

SENATE BILL NO. 18

INTRODUCED BY B. HAMLETT

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; CREATING A
7 PROCESS TO CLARIFY OWNERSHIP AFTER AN AVULSION OF ABANDONED BEDS OF RIVERS AND
8 STREAMS NOT ADJUDICATED FOR TITLE; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS
9 SECTION 77-1-102 AND 77-1-103, MCA; REPEALING SECTION 70-18-202, MCA; AND PROVIDING AN
10 IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

13
14 NEW SECTION. Section 1. Sudden change in bed of navigable river or stream. (1) Subject to
15 ~~subsections (2) and (3), if a navigable~~ IF A river or stream abandons its channel and forms a new channel as a
16 result of an avulsion AND IF THE SEGMENT OF THE RIVER OR STREAM WHERE THE AVULSION OCCURRED HAS BEEN
17 ADJUDICATED AS NAVIGABLE FOR TITLE PURPOSES BY A COURT OF COMPETENT JURISDICTION, the land constituting the
18 old channel belongs to the owner of the shores through which the old channel flowed or, if the shores are owned
19 by different owners, to the owners on two sides, divided by an imaginary line drawn through the middle of the old
20 river or stream channel.

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

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

1 THAT THE NEW CHANNEL WAS FORMED BY AN AVULSION AND THE OLD CHANNEL IS ABANDONED, THE DEPARTMENT SHALL
 2 RECOMMEND TO THE BOARD OF LAND COMMISSIONERS THAT THE STATE AND THE AFFECTED OWNER EXCHANGE QUITCLAIM
 3 DEEDS FOR THE PROPERTIES AFFECTED BY THE AVULSION.

4 (4) Upon approval by the board AND THE EXCHANGE OF QUITCLAIM DEEDS, the affected owner shall notify
 5 the department of revenue and the clerk and recorder of the county in which the affected property is located of
 6 the change in ownership and submit any information necessary to update the applicable ownership records.

7 (5) The land constituting the old channel is subject to property taxation payable by the affected owner
 8 from the date the ~~board approves the transfer or sale~~ QUITCLAIM DEEDS ARE EXCHANGED.

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

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

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

15 (8) (A) IF AN AVULSION OCCURS ON A SEGMENT OF A RIVER OR STREAM THAT HAS NOT BEEN ADJUDICATED AS
 16 NAVIGABLE FOR TITLE PURPOSES BY A COURT OF COMPETENT JURISDICTION BUT THE DEPARTMENT DETERMINES THAT
 17 HISTORIC EVIDENCE EXISTS THAT THE SEGMENT OF RIVER OR STREAM WAS NAVIGABLE AT THE TIME OF STATEHOOD, AN
 18 OWNER MAY SEEK TO CLARIFY TITLE TO THE PROPERTY AFFECTED BY THE AVULSION.

19 (B) TO SEEK TITLE CLARIFICATION, THE AFFECTED OWNER SHALL SUBMIT THE INFORMATION TO THE DEPARTMENT
 20 AS REQUIRED BY SUBSECTION (2).

21 (C) IF THE DEPARTMENT DETERMINES THAT THE NEW CHANNEL WAS FORMED BY AN AVULSION AND THAT THE OLD
 22 CHANNEL IS ABANDONED, THE DEPARTMENT SHALL RECOMMEND TO THE BOARD THAT THE BOARD ISSUE A DISCLAIMER
 23 OF INTEREST FOR THE ABANDONED CHANNEL.

24 (D) UPON APPROVAL BY THE BOARD, THE AFFECTED OWNER MAY CITE THE DISCLAIMER OF INTEREST TO SUPPORT
 25 AN OWNERSHIP CLAIM IN A QUIET TITLE ACTION FILED IN A DISTRICT COURT.

26 (E) UPON OBTAINING A QUIET TITLE JUDGMENT ON THE ABANDONED CHANNEL, THE AFFECTED OWNER SHALL
 27 NOTIFY THE DEPARTMENT OF REVENUE AND THE CLERK AND RECORDER OF THE COUNTY IN WHICH THE AFFECTED
 28 PROPERTY IS LOCATED OF THE CHANGE IN OWNERSHIP AND SUBMIT ANY INFORMATION NECESSARY TO UPDATE THE
 29 APPLICABLE OWNERSHIP RECORDS.

30 (F) THE LAND CONSTITUTING THE OLD CHANNEL IS SUBJECT TO PROPERTY TAXATION PAYABLE BY THE AFFECTED

1 OWNER FROM THE DATE OF THE QUIET TITLE JUDGEMENT.

2 (9) For purposes of this section,:

3 ~~(a)~~(A) "ABANDONED BED" MEANS A RIVERBED, STREAMBED, OR LAKEBED WITH NO WATER OVER IT AT THE
4 LOW-WATER MARK;

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

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

10

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

12 **"77-1-102. Ownership of certain islands, ~~abandoned riverbeds,~~ and riverbeds.** (1) ~~The~~ Except as
13 provided in [section 1] and subsection (2) of this section and subject to Title 70, chapter 18, part 2, the ~~THE~~
14 following lands belong to the state of Montana to be held in trust for the benefit of the public schools of the state:

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

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

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

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

24 ~~(2)~~(3) State-owned riverbeds are public lands of the state that are held in trust for the people as provided
25 in Article X, section 11, of the Montana constitution.

26 ~~(4)~~ For purposes of this section,:

27 ~~(a)~~ "abandoned bed" means a riverbed, streambed, or lakebed with no water over it AT THE LOW WATER
28 MARK;

29 ~~(b)~~ "navigable stream" has the same meaning as navigable river as defined in [section 1]."

30

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

2 ~~"77-1-103. Administration of lands.~~ (1) The board shall sell lands under ~~[section 1] and 77-1-102(1)~~
3 in the same manner as other school lands of the state are sold.

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

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

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

12

13 NEW SECTION. **Section 3. Repealer.** The following section of the Montana Code Annotated is
14 repealed:

15 70-18-202. Sudden removal of bank -- right of owner to reclaim.

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17 NEW SECTION. **Section 4. Codification instruction.** [Section 1] is intended to be codified as an
18 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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20 NEW SECTION. **Section 5. Effective date.** [This act] is effective on passage and approval.

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22 NEW SECTION. **Section 6. Applicability.** [This act] applies to avulsions occurring on or after [the
23 effective date of this act].

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