

HOUSE BILL NO. 379

INTRODUCED BY L. BREWSTER

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO THE LEASING OF STATE LAND FOR COMMERCIAL PURPOSES AND THE SALE OF STATE LAND; ELIMINATING AUCTION REQUIREMENTS; ALLOWING FOR INDIVIDUAL AGREEMENTS BETWEEN LESSEES AND THE DEPARTMENT; REVISING A DEFINITION; AMENDING SECTIONS 77-1-902, 77-1-906, 77-2-321, 77-2-322, 77-2-323, 77-2-324, 77-2-325, 77-2-329, AND 77-2-363, MCA; AND REPEALING SECTION 77-2-327, 77-2-330, 77-2-331, 77-2-332, 77-2-333, 77-2-334, AND 77-2-335, MCA."

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

Section 1. Section 77-1-902, MCA, is amended to read:

"77-1-902. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Cancellation" means the cessation of a lessee's possessory rights and privileges under a lease due to the lessee's breach of some term of the lease, applicable statutes, or applicable administrative rules.

(2) "Commercial lease" means a contract to use state trust land for a commercial purpose.

(3) (a) "Commercial purpose" means an industrial enterprise, retail sales outlet, business and professional office building, warehouse, motel, hotel, hospitality enterprise, commercial or concentrated recreational use, ~~multifamily residential development~~ development of real property for eventual use or sale for residential, industrial, or commercial purposes, and other similar business.

(b) The term does not include the following uses:

(i) agriculture;

(ii) grazing;

(iii) exploration or development of oil and gas, minerals, and resources from geothermal, wind, or solar;

(iv) the lease or management of single-family residences, home sites, and cabin sites; and

(v) utility rights-of-way.

(4) "Land value" is the monetary value of the land determined by an appraisal by a certified general appraiser or a department staff appraiser or by a limited valuation.

(5) "Limited valuation" means estimating the land value of commercial lease land by analyzing comparable land valuations conducted within 2 years of the lease commencement date as provided by real estate appraisers, local tax assessors, local realtors, an evaluation of local market rents, or a combination of those methods.

(6) "Termination" means the automatic completion or ending of the term of a contract according to its provisions. Upon termination, the lessee ceases to have any possessory rights or privileges under a lease."

Section 2. Section 77-1-906, MCA, is amended to read:

"77-1-906. Requirements for commercial lease -- improvements. (1) The board shall require, subject to the board's supervision and jurisdiction, that the lessee be solely responsible for the expense of maintenance and operation of the enterprise, business, or venture and all improvements made and constructed in support of any commercial purpose during the term of the lease. This requirement does not apply to the installation and construction by the lessee of infrastructure and improvements, such as public roads, parks, sewers, or utilities, if they were required by a local government as a condition of development unless the department and lessee agree otherwise in writing.

(2) ~~Upon~~On expiration of the lease, the title to all permanent improvements and fixtures located on the leased property and used in the operation and maintenance of the enterprise vests in the state. The lease must describe in detail the manner and subject matter of the transfer to the state."

Section 3. Section 77-2-321, MCA, is amended to read:

"77-2-321. Sales to be at public auction by public sale. All sales of state lands shall must be only at public auction held at the county courthouse of the county in which the lands are located. In case no suitable room can be found in such courthouse at the time for holding the sale, then the sale may be transferred to a more convenient place within a reasonable distance of such courthouse by public announcement made at the

1 courthouse at the time fixed for beginning the sale by public sale."

2

3 **Section 4.** Section 77-2-322, MCA, is amended to read:

4 **"77-2-322. Notice of sale.** (1) ~~The Sales of state land must be advertised using methods determined~~
5 ~~by the department to be in the best interest of the applicable trust beneficiary. At minimum, the~~ department shall
6 give notice of each sale by publication in a newspaper of general circulation in the county where the ~~sale is to~~
7 ~~be held~~ land is located, once ~~each week through the for~~ at least 4 consecutive weeks preceding the final date of
8 sale on which the state will accept offers for purchase. The notice ~~shall~~ must give the ~~day, date, and time of the~~
9 ~~beginning of the sale period of time during which the state will accept offers for purchase, the manner in which~~
10 offers must be made to the state, and contain a list of all the tracts to be offered for sale showing the township
11 and range in which they are located, describing them with reference to section number and subdivision of the
12 section or with reference to block and lot if surveyed, the number of acres in unplatted lands, and the appraised
13 value ~~per of each~~ acre and the appraised value of each lot. As a general rule, nonirrigable farming lands shall
14 must be listed in quarter sections; and grazing lands may be listed in larger tracts not exceeding one section.

15 (2) For the convenience of the bidders, the department may assign to the tracts advertised a
16 consecutive series of sales numbers and show the sales number of each tract in the notice of sale.

17 (3) The notice ~~shall~~ must also give the terms and conditions of sale and any additional information
18 the department considers useful."

19

20 **Section 5.** Section 77-2-323, MCA, is amended to read:

21 **"77-2-323. Sale procedure and limitation.** (1) ~~At the time fixed for the sale, state land must be~~
22 ~~offered for sale at auction in the order that the land appears in the notice of sale. Under the direction of the~~
23 department, the state land must be sold to the highest qualified bidder. State land may not be sold for less than
24 the value determined by the board after appraisal by a qualified land appraiser.

25 (2) The state land must be sold as nearly as practicable according to the subdivisions in which it is
26 advertised, and care must be taken not to subdivide any tract in such a way as to separate remaining portions
27 from a water supply or from section lines or public highways.

28 (3) The sale may be adjourned from day to day until all the state land advertised has been offered

1 for sale."

2

3 **Section 6.** Section 77-2-324, MCA, is amended to read:

4 **"77-2-324. Preference to lessee of land.** The lessee of the land need not make a higher bid than
5 others, but the lessee has the option to match the high bid and must be given the preference. If the lessee
6 matches the high bid, bidding must be reopened to all bidders, with the lessee retaining the right of preference
7 to match the ultimate high bid and be awarded the sale. The preference right contemplated by this section may
8 be waived by the lessee in writing."

9

10 **Section 7.** Section 77-2-325, MCA, is amended to read:

11 **"77-2-325. Settlement for improvements.** Except for the sale of a cabin or home site, if any state
12 land is sold on which there are improvements belonging to a lessee and some person other than the lessee is
13 the purchaser, that person shall settle with the lessee for all improvements on the land belonging to the lessee
14 before the issuance of the certificate of purchase. The provisions of 77-6-301 through 77-6-303 and 77-6-306
15 relating to the payment and settlement for improvements on state lands between a former lessee and a new
16 lessee apply to the settlement between a lessee and the purchaser unless the lessee and the purchaser agree
17 otherwise in writing. If settlement is not reached within 6 months of the date of sale, all improvements become
18 the property of the state unless the department for good cause shown grants both parties additional time in
19 which to exhaust arbitration."

20

21 **Section 8.** Section 77-2-329, MCA, is amended to read:

22 **"77-2-329. Terms of payment.** ~~(1) A purchaser of state land shall pay on the day of sale that portion~~
23 ~~of the purchase price that the purchaser desires, but not less than 10% of the total sales price. If the balance on~~
24 ~~the purchase price is not an exact multiple of \$25, the purchaser shall pay the additional sum that is necessary~~
25 ~~to reduce the balance to an even multiple of \$25 in full.~~

26 ~~(2) The purchaser shall pay the balance of the purchase price within 30 days. The department may~~
27 ~~extend this deadline up to 30 additional days for good cause."~~

28

1 **Section 9.** Section 77-2-363, MCA, is amended to read:

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

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

9 (2) (a) A person bidding to purchase state land offered for sale shall 20 days prior to the day of
10 ~~auction-sale~~ deposit with the department a bid bond in the form of a certified check or cashier's check drawn on
11 any Montana bank or an electronic funds transfer, as defined in 32-6-103, equal to at least 20% of the minimum
12 sale price specified by the department pursuant to 77-2-323(1) to guarantee the bidder's payment of the
13 purchase price. Bid bonds submitted to secure a bid on a parcel formerly leased as a cabin or home site need
14 only be equal to 5% of the minimum sale price as specified by the department.

15 (b) Except as provided in subsection (2)(c), and unless the current lessee has waived, in writing,
16 its right to cancel the sale pursuant to this section, if the current lessee of the land to be sold has initiated the
17 sale as authorized by 77-2-364, the lessee may cancel the sale by giving notice to the department at least 10
18 days prior to the day of the auction. When the sale is canceled by the lessee, the lessee shall pay the costs
19 incurred by the department for the preparation of the sale, including any costs incurred for preparation of
20 documents required by 75-1-201.

21 (c) If the land to be sold is a leased cabin or home site as provided in 77-2-318 and the current
22 lessee has initiated the sale as authorized by 77-2-364, the lessee may cancel the sale by giving notice to the
23 department at least 10 days prior to the day of the auction unless another person has deposited a bid bond per
24 subsection (2)(a), at which point the sale cannot be canceled by the lessee. When the sale is canceled by the
25 lessee, the lessee shall pay the costs incurred by the department for the preparation of the sale, including any
26 costs incurred for preparation of documents required by 75-1-201.

27 (d) The department shall retain the bid bond of the successful bidder and shall return the bid
28 bonds of the unsuccessful bidders. If the successful bidder fails to comply with the terms of the sale for any

1 reason, the successful bidder's bid bond must be forfeited and credited to the interest and income account of
2 the proper trust.

3 (3) Except for a sale that is initiated by the lessee of the parcel of land proposed for sale, prior to
4 the proposed sale of any parcel of state land under the land banking process, the board shall give 60 days'
5 notice of the proposed sale to the lessee of the parcel to allow the lessee sufficient time to determine whether
6 the lessee wishes to propose an exchange of the land to the board.

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

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

14 (b) If the parcel is sold to the lessee, the funds remitted for the costs of the sale must be applied to
15 the actual costs at closing. ~~If Unless otherwise agreed to in writing by the lessee and the board, if the parcel is~~
16 sold to a party other than the lessee, the funds remitted by the lessee must be refunded to the lessee and the
17 actual costs of preparing the parcel for sale must be assessed to the purchaser at closing.

18 (6) For the sale of a cabin or home site, the department shall prepare and assume the cost of the
19 land survey. The department may allow the survey to be paid for in advance by the lessee or the owner of any
20 improvements if the survey is contracted through the department according to department specifications. If the
21 parcel is sold but the purchaser is other than the lessee or the owner of the improvements, the cost of the
22 survey must be included in the actual costs at closing and the department shall refund the cost of the survey to
23 the former lessee or the owner of the improvements.

24 (7) The sale of a cabin or home site is exempt from the provisions of Title 75, chapter 1, parts 1
25 through 3."
26

27 NEW SECTION. Section 10. Repealer. The following sections of the Montana Code Annotated are
28 repealed:

- 1 77-2-327. Certificate of purchase.
- 2 77-2-330. Computation of interest and payment schedule.
- 3 77-2-331. Manner of making payments.
- 4 77-2-332. Procedure in case of default.
- 5 77-2-333. Reinstatement of canceled certificates of purchase.
- 6 77-2-334. Assignment of certificate.
- 7 77-2-335. Lost certificate.

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