

1 SENATE BILL NO. 369

2 INTRODUCED BY FACEY, HAMLETT, RIPLEY, VINCENT

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO STATE LAND CABIN
5 AND HOME SITES; REQUIRING THE BOARD OF LAND COMMISSIONERS, CONSISTENT WITH THE
6 BOARD'S CONSTITUTIONAL FIDUCIARY DUTY OF ATTAINING FULL MARKET VALUE, TO MAKE
7 AVAILABLE FOR SALE AT THE REQUEST OF THE LESSEE OR IMPROVEMENT OWNER ALL LEASED OR
8 VACANT STATE LAND AND PERMANENT AND IMMOVABLE IMPROVEMENTS FOR CABIN OR HOME SITES
9 BY JULY 1, 2035; PROVIDING A PROCESS FOR SELLING ALL LEASED OR VACANT STATE LAND AND
10 PERMANENT AND IMMOVABLE IMPROVEMENTS FOR CABIN AND HOME SITES; PROVIDING FOR A
11 VALUATION PROCESS PRIOR TO SALE; EXEMPTING THE SALE OF CABIN OR HOME SITE LOTS FROM
12 THE PROVISIONS OF TITLE 75, CHAPTER 1, PARTS 1 THROUGH 3; PROVIDING RULEMAKING AUTHORITY;
13 AMENDING SECTIONS 77-2-303, 77-2-311, ~~AND 77-2-318~~, AND 77-2-363, MCA; REPEALING SECTION
14 77-2-320, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

15
16 WHEREAS, implementation of the state cabin site leasing laws has become dysfunctional and those laws
17 have become subject to continuous and unproductive litigation; and

18 WHEREAS, a significant number of state land cabin site properties are vacant and are producing no
19 revenue for the state trust land beneficiaries; and

20 WHEREAS, the implementation of the state cabin site leasing laws has caused a loss in value of lessee
21 private property improvements; and

22 WHEREAS, the sale of all state land cabin site properties is the only long-term and viable solution to
23 resolve the state cabin site leasing law issues and maximize revenue to the state trust land beneficiaries; and

24 WHEREAS, it is recognized that in order to maximize the revenue from the sale of these state cabin site
25 properties to the state trust land beneficiaries, the properties must be sold over a reasonable period of time.

26

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

28

29 **Section 1.** Section 77-2-303, MCA, is amended to read:30 **"77-2-303. Restrictions on land available for sale.** (1) Subject to purchase by the department pursuant

1 to 17-6-340, land that in the judgment of the department is likely to contain valuable deposits of coal, oil, oil shale,
 2 phosphate, metals, sodium, or other valuable mineral deposits is not subject to sale of either the surface land or
 3 any of the mineral deposits. However, this subsection does not prohibit the sale of lands containing sand, gravel,
 4 building stone, brick clay, or similar materials.

5 (2) (a) ~~There~~ Except any lands previously leased as cabin sites, there is reserved from sale from all state
 6 land bordering on navigable lakes, nonnavigable meandered lakes, and navigable streams, that the board
 7 considers in the best interests of the state, a strip of land that includes all the land lying between low-water mark
 8 and high-water mark and that extends in width landward from the line of high-water mark of the lake or stream
 9 the full width of the 40-acre tract or government lot abutting the line of high-water mark. If the width of the abutting
 10 government lot at its narrowest point is less than 100 feet, then the strip reserved must extend to and include the
 11 next adjoining 40-acre tract or government lot. The land reserved from sale by this subsection is subject to the
 12 granting of easements the same as other state lands.

13 (b) Strips of land bordering on meandering lakes or on navigable streams, except the strip lying between
 14 low-water and high-water mark, whether surveyed and platted into blocks and lots or not, may be leased as
 15 provided in this title for the leasing of other state lands."
 16

17 **Section 2.** Section 77-2-311, MCA, is amended to read:

18 **"77-2-311. Survey and plat of shore lands.** The board may cause any part of the lands bordering on
 19 lakes described in 77-2-303(2) and on navigable streams that are reserved from sale to be surveyed and platted
 20 into blocks and lots. The lots may not be less than 125 feet in width, measured in the general direction of the
 21 abutting water front, EXCEPT THAT ANY FORMER CABIN OR HOME SITES PROPOSED FOR SALE OR SOLD BY THE BOARD
 22 MAY POSSESS A WIDTH LESS THAN 125 FEET. In all surveys and plats the strip of 100 feet in width along the water
 23 front, referred to in 77-2-303(2)(a), must be reserved for the use and enjoyment of the public. Cabin sites or home
 24 sites bordering on meandered lakes or navigable streams may be surveyed and sold consistent with the
 25 procedures provided in 77-2-361 through 77-2-367."
 26

27 **Section 3.** Section 77-2-318, MCA, is amended to read:

28 **"77-2-318. Sale of leased cabin or home sites or city or town lots.** ~~(1) At the request of the lessee~~
 29 ~~and if consistent with the orderly development and management of state lands, the board may make available~~
 30 ~~for sale, in the manner provided in this part, any leased cabin or home site or city or town lot that is under lease~~

1 during the 15th year of any 15-year lease that was established through the open competitive bidding process or
 2 through the transition process provided for in 77-1-236 or subsection (4) of this section:

3 (1) (a) On or before July 1, 2035, the board shall, consistent with the board's constitutional fiduciary duty
 4 of attaining full market value, make available for sale within a reasonable period of time as provided in this part
 5 all THOSE LANDS THAT WERE state land cabin or home sites: ON [THE EFFECTIVE DATE OF THIS ACT], AT THE REQUEST
 6 OF A LESSEE OR AN IMPROVEMENT OWNER AND WITH THE CONSENT OF ANY MORTGAGEE OR OTHER OWNER OF AN
 7 INTEREST IN THE CABIN OR HOME SITE IMPROVEMENTS, ONLY IF THE REQUESTED SALE IS CONSISTENT WITH THE BOARD'S
 8 CONSTITUTIONAL FIDUCIARY DUTY OF ATTAINING FULL MARKET VALUE AND WITH THE PROVISIONS OF THIS PART AND IF THE
 9 SALE IS APPROVED BY THE BOARD.

10 (i) that are under lease during the last year of the term of the lease;
 11 —— (ii) at the request of a lessee prior to the last year of the term of the lease only if the requested sale is
 12 consistent with the board's constitutional fiduciary duty of attaining full market value and the provisions of this part;

13 or

14 —— (iii) that are not currently under lease and are vacant.

15 (b) (i) The disposition of proceeds of any sale of state land property pursuant to this section must comply
 16 with the provisions of 77-2-337.

17 (ii) The proceeds of any sale of permanent and immovable improvements pursuant to this part must go
 18 to the owner of record of the improvements.

19 (iii) Ownership of the permanent and immovable improvements on each state land property sold pursuant
 20 to this section must remain with the owner of record until both the state land property and the improvements are
 21 sold.

22 (2) The lessee requesting the sale department shall have prepared a current certificate of survey for the
 23 property. The cost of preparation of the certificate of survey must be included in the settlement for improvements,
 24 as provided for in 77-2-325, if a person other than the lessee is the purchaser.

25 (3) The sale of a lease is exempt from the subdivision laws, except that the development of any new,
 26 replacement, or additional water supply or sewage disposal system on the property must be approved pursuant
 27 to the review procedure, fee, and other requirements of Title 76, chapter 4, part 1.

28 (4) By January 1, 2012 2014, the board shall adopt rules to ensure that the sales process authorized
 29 pursuant to this section is orderly and consistent with its constitutional fiduciary duties and that the number of
 30 leased cabin or home sites or city or town lots made available for sale at any given time is consistent with the

1 board's constitutional duty of attaining full market value.

2 (5) Upon a sale of leased land, the department shall, upon compliance with 77-2-101 through 77-2-106,
3 grant a permanent easement across state lands to secure access using current routes.

4 (6) For purposes of this section, "permanent and immovable improvements" has the meaning provided
5 in [section 4 5]."

6

7 **SECTION 4. SECTION 77-2-363, MCA, IS AMENDED TO READ:**

8 **"77-2-363. Land banking land sales and limitations -- sale preparation costs.** (1) (a) The board may
9 not cumulatively sell or dispose of more than 250,000 acres of state land. Seventy-five percent of the acreage
10 cumulatively sold must be isolated parcels that do not have a legal right of access by the public. At any one time
11 during the life of the land banking process, the board may not sell more than 20,000 acres of state land unless
12 the board has acted to use the revenue from that land to make purchases pursuant to 77-2-364.

13 (b) The estimated fair market value must be determined by a Montana-licensed and Montana-certified
14 appraiser.

15 (2) (a) A person bidding to purchase state land offered for sale shall 20 days prior to the day of auction
16 deposit with the department a bid bond in the form of a certified check or cashier's check drawn on any Montana
17 bank equal to at least 20% of the minimum sale price specified by the department pursuant to 77-2-323(1) to
18 guarantee the bidder's payment of the purchase price. Bid bonds submitted to secure a bid upon a parcel formerly
19 leased as a cabin or home site need only be equal to 5% of the minimum sale price as specified by the
20 department.

21 (b) If the current lessee of the land to be sold has initiated the sale as authorized by 77-2-364, the lessee
22 may cancel the sale by giving notice to the department at least 10 days prior to the day of the auction. When the
23 sale is canceled by the lessee, the lessee shall pay the costs incurred by the department for the preparation of
24 the sale, including any costs incurred for preparation of documents required by 75-1-201.

25 (c) The department shall retain the bid bond of the successful bidder and shall return the bid bonds of
26 the unsuccessful bidders. If the successful bidder fails to comply with the terms of the sale for any reason, the
27 successful bidder's bid bond must be forfeited and credited to the interest and income account of the proper trust.

28 (3) Except for a sale that is initiated by the lessee of the parcel of land proposed for sale, prior to the
29 proposed sale of any parcel of state land under the land banking process, the board shall give 60 days' notice
30 of the proposed sale to the lessee of the parcel to allow the lessee sufficient time to determine whether the lessee

1 wishes to propose an exchange of the land to the board.

2 (4) For a sale initiated by the board or the department, the lessee of the land must be afforded all the
3 rights and privileges to match the high bid, as provided in 77-2-324.

4 (5) (a) ~~When~~ Except as provided in subsection (6), when the lessee has initiated a sale of land under
5 this section, the lessee shall remit to the department the estimated costs of preparing the parcel for sale, including
6 but not limited to appraisals, cultural surveys, environmental review pursuant to Title 75, chapter 1, parts 1
7 through 3, and land surveys, if necessary. Payment must be made within 10 days after the board has provided
8 preliminary approval for the sale of the parcel.

9 (b) If the parcel is sold to the lessee, the funds remitted for the costs of the sale must be applied to the
10 actual costs at closing. If the parcel is sold to a party other than the lessee, the funds remitted by the lessee must
11 be refunded to the lessee and actual costs of preparing the parcel for sale must be assessed to the purchaser
12 at closing.

13 (6) For the sale of a parcel formerly leased as a cabin or home site:

14 (a) the department shall assume the cost of the land survey; and

15 (b) the sale is exempt from the provisions of Title 75, chapter 1, parts 1 through 3."

16
17 **NEW SECTION. Section 5. Valuation of cabin or home site and permanent improvements --**

18 **RULEMAKING.** (1) (a) Prior to the board's approval of any sale of state land leased as a cabin or home site or state
19 land with a vacant cabin or home site as provided in 77-2-318, the board shall separately determine the full
20 market value of the land and the value of the permanent and immovable improvements existing on the land AND
21 THE VALUE OF ANY NECESSARY ACCESS EASEMENT ACROSS EXISTING STATE LANDS FROM THE NEAREST PUBLIC ROAD.
22 THE APPRAISAL TO DETERMINE THESE VALUES MUST BE BASED UPON COMPARABLE SALES OF NEARBY EXISTING
23 PROPERTIES WITH THE HYPOTHETICAL CONDITION THAT THE STATE PARCEL TO BE SOLD IS ACCESSIBLE FOR ALL LAWFUL
24 PURPOSES. THE APPRAISAL MUST DETERMINE THE RAW UNDEVELOPED VALUE OF THE PARCEL AND THE VALUE OF THE
25 PERMANENT AND IMMOVABLE IMPROVEMENTS.

26 (b) (i) In determining the value of state land leased as a cabin or home site pursuant to subsection (1)(a),
27 the department shall establish a list that is acceptable to the board of no fewer than two third-party independent
28 appraisers that are available to conduct the appraisal of the land and the permanent and immovable
29 improvements. The department shall provide a copy of the list to the cabin site or home site lessee. The lessee
30 shall provide the department with a list of at least 50% of the appraisers from the department's list. The

1 department shall select the appraiser to conduct the appraisal from the list provided by the lessee.

2 (ii) The department shall assume the proportionate cost of the appraisal of the state land valuation. The
3 lessee shall assume the proportionate cost of the appraisal of the valuation of the permanent and immovable
4 improvements.

5 (c) The board shall disclose the results of the appraisal to the cabin site or home site lessee of the land
6 for sale and shall give that lessee notice and opportunity for an administrative hearing before the department to
7 contest those valuations. The department shall review the arguments and evidence received at the hearing to
8 make a recommendation of the values of the land and the permanent improvements to the board. The board shall
9 make a final determination on the values of the land and permanent improvements.

10 (2) (a) ~~The~~ IF THE LESSEE CONSENTS TO THE TERMS AND CONDITIONS OF THE PROPOSED SALE AND THE
11 VALUATION OF PERMANENT AND IMMOVABLE IMPROVEMENTS, THE sale must proceed utilizing the board's final
12 determination of the values, and the lessee is obligated to transfer its interest in the permanent and immovable
13 improvements existing on the cabin or home site lease according to the board's final determination of their value.

14 (b) Nothing in this section prohibits the lessee from accepting a price for the permanent and immovable
15 improvements existing on the cabin or home site that is less than the board's final determination of value.

16 (3) For purposes of this section and 77-2-318, "permanent and immovable improvements" includes but
17 is not limited to:

18 (a) a home or residence THAT SITS ON A PERMANENT FOUNDATION;

19 (b) outbuildings and structures THAT SIT ON A PERMANENT FOUNDATION;

20 (c) sleeping cabins THAT SIT ON A PERMANENT FOUNDATION;

21 (d) utilities;

22 (e) water systems;

23 (f) septic systems;

24 (g) docks; and

25 (h) landscaping.

26 (4) THE BOARD MAY ADOPT RULES TO IMPLEMENT THE PROVISIONS OF THIS SECTION.

27

28 NEW SECTION. Section 6. Repealer. The following section of the Montana Code Annotated is
29 repealed:

30 77-2-320. Appraisal review board.

