible state trust land. ~~Ten percent of the gross receipts from the agreement must be deposited in the state lands recreational use account established in 77-1-808. The remaining 90%~~ The department may use funds appropriated from the trust land administration account, provided for in 77-1-108, to implement and manage the agreement. The proceeds from the agreement must be apportioned on a pro rata basis to the land trusts, in proportion to the respective trust's percentage of acreage in the total acreage of all state land trusts.

(3) Any agreement entered into is subject to the following conditions:

(a) The department maintains sole discretion, throughout the term of the agreement, with regard to identifying legally accessible parcels, coordinating uses on state trust land, and making any other necessary state trust land management decisions.

(b) An agreement between the department and the department of fish, wildlife, and parks may not convey any additional authority to the department of fish, wildlife, and parks.

(4) During any period that the department of fish, wildlife, and parks and the department have reached an agreement as provided in subsection (1), an individual recreational use license under 77-1-801 or 77-1-802 may not be required for a member of the public to hunt, fish, or trap upon legally accessible state trust land. (Void on occurrence of contingency--sec. 8, Ch. 596, L. 2003.)"

**Section 16.** Section 77-1-905, MCA, is amended to read:

**"77-1-905. Rental provisions for commercial leasing -- payments and credits -- administration -- lease options.** (1) The first year's annual rental payment for state trust land leased for commercial purposes must be paid by cashier's check, and payment is due upon execution of the lease. The department may require the lessee of state trust land for commercial purposes to pay the department's cost of the request for proposals process, including publication and other reasonable expenses. Failure to pay the first year's rental at the time of

lease execution must result in the cancellation of the lease and forfeiture of all money paid. In the event of cancellation or in the event that the successful proposer is offered and does not accept the lease, the board may enter into negotiations with other persons who submitted a proposal for commercial purposes in response to the department request for proposals on that tract.

(2) The board shall specify in any commercial lease an annual rental equal to the full market rental value of the land. The annual rent may not be less than the product of the appraised value of the land multiplied by a rate that is 2 percentage points a year less than the rate of return of the unified investment program administered by the board of investments pursuant to 17-6-201. The rate of return from the unified investment program used in this subsection must be determined no less than 30 days prior to the execution of the competitive bid. A commercial lease may include a rental adjustment formula established by the board that periodically adjusts the annual rent provided for in the lease at frequencies specified in the lease. The board may allow a credit against the annual rent due for payments made by the lessee on behalf of the state of Montana for construction of structures and improvements, special improvement district assessments, annexation fees, or other city or county fees attributable to the state's property interest in land leased for commercial purposes. If the board allows a credit against the annual rent due, the department shall offset this credit by transferring money from the trust land administration account, provided for in 77-1-108, to the trust that would have received the revenue resulting from the lease. The board may accept as lawful consideration in-kind payments of services or materials equal to the full market value of the rent calculated to be owed on any commercial lease. A lease issued under this part may include an amortization schedule to be used to determine the value to the lessee of improvements when the lease is terminated.

(3) The department may use ~~up to 10% of the annual rent received from a commercial lease~~ funds appropriated from the trust land administration account, provided for in 77-1-108, to contract with realtors, property managers, surveyors, legal counsel, or lease administrators to administer the commercial lease, either singly or in common with other leases, or to provide assistance to the department in the administration of commercial leases.

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

**Section 17.** 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 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 trust land administration account ~~as~~ provided for in 77-1-108."

**Section 18.** Section 77-2-362, MCA, is amended to read:

**"77-2-362. 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 77-2-361 through 77-2-367 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, except earnings on those proceeds, are statutorily appropriated, as provided in 17-7-502, to the department for the purposes described in 77-2-361 through 77-2-367. All earnings on the proceeds deposited in the state land bank fund are subject to the provisions of Article X, sections 5 and 10, of the Montana constitution.

(b) ~~Except as provided in subsection (2)(c), up to 10% of the proceeds in the state land bank fund~~ Funds appropriated from the trust land administration account, provided for in 77-1-108, 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 trust 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 shall adopt rules providing for the implementation and administration of the state land bank fund, purchases, and sales."

**NEW SECTION. Section 19. Unencumbered fund balances.** (1) Except as provided in 17-7-304, any unencumbered fund balances in the resource development account formerly provided for in 77-1-604, the state timber sale account formerly provided for in 77-1-613, and the state lands recreational use account formerly provided for in 77-1-808 on June 30, 2007, must be transferred to each of the permanent funds or distributable accounts in proportionate shares to each fund's contribution to the accounts. The distribution to the appropriate trusts must take place before October 1, 2007.

(2) The department of natural resources and conservation shall submit a written report to the legislative finance committee prior to October 1, 2007, that provides, by account and trust, the amount of money to be transferred, the amount of money encumbered in each account, and the purpose for which the money is encumbered.

**NEW SECTION. Section 20. Repealer.** Sections 77-1-109, 77-1-602, 77-1-604, 77-1-605, 77-1-606, 77-1-607, 77-1-608, and 77-1-609, MCA, are repealed.

**NEW SECTION. Section 21. Effective date.** [This act] is effective July 1, 2007.

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