

1 SENATE BILL NO. 18

2 INTRODUCED BY B. HAMLETT

3 BY REQUEST OF THE WATER POLICY COMMITTEE

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5 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE OWNERSHIP OF A CHANNEL AND
6 FORMER CHANNEL OF A NAVIGABLE RIVER OR STREAM FOLLOWING AN AVULSION; PROVIDING
7 RULEMAKING AUTHORITY; AMENDING SECTIONS 77-1-102 AND 77-1-103, MCA; REPEALING SECTION
8 70-18-202, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

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12 NEW SECTION. **Section 1. Sudden change in bed of navigable river or stream.** (1) Subject to
13 subsections (2) and (3), if a navigable river or stream abandons its channel and forms a new channel as a result
14 of an avulsion, the land constituting the old channel belongs to the owner of the shores through which the old
15 channel flowed or, if the shores are owned by different owners, to the owners on two sides, divided by an
16 imaginary line drawn through the middle of the old river or stream channel.

17 (2) An affected owner seeking title to the land described in subsection (1) shall notify the department of
18 natural resources and conservation and describe with particularity the event that resulted in the formation of the
19 new channel. The affected owner shall also provide the department with a survey and any other information the
20 department considers necessary.

21 (3) Upon receiving the information from the affected owner, the department shall verify the information
22 and determine whether the new channel was created by an avulsion. The department shall also verify whether
23 the land constituting the old channel is in equal value and, as closely as possible, equal in area to the land
24 constituting the new channel. If the land constituting the old channel is greater in value or area, the affected owner
25 shall pay the full market value of the difference upon the transfer of title. Ownership may not vest in the affected
26 owner unless the board of land commissioners approves the exchange or sale.

27 (4) Upon approval by the board, the affected owner shall notify the department of revenue and the clerk
28 and recorder of the county in which the affected property is located of the change in ownership and submit any
29 information necessary to update the applicable ownership records.

30 (5) The land constituting the old channel is subject to property taxation payable by the affected owner

1 from the date the board approves the transfer or sale.

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

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

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

8 (9) For purposes of this section:

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

12 (b) "navigable river" means a river or stream adjudicated as navigable for title purposes by a court of
13 competent jurisdiction.

14

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

16 **"77-1-102. Ownership of certain islands, abandoned riverbeds, and riverbeds.** (1) ~~The~~ Except as
17 provided in [section 1] and subsection (2) of this section and subject to Title 70, chapter 18, part 2, the following
18 lands belong to the state of Montana to be held in trust for the benefit of the public schools of the state:

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

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

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

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

28 ~~(2)(3)~~ State-owned riverbeds are public lands of the state that are held in trust for the people as provided
29 in Article X, section 11, of the Montana constitution.

30 (4) For purposes of this section:

- 1 (a) "abandoned bed" means a riverbed, streambed, or lakebed with no water over it;
 2 (b) "navigable stream" has the same meaning as navigable river as defined in [section 1]."

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

5 **"77-1-103. Administration of lands.** (1) The board shall sell lands under [section 1] and 77-1-102(1)
 6 in the same manner as other school lands of the state are sold.

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

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

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

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

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

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

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

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25 NEW SECTION. **Section 7. Applicability.** [This act] applies to avulsions occurring on or after [the
 26 effective date of this act].

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