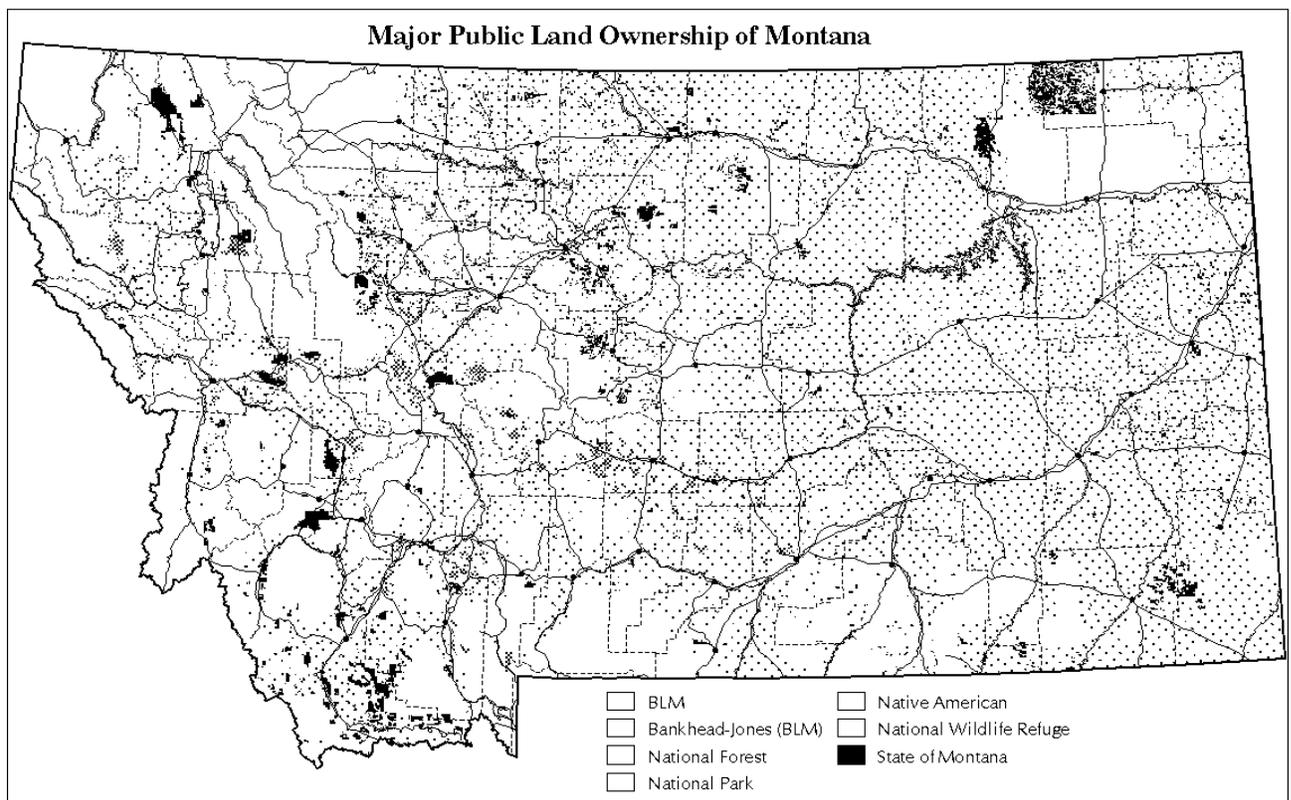


# Financing the Administration of Montana's Trust Lands

A Review and Analysis of Federal Granting Legislation and Current Financing Methods

2006



Prepared by Krista Lee Evans  
Legislative Research Analyst

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# Financing the Administration of Montana's Trust Lands

## A Review and Analysis of Federal Granting Legislation and Current Financing Methods

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<sup>1</sup> LC 7777 WAS NOT requested as a committee bill and is provided for informational purposes only.

# I. Introduction—Environmental Quality Council Study Subcommittee Study—A Review of the Interim

The Environmental Quality Council (EQC) is a 17-member interim committee of the Montana Legislature. At the first EQC meeting of each interim between legislative sessions, the EQC members discuss the study resolutions that have been assigned to the EQC by Legislative Council as well as issues raised by members of the EQC. After reviewing and discussing the issues, the EQC determines the interim work plan by analyzing issues and their complexity, committee resources available, staff resources available, and financial resources available. The EQC then ranks the studies and the member-requested issues and determines how the EQC will address the workload throughout the interim.

For the 2005-2006 interim, the EQC decided to split some of the issues into subcommittees appointed by the co-chairpersons. The "study subcommittee" was assigned the task of looking into the funding of the administration of state trust land in more detail. Financing the administrative costs of trust lands was a member-defined issue that the EQC agreed to look into and assigned to the study subcommittee.

The study subcommittee work plan provided that the subcommittee would evaluate the following elements:

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The study subcommittee was assigned the task of looking into the funding of the administration of state trust land in more detail.

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1. Facilitating the convening of a meeting of interested parties to articulate the issues and discuss possible policy changes that may need to be made.
2. Providing historical and background information related to the administration fees deducted from proceeds from state lands.
3. Work group meetings to determine findings and recommendations.
4. Final decision of findings, recommendations, and any legislation by the work group presented to the subcommittee.
5. Full EQC review, rejection, or approval of findings, recommendations, and any legislation.

## **Review of the Interim**

To carry out the work plan that the EQC study subcommittee adopted, the subcommittee outlined the goals and tasks necessary to complete the trust lands study, in addition to their other responsibilities, by September 15, 2006. The subcommittee made an effort to include an opportunity for public comment regarding trust land management and invited concerned trust beneficiaries to be part of the discussion. The subcommittee also allowed for public comment on issues that were not covered on each meeting's agenda. The study subcommittee's study process throughout the interim is outlined below.

### **Nature and Scope of the EQC Study Subcommittee Trust Land Administration Study**

The Montana University System campuses are the beneficiaries of five separate land grants given by Congress at the time of statehood. The common schools are recipients of similar grants as well as the School for the Deaf and Blind, Pine Hills School, and the Veterans' Trust. The Legislature has allowed the Department of Natural Resources and Conservation (DNRC) to assess fees from the earnings realized from these trust lands to cover the expenses of administering these lands. Over the past decade, the legality of these assessments has come increasingly into question. This issue was discussed in detail prior to the 2005 session and a bill draft was written. However, the draft was never introduced.

The issue before the study subcommittee was whether it is advisable for the DNRC to continue to receive funding from a percentage of the revenue received from the trusts as payment for their administration and management of the property. The DNRC retains their administrative fee before depositing the revenue into the various trusts as provided in the Montana Constitution. There is also language in the various federal laws that granted the property that provides guidance. The Legislature has directed the DNRC to keep a certain percentage of revenue to offset administrative expenses since the early 1960s. The percentages are different depending on the program and the amount of administration that is required and is provided in more detail later in this report.

Because of the magnitude of this issue, the subcommittee chose to address many of the issues related to trust land administration as a subcommittee rather than requesting that a work group conduct the research and report back to the subcommittee.

The primary issue that was submitted to a work group was whether or not the administration of Morrill Act lands should be funded with general fund revenue rather than revenue received from the trust, and if so, determining the appropriate amount.

## **Environmental Quality Council Study Subcommittee Interim Study Process**

### September 15, 2005

- Presentation and update regarding the DNRC administration of school trust lands

### January 26, 2006

- Presentation and update regarding the DNRC administration of school trust lands
- Trust Management 101 – introduction to common trust practices
- University System funding process
- Morrill Act lands panel discussion including the DNRC, Montana University System, Budget Office, and Board of Investments
- Discuss proposed resolution to Morrill Act administrative funding
- Discussion and decision on statutory cleanup to implement the proposed Morrill Act administration resolution
- Board of Investments administrative costs
- Discuss administrative costs associated with university trusts other than the Morrill Act trust
- DNRC proposal for alternative funding formula
- Montana University System proposal regarding the limitation of use of revenues from trusts to fund administration on University System trust lands
- Review work plan and make changes if necessary
- Identify areas where more information is needed
- Public input

### March 16, 2006

- Discuss and review the Montana University System and Office of Public Instruction positions regarding funding of administrative costs with generated revenue
- Appropriations 101 – overview and discussion regarding appropriations process and how it is similar and different between the University System and common schools
- Morrill Act trust proposed resolution bill draft review and discussion

- Review and discuss bill draft related to the DNRC proposal to revise the funding formula for administration of all trust land administration except Morrill Act land administration
- Review and discussion of any findings, recommendations, or proposed legislation
- Review of progress related to specific issues identified in the work plan
- Review work plan and make changes if necessary
- Public comment

May 18, 2006

- Final review and decision, prior to public comment, on bill draft regarding the DNRC alternative funding formula for funding administration on trust lands with revenues received from the trusts
- Final review and decision, prior to public comment, on bill draft regarding the removal of the ability to use revenue from Morrill Act lands, or any other land trust, to fund the administration of Morrill Act lands
- Final decision, prior to public comment, on paying the University System for past use of Morrill Act revenue to fund administrative costs
- Final decision, prior to public comment, on paying the trusts, other than the Morrill Act trust, for the administrative costs the trusts have borne that were related to the Morrill Act lands administration
- Review and discussion of revised findings, recommendations, or proposed legislation
- Public comment

June 1, 2006

- Send out DRAFT Morrill Act administration bill for public comment
- Send out DRAFT revised funding formula bill draft for public comment
- Send out findings, recommendations, and draft study report for public comment

July 3, 2006

- Compile and distribute comments on draft documents to subcommittee members

July 17, 2006

- Review public comment regarding DRAFT Morrill Act administration bill
- Review public comment regarding DRAFT revised funding formula bill draft
- Review public comment regarding findings, recommendations, and draft study report

- Last dates to revise draft reports and concepts for proposed legislation

September 11-12, 2006 (EQC meeting)

- EQC final decision on the DNRC administration of school trust lands findings, recommendations, and any legislation
- Selection of bill sponsors and development of strategy.
- Briefing on potential legislative proposals (if any) related to subcommittee topics

## 2. Findings and Recommendations

### Morrill Act Trust Lands

#### Findings

1. Montana's federally granted lands are held in trust pursuant to The Enabling Act and the Montana Constitution.
2. The language in the granting act determines how the asset is managed and provides sideboards that were conditions of accepting the grant from the federal government. By accepting the grant, the state accepted the associated conditions.
3. There are 10 land trusts managed for specific beneficiaries. The Morrill Act land trust is managed for the University System, specifically the "Agricultural College".
4. Morrill Act lands were granted to the state by acts of Congress in the First Morrill Act of July 2, 1862, and the Second Morrill Act of August 30, 1890.
5. Section 3(5) of the Morrill Act states that "all the expenses of management, superintendence, and taxes from date of selection of said lands, previous to their sales, and all expenses incurred in the management and disbursement of the moneys which may be received therefrom, shall be paid by the States to which they may belong, out of the treasury of said States, so that the entire proceeds of the sale of said lands shall be applied without any diminution whatever to the purposes hereinafter mentioned."
6. The states of North Dakota, South Dakota, Montana, and Washington were part of the same Enabling Act facilitating their statehood.
7. In 1912 Department of Interior Secretary Walter L. Fisher issued an opinion to the Montana Board of Land Commissioners providing that "it is clear that the use of any portion of the principal or income derived from the lands or funds set aside and appropriated by the acts of Congress mentioned for the endowment and support of agricultural colleges in payment of administration expenses is a violation of law."

8. The 1912 Department of the Interior opinion also stated that "the State is required to cease the use of any portion of the moneys in question in payment of administrative expenses, and to replace moneys heretofore taken from such funds."
9. In Chapter 70 of the Laws of the 13th General Assembly, the Montana Legislature appropriated "the sum of Nineteen Thousand, Three Hundred Seventy-two Dollars and thirty-two cents, to reimburse said income fund for moneys heretofore taken therefrom for the administration of the land grants of said Agricultural College for the fiscal years 1897 to and including the fiscal year 1912."
10. In 1996 the Washington Attorney General issued a legal opinion stating "By virtue of Section 16 of the Enabling Act and 7 U.S.C. § 303, a provision in the first Morrill Act, the state is precluded from charging the expense of managing and administering Section 16 lands against proceeds of the sale of the lands. Proceeds of the sale of the lands include proceeds from the sale of resources that are part of the lands".
11. The DNRC stopped deducting administrative costs for management of the Morrill Act lands from Morrill Act land revenue in 2003.
12. The DNRC did not request or obtain an appropriation through the legislative process to pay for administrative costs associated with Morrill Act lands; therefore, the other trusts managed by the DNRC have absorbed this administration cost.

## **Recommendations**

1. Based on the clear language of the first Morrill Act and further supported by the 1912 Department of Interior opinion, the 1913 Montana Legislature's payback for administrative costs, and the Washington Attorney General opinion (AG096-11), the Legislature should fund administration of Morrill Act lands from some source other than trust revenues.
2. Request a bill to:
  - a. provide for a statutory appropriation to ensure that DNRC's fiduciary responsibilities to the Morrill Act trust are not hindered by lack of or inadequate funding; and

- b. make it clear in statute that administrative fees of any kind may not be assessed against Morrill Act trust lands revenue.

## Other Trust Lands

### Findings

1. There are 10 trusts that the DNRC manages for different beneficiaries.
2. Providing funding for the administration of the trusts through revenues received from those trusts provides stability and continuity to the DNRC, which in turn provides an environment conducive to the DNRC meeting its fiduciary responsibilities to the trusts.
3. Other than the Montana University System, none of the beneficiaries associated with the trusts has expressed concern regarding the use of revenues from the trusts to pay for administering the trusts.
4. In 1967, Attorney General Forrest Anderson issued 32 Attorney General Opinion No. 8. In that opinion Attorney General Anderson concluded that the state of Montana has, in executing the trust imposed by the grant of school trust lands, an inherent equitable right to reimbursement for the trust for all charges and expenses necessarily incurred in the execution of the trust where no provision exists to the contrary in the grant creating the trust.
5. In a letter dated February 24, 1994, Mr. Greg Petesch, Director of Legal Services for the Legislative Services Division, advised the Legislature that he harbored concerns regarding funding the administration of school trust lands with revenues received from the lands. Mr. Petesch felt that use of interest from the permanent fund and income from the school trust lands violated The Enabling Act and Article X, section 5, of the 1972 Montana Constitution.
6. On September 15, 2005, Attorney General Mike McGrath provided a letter of counsel to Governor Schweitzer. Attorney General McGrath stated that he feels that Article X, section 5, of the 1972 Montana Constitution does not prohibit the deduction of revenue to administer the various school trusts. Further, Attorney General McGrath affirmed the conclusions reached by Attorney General Anderson in 1967.

7. The Legislature has provided, in statute, for the funding of administration of trust lands through the use of revenues since the early 1960s.
8. The concept of simplifying and streamlining the DNRC's accounting process and to base the funding cap on revenues rather than 1.8% of the permanent fund balance is laudable.
9. Increased transparency and simplification of the accounting process as it relates to trust land management would significantly benefit the various trust beneficiaries.
10. In order for the Legislature to meet its fiduciary responsibilities to the trust beneficiaries, the state accounting system must provide transaction detail, in an easily accessible format, related to the actual revenue source providing funding to the trust land accounts.

## **Recommendations**

1. Make no changes to statute at this time, other than changes necessary to address the Morrill Act land trust administrative costs.
2. If the DNRC decides to pursue the draft account consolidation legislation (LC7777) that the study subcommittee considered and debated throughout the interim and chose not to adopt as a committee bill, the DNRC needs to resolve the following issues before introduction of a bill:
  - a. Is it more appropriate and/or more accurate to use gross revenue or distributable revenue when applying the percentage of revenue that can be used for administration?
  - b. Are distributable revenues sufficient to fund administration of trust lands? If so, should the use of permanent fund revenue, such as mineral royalties, which statute currently allows the DNRC to use for administration costs, be removed from statute?
3. Do not request that the account consolidation legislation (LC7777) be an Environmental Quality Council bill.

### 3. Trust Land Origins in Montana

There are multiple trusts that are property of the state of Montana. With each of these trusts there are designated beneficiaries. The trusts include both property and the permanent fund, which must be managed in the best interest of the beneficiary. The beneficiaries were outlined in the granting document for each trust. The granting document, by trust, is provided in Figure 1 on pages 15-16.

When states became part of the United States, Congress gave them certain property with conditions attached. These conditions provided what the revenue from the property could be used for. The granting documents also provide what must happen if the property is sold. For example, sections 16 and 36 of each township are often referred to as “school sections”. This is because those sections of land, unless they were already homesteaded or held by a deed, were given to the states to be used for funding a public education system.

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**The question that gave rise to this study was whether or not revenue from the various trusts could be used to pay administrative costs.**

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As with many other issues, the western United States and the eastern United States chose to handle their trust lands differently. It is doubtful that it was an organized effort between the states, but in the end they all handled it similarly. In the eastern United States, a majority of the states sold their property and put the

revenue into a “trust fund” to be used for the purpose outlined in the granting act or document. Conversely, in the western United States, a majority of the states held on to the actual property and manage that property to generate revenue for the trust beneficiaries. Over time, portions have been sold and certain rights have been sold. The proceeds of these sales, considered a permanent disposition of property, were placed in “trust funds” or what is often called the permanent fund. In some cases, these permanent funds are guaranteed in the Montana Constitution against loss or diversion. Each trust and its associated beneficiary is earning revenue from the property portion of their trust as well as the cash part of their trust.

It is important to understand and know where the trusts came from and what conditions Montana agreed to when the property was accepted. Because the granting document trumps, it is critical to review and understand what is provided in these documents—primarily The Enabling Act and the Morrill Act. The Morrill Act was the “land grant college” grant, and hence Montana State University is the beneficiary.

There are two Morrill Act grants—one enacted in the actual Morrill Act and a second grant provided for in The Enabling Act. The Enabling Act provided for multiple purposes for revenue attached to each acre—these provisions in The Enabling Act are what set up the framework for our current university structure. For example, The Enabling Act provided for a “school of mines” (Montana Tech) and “state normal schools” (UM-Western). The Enabling Act also led to the formation of a “reform school” (Pine Hills) and a “deaf and dumb asylum” (Montana School for the Deaf and Blind). The Enabling Act also recognized that there would be ongoing costs associated with the public buildings necessary to run a state government—it provided a specific number of acres to be used for “public buildings at the capital of the state”.

The question that gave rise to this study was whether or not revenue from the various trusts could be used to pay administrative costs. The question is further complicated by what is allowed and what is not allowed in the “granting act” and whether the Legislature and the DNRC have acted within these restrictions in paying for administration. To take it one step further, there is the discussion of revenue that is received from the permanent disposition of property, which should be deposited in the “permanent fund” of the trust, vs. revenue received as the result of use of the property such as agriculture, grazing, or recreational use—often called “distributable revenues”. The rules for each “type” of revenue are different.

The discussion and interpretation of the federal granting acts as well as the Montana Constitution and Montana statutes vary greatly. The language from each is provided below so that the readers can read the material themselves and come to their own conclusion and interpretation.

## **Federal Law**

### **Enabling Act**

The Enabling Act authorized the people of Montana to form a constitution and a state government, allowed the state to be admitted to the union on an equal footing with the original states, and made donations of public land to the state. Pertinent provisions of The Enabling Act are outlined below.

§ 4. Fourth. That provision shall be made for the establishment and maintenance of systems of public schools, which shall be open to all the children of said States, and free from sectarian control.

§10. That upon the admission of each of said States into the Union sections numbered sixteen and thirty-six in every township of said proposed States, and where such section, or any parts thereof, have been sold or otherwise disposed of by or under the authority of any act of Congress, other lands equivalent thereto, in legal subdivisions of not less than one quarter section, and as contiguous as may be to the section in lieu of which the same is taken, are hereby granted to said States for the support of common schools . . . . (emphasis added)

§ 11. With the exception of the lands granted for public buildings, the proceeds from the sale and other permanent disposition of any of the said lands and from every part thereof, shall constitute permanent funds for the support and maintenance of the public schools and the various state institutions for which the lands have been granted. Rentals on leased land, proceeds from the sale of timber and other crops, interest on deferred payments on land sold, interest on funds arising from these lands, and all other actual income, shall be available for the acquisition and construction of facilities, including the retirement of bonds authorized by law for such purposes, and for the maintenance and support of such schools and institutions. Any state may, however, in its discretion, add a portion of the annual income of the permanent funds.

The lands hereby granted shall not be subject to pre-emption, homestead entry, or any other entry under the land laws of the United States, whether surveyed or unsurveyed, but shall be reserved for the purposes for which they have been granted. (emphasis added)

§ 12. That upon the admission of each of said states into the Union, in accordance with the provisions of this act, fifty sections of unappropriated public lands within such states, to be selected and located in legal subdivisions as provided in section 10 of this act, shall be, and are hereby, granted to said states for public buildings at the capital of said states for legislative, executive, and judicial purposes, including construction, reconstruction, repair, renovation, furnishings, equipment, and any other permanent improvement of such buildings and the acquisition of necessary land for such buildings, and the payment of principal and interest on bonds issued for any of the above purposes. (emphasis added)

§ 14. That the lands granted to the Territories of Dakota and Montana by the act of February eighteenth, eighteen hundred and eighty-one, entitled "An act to grant lands to Dakota, Montana, Arizona, Idaho and Wyoming for university purposes," are hereby vested in the States of South Dakota, North Dakota, and Montana, respectively, if such States are admitted into the union, as provided in this act, to the extent of the full quantity of seventy-two sections to each of said States, and any

portion of said lands that may not have been selected by either of said Territories of Dakota or Montana may be selected by the respective States aforesaid; but said act of February eighteenth, eighteen hundred and eighty-one, shall be so amended as to provide that none of said lands shall be sold for less than ten dollars per acre, and the proceeds shall constitute a permanent fund to be safely invested and held by said States severally, and the income thereof be used exclusively for university purposes. And such quantity of the lands authorized by the fourth section of the act of July seventeenth, eighteen hundred and fifty-four, to be reserved for university purposes in the Territory of Washington, as, together with the lands confirmed to the vendees of the Territory by the act of March fourteenth, eighteen hundred and sixty-four, will make the full quantity of seventy-two entire sections, are hereby granted in the like manner to the State of Washington for the purpose of a university in said State. None of the lands granted in this section shall be sold at less than ten dollars per acre; but said lands may be leased in the same manner as provided in section eleven of this act. The schools, colleges and universities provided for in this act shall forever remain under the exclusive control of the said States, respectively, and no part of the proceeds arising from the sale or disposal of any lands herein granted for educational purposes shall be used for the support of any sectarian or denominational school, college or university. The section of land granted by the act of June sixteenth, eighteen hundred and eighty, to the Territory of Dakota, for an asylum for the insane shall, upon admission of the said State of South Dakota into the Union, become the property of said State. (emphasis added)

§ 17. That in lieu of the grant of land for purposes of internal improvement made to new States by the eighth section of the act of September fourth, eighteen hundred and forty-one, which act is hereby repealed as to the States provided for by this act, and in lieu of any claim or demand by the said States, or either of them, under the act of September twenty-eight, eighteen hundred and fifty, and section twenty-four hundred and seventy-nine of the Revised Statutes, making a grant of swamp and overflowed lands to certain States, which grant it is hereby declared is not extended to the States provided for in this act, and in lieu of any grant of saline lands to said States, the following grants of land are hereby made, to-wit:

To the State of Montana: For the establishment and maintenance of a school of mines, one hundred thousand acres; for State normal schools, one hundred thousand acres; for agricultural colleges, in addition to the grant hereinbefore made for that purpose, fifty thousand acres; for the establishment of a State reform school, fifty thousand acres; for the establishment of a deaf and dumb asylum, fifty thousand acres; for public buildings at the capital of the State, in addition to the grant hereinbefore made for that purpose, one hundred and fifty thousand acres.

That the States provided for in this act shall not be entitled to any further or other grants of land for any purpose than as expressly provided in this Act. And the lands granted by this section shall be held, appropriated, and disposed of exclusively for the purposes herein mentioned, in such manner as the legislatures of the respective States may severally provide. (emphasis added)

**The Morrill Act of July 2, 1862, Ch. 130, 12 Stat. 503, 7 U.S.C. 301, et seq.**

The Morrill Act provided for the donation of public lands to states and territories “which may provide Colleges for the Benefit of Agriculture and Mechanic Arts.” These universities came to be known as the "Land Grant Universities". The act provided for the sale of the property at a minimum price. However, the proceeds of the sales had to be "applied to the uses and purposes prescribed in this act, and for no other use or purpose whatsoever . . ."

Section 3 of the Act provided: "That all expenses of management, superintendence, and taxes from date of selection of said lands, previous to their sales, and all

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The Montana Constitution addresses public school fund revenue and how it should be apportioned but does not discuss whether or not the administrative costs can be collected prior to disbursement.

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expenses incurred in the management and disbursement of the moneys which may be received therefrom, shall be paid by the States to which they may belong, out of the treasury of said States, so that the entire proceeds of the sale of said lands shall be applied without any diminution whatever to the purposes hereinafter mentioned."

## State Law

### The Montana Constitution

The Montana Constitution addresses public school fund revenue and how it should be apportioned. However, it does not discuss whether or not administrative costs can be collected prior to the disbursement of the revenue to the appropriate trust or school districts. There is disagreement on whether the Constitution is speaking to "gross" or "net" revenue. Article X, Sections 3, 5, and 10, of the Montana Constitution are provided below.

## Article X. EDUCATION AND PUBLIC LANDS

Section 3. Public school fund inviolate. The public school fund shall forever remain inviolate, guaranteed by the state against loss or diversion.

Section 5. Public school fund revenue. (1) Ninety-five percent of all the interest received on the public school fund and ninety-five percent of all rent received from the leasing of school lands and all other income from the public school fund shall be equitably apportioned annually to public elementary and secondary school districts as provided by law.

(2) The remaining five percent of all interest received on the public school fund, and the remaining five percent of all rent received from the leasing of school lands and all other income from the public school fund shall annually be added to the public school fund and become and forever remain an inseparable and inviolable part thereof. (emphasis added)

Section 10. State university funds. The funds of the Montana university system and of all other state institutions of learning, from whatever source accruing, shall forever remain inviolate and sacred to the purpose for which they were dedicated. The various funds shall be respectively invested under such regulations as may be provided by law, and shall be guaranteed by the state against loss or diversion. The interest from such invested funds, together with the rent from leased lands or properties, shall be devoted to the maintenance and perpetuation of the respective institutions.

## Trusts and Associated Granting Acts

There are multiple trusts that hold land that the DNRC manages. The beneficiaries of the various trusts and the acreage amounts as of August 8, 2004, are as follows:

**Figure 1. Trusts and Associated Acts<sup>2</sup>**

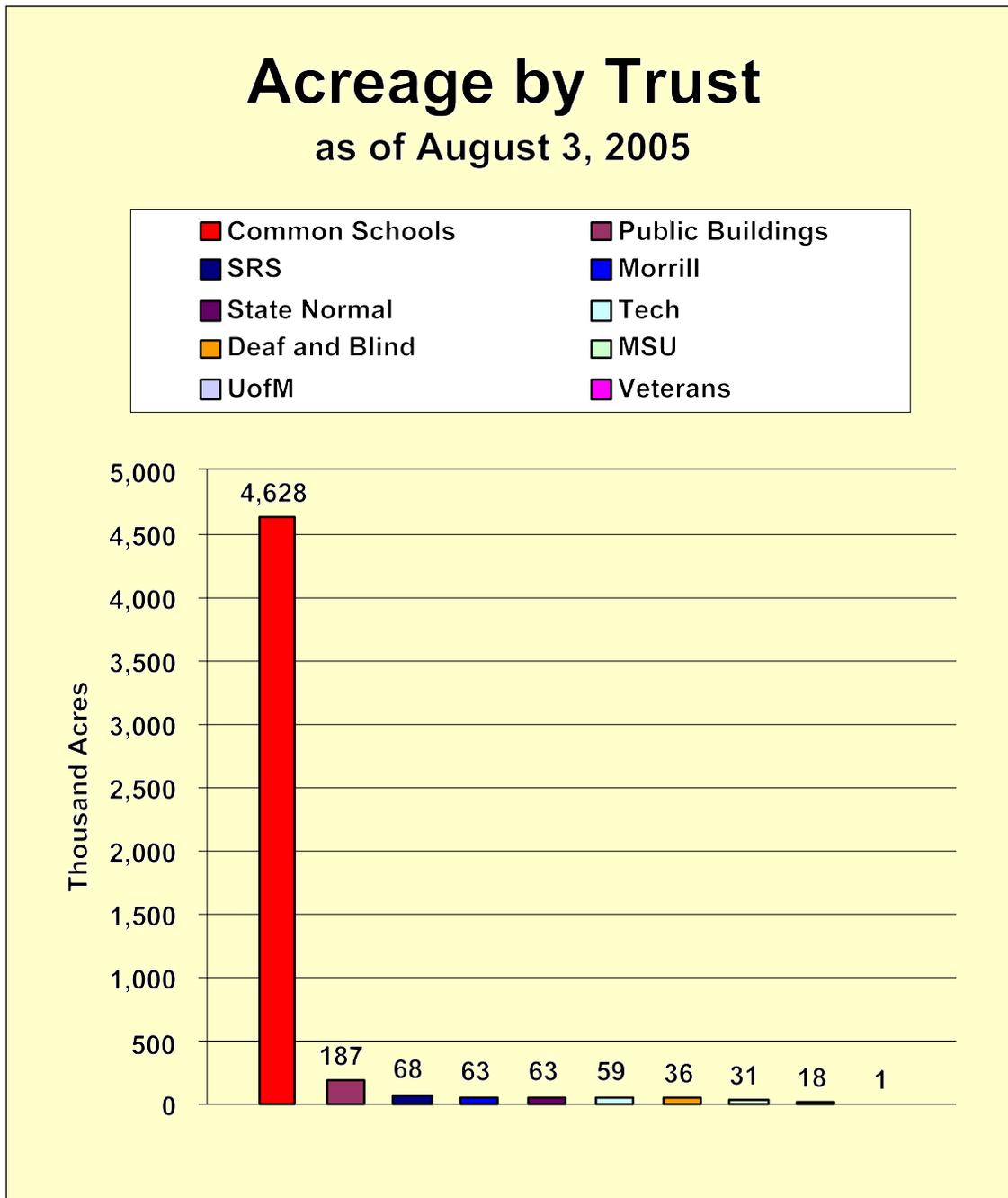
Beneficiary	Granting Act	Original Acreage	Current Surface Acreage	Current Mineral Acreage
Common School	Enabling Act (Section 4)	5,188,000	4,631,820	5,608,537
The University of Montana	Enabling Act (Section 14)	46,720	18,556	33,754

<sup>2</sup>Source: <http://www.dnrc.state.mt.us/trust/acreage.htm>.

Beneficiary	Granting Act	Original Acreage	Current Surface Acreage	Current Mineral Acreage
Montana State University	Morrill Act	90,000	63,456	76,960
Montana State University - 2nd Grant	Enabling Act (Section 17)	50,000	31,424	47,077
Montana Tech of The University of Montana	Enabling Act (Section 17)	100,000	59,440	86,267
State Normal Schools (UM-Western and MSU-Billings)	Enabling Act (Section 17)	100,000	63,455	83,540
School for the Deaf and Blind	Enabling Act (Section 17)	50,000	36,461	41,171
State Reform School (Pine Hills)	Enabling Act (Section 17)	50,000	67,795	78,125
Veterans' Home	DNRC unable to determine	0	1,276	1,276
Capitol Trust (public buildings)	Enabling Act (Sections 12 and 17)	182,000	187,009	228,310

The amount of acreage per trust is important when discussing administrative costs because the DNRC currently assigns the costs of administering the trusts to each trust based on acreage or revenue—depending on the activity that generated the revenue. Common Schools is, by far, the largest trust with respect to acreage and also with respect to revenue.

Figure 2. Acreage by Trust<sup>3</sup>



<sup>3</sup>Source: Department of Natural Resources and Conservation, "Trust Land Fees by Trust" Spreadsheet.

## 4. Administration of Trust Lands

### Statutory Guidance

When the state of Montana agreed to accept lands granted to the state by the federal government, the state also agreed to the conditions associated with those lands. The conditions in federal law are fairly detailed and address issues ranging from what the state has to do with any money that it receives as the result of a sale of the property to a minimum amount for which the property can be sold.<sup>4</sup> It is arguable that a permanent disposition of an interest in property is the same as actually selling title to the property and that funds received as the result of this permanent disposition must be placed in the permanent fund of the trust—some of which, depending on the trust, are protected by the Montana Constitution against loss or diversion.

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**When the state of Montana agreed to accept lands granted to the state by the federal government, the state also agreed to the conditions associated with those lands.**

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The Montana Code Annotated plays a role in the management of the trust lands because legislatures over the years have provided direction to the land manager on what they feel is appropriate with regard to managing the property. This direction includes classification of the property, the

types of uses that can occur on state property, a description of fair market value, and other important guidance for the DNRC. This guidance is generally specific to the type of activity that is proposed. For example, the types of activities that the DNRC oversees on trust lands include grazing, agriculture, commercial development, land banking, recreational use, and timber harvest, to name a few. Each of these activities has statutes that govern, to a certain extent, how the activities can occur and formulas to be used for determining the amount the DNRC can assess for the privilege of using state trust land and ensuring that fair market value is received in exchange for this use.

The Legislature has designated the DNRC as the entity that manages trust lands in Montana. There is other property or interest in property that is owned by the state. These parcels are not restricted by The Enabling Act or the Morrill Act and are generally managed by the state agency that is most closely related to the property's purpose. For example, Wildlife Management Areas are managed by the Department of Fish, Wildlife, and Parks. The statutes provided for in Appendix A outline the

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<sup>4</sup> Sections 11 and 14 of [The Enabling Act](#).

complex structure that exists for administration of state trust lands and the funding of that administration.

There are interesting twists that occur in statute that show the lengthy and often controversial history of management of state trust lands. For example:

- Section 20-9-341, MCA, defines interest and income money. It also provides that the deposits are made after deductions for provisions of Title 77, chapter 1, part 6, and 77-1-109. However, there are other statutes, primarily the recreational use statutes, the land banking statutes, and the commercial leasing statutes (77-1-802, 77-1-808, 77-1-815, 77-1-905, and 77-2-362) that are not included in this section. It appears that there is a conflict in the statutes with regard to how the deposits are to be handled. Some statutes allow for a percentage to be retained by the DNRC, and others do not include those percentages in amounts allowed to be retained.
- Section 17-3-1003, MCA, provides: "For the support and endowment of each state institution, there is annually and perpetually appropriated, 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." The land banking statutes are included in this section as an allowed deduction but the recreational use statutes and the commercial lease statutes are not included. Again, there appears to be a conflict, or did a past Legislature do this intentionally?
- Section 77-1-109, MCA, provides that mineral royalties are to be deposited in the trust land administration account. However, 77-3-106, 77-3-206, 77-3-318, 77-3-436, and 77-4-127, MCA, provide that all moneys collected as royalties are to be credited to the appropriate permanent fund. Case law shows that the sale or leasing of mineral rights is a permanent disposition of property and therefore, as required by the granting acts, the revenue from this permanent disposition must be deposited in the permanent fund of the appropriate trust. Section 77-1-109, MCA, appears to ignore the permanent nature of the disposition of mineral royalties. At a minimum there is a conflict in statute.

# Fiduciary Responsibilities to Beneficiaries

Basic trust law and common trust practices require that the entity that manages a trust on behalf of a beneficiary has a fiduciary responsibility to that beneficiary. The DNRC has the exclusive authority and discretion to manage and control the assets of the trust subject to the limitations and sideboards set by the granting act, the Montana Constitution, and the Legislature. Therefore, both the DNRC and the Legislature have fiduciary responsibilities.

Fiduciaries have important responsibilities and are subject to standards of conduct because they act on behalf of the trust and its beneficiaries. These responsibilities include:

- acting solely in the interest of trusts and their beneficiaries and with the exclusive purpose of providing benefits to them;
- carrying out their duties prudently;
- following the trust documents, including the granting act, the Montana Constitution, and pertinent statutes; and
- paying only reasonable plan expenses.

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It could be argued that the Legislature, as part of its fiduciary responsibility, must ensure that the DNRC receives adequate funding for the administration and management of the trust lands.

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The duty to act prudently is one of a fiduciary's central responsibilities. It requires expertise in a variety of areas. Prudence focuses on the process for making fiduciary decisions.

## Montana Legislature

It is critical that the Legislature recognizes its fiduciary responsibility and passes laws only when the Legislature feels it is in the best interest of the trust and the beneficiary. It is also the duty of the Legislature to ensure that it is operating within the confines and constraints of the granting documents. It could be argued that the Legislature, as part of its fiduciary responsibility, must ensure that the DNRC receives adequate funding for the administration and management of the trust lands.

## **Montana Department of Natural Resources and Conservation**

Following the terms of the granting act, the Montana Constitution, and applicable statutes is an important responsibility. These should serve as the foundation for operations regarding the trusts. It is a balancing act for the DNRC with regard to short-term revenue generation vs. long-term revenue generation and how the agency manages the property to produce income while still preserving the health and production capability of the property.

# 5. Financing the Administration of Trust Lands in Montana

## Current Trust Land Funding—Allocation of Administrative Costs<sup>5</sup>

Seven state special revenue accounts receive revenues from trust land activities. The revenues to each fund are not easily found within SABHRS (the state computerized accounting system). The incoming revenue is booked as a grant/transfer and does not identify the type of revenue coming into the fund. The purpose of this section is to outline how administrative allocations are currently being made against trust land revenues.

Administrative costs are not charged against revenues derived from lands received under the Morrill Act. Federal law (the Morrill Act) prohibits retaining of revenues for administrative purposes.

### Recreational Use—Fund 02241

The recreational use account is funded by retaining 10% of the revenues generated from the sale of recreational use permits. This includes the \$2.00 fee attached the conservation licenses required to hunt or fish in Montana. The 10% is designated to mitigate the affects of recreation on public land.

When the fees are received, 10% is retained for deposit into the recreational use fund. The remaining revenue is allocated to the trusts based on the trust's percentage of total surface acres held by all trusts. The following table is the allocation percentages used for fiscal year 2005.

**Figure 3. Trust Grant Percentage of Total Acres**

Grant	Surface Acres	Percentage of Total
Common School	4,631,819.94	89.751933
University of Montana	18,555.7	.359558
MSU – Morrill Grant	63,455.92	1.229601
MSU – Second Grant	31,424.02	.608911
Montana Tech	59,440.07	1.151785
State Normal School	63,454.95	1.229582
School for the Deaf & Blind	36,460.83	.706511

<sup>5</sup> Prepared in cooperation with Barbara Smith, Associate Fiscal Analyst, Legislative Fiscal Division.

State Reform (Pine Hills)	67,794.69	1.313675
Veterans' Home	1,275.61	.024718
Public Buildings – Capitol	187,009.28	3.623726
<b>Total</b>	<b>5,160,691.01</b>	<b>100</b>

The percentages change annually to account for the sale and exchange of state lands.

### **Timber Sales–Fund 02280**

The timber sales fund is derived from the revenue generated from timber sales. The purpose of the fund is to support the cost of timber sale preparation and documentation. Timber sales revenue is deposited to the trust that produced the sale. The allocation of this revenue to the timber sales state special revenue account is based on the total amount of sales and the percent of sales generated by each trust. The percentage is applied to the amount appropriated by the Legislature, and affected trusts are charged for their allocation.

For example:

The Legislature established \$1.0 million appropriation from the timber sales fund.

**Figure 4. Example: Timber Sale Cost Allocation**

	Timber Revenue	Percent of Total	Allocation	Net Timber Revenue
Public Buildings	\$ 1,500,000	27.3	\$ 273,000	\$ 1,227,000
Common Schools	3,200,000	58.2	582,000	2,618,000
Montana Tech	800,000	14.5	145,000	655,000
	\$ 5,500,000	100 %	\$ 1,000,000	\$4,500,000

The revenue deposited to this fund varies depending on the amount of timber sales completed. Because a timber sale can take 1 to 2 years to prep and another 1 to 3 years to complete the sale, revenue is not generated immediately.

### **Trust Land Banking–Fund 02324**

Land banking was approved by the 2003 Legislature. This provides authority to the state land board to sell and purchase parcels of land to increase the revenue-generating capacity of the lands held in trust. Revenue from the lands that are sold is

held in the state land bank fund for the purpose of purchasing replacement lands. Lands purchased must benefit the same trust for which the land was sold. Interest earned on proceeds deposited in the fund must be paid to the related trust and not held in the fund.

The DNRC is provided the ability to retain 10% of the proceeds of each land bank transaction for the purpose of funding the cost of buying, selling, appraising, or marketing trust land. Each land bank transaction is charged this administrative fee, which is deposited to the state special revenue fund. These funds are used for any land banking activity.

The provision in Montana statute that allows for land banking terminates in 2008.

### **Forest Improvement Fees–Fund 02449**

The land board may impose a forest improvement fee on the purchaser of a timber sale. This fee is designed to assist in the cost of disposing of logging slash, road maintenance, and reforestation activities and to fund the legal issues associated with timber harvesting. All of these fees are deposited to the forest improvement fee account. The trusts do not receive any income from this fee.

The fee is collected in six payments. The timber purchaser makes five monthly payments of an estimated fee based on harvest estimates. The sixth fee is charged when the sale is completed. If actual harvest is less than the estimated amount, a refund may be provided to the purchaser.

### **Resource Development–Fund 02450**

The resource development fee was created for the purpose of investing in the improvement and development of state lands to increase revenue-generating potential. This could range from protecting the land's natural resources to perfecting titles for development potential. The fee is set by the state land board and cannot exceed the statutory maximum of 3%. (The fee is currently set at 3%.) The fee is applied to the revenue of each trust after timber sales fees and investment earnings are deducted. These funds are then used for any resource development project within any trust.

### **Commercial Leasing Activities–Fund 02836**

A commercial lease is a contract to use state land for a commercial purpose. The allowed purposes are defined in statute. The state land board provides the direction

for the development of state land for commercial leasing. The lease term cannot exceed 99 years. Two examples of commercial leasing are the Hampton Inn in Great Falls and the Lowe's Home Improvement Store in Kalispell.

Annual rent received from a commercial lease is deposited to the trust that holds the leased land. Ten percent of this revenue is withheld for the purpose of contracting with realtors, property managers, surveyors, attorneys, etc., to assist in the management of the commercial leasing program. These funds are utilized for any commercial lease activities within any trust.

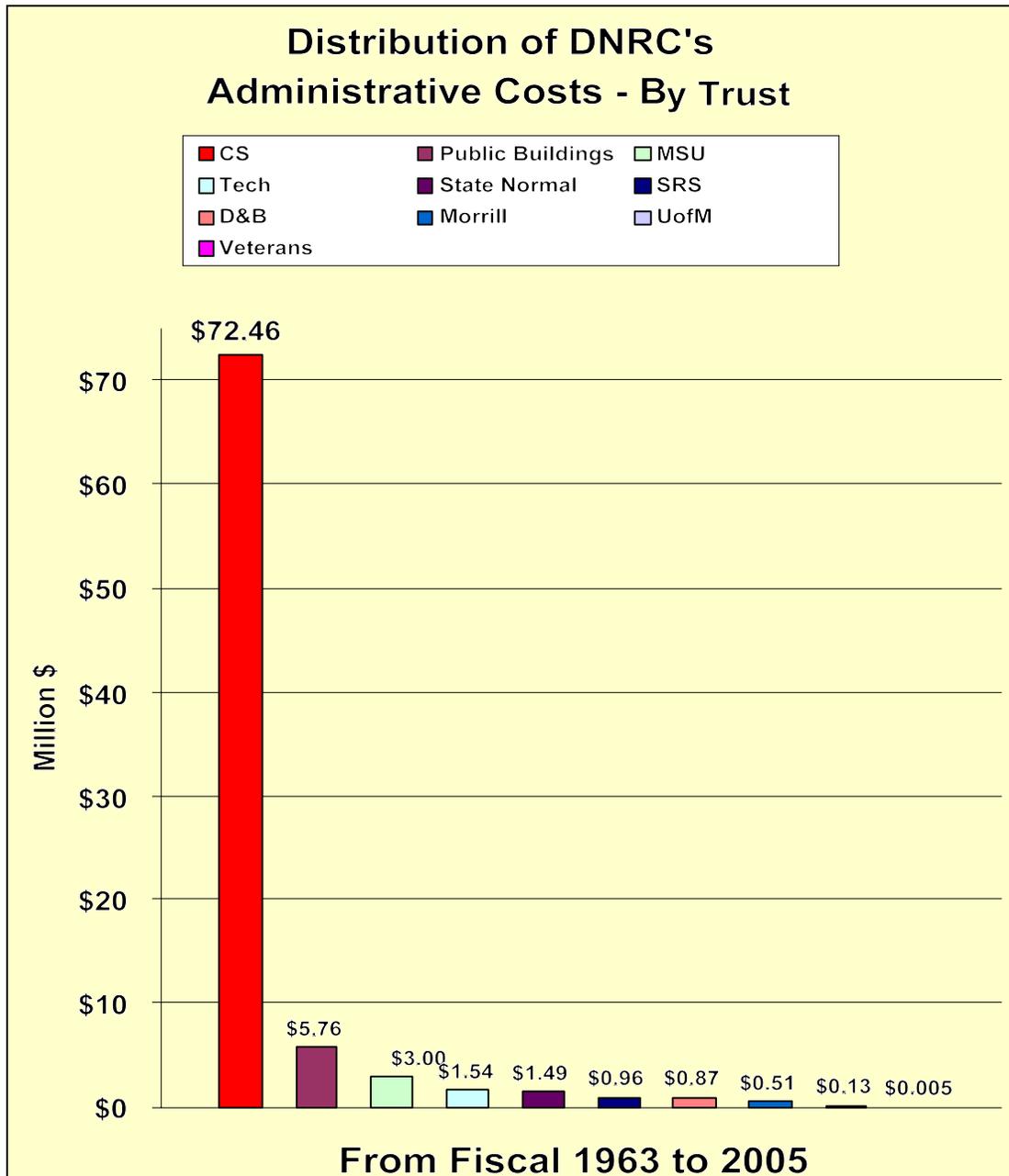
### **Trust Land Administration—Fund 02938**

The trust land administration account was created to cover the cost of administering state trust lands. The fund receives some mineral royalties, revenue from easements, and fees established in association with trust land activities up to the appropriation established by the Legislature. The fund is expended for the general administration of trust lands.

## **Fund or Account Balances at the End of a Fiscal Year**

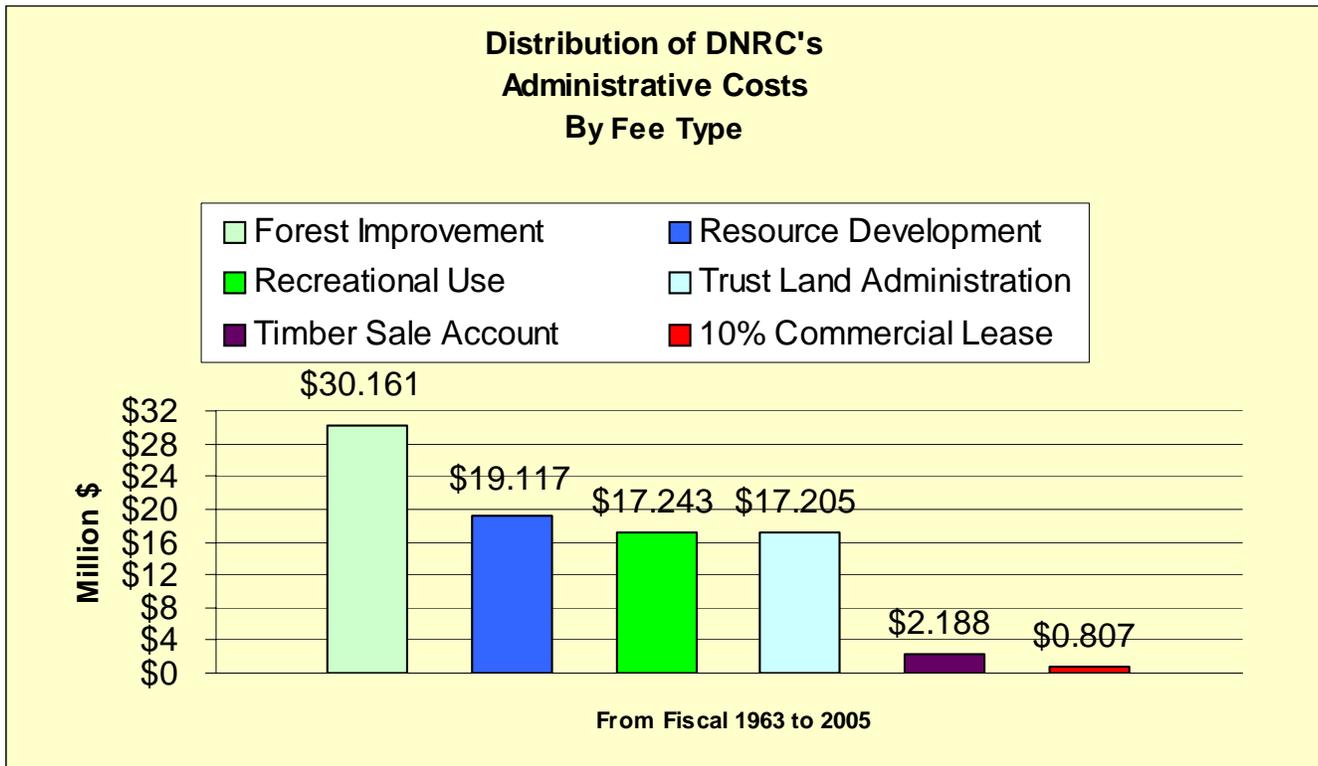
A majority, if not all, of the statutes that allow for a percentage of revenue to be retained to pay for administrative expenses do not address what should be done with excess fund balances at the end of the fiscal year or the biennium. At fiscal year 2005 year end, four of the seven accounts that receive administrative funds have excess fund balances. The question is whether or not these excess funds should be returned to the appropriate trust and if so, in what kind of timeframe.

Figure 5. Distribution of Administrative Costs by Trust<sup>6</sup>



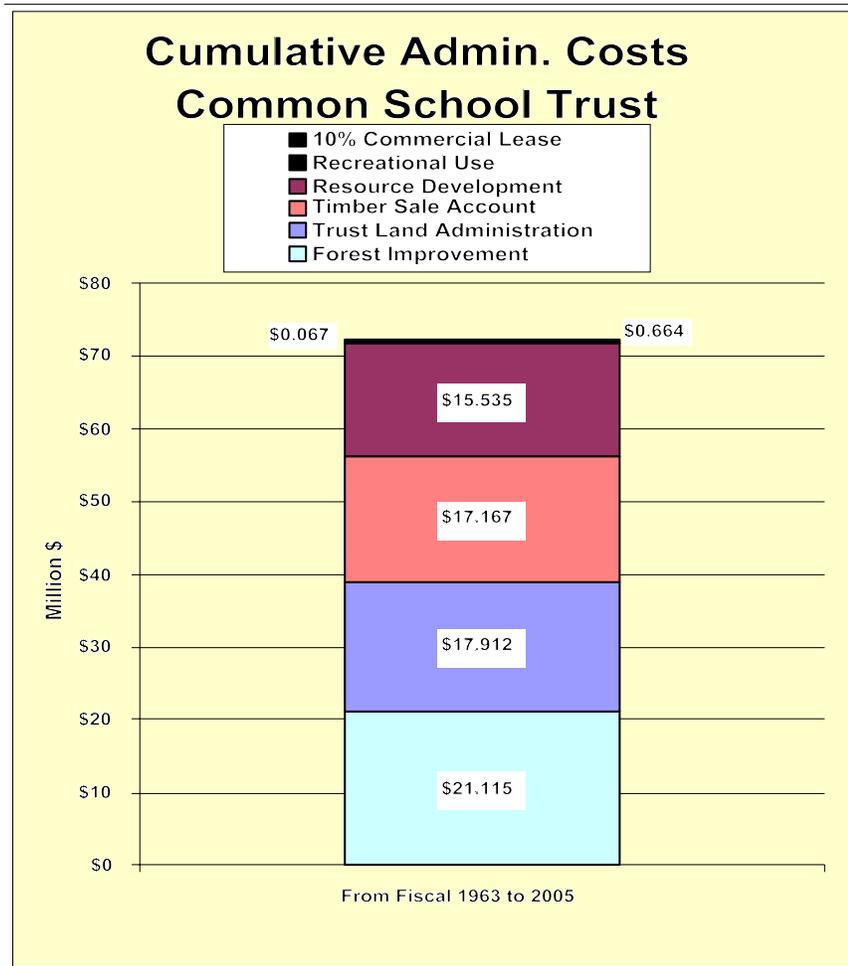
<sup>6</sup> Source: Department of Natural Resources and Conservation, "Trust Land Fees by Trust" Spreadsheet.

Figure 6. Distribution of Administrative Costs by Fee Type<sup>7</sup>



<sup>7</sup> Source: Department of Natural Resources and Conservation, "Trust Land Fees by Trust" Spreadsheet.

**Figure 7. Example of Cumulative Impacts 1963-Present<sup>8</sup>**



## DNRC Alternative Funding Formula and Account Combo

Currently, there are seven accounts that fund the DNRC’s administrative costs. The accounts are discussed in detail starting on page 21 of this report. In summary, the accounts are the trust land administration account (77-1-108, MCA), the recreational use account (77-1-808, MCA), the timber sale account (77-1-613, MCA), the trust land banking account (77-2-362, MCA), the forest improvement fee account (77-5-204, MCA), the resource development account (77-1-604, MCA), and commercial leasing (77-1-905, MCA). In an effort to simplify accounting procedures, the DNRC proposed to the study subcommittee that a bill be drafted that repeals all of the accounts except the trust land administration account and the forest improvement fee account. This bill is referred to as the account combo bill draft.

<sup>8</sup> Source: Department of Natural Resources and Conservation, “Trust Land Fees by Trust” Spreadsheet.

Rather than take certain percentages or certain amounts based on the type of land use that generated the revenue, the DNRC is proposing that they be allowed to use an amount equal to 15% of gross revenue to pay for administrative costs. Gross "revenue" is defined in the bill as:

- a) the interest and income received from the investment of the permanent funds, less any unrealized gains or losses;
- (b) the income received from the leasing, licensing, or other use of state trust lands; and
- (c) the proceeds from the sale or other disposition of interests in state trust land property.

Subcommittee staff reviewed the bill draft to identify potential policy issues that the subcommittee might consider. The issues that were raised include the following:

(1) Greg Petesch, Director of Legal Services for the Legislative Services Division, has stated numerous times that he believes that it is unconstitutional to use revenues from the public school trust to pay for administration. There are multiple trusts with multiple granting instruments that, along with the Montana Constitution, control whether or not it is appropriate to use revenues to fund administration. This bill draft does not address this issue and does not negate his concerns.

(2) Section 17-3-1003, MCA, states that "there is annually and perpetually appropriated . . . the income from all permanent endowments. . ." It appears that the intent is to make this a statutory appropriation. However, current practice requires that for this to truly be a statutory appropriation it must state "as provided in 17-7-502" and the statute (17-3-1003) must be listed in 17-7-502. This is a code cleanup and clarification suggestion.

(3) Are the costs determined per trust? A new subsection—77-1-108(5), MCA—speaks to how the costs will be apportioned. This is apparently the only place in statute (if this bill was passed) that addresses how the costs are allocated per trust. In a best case scenario, costs would be tracked per trust and only the costs associated with activities conducted on or on behalf of that trust would be assessed against that trust's revenues, up to the maximum of 15% envisioned in this bill. This would conform to general trust principles and could help address the issues similar to the Morrill Act problem where the other trusts were bearing the cost of administration. The feasibility of tracking costs and to what detail would need to be discussed further. It is also important to recognize that the 15% figure works in the proposed bill; it might not work in this scenario, so we would need to look at the numbers per trust to determine appropriate percentages.

(4) One alternative that staff has identified is to change from an "activity view" (timber harvest, recreational use, commercial lease, etc.) to a "trust view" to ensure that the DNRC is keeping track of everything, both costs and revenues, on a per-trust basis. This would potentially help make sure that revenues are exceeding costs on a per-trust basis, and it will also provide a more transparent process for the beneficiaries of each trust, the Legislature, and citizens in general. One way of accomplishing this (which is very similar to how the DNRC manages the money right now—it would simply put it into statute) would be to:

(a) establish an "income account" for each trust if one doesn't already exist;  
and

(b) establish an "expense account" for each trust if one doesn't already exist. Once these accounts are established, it should be made clear that proceeds are initially deposited in the revenue account and expenses accrue in the expense account. DNRC "bills" the revenue account for the expenses that are in that trust's expense account. These expenses would be actual, not to exceed a maximum amount or 15% in the scenario in the bill draft. Once again, these numbers would need to be looked at in more detail to make sure that on a direct expense to revenue calculation per trust, the percentage is accurate. Once the administrative costs were deducted, the funds could be deposited in the appropriate account or fund, either distributable for the trust or put in a permanent fund for the trust based on how the funds were obtained.

(5) In this bill draft the "cap" is set at 15%. It might be a good idea to also include a "floor" in statute, 12% for example, to ensure that the DNRC's fiduciary responsibilities to the trusts are not negatively affected by the lack of funding or inadequate funding.

(6) In the bill draft the term "revenue" has been defined in 77-1-108(1), MCA. This is important because the bill is saying that 15% of the gross revenue can be used for administration. In subsection (1)(c) it discusses "the proceeds from the sale or other disposition of interests in property". If it is a permanent disposition of property, as outlined in subsection (1)(c), then the proceeds are required to go into the permanent fund for that trust. For some trusts these permanent funds are inviolate and guaranteed against loss or diversion in the Montana Constitution. This subsection appears to be allowing the use of funds that should be deposited in the permanent fund for administrative purposes. It is arguable that it is statutorily allowing a diversion, to pay for administrative costs, of permanent fund money. If the subcommittee decided to address this issue, staff would need to look at the numbers again to make sure they still work; the 15% was calculated using revenues from permanent disposition. If the permanent disposition revenues were not used, the

percentage would probably have to go up, maybe to around 20%. In other words, 20% of distributable revenue would go to the DNRC for administrative costs.

(7) There are multiple sections of law being repealed. It appears that some of the sections that are being repealed are the sections of law that limit how the administrative funds can be used. This is a policy choice regarding how many or what types of limits the Legislature wants to place on the use of these funds.

The bill draft is provided in this document in Appendix E along with a flow chart in Appendix F that delineates how the DNRC envisions revenues moving through their accounting system. The study subcommittee decided that there were questions and issues that still need to be resolved with this bill draft and chose not to forward it to the full EQC for their consideration as a committee bill.

## **Constitutionality and Legality of Funding Administrative Costs With Revenue**

If the granting document is silent, common trust practice provides that the trustee can use a reasonable amount of revenue generated by the trust to pay for expenses incurred by the trust and on behalf of the trust. However, for the most part, the granting documents that govern the management of Montana's trusts are not silent. The question then becomes interpretation of the language in the granting document. An additional layer of complexity is added because the Montana Constitution also provides guidance on distribution of trust revenue and whether or not the trust is guaranteed against loss or diversion.

Depending on which trust is being discussed, there is disagreement regarding whether or not it is constitutional or legal to fund the administration of the lands through trust land revenues.

Legislatures that in the past that have approved withholding a certain amount of revenue give the impression that they felt it was an appropriate way to fund administration. There are multiple DNRC legal opinions, an Attorney General opinion<sup>9</sup>, and two Attorney General letters of advice that agree that it is not unconstitutional nor does it go against federal law to fund administration this way.

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<sup>9</sup> 32 Ag. Op. No. 8 (1967) Attorney General Forrest Anderson.

The Montana University System, whose lands were granted by the Morrill Act and The Enabling Act, has raised the issue of legality. It is the opinion of the University System that the withholding of revenue to fund administration is contrary to the requirements of the Morrill Act.<sup>10</sup> The Montana Board of Regents has contemplated litigating the issue.

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Depending on which trust is being discussed, there is disagreement regarding whether or not it is constitutional or legal to fund the administration of the lands through trust land revenues.

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Greg Petesch, Director of Legal Services for the Legislative Services Division, has written numerous legal opinions regarding his concern that it is unconstitutional to withhold any amounts from the revenue from common school trusts. His opinion points out that the Montana Constitution provides that for public schools 95% is to be disbursed directly to the schools and that 5% must go into the permanent fund of the trust. There is no mention in the Montana Constitution regarding administrative costs.

The DNRC has stated both in legal opinions and before the Senate Natural Resources committee that they believe the use of revenues to fund administration is not unconstitutional and is permissible. The DNRC opinions rely heavily on the general trust doctrine, which allows administrative costs to be deducted from revenues of the trust, the 1967 Montana Attorney General opinion, and other states actions and funding mechanisms.

### **Who Is Right and Who Is Wrong?**

That is a question that would probably require a Montana Supreme Court case to come to a final answer. However, it is important that the members of the Legislature recognize the importance of this issue. Without getting into the age-old battle of who is right and who is wrong, it comes down to the fact that there is a risk involved with funding trust land administration out of the revenues received from the trusts. If there is a court case in the future that addresses this specific issue and the Supreme Court determines that the current framework is unconstitutional, the liability facing the state is enormous. The Montana University System as of July 8, 2004, determined that the total amount that would be owed to the University System (in present value at that

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<sup>10</sup>Memo from Leroy H. Schramm, Chief Legal Counsel, to the Montana Board of Regents dated July 8-9, 2004.

time) is between \$11 and \$12 million dollars.<sup>11</sup> This does not take into account the common schools and the potential liability associated with those trusts, which would be significantly larger. The administrative costs, on a per-trust basis over time, were provided by the DNRC and are included in this report as Appendix C.

Discussion and study of this issue gets complex very quickly because of the number of trusts, the different federal laws granting the land, varying legal opinions from various entities, etc. The purpose of this information is to provide the reader with the information in order to come to their own conclusion regarding whether or how this issue should be addressed. If the current funding mechanism for management of the trusts is removed, then a new funding source for DNRC trust land administration will need to be identified that will not impede the fiduciary responsibility concerning the trusts because it is unstable or not consistent.

## Morrill Act Trust Lands

In fiscal year 2003, the DNRC voluntarily stopped taking assessments against the Morrill Act trust. This was a decision made by the DNRC, and the statute requiring them to charge a fee has not been changed. Since the fee is no longer assessed against Morrill Act lands, the administrative costs have been absorbed by the other trusts, including other university trusts. A spreadsheet detailing the amount of Morrill Act costs that were paid for by the other trusts is provided below. There will be costs associated with fiscal year 2006 and fiscal year 2007.

**Figure 8. Admin. Costs of MSU — Morrill Grant Apportioned to Other Grants FY03-FY05<sup>12</sup>**

	<u>FY2003</u>	<u>FY2004</u>	<u>FY2005</u>	<u>Total</u>
Timber Sale Account	\$0.00	\$171,637.96	\$28,255.58	\$199,893.54
Recreational Use Account	\$0.00	\$0.00	\$1,286.36	\$1,286.36
Trust Admin. Account	<u>\$26,164.00</u>	<u>\$7,824.00</u>	<u>\$9,732.00</u>	<u>\$43,720.00</u>
Total	\$26,164.00	\$179,461.96	\$39,273.94	\$244,899.90

	<u>FY2003</u>	<u>FY2004</u>	<u>FY2005</u>	<u>Total</u>
Timber Sale Account				
Other Grant Increased Allocation				
MSU-2nd	\$0.00	\$10,656.89	\$2,209.25	\$12,866.14
MSU-Morrill	\$0.00	\$0.00	\$0.00	\$0.00
State Normal School	\$0.00	\$3,847.97	\$1,523.62	\$5,371.59
Montana Tech	\$0.00	\$470.63	\$191.91	\$662.54

<sup>11</sup> Memo from Leroy H. Schramm, Chief Legal Counsel, to the Montana Board of Regents dated July 8-9, 2004.

<sup>12</sup> FY03\_05othergrantsfundingMorrill1.xls\_DNRC.

University of Montana	\$0.00	\$0.60	\$0.04	\$0.64
Capital Building Trust	\$0.00	\$24,326.06	\$1,475.04	\$25,801.10
Deaf & Blind	\$0.00	\$379.00	\$272.00	\$651.00
Pine Hills	\$0.00	\$7,101.95	\$382.83	\$7,484.78
Veterans' Home	\$0.00	\$0.00	\$0.00	\$0.00
Common School	<u>\$0.00</u>	<u>\$124,854.86</u>	<u>\$22,200.89</u>	<u>\$147,055.75</u>
Total	\$0.00	\$171,637.96	\$28,255.58	\$199,893.54

Timber Sale Account Other Grant Increased Allocation	<u>FY2003</u>	<u>FY2004</u>	<u>FY2005</u>	<u>Total</u>
MSU-2nd	\$0.00	\$0.00	\$7.95	\$7.95
MSU-Morrill	\$0.00	\$0.00	\$0.00	\$0.00
State Normal School	\$0.00	\$0.00	\$16.16	\$16.16
Montana Tech	\$0.00	\$0.00	\$14.97	\$14.97
University of Montana	\$0.00	\$0.00	\$4.68	\$4.68
Capital Building Trust	\$0.00	\$0.00	\$47.15	\$47.15
Deaf & Blind	\$0.00	\$0.00	\$9.26	\$9.26
Pine Hills	\$0.00	\$0.00	\$17.06	\$17.06
Veterans' Home	\$0.00	\$0.00	\$0.00	\$0.00
Common School	<u>\$0.00</u>	<u>\$0.00</u>	<u>\$1,169.13</u>	<u>\$1,169.13</u>
Total	\$0.00	\$0.00	\$1,286.36	\$1,286.36

Trust Administration Account Other Grant Increased Allocation	<u>FY2003</u>	<u>FY2004</u>	<u>FY2005</u>	<u>Total</u>
Common School	\$26,164.00	\$7,824.00	\$9,732.00	\$43,720.00

## Washington's Actions

In the state of Washington, the Attorney General's office issued an opinion in 1996 stating that revenues received from Morrill Act trust lands could not be used for administrative purposes. Washington State University was in the process of hiring legal counsel to contest the state's use of these funds for administrative purposes. In 1997 and 1998, legislation was introduced in Washington and failed. In 1999 there was an appropriation of \$20 million as a down payment to Washington State University as well as specific language regarding what the Legislature wanted to see in a settlement agreement. Eventually it was agreed that in addition to the \$20 million initial payment, the state must pay an additional \$16 million over a 3-biennium period for a total cost to the state of \$36 million. The \$36 million settlement did not include any interest on the amount owed to the University. The Attorney General, acting on behalf of the state, and Washington State University entered into a settlement agreement reflecting the above amounts.

## Other Trust Lands

### University System Trusts Other Than the Morrill Act Trust<sup>13</sup>

The University System has stated in a legal opinion that using revenue generated by the Morrill Act lands and other university trusts to fund administration is in violation of the federal law granting the land to the University System to be managed and administered by the state. The University System also followed the actions taken in Washington very closely.

The assessment of fees for administration against the four other university land trusts, while arguably permissible under federal law, is prohibited by Article X, § 10 of the Montana Constitution:

The funds of the Montana university system . . . from whatever source accruing, shall forever remain inviolate and sacred to the purpose for which they were dedicated . . . and shall be guaranteed by the state against loss or diversion. The interest from such invested funds, together with the rent from leased lands or properties, shall be devoted to the maintenance and perpetuation of the respective institutions.

Legal opinions prepared by LeRoy Schramm, at the time Chief Legal Counsel of the Montana University System, and Gregory Petesch, Director of Legal Services, Montana Legislative Council, have concluded there are potential legal liabilities created by the assessment of administrative fees against the university land trusts.

### Comparison of Common Schools and University Trusts

Montana has certain land trusts dedicated to the support of its educational institutions—the common schools and the units of the Montana University System. The land trusts are created by the Enabling Act and are governed by the language of the Montana Constitution. The language governing the common school trust and the various university trusts are not identical. This paper is intended to show how the wording and operation of the common school trust and the university trusts are distinguishable.

*Enabling Act.* The common school trust is governed by the Enabling Act provisions contained in Sections 10, 11 and 13. Section 10 provides for the dedication of certain lands “for the support of common schools.” Section 11 provides that the income from

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<sup>13</sup> Trust Land Position Paper prepared by staff of Montana State University-Bozeman, March 2006.

such lands shall “constitute a permanent school fund, the interest of which only shall be expended in support of said schools.” Section 13 specifies that 5% of the proceeds of the sale of public lands “after deduction of all expenses incident to the same” shall be used as a permanent fund, the interest of which only shall be expended for the support of common schools . . . .”

The University land trusts are created under Section 14, “the proceeds shall constitute a permanent fund . . . , the income thereof used exclusively for university purposes.” Section 16 governs the Morrill Act lands granted by Congress “for the use and support” of the agricultural college [Montana State University]. Section 17 provides for specific grants to “the establishment and maintenance of a school of mines [Montana Tech of the University of Montana]; “for agricultural colleges” in addition to the grant under Section 16; “for state normal schools” [University of Montana – Dillon and Montana State University – Billings].

The language of each grant is specific and not identical. The Section 14 lands are dedicated to be used exclusively for university purposes. The Section 17 lands are dedicated to the “establishment and maintenance of the various universities. The Section 16 lands are dedicated for the use and support of the agricultural colleges and are also governed by the language of the Morrill Act [7 USC §§ 301 *et seq.*] which specifies that “[a]ll the expenses of management, superintendence, and taxes” and “all expenses incurred in the management and disbursement of the moneys which may be received therefrom” shall be paid from the state treasury “so that the entire proceeds of the sale of said lands shall be applied without any diminution whatever.” The Morrill Act further specifies that the interest of the permanent fund shall be “inviolably appropriated, by each State . . . to the endowment, support, and maintenance of” the college selected by the state legislature [Montana State University-Bozeman].

*Montana Constitution.* The language of the Montana Constitution is also implicated in the support of education from trust land proceeds. Again, the language for the common schools and the university system is not identical. Mont. Const., Art. X § 3, provides: “The public school fund shall forever remain inviolate, guaranteed by the state against loss or diversion.” Art. X §5 specifies that 95% of all income, interest and rent “received on the public school fund shall be equitably apportioned annually to public elementary and secondary school districts as provided by law.” The remaining 5% “shall annually be added to the public school fund and become and forever remain an inseparable and inviolable part thereof.”

As to the university land trusts, the Montana Constitution, Art. X, Sec. 10, states: The funds of the Montana university system and of all other state institutions of learning, from whatever source accruing, shall forever remain inviolate and sacred to the purpose for which they were dedicated. The various funds shall be respectively invested under such regulations as may be provided by law, and shall be guaranteed by the state against loss or diversion. The interest from such invested funds, together with the rent from leased lands or properties, shall be devoted to the maintenance and perpetuation of the respective institutions.

*Distribution of Trust Proceeds.* The actual distribution of trust fund income for common schools occurs by the distribution of the funds as part of the entire appropriation for the support of all of the schools. The trust funds are distributed and are commingled as part of the overall appropriation which is later distributed to each school district according to the funding formula.

At least one Montana Supreme Court case has determined that the co-mingling of general fund and trust income did not violate the Constitution or Enabling Act in light of the fact that the funds were properly identified and accounted for and the appropriation to the common schools far exceeded the trust income distributed. *Montanans for the Responsible Use of the School Trust v. Darkenwald*, 2005 MT 190, ¶¶31, 328 Mont. 105, 119 P.3d 27.

The university trust distributions are dedicated to the particular units identified in the Enabling Act. Therefore, the distribution of trust income is not co-mingled with the appropriation to the Montana University System and is instead distributed directly to the beneficiary institution for the exclusive use of that unit through a journal voucher transaction between the beneficiary institution and the DNRC. Each of the beneficiary institutions has pledged its trust income to the repayment of bonds issued for the construction of campus buildings or acquisition of major equipment.

Once the distribution is received, it is applied to the repayment of the bonds along with other revenues, such as dormitory rent, concessions, etc. All pledged income is subject to annual audit in accordance with the bond indenture. In addition to regular debt service, bond covenants for MSU require that the units adequately fund operations and maintenance of revenue-generating facilities within the indenture, maintain net revenues of at least 110% of annual debt service requirements, and maintain at least \$1.5 million in reserve for the repair and replacement of revenue-generating facilities. If any funds remain after the payment of debt service, the funds may be used for "other lawful purposes" as defined in the bond documents. By maintaining a strong debt service coverage ratio, the units assure an above average

credit rating resulting in lower costs of financing than would have been obtained with an inferior rating.

### **Common School Trust<sup>14</sup>**

The study subcommittee requested that the Montana University System and the Office of Public Instruction prepare brief papers explaining the similarities and differences between funding for the Montana University System and public schools and the state special revenue and general fund relationships. The following is the paper prepared by OPI.

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<sup>14</sup> Position paper prepared by the Montana Office of Public Instruction.

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Linda McCulloch  
Superintendent

DATE: March 1, 2006

TO: Members of the EQC Study Subcommittee  
Rep. Walter L. McNutt, Chair  
Rep. Sue Dickenson, Vice Chair  
Senator Greg Lind  
Senator Robert Story, Jr.  
Mr. Buzz Mattelin

FROM: Kathy Bramer, OPI School Trust Lands Staffer

RE: Subcommittee Request for Information on OPI Trust Land  
Appropriations and Trust Land Administrative Costs

**Background**

At their January 26, 2006 meeting, members of the EQC Study Subcommittee requested information from both the Office of Public Instruction and the Office of the Commissioner of Higher Education pertinent to questions that have arisen on the appropriateness of the trust manager's (DNRC) assessment of fees for the management of Montana's state school trust lands. OPI was asked to respond to the following questions.

*Question 1. How does the OPI appropriations work —trust revenues vs. general fund—and anything the subcommittee may need to know regarding this topic.*

A chart is attached to this memo that shows how the state trust lands revenue flows through OPI to become part of the Base Aid that is then distributed to schools. The chart was prepared by the Legislative Fiscal Division (LFD) to provide a trust lands revenue estimate for FY2006. It gives a clear picture of how various types of revenues, generated on Common School Trust lands, are distributed to schools through OPI.

The FY2006 estimate of distributable revenue available for Base Aid is shown in the chart as \$56.85 million. This revenue flows through the Guarantee Account and offsets the total state direct aid appropriation to K-12 public schools. The annual

payment, ranging from \$45-\$57 million, represents generally less than 10% of the total Base Aid distributed to schools. It is important to note that Base Aid to schools is limited by statutory formulas. Consequently, this contribution to the Guarantee Account does not affect the amount of Base Aid received by schools. Instead, the trust land revenue becomes the base on which the rest of the general fund appropriation is built.

The total Base Aid for schools is set by the legislature and is not affected directly by trust land revenue. Trust land revenue only represents a fraction of the total—the rest is paid by general fund dollars. Increased revenues from trust lands do not raise the overall appropriation for public schools, with one small exception.

The funding formula for revenues deposited in the Guarantee Account, described above, is not the same as the formula for distribution of timber harvest revenues. Revenues from trust land timber harvests for the first 18 million board feet in a year are also directed to the Guarantee Account. However, revenue generated from timber harvest above 18 million board feet in the same year are distributed to schools on a roughly per-student basis for the purchase of education technology and services in addition to Base Aid payments.

*Question 2. Can the issue of administrative costs taken from revenues be addressed for the University System without addressing it for the Common Schools trust and vice versa?*

With the exception of the Morrill Trust, there is no specific direction as to the appropriateness of taking management fees from revenues generated from activities on state trust lands. It is understood that, while legal opinions regarding the administrative fee issue may differ, there is an existing Attorney General's opinion (Attorney General Forrest Anderson - 1967), an affirmation of that opinion by Attorney General Robert Woodahl in 1970, and a letter of counsel from Attorney General Mike McGrath to Governor Brian Schweitzer in 2005, all of which affirm the current DNRC practice of deducting reasonable costs of managing the trusts on behalf of the beneficiaries.

Assigning the trustee management costs to each of the beneficiaries in the same proportion as revenue generated on their lands appears to be a reasonable and fair approach. With the exception of the Morrill Trust beneficiary, trust land beneficiaries share the cost of administering the trusts relative to revenues generated by those lands. However, since 2003, management costs associated with Morrill Trust lands have been supported by the beneficiaries of all the other trust lands. This appears to

be an unfair assignment of costs that should instead be covered by a separate appropriation. This inappropriate assignment of costs has a disproportionately large financial impact on the Common School trust, which is the beneficiary of 90% of state trust lands.

It is important that the costs of managing state trust lands are assigned fairly to all of the beneficiaries. In order to accomplish this, the system for identifying and assessing management fees must be as clear and straightforward as possible. Segregating the University System trusts from the other trusts has the potential to create a complex and unworkable accounting structure.

If management costs are segregated by trust beneficiary, management time and effort must be segregated the same way—potentially very cumbersome and time-consuming. The DNRC manages activities on all state trust lands with staff in regional field offices across the state and in the central offices in Helena and Missoula. Additional record-keeping to account for individual management time and effort on each trust's land would be burdensome and could seriously compromise the ability of these land management professionals to effectively do their jobs. It is possible that trust land management costs could even increase as a result of this approach.

Assigning management costs for all state land trust beneficiaries should be consistent, reasonable, fair, and cost-effective. Assigning costs using different methods, such as by trust beneficiary, may result in costs being disproportionately assigned to one trust or another. As the largest stakeholder in trust land revenues, Common Schools could be the most adversely impacted by this approach.

If no management fees are assessed to cover the trust land management costs, it will be necessary to seek legislative approval for funding of all management activities on state trust land. This process would likely result in greater uncertainty regarding trust land management planning, funding, and resource allocation. There is no foreseeable gain for the trust beneficiaries in subjecting the trust land management cost assignment to the legislative process. The management costs can either be deducted before the revenues are deposited in the beneficiary accounts – the current practice, or the costs can be assigned indirectly by deducting from the budgets of the various beneficiaries. Either way, the assignment of trust land management costs must be done equitably for all trusts.

## Amount of Funds Diverted for Administrative Costs from Montana University System Trusts

To get a complete understanding of the potential liability associated with using revenue from the trusts to pay for administrative costs, it is important to review and analyze the dollars that are involved. The amount of funds that have been used over the years to pay for administrative costs associated with managing the Montana University System trusts are outlined below. The administrative costs, on a per-trust basis over time, were provided by the DNRC and are included in this report as Appendix C. Appendix C addresses all of the trusts, not just those associated with the University System.

**Figure 9. MT Univ. Sys. Trust Land Administrative Assessments 1963-FY04<sup>15</sup>**

<b>Board of Investments</b>	<b>FY97-FY02</b>	<b>FY03</b>	<b>FY04</b>	<b>Total</b>
UM	1,482.32	297.00	268.00	2,047.32
MSU-Morrill	2,772.75	592.00	633.00	3,997.75
MSU-Second	6,374.67	1,609.00	1,515.00	9,498.67
MT Tech	3,311.05	898.00	813.00	5,022.05
Normal Schools	5,287.34	1,161.00	1,070.00	7,518.34
<b>Total</b>	<b>19,228.13</b>	<b>4,557.00</b>	<b>4,299.00</b>	<b>28,084.13</b>
<b>Trust Administration Account</b>				
	<b>FY00-FY02</b>	<b>FY03</b>	<b>FY04</b>	<b>Total</b>
UM	28,692.00	3,538.00	793.00	33,023.00
MSU-Morrill	62,543.00	0.00	0.00	62,543.00
MSU-Second	193,517.00	74,467.00	5,311.00	273,295.00
MT Tech	100,141.00	34,762.00	753.00	135,656.00
Normal Schools	142,130.00	61,247.00	2,013.00	205,390.00
<b>Total</b>	<b>527,023.00</b>	<b>174,014.00</b>	<b>8,870.00</b>	<b>709,907.00</b>
<b>Forest Improvement</b>				
	<b>FY63-FY02</b>	<b>FY03</b>	<b>FY04</b>	<b>Total</b>
UM	22,746.00	0.00	2.00	22,748.00
MSU-Morrill	322,247.00	0.00	0.00	322,247.00
MSU-Second	1,740,262.00	69,016.00	130,006.00	1,939,284.00
MT Tech	1,063,509.00	71,292.00	6,269.00	1,141,070.00
Normal Schools	724,051.00	3,070.00	46,365.00	773,486.00
<b>Total</b>	<b>3,872,815.00</b>	<b>143,378.00</b>	<b>182,642.00</b>	<b>4,198,835.00</b>

<sup>15</sup> Source: Department of Natural Resources and Conservation.

<b>Resource Development</b>	<b>FY67-FY02</b>	<b>FY03</b>	<b>FY04</b>	<b>Total</b>
UM	57,515.54	2,944.00	3,128.00	63,587.54
MSU-Morrill	125,237.96	0.00	0.00	125,237.96
MSU-Second	105,541.75	10,164.00	12,980.00	128,685.75
MT Tech	207,872.54	12,013.00	11,375.00	231,260.54
Normal Schools	116,522.96	5,670.00	4,683.00	126,875.96
<b>Total</b>	<b>612,690.75</b>	<b>30,791.00</b>	<b>32,166.00</b>	<b>675,647.75</b>
<b>Timber Sale Account</b>				
			<b>FY04</b>	<b>Total</b>
UM			11.00	11.00
MSU-Morrill			0.00	0.00
MSU-Second			196,453.00	196,453.00
MT Tech			8,676.00	8,676.00
Normal Schools			70,935.00	70,935.00
<b>Total</b>			<b>276,075.00</b>	<b>276,075.00</b>
<b>GRAND TOTAL</b>	<b>5,031,756.88</b>	<b>352,740.00</b>	<b>504,052.00</b>	<b>5,888,548.88</b>

<b>Totals by Trust/Fee</b>	<b>Bol</b>	<b>TAC</b>	<b>Forest Imp.</b>	<b>Res. Dev.</b>	<b>Timber Sale</b>	<b>Total</b>
UM	2,047.32	33,023.00	22,748.00	63,587.54	11.00	121,416.86
MSU-Morrill	3,997.75	62,543.00	322,247.00	125,237.96	0.00	514,025.71
MSU-Second	9,498.67	273,295.00	1,939,284.00	128,685.75	196,453.00	2,547,216.42
MTUM	5,022.05	135,656.00	1,141,070.00	231,260.54	8,676.00	1,521,684.59
Normal Schools	7,518.34	205,390.00	773,486.00	126,875.96	70,935.00	1,184,205.30
<b>Total</b>	<b>28,084.13</b>	<b>709,907.00</b>	<b>4,198,835.00</b>	<b>675,647.75</b>	<b>276,075.00</b>	<b>5,888,548.88</b>

### **Amount of Funds Estimated by Montana University System<sup>16</sup>**

As shown in Figure 9, \$5,888,548 of trust land income has been diverted through 2004. The calculated present value of this amount is roughly \$12,000,000. The university trusts generate approximately \$500,000 per year.

<sup>16</sup> Trust Land Position Paper prepared by Montana University System.



## **Appendix A. Montana Law Governing Administration of Trust Lands—Constitution and Statutes**

### **Montana Code Annotated**

The Montana Code Annotated also addresses the administrative and management costs that are faced by the DNRC for administering and managing the trusts. Over the past 40 years, various bills have been passed into law and have provided that a certain percentage of trust revenue may be retained by the DNRC as payment for administration and management. This is where the question of whether or not The Enabling Act, the Morrill Act, and the Montana Constitution have provided some level of constraint regarding the use of the trust revenues and whether or not the use of these revenues to pay for administration and management is a legitimate use of the money or if it is unconstitutional.

There are numerous statutes that outline the percentages or fees that may be retained by the DNRC. There are also statutes that, similar to the Constitution, restrict disbursement of the proceeds of the various trusts. These statutes are provided below.

### **Title 17. State Finance** **Chapter 6. Deposits and Investments** **Part 2. Investments**

(Board of Investments)

**17-6-201. Unified investment program -- general provisions.** (1) The unified investment program directed by Article VIII, section 13, of the Montana constitution to be provided for public funds must be administered by the board of investments in accordance with the prudent expert principle, which requires an investment manager to:

(a) discharge the duties with the care, skill, prudence, and diligence, under the circumstances then prevailing, that a prudent person acting in a like capacity with the same resources and familiar with like matters exercises in the conduct of an enterprise of a like character with like aims;

(b) diversify the holdings of each fund within the unified investment program to minimize the risk of loss and to maximize the rate of return unless, under the circumstances, it is clearly prudent not to do so; and

(c) discharge the duties solely in the interest of and for the benefit of the funds forming the unified investment program.

(2) (a) Retirement funds may be invested in common stocks of any corporation.

(b) Other public funds may not be invested in private corporate capital stock. "Private corporate capital stock" means only the common stock of a corporation.

(3) (a) This section does not prevent investment in any business activity in Montana, including activities that continue existing jobs or create new jobs in Montana.

(b) The board is urged under the prudent expert principle to invest up to 3% of retirement funds in venture capital companies. Whenever possible, preference should be given to investments in those venture capital companies that demonstrate an interest in making investments in Montana.

(c) In discharging its duties, the board shall consider the preservation of purchasing power of capital during periods of high monetary inflation.

(d) The board may not make a direct loan to an individual borrower. The purchase of a loan or a portion of a loan originated by a financial institution is not considered a direct loan.

(4) The board has the primary authority to invest state funds. Another agency may not invest state funds unless otherwise provided by law. The board shall direct the investment of state funds in accordance with the laws and constitution of this state. The board has the power to veto investments made under its general supervision.

(5) The board shall:

(a) assist agencies with public money to determine if, when, and how much surplus cash is available for investment;

(b) determine the amount of surplus treasury cash to be invested;

(c) determine the type of investment to be made;

(d) prepare the claim to pay for the investment; and

(e) keep an account of the total of each investment fund and of all the investments belonging to the fund and a record of the participation of each treasury fund account in each investment fund.

(6) The board may:

(a) execute deeds of conveyance transferring real property obtained through investments. Prior to the transfer of real property directly purchased and held as an investment, the board shall obtain an appraisal by a qualified appraiser.

(b) direct the withdrawal of funds deposited by or for the state treasurer pursuant to 17-6-101 and 17-6-105;

(c) direct the sale of securities in the program at their full and true value when found necessary to raise money for payments due from the treasury funds for which the securities have been purchased.

(7) The cost of administering and accounting for each investment fund must be deducted from the income from each fund.

History: (1), (2), (5) thru (7)En. Sec. 5, Ch. 298, L. 1973; amd. Sec. 1, Ch. 203, L. 1977; Sec. 79-308, R.C.M. 1947; (3), (4)En. 82A-204 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 90, Ch. 326, L. 1974; Sec. 82A-204, R.C.M. 1947; R.C.M. 1947, 79-308, 82A-204(4); amd. Sec. 1, Ch. 395, L. 1981; amd. Sec. 11, Ch. 281, L. 1983; amd. Sec. 19, Ch. 677, L. 1983; amd. Sec. 2, Ch. 183, L. 1985; amd. Sec. 3, Ch. 418, L. 1985; amd. Sec. 1, Ch. 158, L. 1987; amd. Sec. 1, Ch. 335, L. 1987; amd. Sec. 12, Ch. 581, L. 1987; amd. Sec. 1, Ch. 291, L. 1991; amd. Sec. 1, Ch. 46, L. 1993; amd. Sec. 1, Ch. 331, L. 1993; amd. Sec. 2, Ch. 37, Sp. L. November 1993; amd. Sec. 32, Ch. 18, L. 1995; amd. Sec. 1, Ch. 32, L. 1997; amd. Sec. 25, Ch. 422, L. 1997; amd. Sec. 12, Ch. 532, L. 1997; amd. Sec. 3, Ch. 549, L. 1997; amd. Sec. 2, Ch. 330, L. 1999; amd. Sec. 3, Ch. 471, L. 1999; amd. Sec. 5, Ch. 418, L. 2001.

## **Chapter 3. Federal Revenue and Endowments**

### **Part 10. Endowments**

**17-3-1003. Support of state institutions.** (1) For the support and endowment of each state institution, there is annually and perpetually appropriated, 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, 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.

History: (1)En. Sec. 3, Ch. 112, L. 1921; re-en. Sec. 194, R.C.M. 1921; re-en. Sec. 194, R.C.M. 1935; amd. Sec. 3, Ch. 14, L. 1941; amd. Sec. 11, Ch. 147, L. 1963; amd. Sec. 3, Ch. 298, L. 1973; Sec. 79-601, R.C.M. 1947; (2)En. Sec. 1, Ch. 120, L. 1909; re-en. Sec. 1922, R.C.M. 1921; re-en. Sec. 1922, R.C.M. 1935; amd. Sec. 1, Ch. 89, L. 1961; amd. Sec. 24, Ch. 147, L. 1963; amd. Sec. 5, Ch. 286, L. 1977; Sec. 79-1401, R.C.M. 1947; R.C.M. 1947, 79-601, 79-1401; amd. Sec. 2, Ch. 277, L. 1983; amd. Sec. 3, Ch. 700, L. 1989; amd. Sec. 2, Ch. 14, Sp. L. January 1992; amd. Sec. 5, Ch. 533, L. 1993; amd. Sec. 3, Ch. 122, L. 1999; amd. Sec. 1, Ch. 355, L. 2003.

## **Title 20. Education**

### **Chapter 9. Finance**

#### **Part 3. Funding of Basic System of Quality Public Schools**

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.

History: En. 75-6907 by Sec. 257, Ch. 5, L. 1971; amd. Sec. 9, Ch. 137, L. 1973; R.C.M. 1947, 75-6907; amd. Sec. 3, Ch. 14, Sp. L. January 1992; amd. Sec. 113, Ch. 42, L. 1997; amd. Sec. 5, Ch. 122, L. 1999.

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## **Trust Land Administration Account**

### **Title 77. State Lands**

#### **Chapter 1. Administration of State Lands**

##### **Part 1. General Provisions**

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) 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).

History: En. Sec. 1, Ch. 122, L. 1999; amd. Sec. 29, Ch. 34, L. 2001.

**77-1-109. Deposits of proceeds in trust land administration account.** (1) The department shall, until the deposit equals the amount appropriated for the fiscal year pursuant to 77-1-108, deposit into the trust land administration account created by 77-1-108 the following:

(a) mineral royalties;

(b) the proceeds or income from the sale of easements and timber, except timber from public school and Montana university system lands;

(c) 5% of the interest and income annually credited to the public school fund in accordance with 20-9-341; and

(d) fees collected pursuant to 77-2-328.

(2) After the deposits in subsection (1) have been made, the remainder of the proceeds, other than proceeds from timber from Montana university system lands and other than those purchased pursuant to 17-6-340, must be deposited in the appropriate permanent fund and the capitol building land grant trust fund. Timber proceeds from university system lands must be paid over to the state treasurer, who shall deposit the money to the credit of the proper fund for use as provided in 17-3-1003(1). Royalty payments purchased pursuant to 17-6-340 must be used as provided in that section and 20-9-622.

(3) The amount of money that is deposited into the trust land administration account may not exceed 1 1/8% of the book value balance in each of the nine permanent funds administered by the department on the first day of January preceding the new biennium and 10% of the previous fiscal year revenue deposited into the capitol building land grant trust fund.

History: En. Sec. 2, Ch. 122, L. 1999; amd. Sec. 30, Ch. 34, L. 2001; amd. Sec. 1, Ch. 420, L. 2001; amd. Sec. 2, Ch. 291, L. 2003; amd. Sec. 4, Ch. 355, L. 2003.

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## Resource Development Account

### Part 6. Development of state lands

**77-1-604. Resource development account.** A resource development account in the state special revenue fund in the state treasury is created to be used solely for the purpose of investing in the improvement and development of state lands acquired by grant or foreclosure in order to increase the revenue to be derived therefrom for common school support and support of the other entities, institutions, and objects for which the lands are held in trust. Appropriations from the account shall be expended for no other purposes.

History: En. Sec. 3, Ch. 295, L. 1967; amd. Sec. 107, Ch. 428, L. 1973; R.C.M. 1947, 81-2403(part); amd. Sec. 1, Ch. 277, L. 1983.

**77-1-606. Restriction on use of income from school and institutional lands.** Money in the resource development account created in 77-1-604 that is derived from the income from public school lands, university lands, agricultural college lands, scientific school lands, normal school lands, capitol building lands, or institutional lands must be expended by the department solely for the purpose of defraying the costs and expenses necessarily incurred in developing public lands of the same trust. If the board determines that public lands in a trust may be developed and moneys in the account from that trust are insufficient to defray the necessary costs and expenses incurred, the board may transfer sufficient moneys from other trusts in the account. Trust accounts from which money is transferred must be reimbursed by a method approved by the board.

History: En. Sec. 4, Ch. 295, L. 1967; amd. Sec. 1, Ch. 180, L. 1973; amd. Sec. 108, Ch. 428, L. 1973; R.C.M. 1947, 81-2404; amd. Sec. 2, Ch. 533, L. 1993.

**77-1-607. Deductions from income for development account -- maximum percentage.** (1) The board shall determine the amount or percentage of income, not to exceed 3%, that is necessary to achieve the purposes of this part and shall provide by rule for deductions of that amount or percentage from the income that is secured from the lands by the department for the trusts benefited by this part.

(2) The maximum percentage limitation in subsection (1) does not apply to income deducted and expended under the provisions of 77-1-613.

History: En. Sec. 5, Ch. 295, L. 1967; amd. Sec. 109, Ch. 428, L. 1973; R.C.M. 1947, 81-2405; amd. Sec. 3, Ch. 533, L. 1993; amd. Sec. 1, Ch. 247, L. 1997.

**77-1-608. Crediting of deductions.** All deductions from gross proceeds made in accordance with 77-1-607(1) must be paid into the account, and the balance of the proceeds must be paid into the state treasury to the credit of the proper account.

History: En. Sec. 6, Ch. 295, L. 1967; amd. Sec. 110, Ch. 428, L. 1973; R.C.M. 1947, 81-2406; amd. Sec. 4, Ch. 533, L. 1993.

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## Timber Sale Account

**77-1-613. Deduction of portion of income received from 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.

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

(3) 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) 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.

History: En. Sec. 1, Ch. 533, L. 1993; amd. Sec. 1, Ch. 157, L. 1995.

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## Recreational Use Account

### Part 8. Recreational Use of State Lands

**(Rec Use Fee -- state lands use other than hunting, fishing, and trapping)**

**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 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 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.

History: En. Sec. 12, Ch. 609, L. 1991; amd. Sec. 2, Ch. 586, L. 1993; amd. Sec. 5, Ch. 596, L. 2003.

**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 state lands recreational use account must be used by the department for the following purposes:

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

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

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

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

(e) 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 state lands recreational use account must be used by the department for the following purposes:

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

History: En. Sec. 16, Ch. 609, L. 1991; amd. Sec. 68, Ch. 509, L. 1995; amd. Sec. 1, Ch. 117, L. 2001; amd. Sec. 6, Ch. 596, L. 2003.

(State lands access for hunting, fishing, and trapping)

**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% 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 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.)

History: En. Sec. 1, Ch. 596, L. 2003.

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## Commercial Leasing

### Part 9. Commercial Leasing of State Trust Land

**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. 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 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.

History: En. Sec. 5, Ch. 404, L. 2003.

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## Fees Collected by Rule

### Chapter 2. Transfers and Reservations of Property Interests

#### Part 3. Sales

**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 in 77-1-108.

History: En. Sec. 76, Ch. 60, L. 1927; re-en. Sec. 1805.76, R.C.M. 1935; R.C.M. 1947, 81-913; amd. Sec. 59, Ch. 422, L. 1997; amd. Sec. 9, Ch. 355, L. 2003.

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### Land Banking

**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 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 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.

History: En. Sec. 12, Ch. 355, L. 2003.

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## Royalty Receipts

### Chapter 3. Rock, Mineral, Coal, Oil, and Gas Resources

#### Part 1. Prospecting Permits and Mining Leases

**77-3-106. Disposition of royalties, fees, and penalties.** All fees and penalties collected under this part shall be credited to the state general fund; all rentals shall be credited to the income fund of the grant to which the land belongs; and all moneys collected as royalties shall be credited to the permanent fund arising from the grant to which the land belongs under each particular permit or lease; provided, however, that all rentals and royalties received from "mortgage lands" shall be credited to the same fund or funds as other receipts from such lands and that all rentals and royalties received under or in connection with a lease or permit on other lands or mineral rights not acquired through any grant to the state of Montana from the United States shall be paid into the same funds into which such receipts are paid when the land is part of the grant for the benefit of the public schools of the state of Montana.

History: En. Sec. 17, Ch. 148, L. 1937; R.C.M. 1947, 81-617.

#### Part 2. Nonmetallic Minerals, Excluding Coal, Oil, and Gas

**77-3-206. Disposition of royalties, fees, and penalties.** The royalties, fees, and penalties received under these leases shall be credited to the various funds to which they properly belong in the same manner as is now provided for crediting the same under oil and gas leases.

History: En. Sec. 53, Ch. 60, L. 1927; re-en. Sec. 1805.53, R.C.M. 1935; amd. Sec. 2, Ch. 194, L. 1945; amd. Sec. 50, Ch. 428, L. 1973; R.C.M. 1947, 81-702(part).

#### Part 3. Coal

**77-3-318. Disposition of royalties and other receipts.** All fees, rentals, royalties, and bonuses collected under state coal leases shall be paid to the department and credited as follows:

(1) All fees shall be credited to the state general fund.

(2) All rentals and bonuses shall be credited to the income fund of the grant to which the lands under each lease belong.

(3) All moneys collected as royalties shall be credited to the permanent fund arising from the grants to which the lands under lease belong.

History: En. Sec. 47, Ch. 60, L. 1927; re-en. Sec. 1805.47, R.C.M. 1935; amd. Sec. 34, Ch. 428, L. 1973; amd. Sec. 5, Ch. 358, L. 1975; R.C.M. 1947, 81-510.

#### Part 4. Oil and Gas

**77-3-436. Disposition of royalties and other money.** All fees, rentals, penalties, royalties, and bonuses collected for or under state oil and gas leases shall be paid to the department and credited as follows:

(1) All fees and penalties shall be credited to the state general fund.

(2) All rentals shall be credited to the income fund of the grant to which the lands under each lease belong.

(3) All moneys collected as royalties and bonuses shall be credited to the permanent fund arising from the grant to which the land under each particular lease belongs and become and forever remain an inseparable and inviolable part thereof. However, all royalties and bonuses collected from the lands forming part of the capitol building grant shall be available as income, the same as all other receipts from such lands.

(4) All moneys received as rentals, royalties, and bonuses for or under leases on state lands and not held in trust for the public schools of the state or for any state institution shall be credited to the state general fund unless other disposition is provided by law.

History: En. Sec. 12, Ch. 108, L. 1927; re-en. Sec. 1882.12, R.C.M. 1935; amd. Sec. 44, Ch. 100, L. 1973; amd. Sec. 89, Ch. 428, L. 1973; R.C.M. 1947, 81-1712; amd. Sec. 1, Ch. 353, L. 1985.

## **Chapter 4. Geothermal and Hydroelectric Resources**

### **Part 1. Geothermal Resources**

77-4-127. Disposition of royalties and other receipts. (1) The department shall credit fees collected under geothermal leases to the general fund.

(2) All rentals, penalties, and bonuses shall be credited to the income fund of the grant to which the lands under each lease belong.

(3) All moneys collected as royalties shall be credited to the permanent fund arising from the grant to which the land under each particular lease belongs.

History: En. 81-2610 by Sec. 10, Ch. 111, L. 1974; R.C.M. 1947, 81-2610.

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## **Forest Improvement Fees**

### **Chapter 5. Timber Resources**

#### **Part 2. Timber Sales and Removal**

**77-5-204. Sale of timber -- fee for forest improvement.** (1) The board may sell timber on state lands, at a price per 1,000 board feet, when appropriate, that, in the board's judgment, is in the best interest of the state, provided that live timber is not sold for less than full market value.

(2) Timber sold or cut from state lands must be cut and removed under rules that may be prescribed by the board for standing timber preservation and fire prevention. In all cases, the board shall require the person cutting the timber to pile and burn or otherwise dispose of the brush and slash in the manner that may be prescribed by the board.

(3) Before the sale of timber is granted, the value of the timber must be appraised under the direction of the department, upon the request and subject to the approval of the board. An appraisal must show as nearly as possible the value per 1,000 board feet, when appropriate, of all merchantable timber.

(4) In addition to the price of the timber established under subsection (1), the board may require a timber purchaser to pay a fee for forest improvement. Revenue from the fee must be deposited in the state special revenue fund to the credit of the department and, as appropriated by the legislature, may be used only for:

- (a) disposing of logging slash;
- (b) acquiring access and maintaining roads necessary for timber harvesting on state lands;
- (c) reforestation, thinning, and otherwise improving the condition and income potential of forested state lands; and
- (d) complying with legal requirements for timber harvesting.

History: En. Sec. 3560, p. 193, L. 1897; re-en. Sec. 2213, Rev. C. 1907; amd. Sec. 53, Ch. 147, L. 1909; amd. Sec. 4, Ch. 118, L. 1911; amd. Sec. 1, Ch. 26, L. 1919; re-en. Sec. 1872, R.C.M. 1921; amd. Sec. 1, Ch. 132, L. 1933; re-en. Sec. 1872, R.C.M. 1935; amd. Sec. 219, Ch. 147, L. 1963; amd. Sec. 82, Ch. 428, L. 1973; R.C.M. 1947, 81-1601; amd. Sec. 1, Ch. 529, L. 1981; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 1, Ch. 446, L. 1993; amd. Sec. 2, Ch. 157, L. 1995.

## Legal Opinions

(Full copies of the various opinions are available upon request)

### Montana Attorney General

There has been one Attorney General opinion and one letter from an Attorney General regarding this issue. These are briefly summarized below.

#### Vol. 32, Opinion No. 8 (1967)

Inquiry: "May school lands granted to the State of Montana under the provisions of sections 10 and 11 of the Enabling Act be made subject to Chapter 295, Laws of 1967, without violating either: (1) The terms of the grant, or (2) The provisions of our Constitution which direct that school land revenues or funds remain inviolate and sacred for school purposes, guaranteed against loss or diversion.

(1) The terms of the grant.

"In the execution of the trust imposed under such a grant, it is now well settled that a state, acting in its role as trustee, has an inherent equitable right to reimbursement from the trust for all charges and expenses necessarily incurred in the execution of the trust where there is no provision to the contrary in the grant creating the trust. U.S. v. Swope, C.C.A. 8th-1926) 16 F. 2d. 215; State ex rel. Greenbaum v. Rhoades, 4 Nev. 312 (1868); Betts v. Commissioners of the Land Office, 27 Okl. 64, 110 Pac. 766 (1910); Bourne v. Cole, 53 Wyo. 31, 77 P. 2d 617 (1938). This rule applies to the trust imposed by the grant of school lands to Montana for there is no provision in the Enabling Act which requires the state to bear the costs of improvement, development, administration or land conservation measures from its general revenues."

(2) The provisions of our Constitution which direct that school land revenues or funds remain inviolate and sacred for school purposes, guaranteed against loss or diversion.

"We have found no provision that indicates that our constitutional framers intended to place restrictions upon the trustees right to require payment for the expense of administration, conservation, improvement and development, of the trust lands out of the proceeds of the lands themselves. In the absence of a showing of such intent, it

must be concluded that the contrary is true, as it is with any other trust where a denial of that right does not appear in its provisions."

### **Letters From Attorney General**

A letter was sent to the commissioner of the Department of State Lands and Investments on February 24, 1970, from Attorney General Robert L. Woodahl. The letter was almost an exact replica of the opinion issue in 1967 and stated the following in summary:

"You have requested my opinion as to whether school lands granted to the state of Montana under the provisions of sections 10 and 11 of the Enabling Act are subject to Chapter 295, Laws of 1967, without violating either: (1) the terms of the grant, or (2) the provisions of our constitution which direct that school land revenues or funds remain inviolate and sacred for school purposes, guaranteed against loss or diversion."

"The state acts as trustee of the school lands under the provisions of Article XI, Constitution of Montana. It is well settled common law principle that the state, as trustee, has an inherent equitable right to reimbursement from the trust for all charges and expenses necessarily incurred in the execution and administration of said trust where there are no provisions to the contrary in the grant of the trust. U.S. v. Swope, C.C.A. 8th, 1926), 16 F. 2d 215."

Montana Attorney General Mike McGrath wrote a "letter of advice" to Governor Brian Schweitzer on September 13, 2005. Because this is the most recent guidance, a copy is provided in Appendix B of this report. Attorney General McGrath's conclusion was "For the reasons discussed, I believe the statutes are defensible in the event of a constitutional challenge."<sup>17</sup>

### **Montana Supreme Court Decisions**

In State ex rel. Bickford v. Cook, 17 Mont. 529, 43 P. 928 (1896), one of the state capitol commissioners (Walter M. Bickford) filed for a writ of mandamus to compel A. B. Cook, state auditor, to draw warrants on the state capitol fund for the value of his services and expenses as a commissioner. Mr. Cook alleged that he refused to pay the expenses because the claim presented by Mr. Bickford was not a claim for the salary and compensation of an officer which was fixed by law and that the claim had not been presented, examined, and approved by the state board of examiners, as required by Article VII, section 20, of the Constitution.

The Montana Supreme Court stated: "When congress made a grant of land to the state for public buildings at the capital of the state, by act of congress approved February 22, 1889, providing for the admission of the state into the Union, it was enacted that the lands so granted should be held, appropriated, and disposed of exclusively for the purposes mention in the act, in such manner as the legislature of the state might provide." In addition, the Supreme Court provided: "The state is an agent to carry out the objects of the donation. The fund created by the statute is a

<sup>17</sup> Attorney General McGrath letter of advice dated September 13, 2005.

trust fund established by law in pursuance of the act of congress. It is not a state fund in the sense that moneys realized from taxes, for instance, and in the public treasury, are state funds. Nor is the disbursement of this capitol fund an expenditure of the state, within the meaning of expenditures generally referred to in the constitution.”

“The legislature had the power to control the fund and its disposition for the specific purposes for which the lands are granted. It therefore had the right, unless otherwise restricted by the act of congress or the law of the state, to appropriate amounts in anticipation of moneys to be realized from the sales of the lands granted, and by sections 2442, 2454, Political Code, warrants upon such fund may be drawn and registered by the officer mentioned in the statute as agents of the state, whether there are moneys on hand to meet the warrants or not.”

The decision was specific to the Capitol Buildings Trust and the use of the funds received from sales of certain portions of the trust.

# Appendix B. Montana Attorney General Advice Letter (9/13/05)

## ATTORNEY GENERAL STATE OF MONTANA

Mike McGrath  
Attorney General



Department of Justice  
215 North Sanders  
PO Box 201401  
Helena, MT 59620-1401

September 13, 2005

Governor Brian Schweitzer  
State Capitol  
P.O. Box 200801  
Helena, MT 59620-0801

Dear Governor Schweitzer:

Thank you for your request for an opinion from my office concerning whether, consistent with the mandates of the Montana Constitution, the costs of administering public school trust lands and the trust lands of Montana's institutions of higher education can be paid from the income received from the trust lands and the interest earned on the trust funds. After a careful review of the relevant Montana law and in keeping with the policies previously adopted by this office for addressing requests, I am providing you counsel on the status of the law as it currently exists.

Your request involves a question of whether certain Montana statutes<sup>1</sup> that provide for funding administrative costs for the management of school trusts are constitutional. All Montana statutes are presumed to be constitutional under accepted principles of statutory construction. T & W Chevrolet v. Darvial, 196 Mont. 287, 641 P.2 1368 (1982). The Supreme Court has reaffirmed that constitutional presumption numerous times, most recently in Montanans for the Responsible Use of the School Trust v. Darkenwald, 2005 Mont. 190, ¶ 22, 2005 Mont. Lexis 347, (*r'hear. denied*) (2005).

As you have noted in your request (with the express exception of the Morrill Trust), there is no language within the enabling acts for the common school trust or for the higher education trusts that would restrict what is now settled law allowing reasonable costs of managing the trusts or trust funds to be deducted from revenue generated by the trusts themselves. U.S. v. Swope, 16 F.2d 215, 219-20 (8th Cir. 1926). Review of the language in the Montana Constitution also shows no restriction on the payment of

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<sup>1</sup> "Attachment A" to the Trust Land administrative costs analysis references the numerous statutes in Title 77, Mont. Code Ann., that provide for necessary administrative costs.

Governor Brian Schweitzer  
September 13, 2005  
Page 2

administrative costs from the revenue generated by the trusts. The well-settled law of trusts allows for reasonable management costs to be deducted from the revenue generated by the trusts. State ex rel. Bickford v. Cook, 17 Mont. 529, 43 P. 928 (1896); See, Moon v. State Board of Land Comm'rs, 111 Idaho 389, 724 P.2d 125 (1986). It is the reasoned and common interpretation that where a trust is established to generate revenue, costs of administering and managing the res of the trust are anticipated. Absent restrictive language in the creating documents (and here we have none) the restriction would be limited only by whether the costs were reasonable, or were otherwise restricted by legislative enactments. Price v. State of Hawaii, 921 F. 2d 950, 956 (9th Cir. 1990).

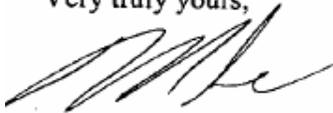
The language within article X section 5 of the Montana Constitution does not restrict income to "gross" income as opposed to the well settled practice of deducting reasonable costs of managing a trust with the net remainder considered the income revenue to that trust. The language at article X section 5 provides for the relative allocation of income revenue and interest to be appropriately applied for the schools (95%) and the trust fund (5%) (as opposed to funding any other operation of state government) but does not by that relative allocation prohibit using revenue to administer those trusts. (See Committee Proposals, Constitutional Convention, Vol. II, pp. 727-728, where the discussion focused upon the revised equitable apportionment of the revenues to the schools, not upon the 95%-5% allocation to the trust and trust fund which remained the same as in the 1889 Constitution.) Likewise article X section 10 directs that university funds and accruals on those funds should also remain used solely for the purposes of the university system as opposed to any other operation of state government.

I would not interpret the State's fiduciary responsibilities for management of either the trust lands or the trust fund differently from the analysis provided by former Attorney General Forrest Anderson in his 1967 opinion regarding the use of income from trust lands for trust lands improvement and development. In that opinion, 32 Op. Att'y Gen. No. 8 (1967), the Attorney General reviewed both the Enabling Act, Act of February 1889, § 11, ch. 180, 25 Stat. 676 (1889) and the Montana Constitution in determining whether they conflicted with the statute. While there was no express discussion of article X section 5 or article X section 10, in his pre-1972 opinion, Attorney General Anderson found that managing the trust lands using trust funds did not violate the 1889 Constitution or the Enabling Act. Additionally, in a February 24, 1970 letter to then Commissioner of State Lands and Investments, Ted Schwinden, Attorney General Robert Woodahl affirmed the general conclusions reached by Attorney General Anderson.

Governor Brian Schweitzer  
September 13, 2005  
Page 3

For the reasons discussed, I believe the statutes are defensible in the event of a constitutional challenge.

Very truly yours,

A handwritten signature in black ink, appearing to read "Mike McGrath", written in a cursive style.

MIKE McGRATH  
Attorney General



COMMON SCHOOLS TRUST, CONT.

FY1979	FY1980	FY1981	FY1982	FY1983	FY1984	FY1985	FY1986	FY1987
\$132,125.00	\$287,663.00	\$319,611.00	\$129,901.00	\$157,367.00	\$189,923.00	\$176,011.00	\$129,783.00	\$270,132.00
\$370,258.63	\$528,630.90	\$1,171,240.14	\$744,098.93	\$510,625.52	\$577,259.83	\$438,674.05	\$364,670.96	\$365,888.44
<u>\$502,383.63</u>	<u>\$816,293.90</u>	<u>\$1,490,851.14</u>	<u>\$873,999.93</u>	<u>\$667,992.52</u>	<u>\$767,182.83</u>	<u>\$614,685.05</u>	<u>\$494,453.96</u>	<u>\$636,020.44</u>

FY1988	FY1989	FY1990	FY1991	FY1992	FY1993	FY1994	FY1995	FY1996
\$431,032.00	\$210,921.00	\$330,326.00	\$210,309.00	\$269,359.00	\$314,894.00	\$383,396.00	\$768,519.00	\$736,718.00
\$390,885.01	\$282,113.53	\$332,943.79	\$336,339.03	\$347,523.98	\$322,435.42	\$380,965.47	\$367,898.21	\$459,722.77
				\$5,552.72	\$34,890.87	\$38,152.21	\$38,262.82	\$36,899.56
						\$298,739.81	\$306,287.05	\$825,312.09
<u>\$821,917.01</u>	<u>\$493,034.53</u>	<u>\$663,269.79</u>	<u>\$546,648.03</u>	<u>\$622,435.70</u>	<u>\$672,220.29</u>	<u>\$802,513.68</u>	<u>\$1,174,680.03</u>	<u>\$1,233,340.33</u>

COMMON SCHOOLS TRUST, CONT.

FY1997	FY1998	FY1999	FY2000	FY2001	FY2002	FY2003	FY2004
\$906,928.00	\$1,088,599.00	\$1,003,040.00	\$1,014,923.00	\$987,823.00	\$860,966.00	\$779,640.00	\$1,463,988.00
\$398,182.16	\$478,117.51	\$464,081.41	\$513,415.50	\$698,124.05	\$504,023.40	\$499,361.61	\$517,845.22
\$39,888.54	\$39,806.55	\$40,765.11	\$43,915.33	\$45,303.29	\$58,406.92	\$59,197.98	\$88,319.97
			\$3,293,638.00	\$3,297,473.00	\$3,369,474.00	\$3,669,482.00	\$3,599,948.00
\$869,579.49	\$1,217,377.15	\$1,316,641.13	\$1,694,649.30	\$1,716,706.00	\$2,129,110.00	\$1,957,786.56	\$2,301,619.54
<u>\$1,344,998.70</u>	<u>\$1,606,523.06</u>	<u>\$1,507,886.52</u>	<u>\$4,865,891.83</u>	<u>\$5,028,723.34</u>	<u>\$4,792,870.32</u>	<u>\$6,965,468.15</u>	<u>\$7,971,720.73</u>

FY2005	TOTAL
\$2,437,026.00	\$17,912,030.00
\$686,492.31	\$15,520,891.26
\$94,284.91	\$663,646.78
\$3,885,075.21	\$21,115,090.21
\$67,174.71	\$67,174.71
<u>\$2,536,322.63</u>	<u>\$17,170,130.75</u>
<u>\$9,706,375.77</u>	<u>\$72,448,963.71</u>

(1) 2.5% of revenue less T&L investment earnings and land contract interest were used to calculate resource development from fiscal years 1979 through 1985. The rate was increased to 3% by the 1997 Legislature.



SCHOOL FOR THE DEAF AND BLIND TRUST, CONT.

FY1980	FY1981	FY1982	FY1983	FY1984	FY1985	FY1986	FY1987	FY1988
\$8,306.00	\$9,228.00	\$5,031.00	\$949.00	\$236.00	\$473.00	\$215.00	\$2,940.00	\$10,337.00
\$2,087.39	\$3,119.38	\$2,912.37	\$3,263.90	\$2,975.66	\$3,125.98	\$2,400.14	\$1,454.64	\$1,439.85
<u>\$10,393.39</u>	<u>\$12,347.38</u>	<u>\$7,943.37</u>	<u>\$4,212.90</u>	<u>\$3,211.66</u>	<u>\$3,598.98</u>	<u>\$2,615.14</u>	<u>\$4,394.64</u>	<u>\$11,776.85</u>

FY1989	FY1990	FY1991	FY1992	FY1993	FY1994	FY1995	FY1996	FY1997
\$0.00	\$6,189.00	\$7,676.00	\$0.00	\$0.00	\$0.00	\$16,331.00	\$188,902.00	\$101,382.00
\$1,346.10	\$1,423.77	\$1,561.55	\$1,591.78	\$1,921.80	\$2,099.07	\$1,647.03	\$1,893.08	\$1,658.70
			\$43.77	\$275.02	\$300.73	\$301.61	\$290.86	\$314.42
<u>\$1,346.10</u>	<u>\$7,612.77</u>	<u>\$9,237.55</u>	<u>\$1,635.55</u>	<u>\$2,196.82</u>	<u>\$2,399.80</u>	<u>\$18,279.64</u>	<u>\$191,085.94</u>	<u>\$103,355.12</u>

SCHOOL FOR THE DEAF AND BLIND TRUST, CONT.

FY1998	FY1999	FY2000	FY2001	FY2002	FY2003	FY2004
\$0.00	\$33,825.00	\$79,243.00	\$31,737.00	\$15,526.00	\$35,606.00	\$4,758.00
-\$2,398.92	\$2,289.73	\$2,663.55	\$2,481.53	\$2,547.50	\$2,987.56	\$2,696.95
\$313.77	\$321.33	\$346.16	\$357.10	\$460.39	\$466.62	\$696.17
		\$19,730.00	\$19,751.00	\$12,704.00	\$30,578.00	\$5,073.00
						\$6,987.00
<u>-\$2,085.15</u>	<u>\$36,436.06</u>	<u>\$101,982.71</u>	<u>\$54,326.63</u>	<u>\$31,237.89</u>	<u>\$69,638.18</u>	<u>\$20,211.12</u>

FY2005	TOTAL
\$29,975.00	\$648,206.00
\$3,653.93	\$64,018.35
\$745.79	\$5,233.74
\$29,109.22	\$116,945.22
\$992.77	\$992.77
<u>\$31,073.65</u>	<u>\$38,060.65</u>
<u>\$95,550.36</u>	<u>\$873,456.73</u>

(1) 2.5% of revenue less T&L investment earnings and land contract interest were used to calculate resource development from fiscal years 1979 through 1985. The rate was increased to 3% by the 1997 Legislature.



STATE REFORM SCHOOL (PINE HILLS) TRUST, CONT.

FY1980	FY1981	FY1982	FY1983	FY1984	FY1985	FY1986	FY1987	FY1988
\$5,587.00	\$6,207.00	\$2,744.00	\$12,105.00	\$15,788.00	\$236.00	\$612.00	\$671.00	\$5,983.00
\$10,446.95	\$11,879.87	\$5,128.17	\$4,224.54	\$4,809.15	\$5,124.97	\$5,786.52	\$3,791.15	\$3,413.14
<u>\$16,033.95</u>	<u>\$18,086.87</u>	<u>\$7,872.17</u>	<u>\$16,329.54</u>	<u>\$20,597.15</u>	<u>\$5,360.97</u>	<u>\$6,398.52</u>	<u>\$4,462.15</u>	<u>\$9,396.14</u>

FY1989	FY1990	FY1991	FY1992	FY1993	FY1994	FY1995	FY1996	FY1997
\$2,138.00	\$192.00	\$5,210.00	\$12,676.00	\$1,430.00	\$27,917.00	\$961.00	\$33,583.00	\$23,143.00
\$2,861.49	\$3,007.23	\$2,173.03	\$2,205.80	\$2,221.71	\$2,647.28	\$2,994.23	\$5,082.69	\$3,175.59
			\$83.03	\$521.69	\$570.46	\$572.11	\$551.73	\$596.42
<u>\$4,999.49</u>	<u>\$3,199.23</u>	<u>\$7,383.03</u>	<u>\$14,964.83</u>	<u>\$4,173.40</u>	<u>\$31,134.74</u>	<u>\$4,527.34</u>	<u>\$39,217.42</u>	<u>\$26,915.01</u>

STATE REFORM SCHOOL (PINE HILLS), CONT.

FY1998	FY1999	FY2000	FY2001	FY2002	FY2003	FY2004	FY2005	TOTAL
\$10,894.00	\$3,481.00	\$22,859.00	\$47,606.00	\$52,223.00	\$31,894.00	\$85,341.00	\$42,754.00	\$491,698.00
\$3,757.22	\$4,156.35	\$4,521.39	\$6,863.51	\$5,450.01	\$5,325.88	\$5,561.36	\$6,101.59	\$135,982.57
\$595.19	\$609.53	\$656.63	\$677.38	\$873.31	\$885.14	\$1,320.58	\$1,376.05	\$9,889.25
		\$20,790.00	\$20,813.00	\$23,837.00	\$23,837.00	\$29,715.00	\$28,614.57	\$147,606.57
							\$1,089.39	\$1,089.39
						\$130,920.21	\$43,737.21	\$174,657.42
<u>\$15,246.41</u>	<u>\$8,246.88</u>	<u>\$48,827.02</u>	<u>\$75,959.89</u>	<u>\$82,383.32</u>	<u>\$61,942.02</u>	<u>\$252,858.15</u>	<u>\$123,672.81</u>	<u>\$960,923.20</u>

(1) 2.5% of revenue less T&L investment earnings and land contract interest were used to calculate resource development from fiscal years 1979 through 1985. The rate was increased to 3% by the 1997 Legislature.



PUBLIC BUILDINGS TRUST, CONT.

FY1980	FY1981	FY1982	FY1983	FY1984	FY1985	FY1986	FY1987	FY1988
\$62,794.00	\$69,768.00	\$61,749.00	\$37,977.00	\$18,144.00	\$51,031.00	\$40,999.00	\$74,878.00	\$113,135.00
\$13,798.20	\$24,039.74	\$13,200.58	\$13,342.99	\$17,322.96	\$12,470.64	\$9,554.63	\$7,236.28	\$6,621.19
<u>\$76,592.20</u>	<u>\$93,807.74</u>	<u>\$74,949.58</u>	<u>\$51,319.99</u>	<u>\$35,466.96</u>	<u>\$63,501.64</u>	<u>\$50,553.63</u>	<u>\$82,114.28</u>	<u>\$119,756.19</u>
FY1989	FY1990	FY1991	FY1992	FY1993	FY1994	FY1995	FY1996	FY1997
\$75,423.00	\$80,682.00	\$52,244.00	\$41,196.00	\$101,391.00	\$0.00	\$47,072.00	\$16,791.00	\$85,803.00
\$5,927.96	\$5,468.91	\$6,105.41	\$5,458.44	\$5,444.10	\$6,175.20	\$6,093.67	\$7,400.35	\$5,730.57
			\$224.92	\$1,413.28	\$1,545.38	\$1,549.86	\$1,494.64	\$1,615.71
<u>\$81,350.96</u>	<u>\$86,150.91</u>	<u>\$58,349.41</u>	<u>\$46,879.36</u>	<u>\$108,248.38</u>	<u>\$7,720.58</u>	<u>\$54,715.53</u>	<u>\$25,685.99</u>	<u>\$93,149.28</u>

PUBLIC BUILDINGS TRUST, CONT.

FY1998	FY1999	FY2000	FY2001	FY2002	FY2003	FY2004	FY2005	TOTAL
\$163,419.00	\$39,656.00	\$242,301.00	\$696,237.00	\$208,890.00	\$209,774.00	\$292,891.00	\$99,850.00	\$3,431,856.00
\$7,142.13	\$7,479.99	\$7,670.36	\$8,268.27	\$8,838.14	\$9,311.21	\$12,622.02	\$12,101.95	\$295,545.44
\$1,612.39	\$1,651.22	\$1,778.82	\$1,835.04	\$2,365.81	\$2,397.85	\$3,577.46	\$4,085.29	\$27,147.67
		\$46,915.00	\$179,620.00	\$240,255.00	\$85,162.00	\$98,964.00	\$172,683.40	\$823,599.40
							\$1,017.35	\$1,017.35
					\$567,082.44	\$448,435.32	\$168,514.65	\$1,184,032.41
<u>\$172,173.52</u>	<u>\$48,787.21</u>	<u>\$298,665.18</u>	<u>\$885,960.31</u>	<u>\$460,348.95</u>	<u>\$873,727.50</u>	<u>\$856,489.80</u>	<u>\$458,252.64</u>	<u>\$5,763,198.27</u>

(1) 2.5% of revenue less T&L investment earnings and land contract interest were used to calculate resource development from fiscal years 1979 through 1985. The rate was increased to 3% by the 1997 Legislature.

STATE NORMAL SCHOOL (UNIV. OF MT – WESTERN) TRUST

TRUST LAND MANAGEMENT DIVISION

SOURCES - ADMINISTRATIVE COSTS	FY1963	FY1964	FY1965	FY1966	FY1967	FY1968	FY1969
FOREST IMPROVEMENT FEES	\$18.00	\$289.00	\$280.00	\$555.00	\$0.00	\$2,120.00	\$9,806.00
RESOURCE DEVELOPMENT FEES (1)					\$626.37	\$1,422.83	\$954.25
RECREATIONAL USE LICENSES							
TRUST LAND ADMINISTRATION							
10% COMMERCIAL LEASE FEE							
TIMBER SALE ACCOUNT							
<b>TOTAL FEES COLLECTED</b>	<b>\$18.00</b>	<b>\$289.00</b>	<b>\$280.00</b>	<b>\$555.00</b>	<b>\$626.37</b>	<b>\$3,542.83</b>	<b>\$10,760.25</b>

	FY1970	FY1971	FY1972	FY1973	FY1974	FY1975	FY1976	FY1977	FY1978	FY1979
	\$15,459.00	\$944.00	\$12,285.00	\$24.00	\$0.00	\$476.00	\$21,356.00	\$0.00	\$0.00	\$349.00
	\$985.26	\$890.86	\$1,151.44	\$1,506.92	\$1,749.29	\$2,041.47	\$1,784.27	\$2,262.50	\$3,831.57	\$3,011.90
	<u>\$16,444.26</u>	<u>\$1,834.86</u>	<u>\$13,436.44</u>	<u>\$1,530.92</u>	<u>\$1,749.29</u>	<u>\$2,517.47</u>	<u>\$23,140.27</u>	<u>\$2,262.50</u>	<u>\$3,831.57</u>	<u>\$3,360.90</u>

STATE NORMAL SCHOOL (UNIV. OF MT – WESTERN) TRUST, CONT.

FY1980	FY1981	FY1982	FY1983	FY1984	FY1985	FY1986	FY1987	FY1988
\$7,420.00	\$49,769.00	\$6,632.00	\$1,187.00	\$1,649.00	\$709.00	\$322.00	\$8,447.00	\$8,389.00
\$3,750.56	\$8,316.10	\$7,415.19	\$5,370.16	\$9,316.44	\$6,537.38	\$5,408.82	\$3,653.63	\$3,395.14
<u>\$11,170.56</u>	<u>\$58,085.10</u>	<u>\$14,047.19</u>	<u>\$6,557.16</u>	<u>\$10,965.44</u>	<u>\$7,246.38</u>	<u>\$5,730.82</u>	<u>\$12,100.63</u>	<u>\$11,784.14</u>
FY1989	FY1990	FY1991	FY1992	FY1993	FY1994	FY1995	FY1996	FY1997
\$0.00	\$18,422.00	\$1,720.00	\$10,563.00	\$893.00	\$3,722.00	\$5,764.00	\$27,286.00	\$117,811.00
\$3,020.31	\$2,745.33	\$2,751.23	\$3,238.82	\$2,607.15	\$2,977.82	\$3,098.04	\$3,167.50	\$3,272.24
			\$75.96	\$477.30	\$521.92	\$1,045.34	\$504.78	\$545.66
<u>\$3,020.31</u>	<u>\$21,167.33</u>	<u>\$4,471.23</u>	<u>\$13,877.78</u>	<u>\$3,977.45</u>	<u>\$7,221.74</u>	<u>\$9,907.38</u>	<u>\$30,958.28</u>	<u>\$121,628.90</u>

STATE NORMAL SCHOOL (UNIV. OF MT – WESTERN) TRUST, CONT.

FY1998	FY1999	FY2000	FY2001	FY2002	FY2003	FY2004	FY2005	TOTAL
\$219,547.00	\$27,790.00	\$33,526.00	\$0.00	\$60,691.00	\$55,253.00	\$46,365.00	\$109,046.00	\$886,884.00
\$3,629.23	\$3,511.53	\$3,928.79	\$4,474.10	\$4,564.58	\$5,670.22	\$4,484.09	\$6,266.27	\$138,789.60
\$544.54	\$557.66	\$600.74	\$619.74	\$798.98	\$809.82	\$1,208.20	\$10,368.67	\$18,679.31
		\$54,680.00	\$26,202.00	\$61,247.00	\$61,247.00	\$2,013.00	\$4,766.77	\$210,155.77
							\$1,641.06	\$1,641.06
						\$70,934.74	\$174,064.31	\$244,999.05
<u>\$223,720.77</u>	<u>\$31,859.19</u>	<u>\$92,735.53</u>	<u>\$31,295.84</u>	<u>\$127,301.56</u>	<u>\$122,980.04</u>	<u>\$125,005.03</u>	<u>\$306,153.08</u>	<u>\$1,501,148.79</u>

(1) 2.5% of revenue less T&L investment earnings and land contract interest were used to calculate resource development from fiscal years 1979 through 1985. The rate was increased to 3% by the 1997 Legislature.

MORRILL TRUST (MSU)

TRUST LAND MANAGEMENT DIVISION

SOURCES - ADMINISTRATIVE COSTS	FY1967	FY1968	FY1969	FY1970	FY1971	FY1972	FY1973
FOREST IMPROVEMENT FEES	\$231.00	\$2,423.00	\$0.00	\$20.00	\$443.00	\$63.00	\$213.00
RESOURCE DEVELOPMENT FEES (1)	\$760.69	\$1,862.29	\$1,202.54	\$1,063.61	\$1,104.53	\$1,474.27	\$1,708.12
RECREATIONAL USE LICENSES							
TRUST LAND ADMINISTRATION							
<b>TOTAL FEES COLLECTED</b>	<b>\$991.69</b>	<b>\$4,285.29</b>	<b>\$1,202.54</b>	<b>\$1,083.61</b>	<b>\$1,547.53</b>	<b>\$1,537.27</b>	<b>\$1,921.12</b>

FY1974	FY1975	FY1976	FY1977	FY1978	FY1979	FY1980	FY1981	FY1982	FY1983
\$18.00	\$904.00	\$385.00	\$0.00	\$0.00	\$976.00	\$0.00	\$0.00	\$1,143.00	\$4,035.00
\$1,678.19	\$1,659.77	\$1,775.37	\$4,525.88	\$4,421.80	\$4,301.52	\$7,679.09	\$7,867.13	\$7,009.38	\$5,128.42
<b>\$1,696.19</b>	<b>\$2,563.77</b>	<b>\$2,160.37</b>	<b>\$4,525.88</b>	<b>\$4,421.80</b>	<b>\$5,277.52</b>	<b>\$7,679.09</b>	<b>\$7,867.13</b>	<b>\$8,152.38</b>	<b>\$9,163.42</b>

FY1984	FY1985	FY1986	FY1987	FY1988	FY1989	FY1990	FY1991	FY1992
\$1,414.00	\$473.00	\$215.00	\$205.00	\$160.00	\$0.00	\$0.00	\$0.00	\$4,225.00
\$5,827.10	\$5,810.41	\$4,272.51	\$3,309.14	\$3,140.65	\$2,363.03	\$2,811.53	\$2,553.00	\$3,068.84
								\$84.51
<b>\$7,241.10</b>	<b>\$6,283.41</b>	<b>\$4,487.51</b>	<b>\$3,514.14</b>	<b>\$3,300.65</b>	<b>\$2,363.03</b>	<b>\$2,811.53</b>	<b>\$2,553.00</b>	<b>\$7,378.35</b>

MORRIL TRUST (MSU), CONT.

FY1993	FY1994	FY1995	FY1996	FY1997	FY1998	FY1999	FY2000	FY2001
\$8,040.00	\$59,557.00	\$961.00	\$0.00	\$39,797.00	\$84,692.00	\$99,939.00	\$4,572.00	\$0.00
\$2,717.51	\$2,944.92	\$2,663.09	\$2,885.40	\$2,330.89	\$3,362.99	\$3,223.72	\$3,442.58	\$6,221.39
\$531.04	\$580.68	\$582.36	\$561.61	\$607.11	\$605.86	\$620.45	\$668.39	\$689.52
							\$26,755.00	\$26,785.00
<u>\$11,288.55</u>	<u>\$63,082.60</u>	<u>\$4,206.45</u>	<u>\$3,447.01</u>	<u>\$42,735.00</u>	<u>\$88,660.85</u>	<u>\$103,783.17</u>	<u>\$35,437.97</u>	<u>\$33,695.91</u>

FY2002	FY2003	FY2004	FY2005	TOTAL
\$1,411.00	\$0.00	\$0.00	\$0.00	\$316,515.00
\$3,993.70	\$0.00	\$0.00	\$0.00	\$122,165.00
\$888.96	\$901.00	\$1,344.23	\$0.00	\$8,665.72
\$9,003.00	\$0.00	\$0.00	\$0.00	\$62,543.00
<u>\$15,296.66</u>	<u>\$901.00</u>	<u>\$1,344.23</u>	<u>\$0.00</u>	<u>\$509,888.72</u>

(1) 2.5% of revenue less T&L investment earnings and land contract interest were used to calculate resource development from fiscal years 1979 through 1985. The rate was increased to 3% by the 1997 Legislature.



MSU 2<sup>ND</sup> GRANT TRUST, CONT.

FY1981	FY1982	FY1983	FY1984	FY1985	FY1986	FY1987	FY1988	FY1989
\$11,868.00	\$0.00	\$13,529.00	\$2,356.00	\$3,071.00	\$5,266.00	\$12,878.00	\$37,833.00	\$16,385.00
\$3,971.69	\$5,468.52	\$2,998.76	\$8,780.53	\$3,293.23	\$2,865.31	\$1,835.90	\$2,041.01	\$2,068.49
<u>\$15,839.69</u>	<u>\$5,468.52</u>	<u>\$16,527.76</u>	<u>\$11,136.53</u>	<u>\$6,364.23</u>	<u>\$8,131.31</u>	<u>\$14,713.90</u>	<u>\$39,874.01</u>	<u>\$18,453.49</u>

FY1990	FY1991	FY1992	FY1993	FY1994	FY1995	FY1996	FY1997	FY1998
\$17,744.00	\$26,518.00	\$14,436.00	\$14,740.00	\$212,170.00	\$104,711.00	\$384,101.00	\$216,588.00	\$22,228.00
\$1,503.21	\$2,371.91	\$2,532.14	\$2,490.16	\$3,004.85	\$3,415.96	\$3,902.13	\$4,671.26	\$6,193.71
		\$39.14	\$245.97	\$268.96	\$269.74	\$260.13	\$281.20	\$280.62
<u>\$19,247.21</u>	<u>\$28,889.91</u>	<u>\$17,007.28</u>	<u>\$17,476.13</u>	<u>\$215,443.81</u>	<u>\$108,396.70</u>	<u>\$388,263.26</u>	<u>\$221,540.46</u>	<u>\$28,702.33</u>

MSU 2<sup>ND</sup> GRANT TRUST, CONT.

FY1999	FY2000	FY2001	FY2002	FY2003	FY2004	FY2005	TOTAL
\$48,307.00	\$115,817.00	\$65,458.00	\$118,559.00	\$ 123,270.00	\$ 130,006.00	\$205,208.00	\$2,130,703.00
\$7,150.05	\$8,029.02	\$8,892.57	\$9,956.88	\$10,164.13	\$12,915.98	\$12,108.95	\$138,998.69
\$287.38	\$309.59	\$319.37	\$411.75	\$417.33	\$622.63	\$787.51	\$4,801.32
	\$59,490.00	\$59,560.00	\$74,466.00	\$74,467.00	\$5,311.00	\$154.49	\$273,448.49
					\$0.00	\$1,761.33	\$1,761.33
					\$196,452.87	\$252,394.13	\$448,847.00
<u>\$55,744.43</u>	<u>\$183,645.61</u>	<u>\$134,229.94</u>	<u>\$203,393.63</u>	<u>\$208,318.46</u>	<u>\$345,308.48</u>	<u>\$472,414.41</u>	<u>\$2,998,559.83</u>

(1) 2.5% of revenue less T&L investment earnings and land contract interest were used to calculate resource development from fiscal years 1979 through 1985. The rate was increased to 3% by the 1997 Legislature.

**VETERANS' HOME TRUST**

**TRUST LAND MANAGEMENT DIVISION**

SOURCES - ADMINISTRATIVE COSTS	FY1989	FY1990	FY1991	FY1992	FY1993	FY1994	FY1995
FOREST IMPROVEMENT FEES (1)							
RESOURCE DEVELOPMENT FEES (2)	\$94.36	\$122.50	\$144.28	\$107.57	\$83.60	\$112.21	\$179.44
RECREATIONAL USE LICENSES							
TRUST LAND ADMINISTRATION							
10% COMMERCIAL LEASE FEES							
<b>TOTAL FEES COLLECTED</b>	<b>\$94.36</b>	<b>\$122.50</b>	<b>\$144.28</b>	<b>\$107.57</b>	<b>\$83.60</b>	<b>\$112.21</b>	<b>\$179.44</b>

FY1996	FY1997	FY1998	FY1999	FY2000	FY2001	FY2002	FY2003	FY2004
\$182.81	\$167.44	\$171.75	\$237.71	\$200.04	\$204.06	\$0.00	\$175.42	\$191.32
<b>\$182.81</b>	<b>\$167.44</b>	<b>\$171.75</b>	<b>\$237.71</b>	<b>\$200.04</b>	<b>\$204.06</b>	<b>\$0.00</b>	<b>\$175.42</b>	<b>\$191.32</b>

FY2005	TOTAL
	\$0.00
\$299.71	\$2,674.22
	\$0.00
\$0.00	\$0.00
	\$0.00
<b>\$299.71</b>	<b>\$2,674.22</b>

(1) Veteran's Home Trust does not have any forest land.  
 (2) 2.5% of revenue less T&L investment earnings and land contract interest were used to calculate resource development from fiscal years 1979 through 1985. The rate was increased to 3% by the 1997 Legislature.



UNIVERSITY OF MONTANA (MISSOULA) TRUST, CONT.

FY1984	FY1985	FY1986	FY1987	FY1988	FY1989	FY1990	FY1991	FY1992
\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
\$3,062.11	\$2,335.54	\$2,342.52	\$2,160.91	\$1,934.81	\$1,309.29	\$1,793.36	\$1,328.40	\$1,811.07
								\$21.72
<u>\$3,062.11</u>	<u>\$2,335.54</u>	<u>\$2,342.52</u>	<u>\$2,160.91</u>	<u>\$1,934.81</u>	<u>\$1,309.29</u>	<u>\$1,793.36</u>	<u>\$1,328.40</u>	<u>\$1,832.79</u>
FY1993	FY1994	FY1995	FY1996	FY1997	FY1998	FY1999	FY2000	FY2001
\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$9,143.00	\$0.00
\$1,790.15	\$1,757.88	\$1,864.95	\$2,059.93	\$1,671.77	\$2,668.50	\$2,387.13	\$2,292.65	\$2,516.52
\$136.46	\$149.21	\$149.65	\$144.32	\$156.01	\$155.69	\$159.43	\$171.76	\$177.18
							\$15,115.00	\$12,486.00
							\$1,691,524.00	
<u>\$1,926.61</u>	<u>\$1,907.09</u>	<u>\$2,014.60</u>	<u>\$2,204.25</u>	<u>\$1,827.78</u>	<u>\$2,824.19</u>	<u>\$2,546.56</u>	<u>\$1,718,246.41</u>	<u>\$15,179.70</u>

UNIVERSITY OF MONTANA (MISSOULA) TRUST, CONT.

FY2002	FY2003	FY2004	FY2005	TOTAL
\$0.00	\$0.00	\$7.00	\$0.00	\$22,753.00
\$2,507.25	\$2,944.03	\$3,076.04	\$3,740.27	\$65,991.10
\$228.43	\$231.52	\$345.42	\$378.16	\$2,604.96
\$1,092.00	\$3,538.00	\$793.00	\$527.37	\$33,551.37
			\$458.00	\$458.00
		\$10.93	\$4.81	\$1,691,539.74
<u>\$3,827.68</u>	<u>\$6,713.55</u>	<u>\$4,232.39</u>	<u>\$5,108.61</u>	<u>\$1,816,898.17</u>

(1) 2.5% of revenue less T&L investment earnings and land contract interest were used to calculate resource development from fiscal years 1979 through 1985. The rate was increased to 3% by the 1997 Legislature.

MONTANA TECH TRUST

TRUST LAND MANAGEMENT DIVISION

SOURCES - ADMINISTRATIVE COSTS	FY1963	FY1964	FY1965	FY1966	FY1967	FY1968	FY1969	FY1970	FY1971
FOREST IMPROVEMENT FEES	\$0.00	\$118.00	\$58.00	\$635.00	\$5.00	\$70.00	\$52,499.00	\$73.00	\$4.00
RESOURCE DEVELOPMENT FEES (1)					\$1,362.98	\$2,518.67	\$1,491.12	\$1,453.94	\$1,468.29
RECREATIONAL USE LICENSES									
10% COMMERCIAL LEASE FEES									
TRUST LAND ADMINISTRATION									
TIMBER SALE ACCOUNT									
<b>TOTAL FEES COLLECTED</b>	<b>\$0.00</b>	<b>\$118.00</b>	<b>\$58.00</b>	<b>\$635.00</b>	<b>\$1,367.98</b>	<b>\$2,588.67</b>	<b>\$53,990.12</b>	<b>\$1,526.94</b>	<b>\$1,472.29</b>

FY1972	FY1973	FY1974	FY1975	FY1976	FY1977	FY1978	FY1979	FY1980	FY1981
\$20,806.00	\$421.00	\$716.00	\$208.00	\$38,822.00	\$3,661.00	\$743.00	\$16,767.00	\$2,671.00	\$16,762.00
\$1,830.70	\$2,510.57	\$2,982.60	\$3,362.07	\$3,724.91	\$4,810.47	\$4,378.41	\$3,556.41	\$4,194.11	\$5,230.01
<b>\$22,636.70</b>	<b>\$2,931.57</b>	<b>\$3,698.60</b>	<b>\$3,570.07</b>	<b>\$42,546.91</b>	<b>\$8,471.47</b>	<b>\$5,121.41</b>	<b>\$20,323.41</b>	<b>\$6,865.11</b>	<b>\$21,992.01</b>

MONTANA TECH TRUST, CONT.

FY1982	FY1983	FY1984	FY1985	FY1986	FY1987	FY1988	FY1989	FY1990	FY1991
\$7,776.00	\$10,444.00	\$6,127.00	\$4,253.00	\$37,249.00	\$40,654.00	\$33,726.00	\$14,513.00	\$11,342.00	\$1,936.00
\$8,868.26	\$8,535.78	\$11,272.14	\$7,447.61	\$5,931.53	\$4,983.92	\$5,623.69	\$4,460.90	\$5,024.33	\$5,027.30
<u>\$16,644.26</u>	<u>\$18,979.78</u>	<u>\$17,399.14</u>	<u>\$11,700.61</u>	<u>\$43,180.53</u>	<u>\$45,637.92</u>	<u>\$39,349.69</u>	<u>\$18,973.90</u>	<u>\$16,366.33</u>	<u>\$6,963.30</u>
FY1992	FY1993	FY1994	FY1995	FY1996	FY1997	FY1998	FY1999	FY2000	
\$0.00	\$5,360.00	\$16,750.00	\$11,528.00	\$73,462.00	\$76,589.00	\$79,085.00	\$0.00	\$2,438.00	
\$5,689.13	\$6,187.36	\$7,720.77	\$7,022.06	\$7,738.99	\$7,200.76	\$9,850.71	\$9,309.96	\$9,965.56	
\$71.99	\$452.37	\$494.65	\$496.09	\$478.41	\$517.17	\$516.11	\$528.53	\$569.38	
								\$32,670.00	
<u>\$5,761.12</u>	<u>\$11,999.73</u>	<u>\$24,965.42</u>	<u>\$19,046.15</u>	<u>\$81,679.40</u>	<u>\$84,306.93</u>	<u>\$89,451.82</u>	<u>\$9,838.49</u>	<u>\$45,642.94</u>	

MONTANA TECH TRUST, CONT.

FY2001	FY2002	FY2003	FY2004	FY2005	TOTAL
\$152,736.00	\$86,097.00	\$71,292.00	\$6,269.00	\$20,701.00	\$925,366.00
\$13,969.41	\$10,994.70	\$12,013.21	\$11,203.56	\$14,635.95	\$245,552.85
\$587.38	\$757.27	\$767.52	\$1,145.10	\$1,172.67	\$8,554.64
				\$2,858.73	\$2,858.73
\$32,709.00	\$34,762.00	\$34,762.00	\$753.00	\$887.97	\$136,543.97
			\$8,675.67	\$21,924.62	\$30,600.29
<u>\$200,001.79</u>	<u>\$132,610.97</u>	<u>\$35,529.52</u>	<u>\$19,370.66</u>	<u>\$62,180.94</u>	<u>\$1,349,476.48</u>

(1) 2.5% of revenue less T&L investment earnings and land contract interest were used to calculate resource development from fiscal years 1979 through 1985. The rate was increased to 3% by the 1997 Legislature.

### Total Administrative Costs with Interest as Determined by the DNRC

<b>Trust</b>	<b>Administrative Expenses</b>
Common School	\$72,448,963.71
Deaf and Blind	\$873,456.73
Reform School	\$960,923.20
Public Buildings	\$5,763,198.27
Normal School	\$1,501,148.79
Morrill	\$509,888.72
MSU – 2 <sup>nd</sup>	\$2,998,559.83
Veterans' Home	\$2,674.22
U of M	\$1,816,898.17
MT Tech	\$1,349,476.48
<b>Total</b>	<b>\$88,225,188.12</b>

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# Appendix D. Morrill Act Bill Draft

60th Legislature

HB0019.01

HOUSE BILL NO. 19

INTRODUCED BY W. MCNUTT

BY REQUEST OF THE ENVIRONMENTAL QUALITY COUNCIL

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS GOVERNING STATE LAND ADMINISTRATION TO CLARIFY THAT LAND GRANTED PURSUANT TO THE MORRILL ACT IS NOT SUBJECT TO DEDUCTIONS OF INTEREST OR INCOME FOR PURPOSES OF FUNDING THE ADMINISTRATION OF MORRILL ACT LAND OR FUNDS DERIVED FROM MORRILL ACT LAND; PROVIDING A STATUTORY APPROPRIATION FOR THE ADMINISTRATION OF MORRILL ACT LAND; PROVIDING FOR THE CARRYOVER OF THE UNEXPENDED PORTION OF THE STATUTORY APPROPRIATION; PROVIDING FOR REIMBURSEMENT FROM THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO THE MORRILL ACT TRUST FOR THE ADMINISTRATIVE COSTS OF INVESTING THE MORRILL ACT FUNDS; AMENDING SECTIONS 17-6-201, 17-7-502, 77-1-108, 77-1-109, 77-1-602, 77-1-606, 77-1-613, 77-2-328, AND 77-5-204, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

**Section 1.** Section 17-6-201, MCA, is amended to read:

**"17-6-201. Unified investment program -- general provisions.** (1) The unified investment program directed by Article VIII, section 13, of the Montana constitution to be provided for public funds must be administered by the board of investments in accordance with the prudent expert principle, which requires an investment manager to:

(a) discharge the duties with the care, skill, prudence, and diligence, under the circumstances then prevailing, that a prudent person acting in a like capacity with the same resources and familiar with like matters exercises in the conduct of an enterprise of a like character with like aims;

(b) diversify the holdings of each fund within the unified investment program to minimize the risk of loss and to maximize the rate of return unless, under the circumstances, it is clearly prudent not to do so; and

(c) discharge the duties solely in the interest of and for the benefit of the funds forming the unified investment program.

(2) (a) Retirement funds may be invested in common stocks of any corporation.

(b) Other public funds may not be invested in private corporate capital stock. "Private corporate capital stock" means only the common stock of a corporation.

(3) (a) This section does not prevent investment in any business activity in Montana, including activities that continue existing jobs or create new jobs in Montana.

(b) The board is urged under the prudent expert principle to invest up to 3% of retirement funds in venture capital companies. Whenever possible, preference should be given to investments in those venture capital companies that demonstrate an interest in making investments in Montana.

(c) In discharging its duties, the board shall consider the preservation of purchasing power of capital during periods of high monetary inflation.

(d) The board may not make a direct loan to an individual borrower. The purchase of a loan or a portion of a loan originated by a financial institution is not considered a direct loan.

(4) The board has the primary authority to invest state funds. Another agency may not invest state funds unless otherwise provided by law. The board shall direct the investment of state funds in accordance with the laws and constitution of this state. The board has the power to veto investments made under its general supervision.

(5) The board shall:

(a) assist agencies with public money to determine if, when, and how much surplus cash is available for investment;

(b) determine the amount of surplus treasury cash to be invested;

(c) determine the type of investment to be made;

(d) prepare the claim to pay for the investment; and

(e) keep an account of the total of each investment fund and of all the investments belonging to the fund and a record of the participation of each treasury fund account in each investment fund.

(6) The board may:

(a) execute deeds of conveyance transferring real property obtained through investments. Prior to the transfer of real property directly purchased and held as an investment, the board shall obtain an appraisal by a qualified appraiser.

(b) direct the withdrawal of funds deposited by or for the state treasurer pursuant to 17-6-101 and 17-6-105;

(c) direct the sale of securities in the program at their full and true value when found necessary to raise money for payments due from the treasury funds for which the securities have been purchased.

(7) The cost of administering and accounting for each investment fund must be deducted from the income from each fund, other than the fund derived from land granted to the state 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 329. An appropriation to pay the costs of administering and accounting for the Morrill Act fund is provided for in 77-1-108."

**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; 17-6-101; 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 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) 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, other than the fund containing proceeds derived from land granted to the state 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 329, 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~~ Except as provided in subsection (4), 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).

(4) (a) The amount of \$80,000 each biennium is statutorily appropriated, as provided in 17-7-502, from the general fund to the department for the purposes of administering the land granted to the state 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 329. Any unexpended portion of the statutory appropriation may be retained in the account and used for the administration of the Morrill Act land.

(b) At the end of each fiscal year, the department shall pay from the appropriation in subsection (4)(a) to the trust containing proceeds derived from land granted to the state 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 329, an amount calculated to be the cost of administering the investment of the fund derived from that trust. The payment must be based upon the percentage that the Morrill Act fund constitutes of the total fund derived from all trust lands."

**Section 4.** Section 77-1-109, MCA, is amended to read:

**"77-1-109. Deposits of proceeds in trust land administration account.** (1) (a) The department shall, until the deposit equals the amount appropriated for the fiscal year pursuant to 77-1-108, deposit into the trust land administration account created by 77-1-108 the following:

~~(a)~~(i) mineral royalties;

~~(b)~~(ii) the proceeds or income from the sale of easements and timber, except timber from public school and Montana university system lands;

~~(c)~~(iii) 5% of the interest and income annually credited to the public school fund in accordance with 20-9-341; and

~~(d)~~(iv) fees collected pursuant to 77-2-328.

(b) The department may not make deductions from interest or income generated from lands granted to the state 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 329.

(2) After the deposits in subsection (1) have been made, the remainder of the proceeds, other than proceeds from timber from Montana university system lands and other than those purchased pursuant to 17-6-340, must be deposited in the appropriate permanent fund and the capitol building land grant trust fund. Timber proceeds from university system lands must be paid over to the state treasurer, who shall deposit the money to the credit of the proper fund for use as provided in 17-3-1003(1). Royalty payments purchased pursuant to 17-6-340 must be used as provided in that section and 20-9-622.

(3) The amount of money that is deposited into the trust land administration account may not exceed 1 1/8% of the book value balance in each of the ~~nine~~ permanent funds, other than the fund containing proceeds derived from lands granted to the state 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 329, administered by the department on the first day of January preceding the new biennium and 10% of the previous fiscal year revenue deposited into the capitol building land grant trust fund."

**Section 5.** Section 77-1-602, MCA, is amended to read:

**"77-1-602. Definition of terms.** Unless the context requires otherwise, in this part, the following definitions apply:

(1) "Account" means the resource development account in the state special revenue fund.

(2) (a) "Income" means all proceeds received for the use of state land except:

(i) revenue required by law to be placed in the permanent fund type; and

(ii) revenue from the sale of timber.

(b) For purposes of subsection (2)(a), state land does not include land granted to the state 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 329."

**Section 6.** Section 77-1-606, MCA, is amended to read:

**"77-1-606. Restriction on use of income from school and institutional lands.** Money in the resource development account created in 77-1-604 that is derived from the income from public school lands, university lands, other than land granted to the state 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 329, agricultural college lands, scientific school lands, normal school lands, capitol building lands, or institutional lands must be expended by the department solely for the purpose of defraying the costs and expenses necessarily incurred in developing public lands of the same trust. If the board determines that public lands in a trust may be developed and ~~moneys~~ money in the account from that trust ~~are~~ is insufficient to defray the necessary costs and expenses incurred, the board may transfer sufficient ~~moneys~~ money from other trusts in the account. Trust accounts from which money is transferred must be reimbursed by a method approved by the board."

**Section 7.** Section 77-1-613, MCA, is amended to read:

**"77-1-613. Deduction of portion of income received from 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, other than land granted to the state 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 329, each fiscal year equal to the amount appropriated from the account for the corresponding fiscal year.

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

(3) 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) 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."

**Section 8.** 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. The rules may not include a deduction of fees from land granted to the state 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 329. Any fees collected by a rule adopted pursuant to this section must be deposited in the trust land administration account as provided in 77-1-108."

**Section 9.** Section 77-5-204, MCA, is amended to read:

**"77-5-204. Sale of timber -- fee for forest improvement.** (1) The board may sell timber on state lands, at a price per 1,000 board feet, when appropriate, that, in the board's judgment, is in the best interest of the state, provided that live timber is not sold for less than full market value.

(2) Timber sold or cut from state lands must be cut and removed under rules that may be prescribed by the board for standing timber preservation and fire prevention. In all cases, the board shall require the person cutting the timber to pile and burn or otherwise dispose of the brush and slash in the manner that may be prescribed by the board.

(3) Before the sale of timber is granted, the value of the timber must be appraised under the direction of the department, upon the request and subject to the approval of the board. An appraisal must show as nearly as possible the value per 1,000 board feet, when appropriate, of all merchantable timber.

(4) In addition to the price of the timber established under subsection (1), the board may require a timber purchaser to pay a fee for forest improvement unless the timber is to be harvested from land granted to the state 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 329. Revenue from the fee must be deposited in the state special revenue fund to the credit of the department and, as appropriated by the legislature, may be used only for:

- (a) disposing of logging slash;
- (b) acquiring access and maintaining roads necessary for timber harvesting on state lands;
- (c) reforestation, thinning, and otherwise improving the condition and income potential of forested state lands; and
- (d) complying with legal requirements for timber harvesting."

NEW SECTION. **Section 10. Effective date.** [This act] is effective on passage and approval.

- END -

**Appendix E. Account Combo Bill Draft. Information Purposes Only. This bill draft WAS NOT requested as a committee bill.**

\*\*\*\* Bill No. \*\*\*\*

LC7777

Introduced By \*\*\*\*\*

By Request of the \*\*\*\*\*

A Bill for an Act entitled: "An Act generally revising the laws governing the administration of state trust land; providing a new funding formula for administration of state lands; providing a funding formula to determine a maximum for appropriations from the trust land administration account; making it clear that the board of regents shall determine how timber proceeds from montana university system lands are distributed; providing for the deposit of an amount of not more than 15% of gross revenue generated annually across all state land trusts, except Morrill Act lands, into the trust land administration account; eliminating the resource development account and associated requirements; eliminating the recreational use account and the requirement to withhold two dollars from each license fee for administration; eliminating the timber sale account; requiring the compensation for damages resulting from recreational use be paid out of the trust land administration account; requiring that weed management necessary due to recreational use on state lands be paid out of the trust land administration account; removing the requirement to retain ten percent of gross receipts from any agreement with the department of fish, wildlife, and parks regarding recreational use of state lands; removing the department's ability to retain ten percent of annual rent received from commercial leasing for administration; allowing for commercial lease administration expense to be paid from the trust land administration account; eliminating the ability of the department to retain up to ten percent of proceeds in the state land bank fund for administration; allowing for the use of funds appropriated from the trust land administration account to be used for administration of the land banking program; amending sections 17-3-1003, 18-2-107, 20-9-620, 77-1-108, 77-1-109, 77-1-802, 77-1-809, 77-1-810, 77-1-815, 77-1-905, 77-2-328, and 77-2-362, MCA; repealing sections 77-1-602, 77-1-604, 77-1-606, 77-1-607, 77-1-608, 77-1-609, 77-1-613, and 77-1-808, MCA and providing an effective date."

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 appropriated, 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 and subsection (4) of this section, 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, at least once per biennium, whether the timber sale proceeds from Montana university system lands must be distributable to the beneficiaries or placed in the permanent fund."

{Internal References to 17-3-1003:  
17-3-1004x 77-1-109x}

**Section 2.** 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."

{Internal References to 18-2-107:  
18-2-101 x}

**Section 3.** 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~~ 77-1-109, 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."

{Internal References to 20-9-620: None.}

**Section 4.** Section 77-1-108, MCA, is amended to read:

**"77-1-108. Trust land administration account.** (1) As used in this section, for all land trusts managed by the state board of land commissioners, except property 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, "revenue" includes:

(a) the interest and income received from the investment of the permanent funds, less any unrealized gains or losses;

(b) the income received from the leasing, licensing, or other use of state trust lands; and

(c) the proceeds from the sale or other disposition of interests in state trust land property.

(2) 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)(3)~~ 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%~~ an amount equal to 15% of the revenue deposited gross revenue generated annually from the sum of all land trusts for the last completed fiscal year except revenue received from:

(a) property 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; and

(b) the forest improvement fee provided for in 77-5-204 in the capitol building land grant trust fund in the last completed fiscal year prior to the new biennium.

~~(3)(4)~~ Unreserved Except as provided in 17-7-304, unreserved funds remaining in the account at the end of a fiscal year must be transferred to each of the permanent funds or distributable accounts in proportionate shares to each fund's contribution to the account ~~as calculated in 77-1-109(3).~~

(5) The department's costs of administering state trust lands must be equitably apportioned to the various land trusts based on the department's activities and revenues generated from each land trust."

{Internal References to 77-1-108:  
77-1-109 x 77-1-109x 77-2-328 x}

**Section 5.** Section 77-1-109, MCA, is amended to read:

**"77-1-109. Deposits of proceeds in trust land administration account.** (1) Gross revenue received by the department must be deposited in funds established for each trust beneficiary. Fund deposits must be identified by revenue source.

(2) The department shall, until the deposit equals the amount appropriated for the fiscal year pursuant to 77-1-108, deposit into the trust land administration account created by 77-1-108 one or more of the following:

(a) distributable revenue;

(b) mineral royalties;

~~(b)(c)~~ the proceeds or income from the sale of easements and timber, except timber from public school and Montana university system lands;

~~(c)(d)~~ 5% of the interest and income annually credited to the public school fund in accordance with 20-9-341; and

~~(d)(e)~~ fees collected pursuant to 77-2-328.

~~(2)(3)~~ After the deposits in subsection ~~(4)~~ (2) have been made, the remainder of the proceeds, other than proceeds from public school lands, timber from Montana university system lands, and ~~other than~~ those proceeds purchased pursuant to 17-6-340, must be deposited in the appropriate permanent fund and the capitol building land grant trust fund. Timber proceeds from university system lands must be paid over to the state treasurer, who shall deposit the money to the credit of the proper fund for use as provided in 17-3-1003(1). Royalty payments purchased pursuant to 17-6-340 must be used as provided in that section and 20-9-622.

~~(3) The amount of money that is deposited into the trust land administration account may not exceed 1 1/8% of the book value balance in each of the nine permanent funds administered by the department on the first day of January preceding the new biennium and 10% of the previous fiscal year revenue deposited into the capitol building land grant trust fund."~~

{Internal References to 77-1-109:

17-3-1003? 17-3-1003? 18-2-107x 20-9-341x  
20-9-601x 20-9-601x 20-25-422x 77-1-108x }

**Section 6.** 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~~ Fifty cents from the fee for each license to must 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 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~~ Fifty cents from the fee for each license to must 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 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."

{*Internal References to 77-1-802:*

70-16-302x	70-16-302x	77-1-106x	77-1-106x
77-1-106x	77-1-106x	77-1-801x	77-1-801x
77-1-808x	77-1-808x	77-1-815x	}

**Section 7.** 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. Claim applications are to be considered in the order they are received."

{Internal References to 77-1-809:  
77-1-808 x 77-1-808 x}

**Section 8.** 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~~ as provided in 77-1-108."

{Internal References to 77-1-810: None.}

**Section 9.** 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. Except as provided in 17-7-304, any unexpended amount in the account established by 77-1-108 that resulted from recreational use 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 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.)"

*{Internal References to 77-1-815:*

70-16-302 x 77-1-106x 77-1-106x 77-1-801x  
77-1-802x 77-1-808x }

**Section 10.** 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. 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 as provided 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."

*{Internal References to 77-1-905: None.}*

**Section 11.** 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 in ~~77-1-108~~ 77-1-109."

*{Internal References to 77-2-328:  
77-1-109 x}*

**Section 12.** 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 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."

{Internal References to 77-2-362:

7-22-2154* x	17-3-1003 x	17-7-502x	18-2-107x
77-2-337 x	77-2-337x	77-2-337x	77-2-337*x
77-2-337x	77-2-337*x	77-2-361*x	77-2-362*x
77-2-362*x	77-2-364*x	77-2-364*x	77-2-365*x
77-2-366 x	77-2-366* x}		

**NEW SECTION. Section 13. {standard} Repealer.** Sections 77-1-602, 77-1-604, 77-1-606, 77-1-607, 77-1-608, 77-1-609, 77-1-613, and 77-1-808, MCA, are repealed.

{Internal References to 77-1-602: None.

Internal References to 77-1-604: 77-1-606 r

Internal References to 77-1-606: None.

Internal References to 77-1-607: 20-9-620 x 77-1-608r

Internal References to 77-1-608: None.

Internal References to 77-1-609: None.

Internal References to 77-1-613: 20-9-620 x 77-1-607r

Internal References to 77-1-808: 77-1-802x 77-1-802x 77-1-809 x 77-1-810 x  
77-1-815 x}

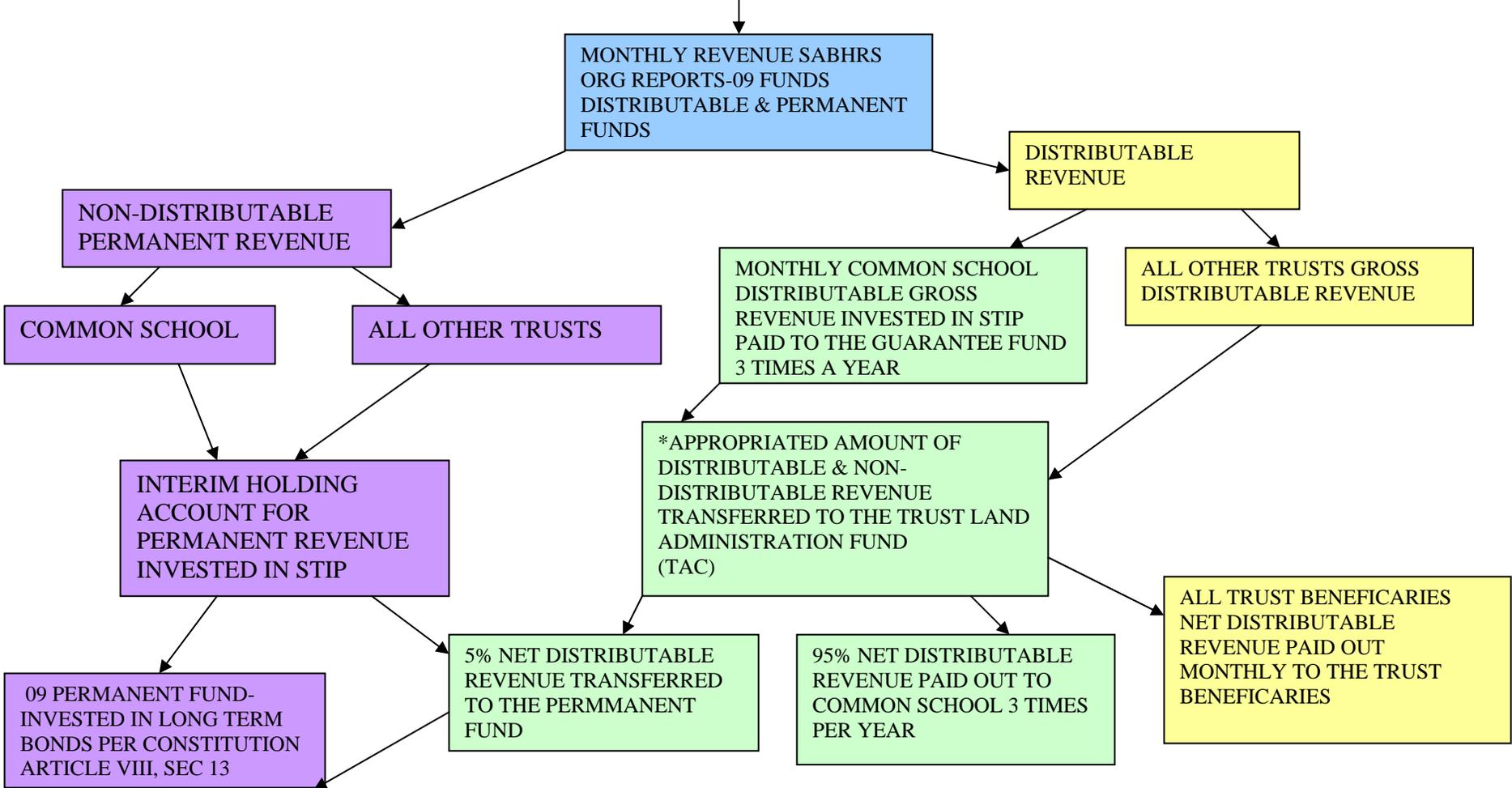
NEW SECTION. **Section 14. {standard} Effective date.** [This act] is effective on July 1, 2007.

- END -

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**DEPARTMENT OF NATURAL RESOURCE & CONSERVATION**

**TRUST LAND FUNDING PROPOSAL FLOW CHART \*\*\***



\* NO MORE THAN 15 PERCENT OF GROSS DISTRIBUTABLE & NON- DISTRIBUTABLE REVENUE CAN BE USED TO FUND ADMINISTRATIVE COSTS

\*\* MORRILL GRANT HAS NO ADMINISTRATIVE COSTS DEDUCTED AND IS NOT INCLUDED IN THIS DIAGRAM

\*\*\*AT FISCAL YEAR END THERE IS AN APPORTIONMENT OF COSTS BY GRANT BASED ON REVENUES GENERATED