

HOUSE BILL NO. 647

INTRODUCED BY B. LER, E. ALBUS, T. MILLETT, R. MINER, N. DURAM

A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING THE LEASE OF STATE LANDS TO NONPROFIT ORGANIZATIONS; PROVIDING RULEMAKING AUTHORITY; AND AMENDING SECTIONS 77-1-113, 77-1-204, 77-1-904, 77-1-1002, 77-2-364, 77-3-102, 77-3-201, 77-3-301, 77-3-401, 77-3-501, 77-4-101, 77-4-301, 77-6-102, 77-6-202, AND 77-6-503, MCA."

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

Section 1. Section 77-1-113, MCA, is amended to read:

"77-1-113. Restrictions on who may buy or lease state lands. It is unlawful for any:

(1) _____ member of the board, any person appraising lands or in the employ of the state for the selection, classification, appraisal, sale, or leasing of any state lands or the timber on state lands, or any officer or employee of the department to purchase or lease, directly or indirectly, any state lands or any timber on state lands; or

(2) _____ official, employee, or member of a nonprofit organization or nonprofit corporation to lease any state lands or any timber on state lands on behalf of a nonprofit organization or nonprofit corporation."

Section 2. Section 77-1-204, MCA, is amended to read:

"77-1-204. Power to sell, lease, or exchange certain state trust lands. (1) The Except as provided in 77-1-113(2), the board is authorized to lease state trust lands for uses other than agriculture, grazing, timber harvest, or mineral production under terms and conditions that best fulfill the duties of the board as specified in 77-1-202 and 77-1-203. The lease period for these leases, except for power and school site leases, may not be for longer than 99 years.

(2) The board may sell, exchange, or lease lands under its jurisdiction by virtue of 77-1-214 when, in the board's judgment, it is advantageous to the state to do so in the highest orderly development and management of state trust land. The sale, lease, or exchange may not be contrary to the terms of any contract

1 that the board has entered into."

2

3 **Section 3.** Section 77-1-904, MCA, is amended to read:

4 **"77-1-904. Commercial leasing authorized.** (1) ~~State~~ Except as provided in 77-1-113(2), state trust
5 land may be leased for a term not to exceed 99 years for commercial purposes to the highest and best bidder
6 responding to a department request for proposals for commercial uses of a specified tract.

7 (2) The board may enter into contracts with lessees of state trust land for commercial purposes
8 upon terms and conditions that the board may reasonably determine to be in the best interests of the
9 beneficiary.

10 (3) A request for proposals for the commercial leasing of state trust land must reserve the board's
11 right to reject any and all bids and the right to reoffer the tract for lease if the bids received are not acceptable to
12 the board.

13 (4) The board and the department, when preparing plans or proposals under this part, shall
14 implement review criteria in consideration of the following local government provisions except to the extent that
15 the provisions violate Article X, section 4 or 11, of the Montana constitution:

- 16 (a) a growth policy or a neighborhood plan adopted pursuant to Title 76, chapter 1;
17 (b) zoning regulations;
18 (c) subdivision review as provided in Title 76, chapter 3;
19 (d) annexation;
20 (e) plans for the extension of services; and
21 (f) other actions related to local planning."

22

23 **Section 4.** Section 77-1-1002, MCA, is amended to read:

24 **"77-1-1002. Planning of lease actions.** (1) The department shall manage the property interests
25 acquired from the federal government in the Crown Butte land exchange consistent with 77-3-102 and consult
26 with the private surface owners and the private mineral owners that control the coal property interests that are
27 located in a checkerboard arrangement with the mineral interests acquired from the federal government in the
28 Crown Butte land exchange in the planning of leasing actions.

(2) Consistent with Title 77 and except as provided in 77-1-113(2), the department's leasing actions must:

(a) attain the fair market value and optimize the monetary return to the public school fund; and

(b) facilitate and encourage timely development of the property interests acquired from the federal government in the Crown Butte land exchange."

Section 5. Section 77-2-364, MCA, is amended to read:

"77-2-364. Land banking purchases. (1) The Except as provided in 77-1-113(2), the board may select and purchase, lease, receive by donation, hold in trust, or in any manner acquire for and in the name of the state of Montana, in trust for the beneficiaries specified in sections 10 through 19 of The Enabling Act of Congress (approved February 22, 1889, 25 Stat. 676), as amended, any interest in real property and improvements, tracts, and leaseholds of land that the board considers proper in order to best provide prudent, maximum, long-term revenue for the beneficiaries.

(2) Sales of state land may be initiated only by the board, by the department, or at the request of a lessee, pursuant to 77-1-202, 77-1-301, 77-2-301, or 77-2-308. The board shall ensure that the full market value of the land sold is realized for each trust by using the appraisal, sale, advertising, and competitive bid procedures contained within 77-2-303, 77-2-321, 77-2-322, 77-2-323, and 77-2-324. The estimated fair market value must be determined by a Montana-licensed and Montana-certified appraiser.

(3) When it is not inconsistent with the purpose of the trust, the board shall purchase land possessing legal access for all legal purposes.

(4) When purchasing land, easements, or improvements for the existing trusts, the board shall develop and apply appraisal and revenue projection procedures to ensure that the land or easements proposed for purchase or that the improvements proposed to be acquired are likely to produce more net revenue for the affected trust than the revenue that was produced from the land that was sold. The board may not purchase land, easements, or improvements pursuant to 77-2-361 through 77-2-367 unless it has first prudently determined that the land, easements, or improvements are likely to produce a greater or equal annual rate of return, as may be reasonably expected over a 20-year accounting period for Class 1, 3, and 4 lands and over a 60-year accounting period for Class 2 lands, as described in 77-1-401, with an acceptable level of risk for the

1 affected trust, than the current annual rate of return from the state land that has been sold pursuant to 77-2-
2 363. As guidance, the board shall use generally accepted accounting standards and the Uniform Appraisal
3 Standards for Federal Land Acquisitions published by the U.S. department of justice and the appraisal institute.

4 (5) Prior to purchasing any land, easements, or improvements, the board shall determine that the
5 financial risks and benefits of the purchase are prudent, financially productive investments that are consistent
6 with the board's fiduciary duty as a reasonably prudent trustee of a perpetual trust. For the purposes of
7 implementing 77-2-361 through 77-2-367, that duty requires the board to:

8 (a) discharge its duties with the care, skill, prudence, and diligence that a prudent person acting in
9 a similar capacity with the same resources and familiar with similar matters should exercise in the conduct of an
10 enterprise of similar character and aims;

11 (b) diversify the land holdings of each trust to minimize the risk of loss and maximize the sustained
12 rate of return;

13 (c) discharge its duties and powers solely in the interest of and for the benefit of the trust
14 managed;

15 (d) discharge its duties subject to the fiduciary standards set forth in 72-38-801; and

16 (e) maintain, as closely as possible, the existing land base of each trust, consistent with the state's
17 fiduciary duty.

18 (6) Prior to purchasing a parcel of land in excess of 160 acres in any particular county, the board
19 shall consult with the county commissioners of the county in which the parcel is located."
20

21 **Section 6.** Section 77-3-102, MCA, is amended to read:

22 **"77-3-102. Mining leases authorized.** (1) ~~The~~ Except as provided in 77-1-113(2), the board may, in
23 its discretion and subject to the other provisions of this part, lease state lands, including the beds of navigable
24 streams and the beds of navigable bodies of water and the reserved mineral rights of the state in lands sold or
25 leased by the state, to any person, association, or corporation for the purpose of prospecting for or mining
26 metalliferous minerals or gems.

27 (2) These leases may be for a period of time determined by the board, subject to limitations
28 contained in the grants by which the state has acquired title to lands or mineral rights so leased.

1 (3) Leases issued under this part must give the lessee, so long as the lessee complies with the
2 terms and conditions of the lease, the exclusive right of possession of the lands or mineral rights leased,
3 subject to any reservations contained in the leases.

4 (4) In making the leases, the board may exercise business discretion as long as this part is not
5 violated."

6
7 **Section 7.** Section 77-3-201, MCA, is amended to read:

8 **"77-3-201. Nonmetallic mineral leases authorized.** When there are found upon on state lands
9 deposits of stone, limestone, oil shale, clay, bentonite, calcite, talc, mica, ceramic, asbestos, marble, diatomite,
10 gravel or sand, or phosphate, sodium, potash, sulfur, fluorite or barite, or any other nonmetallic minerals, but
11 not including coal, oil, or gas, valuable for building, mining, or other commercial purposes, the board may in its
12 discretion issue permits or leases to private persons for the removal and disposition of ~~the above-named these~~
13 deposits ~~upon such on the~~ terms and conditions ~~as that~~ the board may determine, except as provided in 77-1-
14 113(2)."

15
16 **Section 8.** Section 77-3-301, MCA, is amended to read:

17 **"77-3-301. Coal leases authorized.** ~~In~~ Except as provided in 77-1-113(2) and in response to an
18 application or on its own initiative, the board may lease in a manner that it considers in the best interests of the
19 state any state lands to which the title is vested in the state and in which the coal or coal rights are not reserved
20 by the United States for exploring for, mining, removing, selling, and disposing of the coal, upon the terms and
21 conditions provided in this section and subject to the rules that the board prescribes."

22
23 **Section 9.** Section 77-3-401, MCA, is amended to read:

24 **"77-3-401. Oil and gas leases authorized.** (1) ~~The~~ Except as provided in 77-1-113(2), the board is
25 hereby authorized and empowered to lease in ~~such a~~ manner ~~as that~~ it may determine, not inconsistent with
26 The Enabling Act and the constitution, any state lands to which the title has vested in the state and in which the
27 oil and gas rights are not reserved by the United States, for prospecting and exploring for oil and gas, mining,
28 drilling, developing, and removing the same ~~upon on~~ the terms and conditions ~~herein-prescribed in this section~~

1 to any person, association, corporation, domestic or foreign, or municipality qualified under the constitution and
2 the laws of the state.

3 (2) This power and authority to lease state lands for ~~such these~~ purposes ~~shall extend~~ extends to
4 and ~~include~~ includes all lands owned by the state under navigable lakes and streams and ~~shall also extend~~
5 extends to and ~~include~~ includes all ~~these~~ state lands ~~which that~~ have been sold but in which the oil and gas
6 rights have been reserved by the state; ~~but in such cases~~ In these cases and in all cases where the lands are
7 under lease for grazing, agriculture, or similar purposes, care ~~shall~~ must be taken in issuing the oil and gas
8 leases to protect the rights of the purchaser or lessee."
9

10 **Section 10.** Section 77-3-501, MCA, is amended to read:

11 **"77-3-501. Lease for underground storage of natural gas authorized.** (1) ~~The~~ Except as provided
12 in 77-1-113(2), the board is hereby authorized and empowered to lease, ~~in such the~~ manner and ~~upon such on~~
13 terms as that it may determine, not inconsistent with The Enabling Act and the constitution, state lands to which
14 the title has vested in the state, subject to existing rights, for use for the underground storage of natural gas
15 ~~upon on~~ the terms and conditions ~~herein prescribed~~ in this section, to any natural gas public utility authorized to
16 do business in this state and engaged in the business of transporting or distributing natural gas by means of
17 pipelines into, within, or through this state for ultimate public use.

18 (2) State lands ~~which that~~ may be leased ~~shall~~ include lands in which the deposit of native gas
19 ~~shall have has~~ been depleted, provided the lessee pays to the state the amount specified by the board for the
20 any remaining native gas ~~then remaining~~ in the lands to be leased."
21

22 **Section 11.** Section 77-4-101, MCA, is amended to read:

23 **"77-4-101. Geothermal leases authorized.** (1) ~~The~~ Except as provided in 77-1-113(2), the board
24 may lease state-owned lands, including the beds of navigable streams and the beds of navigable bodies of
25 water, to persons, associations, or corporations for prospecting, exploration, well construction, and the
26 production of geothermal resources.

27 (2) The board may exercise business discretion in entering into leases under this part."
28

1 **Section 12.** Section 77-4-301, MCA, is amended to read:

2 **"77-4-301. Wind and solar leases authorized.** (1) ~~The~~ Except as provided in 77-1-113(2), the board
3 may lease state lands for exploration, planning, development, and the production of energy from wind and solar
4 resources.

5 (2) Leases for wind or solar rights only where no ground disturbance is authorized do not require
6 reclassification.

7 (3) The board may exercise business discretion in entering leases under this part."
8

9 **Section 13.** Section 77-6-102, MCA, is amended to read:

10 **"77-6-102. Surface leases authorized.** Under the general direction and control of the board and
11 except as provided in 77-1-113(2), the department shall lease all agricultural and grazing lands and all town
12 lots, city lots, and lands valuable for commercial development open to leasing upon proper application."
13

14 **Section 14.** Section 77-6-202, MCA, is amended to read:

15 **"77-6-202. Lease by competitive bidding -- full market value required.** When the department
16 receives an application to lease an unleased tract, it shall advertise for bids on the tract. ~~The~~ Except as
17 provided in 77-1-113(2), the tract must be leased to the highest bidder unless the board determines that the bid
18 is not in the state's best interest for the reasons set forth in 77-6-205(2). The board may not accept a bid that is
19 below full market value. If the high bid is rejected, the board shall set forth the reasons for the rejection in
20 writing. The lease may be issued, at a rental rate to be determined by the board, to the first bidder who is willing
21 to pay the board-determined rate whose name is selected through a random selection process from all bidders
22 on the tract."
23

24 **Section 15.** Section 77-6-503, MCA, is amended to read:

25 **"77-6-503. Leases of city lots, town lots, and commercial property.** The fair rental value of state-
26 owned town lots, city lots, and land valuable for commercial development must be determined from time to time
27 by the department with the approval of the board, and a record must be made of the values. ~~State-owned~~
28 Except as provided in 77-1-113(2), state-owned town lots, city lots, or land valuable for commercial

1 development may be leased at the current appraised rental value for terms not to exceed 99 years."

2 - END -