

SENATE BILL 37

Introduced by Bruski-Maus, et al.

12/06	Introduced
12/06	Referred to Education & Cultural Resources
12/06	First Reading
12/06	Fiscal Note Requested
12/08	Fiscal Note Received
12/08	Fiscal Note Printed
12/10	Hearing
12/10	Tabled in Committee

1 Senate BILL NO. 37
2 INTRODUCED BY Bush-Mann-Town
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THE SALE OF
5 STATE-OWNED PUBLIC LANDS, WITH CERTAIN EXCEPTIONS; PROVIDING
6 THAT NO ADDITIONAL STATE LEASES FOR AGRICULTURAL, GRAZING,
7 OR OTHER SURFACE USES BE GRANTED AND THAT AS OUTSTANDING
8 SURFACE LEASES EXPIRE, THE LANDS BE SOLD TO THE HIGHEST
9 BIDDER, WITH A SALE PREFERENCE EXTENDED TO THE PRIOR LESSEE
10 TO MATCH THE HIGHEST BID; PROVIDING THAT AS SUBSURFACE
11 LEASES EXPIRE, THE INTERESTS IN THE LANDS BE SOLD TO THE
12 HIGHEST BIDDER, WITH A SALE PREFERENCE EXTENDED TO THE PRIOR
13 LESSEE TO MATCH THE HIGHEST BID; REMOVING THE ACREAGE
14 LIMITATION APPLICABLE TO THE PURCHASE OF STATE LANDS;
15 REVISING THE METHOD OF PAYMENT FOR PURCHASES OF STATE LANDS
16 BY REPEALING THE INSTALLMENT PAYMENT PROCESS; ALLOWING
17 VOLUNTARY TERMINATION OF A LEASE; AMENDING SECTIONS
18 77-1-103, 77-1-106, 77-1-120, 77-1-202, 77-1-203, 77-1-204,
19 77-1-208, 77-1-209, 77-1-301, 77-1-402, 77-1-601, 77-2-105,
20 77-2-201, 77-2-202, 77-2-203, 77-2-206, 77-2-207, 77-2-211,
21 77-2-212, 77-2-217, 77-2-301, 77-2-302, 77-2-304, 77-2-306,
22 77-2-308, 77-2-309, 77-2-318, 77-2-324, 77-2-325, 77-2-327,
23 77-2-328, 77-2-329, 77-2-343, 77-2-351, 77-3-102, 77-3-201,
24 77-3-207, 77-3-301, 77-3-303, 77-3-401, 77-3-402, 77-3-407,
25 77-3-441, 77-3-442, 77-3-501, 77-3-502, 77-4-101, 77-4-103,

1 77-4-128, 77-4-129, 77-6-102, 77-6-103, 77-6-116, 77-6-202,
2 77-6-203, 77-6-204, 77-6-205, 77-6-206, 77-6-208, 77-6-211,
3 77-6-302, 77-6-303, 77-6-304, 77-6-305, 77-6-306, 77-6-501,
4 AND 77-6-506, MCA; REPEALING SECTIONS 77-2-303, 77-2-307,
5 77-2-311, 77-2-312, 77-2-330, 77-2-331, 77-2-332, 77-2-333,
6 AND 77-3-302, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE
7 DATE."
8

9 WHEREAS, there are over 23 million acres of public land
10 in Montana, including over 5 million acres of state-owned
11 school trust land; and

12 WHEREAS, Article X, section 11, of the Montana
13 Constitution provides that public lands may be disposed of
14 when the full market value of the estate or interest has
15 been paid or safely secured to the state; and

16 WHEREAS, the Board of Land Commissioners is empowered
17 under Article X, section 4, of the Montana Constitution and
18 Title 77, chapter 2, part 3, MCA, to control sales of public
19 lands; and

20 WHEREAS, the sale of state land holdings and deposit of
21 the sale proceeds in the school trust would greatly enhance
22 the long-term viability of the trust fund, providing a
23 secure source of income for Montana schools, and would
24 create a significant potential for property tax relief
25 through the reduction or elimination of school mill levies;

1 and

2 WHEREAS, the sale of state-owned public lands will
3 eliminate administrative costs associated with maintenance
4 of those lands, thereby reducing the need for future state
5 maintenance funding; and

6 WHEREAS, placing state lands for sale in the public
7 market will allow private interest groups, such as sporting
8 and recreation groups, the opportunity to bid for the lands
9 and maintain the lands for specific private purposes; and

10 WHEREAS, preference procedures presently in place will
11 allow current lessees the opportunity to match public bids
12 and maintain their interest in the property.

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

15 NEW SECTION. **Section 1. Public lands required to be**
16 **sold -- exceptions.** (1) Subject to the provisions of Article
17 X, section 11(2) and (3), of the Montana Constitution; the
18 provisions of Title 77, chapter 2, part 3; and the
19 provisions of [section 2] and this section, the board shall
20 sell all state-owned public lands, except:

21 (a) lands passing to the state by gift, donation,
22 grant, legacy, or devise under 77-1-213, the use of which
23 has been designated by the grantor for a specific object and
24 purpose;

25 (b) lands suitable for forestry purposes that pass to

1 the state by gift, donation, or contribution under 77-1-214,
2 unless sale authority is exercised under 77-1-204(2), and
3 lands designated as state forest units under 77-5-102;

4 (c) public lands designated as state parks or fishing
5 access sites that are managed by the department of fish,
6 wildlife, and parks and other lands acquired by that
7 department through license or permit proceeds and maintained
8 for wildlife habitat, conservation, enhancement, or
9 preservation;

10 (d) lands protected as natural areas under Title 76,
11 chapter 12;

12 (e) state lands leased or licensed for hydroelectric
13 power sites under Title 77, chapter 4, part 2;

14 (f) public lands used and occupied by state
15 institutions, educational entities, or governmental
16 agencies; and

17 (g) the beds of navigable rivers subject to public
18 recreational use.

19 (2) Except for lands passing to the state by gift,
20 donation, grant, legacy, devise, or contribution under
21 77-1-211 through 77-1-214, the board may not acquire
22 additional lands on behalf of the state of Montana.

23 NEW SECTION. **Section 2. Leased lands subject to sale**
24 **upon expiration of lease -- restriction on grant of new and**
25 **renewal leases.** (1) State lands or interests in state lands

1 under lease of any kind on [the effective date of this act]
 2 must, upon expiration of the lease or upon expiration of an
 3 extension of a lease interest or conditional lease allowed
 4 under subsection (2), be sold as required in [section 1] and
 5 Title 77, chapter 2, part 3. The proceeds of the sale must
 6 be deposited as provided in 77-2-337. The lessee preference
 7 provisions of 77-3-324 apply to sales under this section.

8 (2) After [the effective date of this act], a new or
 9 renewal state lease for agricultural, grazing, or other
 10 surface use may not be granted. However, if conditions exist
 11 that preclude the immediate sale of state lands formerly
 12 leased for agricultural or grazing purposes, the board may
 13 grant to the former lessee a conditional agricultural or
 14 grazing lease until December 31 of the year in which the
 15 lease expires to allow cultivation and harvest of that
 16 year's crop. Extensions of state leases for subsurface uses
 17 may be granted as provided by law, but upon final expiration
 18 of the subsurface lease, the provisions of subsection (1)
 19 apply.

20 **Section 3.** Section 77-1-103, MCA, is amended to read:

21 "77-1-103. Administration of lands. The Subject to the
 22 provisions of [sections 1 and 2], the board shall lease or
 23 sell lands under 77-1-102 in the same manner as other school
 24 lands of the state are leased and sold. The board may sell
 25 or lease these lands without having them surveyed, unless

1 the board considers it to be to the best interests of the
 2 state to have the lands surveyed as in 77-1-104. The
 3 proceeds from the leasing and sale of ~~such lands shall~~ must
 4 be disposed of in the same manner as disposition is made of
 5 the proceeds from the leasing and sale of school lands of
 6 the state."

7 **Section 4.** Section 77-1-106, MCA, is amended to read:

8 "77-1-106. Setting of rates or fees -- rules. (1) In
 9 setting the lease rental rates or fees for the use of state
 10 lands and cabin sites, the board shall consider the
 11 provisions of [sections 1 and 2]; the impact of the uses on
 12 the school trust asset; lessee expenses for management,
 13 water development, weed control, and fire control; the term
 14 of the lease; the production capabilities; the conditions
 15 on the lease payment; and any other required expenses
 16 reasonably borne by the lessee. In setting cabin site lease
 17 rates, the board shall consider expenses that are commonly
 18 incurred by the lessees to preserve the value of the state
 19 land or to provide services commonly provided by private
 20 lessors in the area.

21 (2) All lease rental rates and fees established by the
 22 board under 77-1-208, 77-1-802, 77-6-202, 77-6-501,
 23 77-6-502, and 77-6-507 must consider the trust asset and be
 24 in the best interests of the state with regard to the
 25 long-term productivity of the school trust lands, while

optimizing the return to the school trust.

(3) The board shall comply with Title 2, chapter 4, part 3, in setting rental rates and license fees pursuant to 77-1-208, 77-1-802, 77-6-202, 77-6-501, 77-6-502, and 77-6-507."

Section 5. Section 77-1-120, MCA, is amended to read:

"77-1-120. (Temporary) State land board advisory council. (1) There is a state land board advisory council. The council shall gather information, provide advice, make recommendations, and perform other activities as may be necessary in the setting of all fees or rental rates for state lands.

(2) The state land board advisory council must be appointed by the governor with the concurrence of the majority of the board of land commissioners. The advisory council must be broadly representative of the users and beneficiaries of the state trust lands.

(3) The state land board advisory council shall make recommendations for fees and rental rates to the state land board, subject to the provisions of [sections 1 and 2]. (Terminates March 1, 1996--sec. 17, Ch. 586, L. 1993.)"

Section 6. Section 77-1-202, MCA, is amended to read:

"77-1-202. Powers and duties of board. (1) The board shall exercise general authority, direction, and control over the care, management, and disposition of state lands

and, subject to the investment authority of the board of investments, the funds arising from the leasing, use, sale, and disposition of those lands or otherwise coming under its administration. In the exercise of these powers, the guiding rule and principle is that these lands and funds are held in trust for the support of education and for the attainment of other worthy objects helpful to the well-being of the people of this state. The Consistent with [sections 1 and 2], the board shall administer this trust to secure the largest measure of legitimate and reasonable advantage to the state.

(2) It is consistent with the powers and duties provided in subsection (1) that the people are entitled to general recreational use of state lands to the extent that the trusts are compensated for the value of the recreation.

(3) When acquiring land for the state, the board shall determine the value thereof of the land after an appraisal by a qualified land appraiser."

Section 7. Section 77-1-203, MCA, is amended to read:

"77-1-203. Multiple-use management. (1) The Consistent with [sections 1 and 2], the board shall manage state lands under the multiple-use management concept defined as the management of all the various resources of the state lands so that:

(a) they are utilized in that combination best meeting the needs of the people and the beneficiaries of the trust,

1 making the most judicious use of the land for some or all of
 2 those resources or related services over areas large enough
 3 to provide sufficient latitude for periodic adjustments in
 4 use to conform to changing needs and conditions and
 5 realizing that some land may be used for less than all of
 6 the resources; and

7 (b) harmonious and coordinated management of the
 8 various resources, each with the other, will result without
 9 impairment of the productivity of the land, with
 10 consideration being given to the relative values of the
 11 various resources.

12 (2) If a parcel of state land in one class has other
 13 multiple uses or resource values which that are of such
 14 significance that they do not warrant classification for the
 15 value, the land shall, nevertheless, be managed insofar as
 16 is possible to maintain or enhance these multiple-use
 17 values.

18 (3) State lands, including those lands that are leased
 19 primarily for other purposes, are open to general
 20 recreational use subject to legal access and to closures and
 21 restrictions pursuant to rules adopted under 77-1-804.

22 (4) The department shall include in all new or renewal
 23 leases and licenses a provision that leased lands may not be
 24 closed at any time to the public for general recreational
 25 purposes without advance written permission of the

1 department."

2 **Section 8.** Section 77-1-204, MCA, is amended to read:

3 "77-1-204. Power to sell, lease, or exchange certain
 4 state lands. (1) The Consistent with [sections 1 and 2], the
 5 board is authorized to lease state lands for uses other than
 6 agriculture, grazing, timber harvest, or mineral production
 7 under such terms and conditions which that best meet the
 8 duties of the board as specified in 77-1-202 and 77-1-203.
 9 The lease period for such those leases, except for power and
 10 school site leases, may not be for longer than 40 years.

11 (2) The board ~~shall have full power and authority~~ is
 12 authorized to sell, exchange or lease lands under its
 13 jurisdiction by virtue of 77-1-214 when, in its judgment, it
 14 is advantageous to the state to do so in the highest orderly
 15 development and management of state forests and state parks.
 16 ~~Said The~~ The sale, lease, or exchange ~~shall~~ may not be contrary
 17 to [sections 1 and 2] or to the terms of any contract ~~which~~
 18 that it has entered into."

19 **Section 9.** Section 77-1-208, MCA, is amended to read:

20 "77-1-208. Cabin site licenses and leases -- method of
 21 establishing value. (1) The board shall[, taking into
 22 account recommendations of the state land board advisory
 23 council, and] subject to the provisions of [sections 1 and
 24 2], set the annual fee based on full market value for each
 25 cabin site and for each licensee or lessee who at any time

wishes to ~~continue-or~~ assign the license or lease. The fee must attain full market value based on appraisal of the cabin site value as determined by the department of revenue. The licensee or lessee has the option to pay the entire fee on March 1 or to divide the fee into two equal payments due March 1 and September 1. The value may be increased or decreased as a result of the statewide periodic revaluation of property pursuant to 15-7-111. An appeal of a cabin site value determined by the department of revenue must be conducted pursuant to Title 15, chapter 2.

~~(2) The--board--shall-set-the-fee-of-each-initial-cabin-site-license-or-lease-or-each-current-cabin-site-license-or-lease--of-a-person-who-does-not-choose-to-retain-the-license-or-lease--The-initial-fee-must-be-based--upon--a--system--of-competitive--bidding--The--fee--for--a-person-who-wishes-to-retain-that-license-or-lease-must-be--determined--under--the-method-provided-for-in-subsection-(1):~~

~~{3}~~ The board shall follow the procedures set forth in 77-6-302 through 77-6-306 for the disposal or valuation of any fixtures or improvements placed upon the property by the then-current licensee or lessee and ~~shall--require--the-subsequent--licensee--or-lessee-whose-bid-is-accepted-by-the-board-to-purchase-those--fixtures--or--improvements--in--the-manner---required--by--the--board.~~ (Bracketed language in subsection (1) terminates March 1, 1996--sec. 17, Ch. 586,

L. 1993.)"

Section 10. Section 77-1-209, MCA, is amended to read:

"77-1-209. **Leasing rules.** The Subject to the provisions of [sections 1 and 2], the board may prescribe rules relating to the leasing of state lands as it considers necessary in order that the use and proceeds of these lands may contribute in the highest attainable measure to the purposes for which they are granted to the state of Montana. The rules should prescribe a procedure for setting all fees and rental rates for the use of state lands for any purpose. The procedure should establish provisions for notice, public comment, public hearings, and appeal."

Section 11. Section 77-1-301, MCA, is amended to read:

"77-1-301. **Powers and duties of the department.** (1) Under the direction of the board and subject to the provisions of [sections 1 and 2], the department has charge of the selecting, exchange, classification, appraisal, leasing, management, sale, or other disposition of the state lands. It shall perform such other duties the board directs, the purpose of the department demands, or the statutes require.

(2) It shall collect and receive all moneys money payable to the state through its office as fees, rentals, royalties, interest, penalties, or payments on mortgages or lands purchased from the state or derived from any other

source. It shall issue a receipt for each cash payment or whenever requested by the payer."

Section 12. Section 77-1-402, MCA, is amended to read:

"77-1-402. Basis for classification or reclassification. (1) The classification or reclassification ~~shall~~ must be so made as to place state land in the class which that .best accomplishes the powers and duties of the board, as specified in 77-1-202 and 77-1-203, and the objectives of [sections 1 and 2]. When state lands are classified or reclassified ~~in accordance with these duties and responsibilities~~, special attention ~~shall~~ must be paid to the capability of the land to support an actual or proposed land use authorized by each classification.

(2) It is the duty of the department to classify or reclassify state lands so that ~~no~~ state land will not be sold, leased, or used under a different classification from that to which it actually belongs."

Section 13. Section 77-1-601, MCA, is amended to read:

"77-1-601. Statement of policy. It is in the best interest and to the great advantage of the state of Montana, when consistent with [sections 1 and 2], to seek the highest development of state-owned lands in order that they might be placed to their highest and best use and thereby derive greater revenue for the support of the common schools, the university system, and other institutions benefiting

~~therefrom from the lands~~, and that in so doing the economy of the local community as well as the state is benefited as a result of the impact of such the development."

Section 14. Section 77-2-105, MCA, is amended to read:

"77-2-105. Termination of easements. Whenever lands granted for any of the purposes mentioned in 77-2-101(2) ~~shall~~ cease to be used for such easement purposes, ~~said the~~ easement shall forthwith terminate terminates upon notice to that effect to the person to whom ~~such the~~ grant was made, served at his the person's last-known last-known post-office address. Upon termination of the easement, the provisions of [sections 1 and 2] apply."

Section 15. Section 77-2-201, MCA, is amended to read:

"77-2-201. Exchange of land with United States or tribal governments. (1) (a) The Subject to the provisions of [sections 1 and 2], the board may enter into contracts or agreements with the United States or any department ~~thereof~~ of the United States having jurisdiction for the waiving and relinquishment to the United States of any rights of the state in and to sections 16 and 36 of any township and to any other parcel of state lands, provided that the state shall, in lieu of the rights ~~so~~ waived and relinquished, receive from the United States other lands of equal or greater value.

(b) The current user of the land transferred to the

1 United States may continue to enjoy the use of the land
 2 under terms and conditions required by the federal
 3 government and in accordance with P.L. 88-607, as amended,
 4 (43 U.S.C. 1411 through 1418), and the current user of the
 5 land received from the United States may continue to utilize
 6 the land on the terms and conditions imposed by law or by
 7 the board.

8 (2) The board may enter into a contract or agreement
 9 with a tribal government as defined in 18-11-102 or with the
 10 United States for the relinquishment to the tribal
 11 government or to the United States in trust for the tribal
 12 government of any rights of the state to some or all state
 13 lands located wholly within the exterior boundaries of the
 14 tribal government's reservation as recognized by the federal
 15 government; however, the state, in exchange for these
 16 relinquished rights, must receive from the tribal government
 17 or the United States lands of equal or greater value. No A
 18 contract or agreement may not be entered into under this
 19 section without first consulting with the board of county
 20 commissioners of the county or counties in which the lands
 21 to be exchanged are located."

22 **Section 16.** Section 77-2-202, MCA, is amended to read:

23 "77-2-202. **Exchange of land with counties.** The Subject
 24 to the provisions of [sections 1 and 2], the board may
 25 accept on behalf of the state title in fee simple to any

1 land owned by a county in the state and may convey in
 2 exchange therefor for the land state land of approximately
 3 the same area and of a value not higher than the land
 4 received from the county if the exchange will result in
 5 consolidating the state lands into more compact bodies."

6 **Section 17.** Section 77-2-203, MCA, is amended to read:

7 "77-2-203. **Exchange for private land.** (1) The Subject
 8 to the provisions of [sections 1 and 2], the board is
 9 authorized to exchange state land for private land provided
 10 that the private land is of equal or greater value, as
 11 determined by the board after appraisal by a qualified land
 12 appraiser, than the state land and as closely as possible
 13 equal in area. The contents of the appraisal must be made
 14 available to any person who makes a written request to the
 15 board. The board shall place priority on exchanges which
 16 that result in consolidation of state lands into more
 17 compact bodies. This section does not apply to exchanges
 18 undertaken under 76-12-107.

19 (2) If the requirements of subsection (1) and 77-2-204
 20 are met, state lands bordering on navigable lakes and
 21 streams or other bodies of water with significant public use
 22 value may be exchanged for private land if the private land
 23 borders on similar navigable lakes, streams, or other bodies
 24 of water."

25 **Section 18.** Section 77-2-206, MCA, is amended to read:

"77-2-206. Settlement for improvements. If any state land is exchanged on which there are improvements belonging to a lessee and some person other than the lessee is the transferee, that person shall settle with the lessee for all improvements on the land belonging to the lessee before the exchange is completed. The provisions of 77-6-301 through 77-6-306 relating to the payment and settlement for improvements on state lands ~~between-a-former--lessee--and--a new--lessee~~ apply to the settlement between a lessee and the transferee in an exchange. If settlement is not reached within 6 months of date of exchange, all improvements become the property of the state unless the department for good cause shown grants both parties additional time in which to exhaust arbitration."

Section 19. Section 77-2-207, MCA, is amended to read:

"77-2-207. Approval or disapproval of exchanges. All exchanges of state lands are subject to approval and confirmation by the board and subject to the provisions of [sections 1 and 2], and ~~no~~ an exchange is not considered completed until after such approval and confirmation. The board has the power and it is its duty to disapprove any exchange which that in its opinion would be disadvantageous to the state."

Section 20. Section 77-2-211, MCA, is amended to read:

"77-2-211. Exchange of timbered, cut-over, or

burned-over lands. ~~The~~ Subject to the provisions of [sections 1 and 2], the board may accept on behalf of the state title in fee simple to any timbered lands or lands from which the timber has been cut or burned and in exchange ~~therefor~~ for the land may convey not to exceed an equal value, as determined by the board after appraisal by a qualified land appraiser, of similar state land. However, ~~no~~ such an exchange may not be made except that which in the opinion of the board will benefit the public interest. For the purpose of ~~such~~ an exchange, all state lands, including those referred to in ~~77-2-303(3), 77-2-311, and~~ 77-5-101, are subject to be offered for such exchange, and any restrictions against their sale or disposal are, for the purpose of such an exchange, released."

Section 21. Section 77-2-212, MCA, is amended to read:

"77-2-212. Rules. ~~The~~ Subject to the provisions of [sections 1 and 2], the board shall adopt ~~and--promulgate~~ such rules and methods of procedure affecting ~~or--touching~~ the exchanges of lands under 77-2-211 through 77-2-217 as in its judgment ~~seems--advisable--to--the--end--that~~ are in the public interests ~~may--be--conserved.~~"

Section 22. Section 77-2-217, MCA, is amended to read:

"77-2-217. Status of exchanged lands. All lands taken in exchange under 77-2-211 through 77-2-216 for lands granted by the United States to the state of Montana prior

to July 1, 1931, ~~shall--be~~ are subject to the same restrictions, limitations, and provisions as the lands granted by the United States are now subject to, including the provisions of [sections 1 and 2]. All lands granted by the state in carrying out ~~such~~ exchanges ~~shall--thereafter~~ must be free from the restrictions and limitations provided by The Enabling Act of the state of Montana or the other grant from the United States."

Section 23. Section 77-2-301, MCA, is amended to read:

"77-2-301. Sales of state land under board control. The board ~~is--hereby-vested-with-the-power-and-authority-to~~ may decide when sales of state lands are to be held and what state lands are to be offered for sale, subject to the limitations of this title and [sections 1 and 2], as the best interests of the state ~~may-appear-to~~ require. ~~As-a general-rule-and-except-as-provided-in-77-2-318, no sale--of state-lands-shall-be-held-unless-applications-have-been-made for--the--purchase-of-lands-within-one-county-by-prospective purchasers-representing-at-least-12-families."~~

Section 24. Section 77-2-302, MCA, is amended to read:

"77-2-302. Disposition of former institutions and certain federal land grants. (1) Notwithstanding any other section in this chapter, any lands, including buildings, formerly used as or by a state institution which that are no longer used for institutional purposes may must be disposed

of in whole or in part on ~~such~~ terms and in ~~such a~~ manner as the board, after consultation with the appropriate legislative committee, ~~may-determine~~ determines to be in the state's best interest, subject to The Enabling Act, and constitutional restrictions, and [sections 1 and 2]. Disposal of ~~such the~~ property ~~shall~~ may not be finally concluded until 60 days' public notice of the terms of the proposed disposal ~~shall~~ have been given.

(2) Notwithstanding any other section in this chapter, any lands, including buildings, granted to the state by the United States pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601, et seq., or acquired by the state as remedial action pursuant to 75-10-704, 75-10-711, or 75-10-712 may must be disposed of, consistent with [sections 1 and 2], in whole or in part on ~~such~~ terms and in ~~such a~~ manner as the board, after consultation with the director of the department of health and environmental sciences, determines to be in the state's best interest."

Section 25. Section 77-2-304, MCA, is amended to read:

"77-2-304. Mineral reservations in state lands. All ~~coal, oil, oil-shale, gas, phosphate, sodium, and other~~ mineral deposits in state lands ~~except sand and gravel, building stone, and brick clay, which were not reserved by the United States before July 1, 1927, are reserved to the~~

~~state--All-those-deposits are reserved from subject to sale except-upon-a-rental-and-royalty-basis as provided by law, in conformity with [sections 1 and 2]. A purchaser of state lands acquires no full right, title, or and interest in or to any--of those mineral deposits. The-state-also-reserves for-itself-and-its-lessees-the-right--to--enter--upon--these lands--to--prospect--for,--develop,--mine,--and-remove-those deposits-and-to-occupy-and-use-so-much-of-the-surface-of-the lands--as--may--be--required--for--all--purposes--reasonably extending-to-the-exploring-for,--mining,--and-removal--of--the deposits--therefrom,--but-the-lessee-shall-make-just-payment to-the-purchaser-for-all-damage-done-by-reason-of-such-entry upon-the-land-and-the--use--and--occupancy--of--the--surface thereof."~~

Section 26. Section 77-2-306, MCA, is amended to read:

"77-2-306. Who may purchase. (1) State lands ~~shall~~ must be sold only to citizens of the United States, persons who have declared their intentions to become citizens, corporations organized under the laws of this state, or towns, cities, counties, or consolidated local governments of this state. No A person ~~shall-be~~ is not qualified to purchase state land who has not reached the age of 18 years. As far as it is possible to determine, the lands ~~shall~~ must be sold only to actual settlers or to persons who will improve the same land and not to persons who are likely to

hold such the lands for speculative purposes intending to resell the same lands at a higher price without having added anything to their value.

(2) State lands may be sold to any sovereign state of the United States or to any board of trustees or public corporation or agency of such a sovereign state created by such that state as an agency or political subdivision thereof. Said The lands may be purchased ~~in--the--quantities set--forth-in-77-2-307~~ for use by such the purchasing state, board of trustees, public corporation, agency, or political subdivision for educational or scientific purposes.

(3) State lands located wholly within the exterior boundaries of the tribal government's reservation as recognized by the federal government may be sold to a tribal government as defined in 18-11-102. ~~No-sale-involving-land in-excess-of-the-acreage-limitations-in-77-2-307-may-be-made under-this-section-without-first-consulting-with--the--board of--county--commissioners-of-the-county-or-counties-in-which the-lands-to-be-sold-are-located."~~

Section 27. Section 77-2-308, MCA, is amended to read:

"77-2-308. Approval or disapproval of sales. All sales of state lands ~~shall--be~~ are subject to the approval and confirmation by the board and subject to the conditions of [sections 1 and 2], and no a sale shall-be-deemed-completed is not considered complete until after such approval and

confirmation by the board. The board shall ~~have the power~~
~~and it shall be its duty to~~ disapprove any sale ~~which that~~
 in its opinion would be disadvantageous to the state."

Section 28. Section 77-2-309, MCA, is amended to read:

"77-2-309. Discretion of board with respect to
 surveying and platting. ~~Except as provided in 77-2-312, it~~
~~shall be~~ It is entirely optional with the board whether or
 not state lands or any part ~~thereof shall~~ of state lands
must be surveyed, platted, and laid off into blocks and lots
~~as herein provided~~, as may appear to be for the best
 interests of the state."

Section 29. Section 77-2-318, MCA, is amended to read:

"77-2-318. Sale of leased cabin or home sites or city
 or town lots. (1) At the request of the lessee and if
 consistent with the orderly development and management of
 state lands and [sections 1 and 2], the board may make
 available for sale, in the manner provided in this part, any
 leased cabin or home site or city or town lot that was under
 lease on October 1, 1989.

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

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

(4) The sale of a leased cabin or home site or city or
 town lot under 77-2-318 through 77-2-320 must be completed
 no later than 10 years after October 1, 1989. A lessee may
 request a lease sale at any time during the 10-year period.
 Upon request, the board may grant a handicapped lessee or a
 lessee 65 years of age or older an additional 10-year period
 to request a sale of leased land.

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

Section 30. Section 77-2-324, MCA, is amended to read:

"77-2-324. Preference to lessee of land. ~~The~~ For sales
of land pursuant to [sections 1 and 2], the lessee of the
 land need not make a higher bid than others, but ~~he shall~~
~~have~~ the lessee has the option to match the high bid and
 must be given the preference. If the lessee matches the high
 bid, bidding must be reopened to all bidders, with the
 lessee retaining the right of preference to match the
 ultimate high bid and be awarded the sale."

Section 31. Section 77-2-325, MCA, is amended to read:

"77-2-325. **Settlement for improvements.** If any state land is sold on which there are improvements belonging to a lessee and some person other than the lessee is the purchaser, that person shall settle with the lessee for all improvements on the land belonging to the lessee before the issuance of the certificate of purchase. The provisions of 77-6-301 through 77-6-306 relating to the payment and settlement for improvements on state lands ~~between a former lessee and a new lessee~~ apply to the settlement between a lessee and the purchaser. If settlement is not reached within 6 months of date of sale, all improvements become the property of the state unless the department for good cause shown grants both parties additional time in which to exhaust arbitration."

Section 32. Section 77-2-327, MCA, is amended to read:

"77-2-327. **Certificate of purchase.** (1) Upon the approval of the sale and receipt of satisfactory evidence of settlement with the former lessee, if any, for improvements on the land, the department shall execute and mail to the purchaser a certificate of purchase signed by the governor as president of the board and by the commissioner of state lands and attested by the seal of the board. The certificate of purchase ~~shall~~ must contain the date of sale, the name and post-office address of the purchaser, a description of

the land, the total purchase price, the amount paid on the day of sale, the balance unpaid, and the amount and due date of each installment of principal and interest to the time of maturity. The certificate ~~shall~~ must reserve the easements for rights-of-way granted by the statutes in favor of the United States and other easements that may have been granted by the board ~~and shall contain the reservations in favor of the state provided for in 77-2-304 relating to coal, oil, and mineral rights in the land.~~

(2) The certificate ~~shall~~ must also contain information in regard to the lien of the state on crops and improvements on the land for installments of principal and interest and taxes and any additional conditions, agreements, and information the board considers necessary in order to carry out the intent of this part."

Section 33. Section 77-2-328, MCA, is amended to read:

"77-2-328. **Additional rules.** The board may prescribe ~~such~~ additional rules for the conduct of these sales as in its judgment the interests of the state and the provisions of [sections 1 and 2] may demand."

Section 34. Section 77-2-329, MCA, is amended to read:

"77-2-329. **Terms of payment.** (1) Every purchaser of state land shall pay on the day of sale that portion of the purchase price as ~~he~~ the purchaser may desire, but in no case less than 10% of the total sales price. ~~In case the~~

~~balance--on--the--purchase-price-is-not-an-exact-multiple-of
\$25--then-he-shall-pay-such-additional-sum-as--is--necessary
to-reduce-the-balance-to-an-even-multiple-of-\$25-~~

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

Section 35. Section 77-2-343, MCA, is amended to read:

"77-2-343. Patent provisions. (1) Such A deed or patent ~~shall~~ must contain the reservation of easements for rights-of-way to the United States~~7--reservation--of--all~~ minerals--in-the-land-as-provided-in-77-2-3047 and all other reservations to which the particular land conveyed is subject.

(2) If the land is located within the boundaries of a federal irrigation project, the patent ~~shall~~ must contain a lien clause substantially in the following form: The land hereby conveyed is located within the boundaries of a federal irrigation project and is subject to all liens which the United States may have thereon by reason of its being located under such irrigation project.

(3) This section does not require any reservation in a patent ~~which~~ that was not an express or implied reservation in the certificate of purchase pursuant to which the patent is issued. The statutes in effect when ~~such~~ the certificate of purchase was issued must govern."

Section 36. Section 77-2-351, MCA, is amended to read:

"77-2-351. Sale to or exchange of property with public entity. Notwithstanding any other section in this chapter, any lands may be sold to or exchanged for other land or for other consideration with another public entity on terms and in a manner as the board, after consultation with the appropriate legislative committee, may determine to be in the state's best interest, subject to The Enabling Act, and constitutional restrictions, and [sections 1 and 2]. The sale or exchange of the property may not be finally concluded until 60 days' public notice of the terms of the proposed sale or exchange has been given."

Section 37. Section 77-3-102, MCA, is amended to read:

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

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

1 1 and 2].

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

7 (4) ~~in--short--the--board--in~~ In making the leases, the
8 board may exercise business discretion, ~~so as~~ long as this
9 part is not violated."

10 **Section 38.** Section 77-3-201, MCA, is amended to read:

11 "77-3-201. Nonmetallic mineral leases authorized. When
12 there are found upon state lands deposits of stone,
13 limestone, oil shale, clay, bentonite, calcite, talc, mica,
14 ceramic, asbestos, marble, diatomite, gravel or sand, or
15 phosphate, sodium, potash, sulphur, fluorite or barite, or
16 any other nonmetallic minerals, but not including coal, oil,
17 or gas, valuable for building, mining, or other commercial
18 purposes, the board may in its discretion and subject to the
19 provisions of [sections 1 and 2] issue permits or leases to
20 private persons for the removal and disposition of the
21 above-named deposits upon such terms and conditions as the
22 board may determine."

23 **Section 39.** Section 77-3-207, MCA, is amended to read:

24 "77-3-207. Land leased for other purposes. Such The
25 portions of the section or other subdivision of the land on

1 which such mineral deposits are located ~~as that~~ are not
2 needed for the quarrying or digging and removal of the
3 stone, limestone, oil shale, clay, sand, or gravel may be
4 leased for grazing or agricultural purposes the same as
5 other state lands, subject to the provisions of [sections 1
6 and 2]. In the case that grazing or agricultural leases are
7 issued they ~~shall~~ must provide for a right-of-way across the
8 land for the removal of the stone, limestone, oil shale,
9 clay, gravel, sand, or other deposits, but the rights of the
10 lessee ~~shall~~ must also be duty protected."

11 **Section 40.** Section 77-3-301, MCA, is amended to read:

12 "77-3-301. Coal leases authorized. The board may,
13 subject to the provisions of [sections 1 and 2], lease in
14 such a manner as that it considers in the best interests of
15 the state any state lands to which the title is vested in
16 the state and in which the coal or coal rights are not
17 reserved by the United States for exploring for, mining,
18 removing, selling, and disposing of the coal ~~therein~~, upon
19 the terms and conditions ~~herein~~ stated in this part and
20 subject to such rules ~~as that~~ the board prescribes."

21 **Section 41.** Section 77-3-303, MCA, is amended to read:

22 "77-3-303. Rules relating to coal leasing. The board
23 ~~shall have the power and authority to~~ may prescribe such
24 additional rules and ~~to~~ may do ~~and perform~~ all acts and
25 things not inconsistent with The Enabling Act, the

constitution, [sections 1 and 2], and the statutes of this state as it ~~may-deem~~ considers necessary ~~and-proper~~ relating to the leasing of state land for coal mining purposes."

Section 42. Section 77-3-401, MCA, is amended to read:

"77-3-401. Oil and gas leases authorized. (1) The board ~~is-hereby-authorized-and-empowered-to~~ may lease in such a manner ~~as that~~ it may determine, not inconsistent with The Enabling Act, and the constitution, and [sections 1 and 2], any state lands to which the title has vested in the state and in which the oil and gas rights are not reserved by the United States, for prospecting and exploring for oil and gas, mining, drilling, developing, and removing the ~~same oil and gas~~ upon the terms and conditions ~~herein~~ prescribed in this part to any person, association, corporation, domestic or foreign, or municipality qualified under the constitution and the laws of the state.

(2) ~~This-power-and The~~ authority to lease state lands for ~~such oil and gas development~~ purposes ~~shall must~~ extend to and include all lands owned by the state under navigable lakes and streams ~~and-shall-also-extend-to-and-include-all those-state-lands-which-have-been-sold-but-in-which-the--oil and--gas-rights-have-been-reserved-by-the-state;~~ but in such ~~cases-and-in-all~~ cases where in which the lands are under lease for grazing, agriculture, or similar purposes, care ~~shall must~~ be taken in issuing the oil and gas leases to

protect the rights of the purchaser or lessee."

Section 43. Section 77-3-402, MCA, is amended to read:

"77-3-402. Rules. (1) The board ~~shall-have-the-power and-authority-to~~ may prescribe ~~such~~ rules and ~~to may~~ do ~~and perform~~ all ~~acts--and~~ things not inconsistent with The Enabling Act, the constitution, [sections 1 and 2], and the statutes of this state as it ~~may-deem~~ considers necessary ~~and-proper-relating-to~~ for the leasing of state lands for oil and gas exploration and development. The board shall formulate rules not inconsistent with law governing the leasing of state lands for oil and gas exploration and development ~~which-shall that must~~ be compiled and printed periodically.

(2) Copies of the rules and notices of changes therein ~~shall in the rules must~~ be made available to any person desiring a copy thereof at a reasonable cost to be fixed by a rule of the board."

Section 44. Section 77-3-407, MCA, is amended to read:

"77-3-407. ~~New-leases-on~~ Sale of lands leased prior to February 28, 1953. (1) In the case of ~~all~~ leases issued under the provisions in force prior to February 28, 1953, where oil or gas is being produced, the board shall, at the expiration thereof ~~of the lease~~ or termination for any cause, advertise the land ~~held-thereunder~~ for ~~re-leasing-and lease--the--same~~ sale and sell the land to the highest

responsible bidder therefor at public auction ~~on--the--terms~~
~~then--existing--for--such--leasing.~~ Any person, association,
 firm, or corporation who held such the lease at--the upon
~~expiration thereof--shall--have--the--privilege--of--re--leasing~~
has preference in purchasing the same--at--such land by
matching the highest responsible bid offered--therefor, upon
 such terms and conditions as may be prescribed by the board
 or the legislature.

(2) In the case of ~~all~~ leases issued under the
 provisions in force prior to February 28, 1953, where oil or
 gas is not being produced, the board ~~may~~ shall at the
 expiration ~~thereof~~ of the lease or termination for any cause
 advertise the land ~~held--thereunder~~ for ~~re--leasing--and--lease~~
~~the--same~~ sale and sell the land to the highest responsible
 bidder therefor at public auction ~~if--in--the--judgment--of--the~~
~~board--such--advertising--and--public--auction--will--result--in~~
~~leasing--of--the--land--on--terms--advantageous--to--the--state."~~

Section 45. Section 77-3-441, MCA, is amended to read:

"77-3-441. Restriction on new lease following
 termination of old lease. In all cases where an oil and gas
 lease issued after March 3, 1955, is surrendered for
 cancellation before its expiration, relinquished to the
 state, or canceled through proceedings on the part of the
 state, ~~no~~ a new lease on the lands ~~under--such--lease~~ may ~~not~~
 be issued ~~within--30--days--from--the--date--of--cancellation--or~~

~~relinquishing.~~ This restriction does not apply~~7--however7~~ in
 cases of bona fide assignment."

Section 46. Section 77-3-442, MCA, is amended to read:

"77-3-442. Disposition of property of lessee upon
 termination of lease. (1) Upon the termination for any cause
 of any lease issued under this part, the former lessee has 6
 months after the date of the termination to remove all
 machinery, fixtures, improvements, buildings, and equipment
 belonging to ~~him~~ the former lessee on the premises, except
 for casing in the wells and other equipment or apparatus
 necessary for the preservation of any oil or gas well or
 wells. ~~As--to--such--casing7--equipment7--and--apparatus7--any~~
~~succeeding--lessee--or7--in--the--event--there--is--no--succeeding~~
~~lessee7~~ If the state ~~wishing~~ wishes to have ~~such the~~
 property left upon the premises, the state shall pay the
 reasonable value thereof of the property to the former
 lessee.

(2) If the ~~succeeding--lessee--or--the~~ board is unable to
 agree with the former lessee upon the reasonable cash value
 of ~~such the~~ casing, equipment, and apparatus, the ~~succeeding~~
~~lessee--or--the~~ state, ~~as--the--case--may--be7~~ shall pay in cash
 to the former lessee a sum fixed as a reasonable price by a
 board of three appraisers, one of whom ~~shall~~ must be chosen
 by the successful bidder, one chosen by the former lessee,
 and the third chosen by the other two so-chosen appraisers.

1 ~~its~~ The appraisal ~~shall~~ must be reported to the respective
2 parties in writing and is final and conclusive.

3 (3) The former lessee may remain in possession and
4 manage the land and property formerly covered by ~~his~~ the
5 lease until the value of the casing, equipment, and
6 apparatus ~~which~~ that the ~~succeeding--lessee--or--the~~ state
7 desires to have left upon the premises is fixed in the
8 manner provided in this section and has been paid to ~~him~~ the
9 ~~former lessee~~ in cash. During the time the former lessee
10 remains in ~~such~~ possession, ~~he~~ the former lessee may retain
11 the same share of the products of the premises as inured to
12 ~~him~~ the former lessee during the term of ~~his~~ the lease.
13 ~~Should If~~ the state ~~or other bidder~~ does not desire any of
14 the lessee's property as provided in this section, the
15 lessee shall properly plug all wells and remove all of ~~his~~
16 the lessee's property from the lands."

17 **Section 47.** Section 77-3-501, MCA, is amended to read:

18 "77-3-501. Lease for underground storage of natural gas
19 authorized. (1) The board is hereby authorized ~~and-empowered~~
20 to lease ~~in--such--manner--and~~ upon ~~such~~ terms as it may
21 determine, not inconsistent with The Enabling Act, and the
22 constitution, and [sections 1 and 2], state lands to which
23 the title has vested in the state, subject to existing
24 rights, for use for the underground storage of natural gas
25 upon the terms and conditions ~~herein~~ prescribed in this

1 part, to any natural gas public utility authorized to do
2 business in this state and engaged in the business of
3 transporting or distributing natural gas by means of
4 pipelines into, within, or through this state for ultimate
5 public use.

6 (2) State lands ~~which~~ that may be leased ~~shall~~ include
7 lands in which the deposit of native gas ~~shall-have~~ has been
8 depleted, provided the lessee pays to the state the amount
9 specified by the board for the native gas then remaining in
10 the lands to be leased."

11 **Section 48.** Section 77-3-502, MCA, is amended to read:

12 "77-3-502. Rules. The board ~~shall-have--the--power--and~~
13 has authority to prescribe ~~such~~ rules and to do ~~and-perform~~
14 all ~~acts-and~~ things not inconsistent with The Enabling Act,
15 the constitution, [sections 1 and 2], and the statutes of
16 this state as it ~~may-deem~~ considers necessary ~~and--proper~~
17 relating to the leasing of state lands for the underground
18 storage of natural gas and the sale of the gas remaining in
19 state lands in a gas field ~~wherein~~ from which native gas
20 deposits have been depleted."

21 **Section 49.** Section 77-4-101, MCA, is amended to read:

22 "77-4-101. Geothermal leases authorized. (1) The board
23 may, consistent with the provisions of [sections 1 and 2],
24 lease state-owned lands, including the beds of navigable
25 streams and the beds of navigable bodies of water, to

persons, associations, or corporations for prospecting, exploration, well construction, and the production of geothermal resources.

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

Section 50. Section 77-4-103, MCA, is amended to read:

"77-4-103. Rules. The board shall adopt rules, consistent with the provisions of [sections 1 and 2], governing the issuance of geothermal resource leases and the conduct of all geothermal operations. The board may also require the applicant for a geothermal lease to pay an application fee."

Section 51. Section 77-4-128, MCA, is amended to read:

"77-4-128. Permission for and disposition of improvements. (1) A geothermal lessee of state lands has the right to place upon the leased lands a reasonable amount of improvements, provided that such the improvements are directly related to the purpose of the lease.

(2) Whenever another person ~~becomes--the--geothermal~~ lessee purchases the interest in a geothermal lease under the provisions of [sections 1 and 2], he the purchaser shall pay the former lessee the reasonable value of such the improvements at the time the ~~new--lessee~~ purchaser takes possession thereof.

(3) In determining the value of these improvements, the

original cost, the present condition, and the suitability of the improvements for the uses ordinarily made of geothermal resources ~~shall~~ must be considered.

(4) The former lessee ~~may--however--~~ remove or dispose of the moveable improvements from the land within 60 days from the expiration of his the lease except for the well casing and other equipment necessary for the preservation of any geothermal well. If not removed within 60 days, improvements ~~shall~~ become the property of the state unless the board ~~shall--grant~~ grants additional time for the removal thereof. Before a lease certificate of purchase is issued to the ~~new-lessee--he~~ the purchaser, the purchaser shall show that ~~he--has--paid--the--former--lessee~~ the value of the improvements has been paid to the former lessee as agreed upon by them or as fixed ~~and--determined~~ under 77-4-129, that he the purchaser has offered to pay the value of the improvements as ~~so fixed and--determined~~, or that the former lessee elects to remove the improvements."

Section 52. Section 77-4-129, MCA, is amended to read:

"77-4-129. Procedure to fix value of improvements. (1) If the owner of any improvements on state lands of the type authorized by law at the time they were placed ~~thereon on~~ the land desires to sell these improvements to the ~~new lessee~~ purchaser and they are unable to agree on the value thereof of the improvements, the value ~~shall~~ must be

ascertained and fixed by three arbitrators, one of whom ~~shall~~ must be appointed by the owner of the improvements, one by the ~~new-lessee~~ purchaser, and the third by the other two arbitrators ~~so--appointed~~. The reasonable compensation that the arbitrators ~~may fix~~ ~~shall~~ must be paid in equal shares by the owner of the improvements and the ~~new-lessee~~ purchaser. The value of the improvements ~~so-ascertained--and fixed~~ is binding on both parties.

(2) If either party is dissatisfied with the valuation ~~so-fixed~~, ~~he~~ that party may within 10 days appeal from their decision to the department, which shall examine the improvements and make the final decision as to the value of the improvements. The department shall apportion the actual cost of the reexamination to the owner and the ~~new-lessee~~ purchaser as justice may require. The value of the improvements ~~shall~~ must be ascertained and fixed as provided in 77-4-128."

Section 53. Section 77-6-102, MCA, is amended to read:

"77-6-102. Surface leases authorized. Under the general direction and control of the board, the department shall, consistent with the provisions of [sections 1 and 2], lease all agricultural and grazing lands and all town lots, city lots, and lands valuable for commercial development open to leasing upon proper application."

Section 54. Section 77-6-103, MCA, is amended to read:

"77-6-103. Lease of state land to United States for military purposes authorized. The board, when it considers it in the public interest, may, consistent with the provisions of [sections 1 and 2], lease to the United States for military purposes any state land, whether ~~such~~ the land was received by the state through federal land grants or whether ~~such~~ the land consists of so-called "mortgage lands", on ~~such~~ terms and conditions as that it considers necessary to promote the public welfare and protect the interests of the state. Rental ~~shall-be~~ is payable at the end of each year of the lease."

Section 55. Section 77-6-116, MCA, is amended to read:

"77-6-116. Voluntary termination of lease to allow ~~concurrence--with--federal-conservation-reserve-program sale~~ -- competitive bidding required. (1) A lessee of state land ~~who---wishes---to--enter--the--state--land--in--the--federal conservation---reserve---program~~ may request voluntary termination of the remainder of the lease prior to scheduled expiration ~~in-order-to--seek-a-renewal-lease--that--will--run concurrently--with--the--federal--program~~. The lessee shall apply for voluntary termination to the department on a form prescribed by the department. The form must specify:

- (a) the name of the lessee and a designation of the leased land for which voluntary termination is sought; and
- (b) the scheduled termination date of the lease; ~~and~~

~~{c}--the-term-of--eligibility--of--the--land--under--the
federal-conservation-reserve-program.~~

(2) Upon receipt of a proper application, the department shall terminate the remainder of the lease. When a request for voluntary termination is granted, the department shall fulfill the notification requirements of 77-6-204, and the lease purchase is subject to the same competitive bidding process ~~as-renewal-leases~~ under 77-6-205 77-2-324. However, ~~the~~ A lessee requesting voluntary termination retains the preference right allowed under 77-6-205 77-2-324.

~~{3}--If--a-lease-renewal-is-granted-pursuant-to-77-6-205
to-a-lessee-who-has-requested--voluntary--termination--under
this--section,--the--term-of-the-renewal-lease-must-coincide
with-the-term-of-eligibility-under-the-federal--conservation
reserve-program."~~

Section 56. Section 77-6-202, MCA, is amended to read:

"77-6-202. Lease by competitive bidding -- full market value required. (1) When the department receives an application to lease an unleased tract not subject to sale pursuant to [sections 1 and 2], it shall advertise for bids on the tract. The tract must be leased to the highest bidder unless the board determines that the bid 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 below

full market value determined by taking into account recommendations of the state land board advisory council. If the high bid is rejected, the board shall set forth the reasons for the rejection in writing. The lease may be issued, at a rental to be determined by the board, to the first bidder willing to pay the board determined rental whose name is selected through a random selection process from all bidders on the tract.

(2) After [the effective date of this act], new leases may not be issued under this section."

Section 57. Section 77-6-203, MCA, is amended to read:

"77-6-203. Bid deposit. (1) A person bidding for the lease of state lands not sold pursuant to [sections 1 and 2] shall deposit with the department, as evidence of good faith, a certified check, cashier's check, or money order in an amount equal to 20% of the annual rental bid in the case of grazing land and an amount equal to \$1 per acre for each acre of agricultural land contained in the lease in the case of agricultural land on which the bid is made on a crop share basis.

(2) The department shall retain the deposit of the successful bidder, apply it on the rental for the first year of the lease only, and return any balance of the deposit at the end of the first year to the successful bidder. The department shall return the deposits of the unsuccessful

bona fide bidders. If the department finds a bid has been submitted that is frivolous, forged, or a bad faith bid or a bid submitted for purposes of harassment, the deposit is forfeited. The department shall make a reasonable attempt to notify the bidder in writing of the forfeiture and reasons therefor for forfeiture.

(3) If the successful bidder fails to execute the lease for any reason, his the deposit ~~shall be~~ is forfeited.

(4) The department shall credit all forfeited deposits to the interest and income account of the proper trust."

Section 58. Section 77-6-204, MCA, is amended to read:

"77-6-204. Notification of termination of lease. When a lease expires, is canceled, or is voluntarily terminated ~~under--77-6-116~~, the department shall immediately notify the holder of the lease ~~and--all--persons--who--have--expressed--an--interest--in--leasing--the--land--during--or--immediately--preceding--the--term--of--the--expired--canceled--or--terminated--lease~~ and offer the land for sale in accordance with sections 1 and 2."

Section 59. Section 77-6-205, MCA, is amended to read:

"77-6-205. ~~Renewal--leases~~ Purchase preference right for lessees. (1) A lessee of state land ~~classed~~ classified as agricultural, grazing, town lot, city lot, or land valuable for commercial development ~~who--has--paid--all--rentals--due--the--state~~ whose lease has expired or who has voluntarily

terminated a lease under 77-6-116 is entitled to ~~have--the--lease--renewed--for--a--period--not--to--exceed--the--maximum--lease--period--provided--in--77-6-109--at--any--time--within--30--days--prior--to--its~~ bid for purchase of the state land following expiration or ~~within--30--days--following~~ voluntary termination ~~if--no--other--applications--for--lease--of--the--land--have--been--received--30--days--prior--to--the--expiration~~ of the lease or ~~within--30--days--following--voluntary--termination~~. The ~~renewal~~ purchase must be at the full market ~~rental--rate~~ value established by the board ~~{--taking--into--account--recommendations--of--the--state--land--board--advisory--council--}~~ for--the--renewal--period and subject to any other conditions at the time of the ~~renewal~~ purchase imposed by law as terms of the ~~lease~~ purchase. Except as provided in 77-6-212, ~~if--other--applications--have--been--received~~, the holder of the lease has the preference right to ~~lease~~ purchase the land covered by the former lease by meeting the highest bid made by any other applicant, in accordance with 77-2-324. ~~Applications--for--lease--of--lands--in--this--section--must--be--given--preference--in--the--order--of--their--receipt--at--the--office--of--the--department.~~

(2) The board shall accept the highest bid. ~~if--the--lessee--exercises--the--preference--right--and--believes--the--bid--to--be--excessive~~, the lessee may ~~request--an--administrative--hearing~~. ~~The--request--must--contain--a--statement--of--reasons--why~~

1 the--lessee--believes--the-bid-not-to-be-in-the-state's-best
 2 interest--The-department--shall--grant--the--request--for--a
 3 hearing--if--it--determines--that--the--statement--indicates
 4 evidence--that--the--bid--may--not--be--in--the-state's-best
 5 interests--The-board-may--after--the--hearing--reduce--the
 6 rental--from-the-amount-bid-if-the-lessee-shows-that-the-bid
 7 is-not-in-the-best-interest-of-the-state-because-it-is-above
 8 community-standards-for-a-lease-of--the--land--would--cause
 9 damage---to---the--tract--or--would--impair--its--long-term
 10 productivity--if-the-board-reduces-the--bid--it--shall--set
 11 forth-its-findings-and-conclusions-in-writing-and-inform-the
 12 lessee--and--competitive--bidder-of-the-reduction--It-is-the
 13 duty-of-the-board-to-secure-the-best--lessees--possible--so
 14 that--the-state-may-receive-the-maximum-return-possible-with
 15 the-least-injury-occurring-to-the-land;

16 {3}--A--renewal--lease--may--be--canceled--pursuant---to
 17 77-6-113, 77-6-208, 77-6-209, or 77-6-210--for-a-violation-by
 18 the--lessee--that-occurred-during-the-previous-lease-term-but
 19 no-more-than-3-years-prior-to-the-date-on-which--the--notice
 20 of-cancellation-required-by-77-6-211-is-issued--Cancellation
 21 procedures--instituted--but-not-completed-before-renewal--are
 22 applicable-to-the-renewal-lease;

23 {4}--A--renewal--lease--may--be--voluntarily--terminated
 24 pursuant-to-77-6-116--{Bracketed-language-in-subsection--(1)}
 25 terminates-March-17-1996--sec--17, Ch--586, B--1993, }

1 **Section 60.** Section 77-6-206, MCA, is amended to read:
 2 "77-6-206. Withdrawal of lands from leasing.
 3 Notwithstanding-the-foregoing-provisions, the The board may
 4 withdraw any agricultural or grazing land from further
 5 leasing for-such-period as the board determines to be in the
 6 best interest of the state. Bids-for-leases-and-applications
 7 for-renewals-of-leases-of-state-agricultural-lands-or--state
 8 grazing--lands--shall--be-in-writing-and-sealed-and-shall-be
 9 submitted-to-the-board-at-the-office-of-the-department; Land
 10 withdrawn from leasing is subject to sale pursuant to
 11 [sections 1 and 2]."

12 **Section 61.** Section 77-6-208, MCA, is amended to read:
 13 "77-6-208. Assignment of leases -- subleasing -- loss
 14 of preference right. (1) Leases to state lands may be
 15 assigned on blanks prescribed by the department, but an
 16 assignment is not binding on the state unless the assignment
 17 is filed with the department and approved by it and payment
 18 made of the assignment fee under 77-1-302.

19 (2) Preference must always be given to the applicant
 20 who wants the land for the applicant's own individual use,
 21 so that the full advantage coming from the leasing and use
 22 of the lands may reach those who actually till the soil and
 23 so that they are not compelled to pay a higher rental than
 24 that due the state.

25 (3) (a) If a lessee, other than a holder of a

1 commercial lease, subleases state lands on terms less
2 advantageous to the sublessee than the terms given by the
3 state, the department shall cancel the lease, subject to the
4 appeal procedure provided in 77-6-211.

5 (b) If a lessee subleases state lands without filing a
6 copy of the sublease with the department and without
7 receiving the department's approval, the department may
8 cancel the lease, subject to the appeal procedure provided
9 in 77-6-211.

10 (c) Upon approval by the department, a commercial
11 leaseholder may sublease state land on terms less
12 advantageous to the sublessee than the terms given to the
13 lessee by the state. However, the department may adjust the
14 lease rate to require that the lessee pay the state a
15 portion of what the sublessee pays to the lessee.

16 (4) The subleasing of state land may result in loss of
17 the preference right to--renew--the--lease as provided in
18 77-6-212.

19 (5) An assignment or series of assignments may not be
20 made to avoid the loss of the preference right under
21 77-6-212."

22 **Section 62.** Section 77-6-211, MCA, is amended to read:

23 "77-6-211. Procedure to cancel lease -- appeal. (1)
24 When the department cancels a lease pursuant to 77-6-113,
25 77-6-208, 77-6-209, or 77-6-210, it shall immediately notify

1 the lessee by certified mail of the cancellation and the
2 reasons therefor for cancellation. The date of cancellation
3 is 15 days from the date the notice is received by the
4 lessee.

5 (2) The lessee has 15 days after the receipt of the
6 notice to file with the department a notice of appeal for a
7 hearing before the board. If notice of appeal is filed, the
8 lease remains in effect until the decision of the board.
9 Within 10 days after notice of appeal has been filed, the
10 department shall set the time and place of hearing and ~~shall~~
11 ~~so~~ notify the lessee. The board may, after 10 days' notice
12 to the lessee, change the time and place of hearing.

13 (3) Under rules it adopts, the board shall conduct an
14 open hearing to determine whether the lease should be
15 reinstated. The burden of proof is on the lessee to show why
16 the lease should not be canceled. If the lease is
17 reinstated, all of the lessee's rights and privileges
18 ~~thereunder--shall-be~~ under the lease are preserved; if not,
19 if the lease is not reinstated, the land shall-be--open--for
20 re-leasing is subject to sale as provided by law [sections 1
21 and 2]. If the board finds that the terms of the lease have
22 been violated but in its judgment the violation is not
23 serious enough to warrant cancellation, it may reinstate the
24 lease and assess a penalty up to three times the annual
25 rental against the lessee."

Section 63. Section 77-6-302, MCA, is amended to read:

"77-6-302. Compensation for improvements -- actual costs. (1) When another person ~~becomes--the--lessee--of~~ purchases the lands, the person shall pay to the former lessee the reasonable value of these improvements at the time the ~~new--lessee~~ purchaser takes possession. The reasonable value may not be less than the full market value of the improvements.

(2) If the former lessee is unable to produce records establishing the reasonable value or if the former lessee and the ~~new--lessee~~ purchaser are unable to agree on the reasonable value of the improvements, the value must be ascertained and fixed as provided in 77-6-306."

Section 64. Section 77-6-303, MCA, is amended to read:

"77-6-303. Determination of compensation. (1) In determining the value of ~~these~~ improvements, consideration ~~shall~~ must be given to their original cost, their present condition, their suitability for the uses ordinarily made of the lands on which they are located, and to the general state of cultivation of the land, its productive capacity as affected by former use, and its condition with reference to the infestation of noxious weeds. Consideration ~~shall~~ must be given to all actual improvements and to all known effects that the use and occupancy of the land have had upon its productive capacity and desirableness for the ~~new--lessee~~

purchaser.

(2) However, if any of the improvements consists of breaking (meaning the original plowing of the land) and 1 year's crops have been raised on the land after the breaking, the compensation for the breaking may not exceed \$2.50 per acre, and if two or more crops have been raised on the land after the breaking, the breaking ~~shall~~ may not be considered as an improvement to the land."

Section 65. Section 77-6-304, MCA, is amended to read:

"77-6-304. Removal of improvements. The former lessee ~~may,--however,~~ remove the movable improvements on the land and dispose of them to parties other than the ~~lessee~~ purchaser. If ~~he~~ the former lessee fails to remove the improvements from the land within 60 days from the date of the expiration of ~~his~~ the lease, all of the improvements become the property of the state unless the department for good cause grants additional time for their removal."

Section 66. Section 77-6-305, MCA, is amended to read:

"77-6-305. Settlement regarding improvements prerequisite to issuance of ~~new--lease~~ certificate of purchase. Before a ~~lease~~ certificate of purchase is issued to the ~~new--lessee~~ purchaser, the ~~lessee~~ purchaser shall show that the former lessee has been paid the value of the improvements pursuant to 77-6-302 or as determined under 77-6-306 or that the former lessee elects to remove the

1 improvements."

2 **Section 67.** Section 77-6-306, MCA, is amended to read:

3 "77-6-306. Arbitrators to fix value of improvements.

4 (1) If the owner of any improvements on state lands of the
5 type authorized by law at the time they were placed on state
6 lands desires to sell these improvements to the new-lessee
7 purchaser and they are unable to agree on the value of the
8 improvements pursuant to 77-6-302, the value must be
9 ascertained and fixed by three arbitrators, one of whom is
10 appointed by the owner of the improvements, one by the new
11 lessee purchaser, and the third by the two arbitrators so
12 appointed. If any party refuses to appoint an arbitrator
13 within 15 days of being requested to do so by the
14 commissioner, the commissioner may appoint an arbitrator for
15 that party. An arbitrator appointed by the commissioner has
16 the same duties and powers as if appointed by one of the
17 parties. The value of the improvements must be ascertained
18 and fixed pursuant to 77-6-302.

19 (2) The reasonable compensation that the arbitrators
20 may fix for their services must be paid in equal shares by
21 the owner of the improvements and the new-lessee purchaser.

22 (3) The value of the improvements ascertained and fixed
23 is binding on both parties. If either party is dissatisfied
24 with the valuation, the party may within 10 days appeal from
25 the decision to the department, which shall examine the

1 records pertaining to the costs of the improvements, and
2 except as provided in subsection (4), its decision is final.
3 The department shall charge and collect the actual cost of
4 the reexamination to the owner and the new-lessee purchaser
5 in the proportion as, in its judgment, justice may demand.

6 (4) If either party is dissatisfied with the valuation
7 fixed by the department, the party may within 30 days after
8 receipt of the department's decision petition the district
9 court in the county in which the majority of the state land
10 is located or the district court of Lewis and Clark County
11 for judicial review of the decision."

12 **Section 68.** Section 77-6-501, MCA, is amended to read:

13 "77-6-501. Agricultural leases. (1) As to agricultural
14 lands, all leases ~~except--lease--renewals--upon--which--the~~
15 ~~lessee--has--made--improvements--at--the--lessee's--expense--as~~
16 ~~provided--in--subsection--(3)~~ must be continued or made upon a
17 crop share rental basis of not less than one-fourth of the
18 annual crops to the state or the usual landlord's share
19 prevailing in the district, whichever is greater. The board
20 may, however, approve special crop share rentals of less
21 than one-fourth for high production cost crops such as but
22 not limited to potatoes and sugar beets or for high
23 production cost methods when these methods would result in
24 more income to the state. The board may not delegate the
25 authority to approve special crop share rentals.

~~(2) Except in the case of cash lease renewals under subsection (3), if~~ If it is in the best interests of the state, the department may authorize a lease upon other basis than crop share, but in these cases the rental must at least equal the value of the usual landlord's share prevailing in the district under similar circumstances, and the department shall set forth in the records the conditions of the case and the rental to be charged.

~~(3) In cases in which the lessee has made substantial improvements for irrigation purposes to the lease at the lessee's own expense, the department shall authorize a cash lease renewal at not less than \$15 an acre on the portion of the lease that has been improved."~~

Section 69. Section 77-6-506, MCA, is amended to read:

"77-6-506. **Date when rental due -- penalty -- cancellation for nonpayment.** (1) For grazing leases, the grazing portion of leases containing both agricultural and grazing land, and agricultural leases not based on a crop share, the rental for the first year of the lease shall must be paid at or before the time of the execution of the lease; however, in the case of leases which that take effect on and after October 1 and before the expiration of the coming February, both the rental for the fractional year and for the next full year beginning March 1 shall must be paid and collected at the time of issuing the lease. If the United

States is the lessee of state lands for grazing purposes, the rental ~~shall~~ must be payable at the end of each year of the lease. The rental for each succeeding year on leases ~~hereafter~~ issued, with the exception of leases wherein in which the United States is the lessee, is due and payable before March 1. If the rental is not paid before March 1, a \$25 penalty shall be imposed on the lessee. If the full rental and the \$25 penalty are not paid by April 1, the entire lease is canceled. •

(2) For agricultural leases and the agricultural portion of leases containing both grazing and agricultural land, when the rental is paid on a crop share basis or on a crop share/cash basis, the rental is due in cash on or before November 15 of the year in which the crop is harvested. If the rental is not paid on or before November 15 of the year of crop harvest, a \$25 penalty shall be imposed on the lessee. If the full rental and the \$25 penalty are not paid on or before December 31 of the year in which the crop is harvested, the entire lease is canceled. The department may extend the deadline in writing. If the lessee does not make the rental payment by the date of extension, the entire lease is canceled. Any rental payment made after November 15 of the year in which the crop is harvested, including payment made after an extension of the deadline, must include the \$25 penalty.

(3) For all state land leases and licenses other than those described in subsections (1) and (2), the department shall impose a \$25 penalty for failure to make a rental payment by any deadline established by statute, rule, or in the lease or license.

(4) At least 2 weeks prior to the final deadline for payment under subsection (1) or (2), the department shall send by certified mail to each lessee who has not made payment a letter notifying the lessee that the lease is canceled if payment and the \$25 penalty are not received by the final deadline. The notice ~~shall~~ must be sent to the lessee at the address given in the lease.

(5) When a lease is canceled under subsection (1) or (2), the department shall notify the lessee of the cancellation by letter at the address given in the lease. The land is then ~~open-for-lease--to--applicants~~ subject to sale under the provisions of [sections 1 and 2].

(6) The penalties collected pursuant to this section must be deposited into the same trust account as the rentals from the state land to which the penalties apply."

NEW SECTION. Section 70. Repealer. Sections 77-2-303, 77-2-307, 77-2-311, 77-2-312, 77-2-330, 77-2-331, 77-2-332, 77-2-333, and 77-3-302, MCA, are repealed.

NEW SECTION. Section 71. Saving clause. [This act] does not affect rights and duties that matured, penalties

that were incurred, or proceedings that were begun before [the effective date of this act].

NEW SECTION. Section 72. Codification instruction. [Sections 1 and 2] are intended to be codified as an integral part of Title 77, chapter 2, part 3, and the provisions of Title 77, chapter 2, part 3, apply to [sections 1 and 2].

NEW SECTION. Section 73. Effective date. [This act] is effective on passage and approval.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

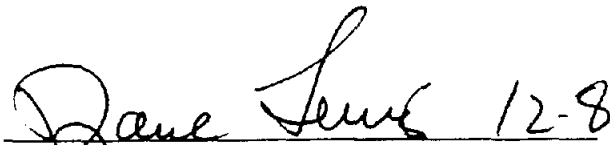
In compliance with a written request, there is hereby submitted a Fiscal Note for SB0037, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION: An act requiring the sale of state owned public lands, with certain exceptions; providing that no additional state leases for agricultural, grazing, or other surface uses be granted and that as outstanding surface leases expire, the lands be sold to the highest bidder, with a sale preference extended to the prior lessee to match the highest bid; providing that as subsurface leases expire, the interests in the lands be sold to the highest bidder, with a sale preference extended to the prior lessee to match the highest bid; removing the acreage limitation applicable to the purchase of state lands; revising the method of payment for purchases of state lands by repealing the installment payment process; allowing voluntary termination of a lease; amending and repealing some MCA sections; and providing an immediate effective date.

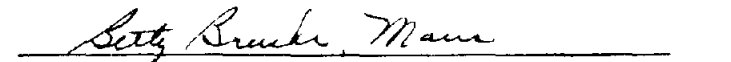
ASSUMPTIONS:

1. Approximately 4,900,000 acres will be subject to sale. That acreage includes classified grazing, agricultural, other, school trust forested lands outside the state forests, and islands, abandoned channels of navigable riverbeds and beds of navigable lakes. There are 10,000 lease agreements for the majority of the acreage to be sold. One-tenth of those lease agreements (1,000) are renewed each year. Therefore, there will be 1,000 sales for 490,000 acres of land for each of the next 10 years. Additional sales will be required after 10 years for longer term leases and r/w that cease to exist. Sales revenues per one full year of sales are estimated to be \$83,000,000.
2. All tracts put up for sale will sell and the Land Board will approve all sales.
3. Other agencies owning land that is subject to sale, will process their own sales.
4. Current administration of ongoing leases and programs will continue at current levels.
5. Field evaluation efforts will be shifted from lease renewal and resource management to sale as much as possible.
6. Revenues from current leased uses will decrease by 10% per year.
7. No appreciation in land value will occur during the biennium.
8. There will be a 10% interest return on investment of permanent funds.
9. Will sell 500 tracts during FY94 because only half of the fiscal year remains. Therefore, revenues and expenses related to the land sales are for six months.
10. Current law expenditures are an estimate of Lands Division, Department of State Lands, funding and that portion of Forestry Division, Department of State Lands, funding for non-state forest lands.
11. Each sale package (lease) to be sold will be appraised by newly hired Department of State Lands (DSL) appraisers. Appraisals will be to standards established by the Montana Appraisal Standards Board. A full time appraiser can be expected to appraise 25 sale packages per year. Therefore, it is estimated 40 appraisers will be required.

(continued on next page)

 12-8

DAVID LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning


BETTY BRUSKI-MAUS, PRIMARY SPONSOR DATE
Fiscal Note for SB0037, as introduced

SB 37

FISCAL IMPACT:

	FY '94			FY '95		
	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
<u>Expenditures</u>	2,000,000	4,002,625	2,002,625	2,000,000	6,005,250	4,005,250

Expenditures include establishment of a specific sales program which would include an estimated up to 70 new FTEs. These FTEs would be appraisers, attorneys, sales coordinators, deed clerks, title examiners and environmental specialists. Operating costs would include travel, communications, advertising, vehicles, office equipment, and additional office space for additional employees at six area offices and the main office in Helena. A comparison for costs of the sales program would be real estate commissions for sale of properties. Real estate commissions range from 6% on residential properties to 10% on vacant land. Therefore, costs would be: FY94 -- \$2.49 to 4.15 million
FY95 -- \$4.98 to 8.30 million

Note that these real estate commission costs would not include such things as appraisals, legal costs and title clearance costs.

<u>Revenues</u>						
Permanent Trust Revenues	7,400,000	48,900,000	41,500,000	7,400,000	90,022,000	82,622,000
Distributable Income less						
Interest on Permanent Fund	17,119,420	16,269,420	(850,000)	17,119,420	14,557,478	(2,561,942)
Distributable Interest Income	34,000,000	39,000,000	5,000,000	39,000,000	48,000,000	9,000,000

All sales revenues must be deposited in the appropriate permanent trust funds and invested by the Board of Investments.

Net Impact:

Increased revenues to the permanent trust funds.
Increased interest earnings to the distributable funds.
Decreased revenues from leased uses.
Decreased state ownership throughout the state.

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

Increased private ownership in all counties which would result in increased tax base to the counties.
May influence state real estate markets due to large amounts of land being placed in the market.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

Eventual elimination of most school trust acreage. Elimination of the school trust land asset. Sales of mineral estates at the current time may be giving up substantial source of revenue from future mineral development.

TECHNICAL NOTES:

Section 1(1)(g) does not include the beds of navigable lakes owned by the state.

Section 14 needs clarification. Does this mean that if land is encumbered by an easement, that land is not subject to sale?

Sections 15, 16, 17, 19, & 20 need clarification. What does it mean that an exchange is subject to the provisions of sections 1 and 2?

Section 26 should be repealed in entirety. This statute probably violates the Enabling Act and the State's trust responsibility to achieve full market value.

Section 2 needs clarification. Is this meant to apply to licenses on a tract? Many tracts have both surface and mineral leases and perhaps licenses. Additionally, some tracts have more than one type of mineral lease. These mineral leases are valid as long as production is occurring. Can any leases be extended until other leases will expire? What if a tract of land does not sell -- may the Department continue to lease or must the tract remain vacant.