

1 HOUSE BILL NO. 376

2 INTRODUCED BY R. FITZGERALD

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT REPEALING THE REAL ESTATE RECOVERY ACCOUNT;
5 PROVIDING FOR THE TRANSFER OF REMAINING MONEY IN THE ACCOUNT TO THE HOUSING
6 MONTANA FUND; REQUIRING CLAIMS MADE TO THE REAL ESTATE RECOVERY ACCOUNT TO BE
7 COMPLETED BY JANUARY 31, 2021; REQUIRING FEES FOR PERSONS LICENSED UNDER TITLE 37,
8 CHAPTER 51, TO BE DEPOSITED INTO THE HOUSING MONTANA FUND; AMENDING SECTIONS 17-7-502,
9 37-51-102, AND 90-6-107, MCA; REPEALING SECTIONS 37-51-501, 37-51-502, 37-51-503, 37-51-504,
10 37-51-505, 37-51-506, 37-51-507, 37-51-508, 37-51-509, 37-51-510, 37-51-511, AND 37-51-512, MCA; AND
11 PROVIDING EFFECTIVE DATES."

12

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

14

15 NEW SECTION. **Section 1. Assessment -- housing Montana fund.** A person licensed under Title 37,
16 chapter 51, must be assessed \$35 at the time of licensure to be deposited into the housing Montana fund
17 provided for in 90-6-107 and 90-6-133.

18

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

20 **"17-7-502. Statutory appropriations -- definition -- requisites for validity.** (1) A statutory
21 appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the
22 need for a biennial legislative appropriation or budget amendment.

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

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

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

28 (3) The following laws are the only laws containing statutory appropriations: 2-17-105; 5-11-120;
29 5-11-407; 5-13-403; 7-4-2502; 10-1-108; 10-1-1202; 10-1-1303; 10-2-603; 10-2-807; 10-3-203; 10-3-310;
30 10-3-312; 10-3-314; 10-3-1304; 10-4-304; 15-1-121; 15-1-218; 15-35-108; 15-36-332; 15-37-117; 15-39-110;

1 15-65-121; 15-70-101; 15-70-130; 15-70-433; 16-11-119; 16-11-509; 17-3-106; 17-3-112; 17-3-212; 17-3-222;
 2 17-3-241; 17-6-101; 17-7-215; 18-11-112; 19-3-319; 19-3-320; 19-6-404; 19-6-410; 19-9-702; 19-13-604;
 3 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 19-20-607; 19-21-203; 20-8-107; 20-9-534; 20-9-622;
 4 20-9-905; 20-26-617; 20-26-1503; 22-1-327; 22-3-116; 22-3-117; 22-3-1004; 23-4-105; 23-5-306; 23-5-409;
 5 23-5-612; 23-7-301; 23-7-402; 30-10-1004; 37-43-204; 37-50-209; ~~37-51-501~~; 37-54-113; 39-71-503; 41-5-2011;
 6 42-2-105; 44-4-1101; 44-12-213; 44-13-102; 50-1-115; 53-1-109; 53-6-148; 53-6-1304; 53-9-113; 53-24-108;
 7 53-24-206; 60-11-115; 61-3-321; 61-3-415; 69-3-870; 69-4-527; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313;
 8 75-26-308; 76-13-150; 76-13-416; 76-17-103; 76-22-109; 77-1-108; 77-2-362; 80-2-222; 80-4-416; 80-11-518;
 9 80-11-1006; 81-1-112; 81-1-113; 81-7-106; 81-10-103; 82-11-161; 85-20-1504; 85-20-1505; [85-25-102];
 10 87-1-603; 90-1-115; 90-1-205; 90-1-504; 90-3-1003; 90-6-331; and 90-9-306.

11 (4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing,
 12 paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued
 13 pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana
 14 to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state
 15 treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory
 16 appropriation authority for the payments. (In subsection (3): pursuant to sec. 10, Ch. 360, L. 1999, the inclusion
 17 of 19-20-604 terminates contingently when the amortization period for the teachers' retirement system's unfunded
 18 liability is 10 years or less; pursuant to sec. 10, Ch. 10, Sp. L. May 2000, secs. 3 and 6, Ch. 481, L. 2003, and
 19 sec. 2, Ch. 459, L. 2009, the inclusion of 15-35-108 terminates June 30, 2019; pursuant to sec. 73, Ch. 44, L.
 20 2007, the inclusion of 19-6-410 terminates contingently upon the death of the last recipient eligible under
 21 19-6-709(2) for the supplemental benefit provided by 19-6-709; pursuant to sec. 6, Ch. 61, L. 2011, the inclusion
 22 of 76-13-416 terminates June 30, 2019; pursuant to sec. 11(2), Ch. 17, L. 2013, the inclusion of 17-3-112
 23 terminates on occurrence of contingency; pursuant to sec. 27, Ch. 285, L. 2015, and sec. 1, Ch. 292, L. 2015,
 24 the inclusion of 53-9-113 terminates June 30, 2021; pursuant to sec. 6, Ch. 291, L. 2015, the inclusion of
 25 50-1-115 terminates June 30, 2021; pursuant to sec. 28, Ch. 368, L. 2015, the inclusion of 53-6-1304 terminates
 26 June 30, 2019; pursuant to sec. 5, Ch. 383, L. 2015, the inclusion of 85-25-102 is effective on occurrence of
 27 contingency; pursuant to sec. 5, Ch. 422, L. 2015, the inclusion of 17-7-215 terminates June 30, 2021; pursuant
 28 to sec. 6, Ch. 423, L. 2015, the inclusion of 22-3-116 and 22-3-117 terminates June 30, 2025; pursuant to sec.
 29 10, Ch. 427, L. 2015, the inclusion of 37-50-209 terminates September 30, 2019; pursuant to sec. 33, Ch. 457,
 30 L. 2015, the inclusion of 20-9-905 terminates December 31, 2023; pursuant to sec. 12, Ch. 55, L. 2017, the

1 inclusion of 37-54-113 terminates June 30, 2023; pursuant to sec. 4, Ch. 122, L. 2017, the inclusion of 10-3-1304
 2 terminates September 30, 2025; pursuant to sec. 55, Ch. 151, L. 2017, the inclusion of 30-10-1004 terminates
 3 June 30, 2021; pursuant to sec. 1, Ch. 213, L. 2017, the inclusion of 90-6-331 terminates June 30, 2027; pursuant
 4 to secs. 5, 8, Ch. 284, L. 2017, the inclusion of 81-1-112, 81-1-113, and 81-7-106 terminates June 30, 2023;
 5 pursuant to sec. 1, Ch. 340, L. 2017, the inclusion of 22-1-327 terminates July 1, 2023, and pursuant to sec. 2,
 6 Ch. 340, L. 2017, and sec. 32, Ch. 429, L. 2017, is void for fiscal years 2018 and 2019; and pursuant to sec. 10,
 7 Ch. 374, L. 2017, the inclusion of 76-17-103 terminates June 30, 2027.)"

8

9 **Section 3.** Section 37-51-102, MCA, is amended to read:

10 **"37-51-102. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions
 11 apply:

12 ~~(1)~~ "Account" means the real estate recovery account established in 37-51-501.

13 ~~(2)~~(1) (a) "Adverse material fact" means a fact that should be recognized by a broker or salesperson as
 14 being of enough significance as to affect a person's decision to enter into a contract to buy or sell real property
 15 and may be a fact that:

16 (i) materially affects the value, affects structural integrity, or presents a documented health risk to
 17 occupants of the property; or

18 (ii) materially affects the buyer's ability or intent to perform the buyer's obligations under a proposed or
 19 existing contract.

20 (b) The term does not include the fact that an occupant of the property has or has had a communicable
 21 disease or that the property was the site of a suicide or felony.

22 ~~(3)~~(2) "Asset management" means management, oversight, or direct actions taken to maintain or transfer
 23 any real property before a foreclosure sale or in preparation for liquidation of real property owned by the client
 24 pursuant to a foreclosure sale. This includes any action taken to preserve, restore, or improve the value and to
 25 lessen the risk of damage to the property in preparation for liquidation of real property pursuant to a foreclosure
 26 sale.

27 ~~(4)~~(3) "Board" means the board of realty regulation provided for in 2-15-1757.

28 ~~(5)~~(4) "Broker" includes an individual who:

29 (a) for another or for valuable consideration or who with the intent or expectation of receiving valuable
 30 consideration negotiates or attempts to negotiate the listing, sale, purchase, rental, exchange, or lease of real

1 estate or of the improvements on real estate or collects rents or attempts to collect rents;

2 (b) is employed by or on behalf of the owner or lessor of real estate to conduct the sale, leasing,
3 subleasing, or other disposition of real estate for consideration;

4 (c) engages in the business of charging an advance fee or contracting for collection of a fee in
5 connection with a contract by which the individual undertakes primarily to promote the sale, lease, or other
6 disposition of real estate in this state through its listing in a publication issued primarily for this purpose or for
7 referral of information concerning real estate to brokers;

8 (d) makes the advertising, sale, lease, or other real estate information available by public display to
9 potential buyers;

10 (e) aids or attempts or offers to aid, for a fee, any person in locating or obtaining any real estate for
11 purchase or lease;

12 (f) receives a fee, commission, or other compensation for referring to a licensed broker or salesperson
13 the name of a prospective buyer or seller of real property;

14 (g) performs asset management services for real property in conjunction with the marketing or transfer
15 of the property; or

16 (h) advertises or represents to the public that the individual is engaged in any of the activities referred
17 to in this subsection ~~(5)~~ (4).

18 ~~(6)~~(5) "Buyer" means a person who is interested in acquiring an ownership interest in real property or
19 who has entered into an agreement to acquire an interest in real property. The term includes tenants or potential
20 tenants with respect to leases or rental agreements of real property.

21 ~~(7)~~(6) "Buyer agent" means a broker or salesperson who, pursuant to a written buyer broker agreement,
22 is acting as the agent of the buyer in a real estate transaction and includes a buyer subagent and an in-house
23 buyer agent designate.

24 ~~(8)~~(7) "Buyer broker agreement" means a written agreement in which a prospective buyer employs a
25 broker to locate real estate of the type and with terms and conditions as designated in the written agreement.

26 ~~(9)~~(8) "Buyer subagent" means a broker or salesperson who, pursuant to an offer of a subagency, acts
27 as the agent of a buyer.

28 ~~(10)~~(9) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part
29 17.

30 ~~(11)~~(10) "Dual agent" means a broker or salesperson who, pursuant to a written listing agreement or

1 buyer broker agreement or as a buyer or seller subagent, acts as the agent of both the buyer and seller with
2 written authorization, as provided in 37-51-314. An in-house buyer or seller agent designate may not be
3 considered a dual agent.

4 ~~(12)~~(11) "Franchise agreement" means a contract or agreement by which:

5 (a) a franchisee is granted the right to engage in business under a marketing plan prescribed in
6 substantial part by the franchisor;

7 (b) the operation of the franchisee's business is substantially associated with the franchisor's trademark,
8 trade name, logotype, or other commercial symbol or advertising designating the franchisor; and

9 (c) the franchisee is required to pay, directly or indirectly, a fee for the right to operate under the
10 agreement.

11 ~~(13)~~(12) "In-house buyer agent designate" means a broker or salesperson employed by or associated
12 as an independent contractor with a broker and designated by the broker as the exclusive agent for a buyer for
13 a designated transaction and who may not be considered to be acting for other than the buyer with respect to the
14 designated transaction.

15 ~~(14)~~(13) "In-house seller agent designate" means a broker or salesperson employed by or associated
16 as an independent contractor with a broker and designated by the broker as the exclusive agent for a seller for
17 a designated transaction and who may not be considered to be acting for other than the seller with respect to the
18 designated transaction.

19 ~~(15)~~(14) "Listing agreement" means a written agreement between a seller and broker for the sale of real
20 estate, with the terms and conditions set out in the agreement.

21 ~~(16)~~(15) "Negotiations" includes:

22 (a) efforts to act as an intermediary between parties to a real estate transaction;

23 (b) facilitating and participating in contract discussions;

24 (c) completing forms for offers, counteroffers, addendums, and other writings; and

25 (d) presenting offers and counteroffers.

26 ~~(17)~~(16) "Person" includes individuals, partnerships, associations, and corporations, foreign and
27 domestic, except that when referring to a person licensed under this chapter, it means an individual.

28 ~~(18)~~(17) "Property manager" means an individual who for a salary, commission, or compensation of any
29 kind or with the intent or expectation of receiving valuable consideration engages in the business of leasing,
30 renting, subleasing, or other transfer of possession of real estate located in this state and belonging to others

1 without transfer of the title to the property. The term includes but is not limited to an individual who:

2 (a) is employed by or on behalf of the owner, lessor, or potential lessee of real estate to promote or
3 conduct the leasing, subleasing, or other disposition or acquisition of real estate without transfer of the title to the
4 property;

5 (b) negotiates or attempts to negotiate the lease of any real estate located in this state or of the
6 improvements on any real estate located in this state;

7 (c) engages in the business of promoting the lease, rental, exchange, or other disposition of real estate
8 located in this state without transfer of the title to the property through the listing of the real estate in a publication
9 issued primarily for this purpose;

10 (d) assists in creating or completing real estate lease contracts;

11 (e) procures tenants for owners of real estate located in this state;

12 (f) aids or offers to aid, for a fee, any person in locating or obtaining any real estate for lease in this state;

13 (g) makes the advertising of real property for lease available by public display to potential tenants;

14 (h) shows rental or lease properties to potential tenants;

15 (i) in conjunction with property management responsibilities, acts as a liaison between the owners of real
16 estate and a tenant or potential tenant;

17 (j) in conjunction with property management responsibilities, generally oversees the inspection,
18 maintenance, and upkeep of leased real estate belonging to others;

19 (k) in conjunction with property management responsibilities, collects rents or attempts to collect rents
20 for any real estate located in this state;

21 (l) pays a fee, commission, or other compensation to a licensed broker, salesperson, or property
22 manager for referral of the name of a prospective lessor or lessee of real property;

23 (m) receives a fee, commission, or other compensation from a licensed broker, salesperson, or property
24 manager for referring the name of a prospective buyer, seller, lessor, or lessee of real estate; or

25 (n) advertises or represents to the public that the individual is engaged in any of the activities referred
26 to in this subsection ~~(18)~~ (17).

27 ~~(19)~~(18) "Real estate" includes leaseholds as well as any other interest or estate in land, whether
28 corporeal, incorporeal, freehold, or nonfreehold and whether the real estate is situated in this state or elsewhere.

29 ~~(20)~~(19) "Real estate transaction" means the sale, exchange, or lease or grant of an option for the sale,
30 exchange, or lease of an interest in real estate and includes all communication, interposition, advisement,

1 negotiation, and contract development and closing.

2 ~~(21)~~(20) "Salesperson" includes an individual who for a salary, commission, or compensation of any kind
3 is associated, either directly, indirectly, regularly, or occasionally, with a real estate broker to sell, purchase, or
4 negotiate for the sale, purchase, exchange, or renting of real estate.

5 ~~(22)~~(21) "Seller" means a person who has entered into a listing agreement to sell real estate and includes
6 landlords who have an interest in or are a party to a lease or rental agreement.

7 ~~(23)~~(22) "Seller agent" means a broker or salesperson who, pursuant to a written listing agreement, acts
8 as the agent of a seller and includes a seller subagent and an in-house seller agent designate.

9 ~~(24)~~(23) "Seller subagent" means a broker or salesperson who, pursuant to an offer of a subagency, acts
10 as the agent of a seller.

11 ~~(25)~~(24) (a) "Statutory broker" means a broker or salesperson who assists one or more parties to a real
12 estate transaction without acting as an agent or representative of any party to the real estate transaction.

13 (b) A broker or salesperson is presumed to be acting as a statutory broker unless the broker or
14 salesperson has entered into a listing agreement with a seller or a buyer broker agreement with a buyer or has
15 disclosed, as required in this chapter, a relationship other than that of a statutory broker.

16 ~~(26)~~(25) "Supervising broker" means a licensed broker with whom a licensed salesperson is associated,
17 directly, indirectly, regularly, or occasionally, to sell, purchase, or negotiate for the sale, purchase, exchange, or
18 renting of real estate.

19 ~~(27)~~(26) "Supervising broker endorsement" means an endorsement to a broker's license that is required
20 of any licensed broker who supervises licensed salespersons performing real estate activity."

21

22 **Section 4.** Section 90-6-107, MCA, is amended to read:

23 **"90-6-107. Deposit and expenditure of funds.** (1) There is a housing authority enterprise fund in the
24 proprietary fund type as provided for in 17-2-102(2). All funds from the proceeds of bonds issued under this part,
25 fees, and other money received by the board, money appropriated by the legislature for the use of the board in
26 carrying out this part, money received by license assessments by the board of realty regulation under [section
27 1], and money made available from any other source for the use of the board must be deposited in the housing
28 authority enterprise fund. All funds deposited in the housing authority enterprise fund, except funds appropriated
29 by the legislature for use of the board in payment of expenses incurred in carrying out this part, are continuously
30 appropriated to and may be expended by the board for the purposes authorized in this part.

1 (2) There is a capital reserve account in the housing authority enterprise fund provided for in subsection
 2 (1). The capital reserve account consists of the aggregate money retained by the board under existing
 3 agreements with bondholders as the minimum capital reserve requirement described in 90-6-119 for each bond
 4 issue sold by the board.

5 (3) Funds appropriated by the legislature for use of the board in payment of expenses incurred in
 6 carrying out this part must be deposited in the housing authority enterprise fund. Funds expended by the board
 7 under this subsection must be repaid by the board from the fees and charges collected under this part and from
 8 any other money available for repayment in accordance with this part."

9
 10 **NEW SECTION. Section 5. Repealer.** The following sections of the Montana Code Annotated are
 11 repealed:

- 12 37-51-501. Real estate recovery account established -- minimum balance -- interest.
- 13 37-51-502. Initial licensure and additional assessment.
- 14 37-51-503. Claims against fund -- orders for payment.
- 15 37-51-504. Form of application.
- 16 37-51-505. Motion to dismiss application.
- 17 37-51-506. Hearing on application.
- 18 37-51-507. Payment from account.
- 19 37-51-508. Limitation of payment -- pro rata distribution.
- 20 37-51-509. Claims satisfied in order of filing.
- 21 37-51-510. Deposits by board.
- 22 37-51-511. Subrogation rights of board.
- 23 37-51-512. Other disciplinary powers unimpaired -- effect of repayment to fund.

24
 25 **NEW SECTION. Section 6. Transfer of funds.** The board must transfer remaining funds from the real
 26 estate recovery account to the housing Montana fund provided for in 90-6-107 and 90-6-133 on February 1, 2021.

27
 28 **NEW SECTION. Section 7. Transition from real estate recovery account.** All claims to the real estate
 29 recovery account must be submitted by November 1, 2020, and completed by January 31, 2021, pursuant to
 30 37-51-501 through 37-51-512.

1

2 **NEW SECTION.** **Section 8. Codification instruction.** [Section 1] is intended to be codified as an
3 integral part of Title 37, chapter 51, and the provisions of Title 37, chapter 51, apply to [section 1].

4

5 **COORDINATION SECTION.** **Section 9. Coordination instruction.** If [LC1473] is not passed and
6 approved, then [this act] is void.

7

8 **NEW SECTION.** **Section 10. Effective dates.** (1) Except as provided in subsection (2), [this act] is
9 effective February 1, 2021.

10 (2) [Section 7] and this section are effective October 1, 2019.

11

- END -