

Jack Lee

House BILL NO. 218

INTRODUCED BY

Lee Bryncker *Joe Wiseman*

Paul H. ...

A BILL FOR AN ACT ENTITLED: 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 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; REMOVING THE ACREAGE LIMITATION APPLICABLE TO THE PURCHASE OF STATE LANDS; INCREASING THE TIME LIMIT FOR A LESSEE TO REMOVE IMPROVEMENTS; INCREASING AGRICULTURAL LEASE CROP SHARE RENTAL TO ONE-THIRD; INCREASING RENTAL PENALTIES TO \$100; REVISING THE METHOD OF PAYMENT FOR PURCHASES OF STATE LANDS BY REPEALING THE INSTALLMENT PAYMENT PROCESS; ALLOWING VOLUNTARY TERMINATION OF A LEASE; AMENDING SECTIONS 77-1-103, 77-1-106, 77-1-120, 77-1-202, 77-1-203, 77-1-204, 77-1-208, 77-1-209, 77-1-301, 77-1-402, 77-1-601, 77-2-105, 77-2-201, 77-2-202, 77-2-203, 77-2-206, 77-2-207, 77-2-211, 77-2-212, 77-2-217, 77-2-301, 77-2-302, 77-2-306, 77-2-308, 77-2-309, 77-2-318, 77-2-324, 77-2-325, 77-2-328, 77-2-329, 77-2-351, 77-3-102, 77-3-201, 77-3-207, 77-3-301, 77-3-303, 77-3-401, 77-3-402, 77-3-407, 77-3-441, 77-3-442, 77-3-501, 77-3-502, 77-4-101, 77-4-103, 77-4-128, 77-4-129, 77-6-102, 77-6-103, 77-6-116, 77-6-202, 77-6-203, 77-6-204, 77-6-205, 77-6-206, 77-6-208, 77-6-211, 77-6-302, 77-6-303, 77-6-304, 77-6-305, 77-6-306, 77-6-501, AND 77-6-506, MCA; REPEALING 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; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

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

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

WHEREAS, the sale of state land holdings and deposit of the sale proceeds in the school trust

1 would greatly enhance the long-term viability of the trust fund, providing a secure source of income for
2 Montana schools, and would create a significant potential for property tax relief through the reduction or
3 elimination of school mill levies; and

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

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

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

11

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

13

14

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

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

20 (b) lands suitable for forestry purposes that pass to the state by gift, donation, or contribution
21 under 77-1-214, unless sale authority is exercised under 77-1-204(2), and lands designated as state forest
22 units under 77-5-102;

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

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

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

28 (f) public lands used and occupied by state institutions, educational entities, or governmental
29 agencies;

30 (g) the beds of navigable rivers subject to public recreational use; and

1 (h) public lands considered valuable for recreation or lands subject to rapid appreciation.

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

4
5 **NEW SECTION. Section 2. Leased lands subject to sale upon expiration of lease -- restriction on**
6 **grant of new and renewal leases.** (1) State lands or interests in state lands under lease of any kind on [the
7 effective date of this act] must, upon expiration of the lease or upon expiration of an extension of a lease
8 interest or conditional lease allowed under subsection (2), be sold as required in [section 1] and under this
9 part. The proceeds of the sale must be deposited as provided in 77-2-337. The lessee preference
10 provisions of 77-3-324 apply to sales under this section.

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

17
18 **Section 3.** Section 77-1-103, MCA, is amended to read:

19 **"77-1-103. Administration of lands -- report.** ~~The~~ (1) Subject to the provisions of [sections 1 and
20 2], the board shall lease or sell lands under 77-1-102 in the same manner as other school lands of the state
21 are leased and sold. The board may sell or lease these lands without having them surveyed, unless the
22 board considers it to be to the best interests of the state to have the lands surveyed as in 77-1-104. The
23 proceeds from the leasing and sale of such lands shall ~~shall~~ must be disposed of in the same manner as
24 disposition is made of the proceeds from the leasing and sale of school lands of the state.

25 (2) The board shall report each biennium to the legislature concerning the sale of public lands and
26 provide an explanation of any board decision that resulted in a lease renewal rather than the sale of public
27 lands."

28
29 **Section 4.** Section 77-1-106, MCA, is amended to read:

30 **"77-1-106. Setting of rates or fees -- rules.** (1) (a) In setting the lease rental rates or fees for the

1 use of state lands and cabin sites, the board shall consider:

2 (i) the provisions of [sections 1 and 2];

3 (ii) the impact of the uses on the school trust asset, lessee expenses for management, water
4 development, weed control, and fire control;

5 (iii) the term of the lease;

6 (iv) the production capabilities;

7 (v) the conditions on the lease payment; and

8 (vi) any other required expenses reasonably borne by the lessee.

9 (b) In setting cabin site lease rates, the board shall consider expenses that are commonly incurred
10 by the lessees to preserve the value of the state land or to provide services commonly provided by private
11 lessors in the area.

12 (2) All lease rental rates and fees established by the board under 77-1-208, 77-1-802, 77-6-202,
13 77-6-501, 77-6-502, and 77-6-507 must consider the trust asset and be in the best interests of the state
14 with regard to the long-term productivity of the school trust lands, while optimizing the return to the school
15 trust.

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

18

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

20 **"77-1-120. (Temporary) State land board advisory council.** (1) There is a state land board advisory
21 council. The council shall gather information, provide advice, make recommendations, and perform other
22 activities as may be necessary in the setting of all fees or rental rates for state lands.

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

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

29

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

1 **"77-1-202. Powers and duties of board.** (1) The board shall exercise general authority, direction,
2 and control over the care, management, and disposition of state lands and, subject to the investment
3 authority of the board of investments, the funds arising from the leasing, use, sale, and disposition of those
4 lands or otherwise coming under its administration. In the exercise of these powers, the guiding rule and
5 principle is that these lands and funds are held in trust for the support of education and for the attainment
6 of other worthy objects helpful to the well-being of the people of this state. ~~The~~ Consistent with [sections
7 1 and 2], the board shall administer this trust to secure the largest measure of legitimate and reasonable
8 advantage to the state.

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

12 (3) When acquiring land for the state, the board shall determine the value ~~thereof~~ of the land after
13 an appraisal by a qualified land appraiser."
14

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

16 **"77-1-203. Multiple-use management.** (1) ~~The~~ Consistent with [sections 1 and 2], the board shall
17 manage state lands under the multiple-use management concept defined as the management of all the
18 various resources of the state lands so that:

19 (a) they are utilized in that combination best meeting the needs of the people and the beneficiaries
20 of the trust, making the most judicious use of the land for some or all of those resources or related services
21 over areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing
22 needs and conditions and realizing that some land may be used for less than all of the resources; and

23 (b) harmonious and coordinated management of the various resources, each with the other, will
24 result without impairment of the productivity of the land, with consideration being given to the relative
25 values of the various resources.

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

29 (3) State lands, including those lands that are leased primarily for other purposes, are open to
30 general recreational use subject to legal access and to closures and restrictions pursuant to rules adopted

1 under 77-1-804.

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

5

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

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

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

17

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

19 **"77-1-208. Cabin site licenses and leases -- method of establishing value.** (1) The board shall,
20 taking into account recommendations of the state land board advisory council, and] subject to the
21 provisions of [sections 1 and 2], set the annual fee based on full market value for each cabin site and for
22 each licensee or lessee who at any time wishes to ~~continue or~~ assign the license or lease. The fee must
23 attain full market value based on appraisal of the cabin site value as determined by the department of
24 revenue. The licensee or lessee has the option to pay the entire fee on March 1 or to divide the fee into two
25 equal payments due March 1 and September 1. The value may be increased or decreased as a result of the
26 statewide periodic revaluation of property pursuant to 15-7-111. An appeal of a cabin site value determined
27 by the department of revenue must be conducted pursuant to Title 15, chapter 2.

28 (2) ~~The board shall set the fee of each initial cabin site license or lease or each current cabin site~~
29 ~~license or lease of a person who does not choose to retain the license or lease. The initial fee must be~~
30 ~~based upon a system of competitive bidding. The fee for a person who wishes to retain that license or lease~~

1 ~~must be determined under the method provided for in subsection (1).~~

2 (3) The board shall follow the procedures set forth in 77-6-302 through 77-6-306 for the disposal
3 or valuation of any fixtures or improvements placed upon the property by the then-current licensee or lessee
4 ~~and shall require the subsequent licensee or lessee whose bid is accepted by the board to purchase those~~
5 ~~fixtures or improvements in the manner required by the board.~~ (Bracketed language in subsection (1)
6 terminates March 1, 1996--sec. 17, Ch. 586, L. 1993.)"

7

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

9 **"77-1-209. Leasing rules.** The Subject to the provisions of [sections 1 and 2], the board may
10 prescribe rules relating to the leasing of state lands as it considers necessary in order that the use and
11 proceeds of these lands may contribute in the highest attainable measure to the purposes for which they
12 are granted to the state of Montana. The rules should prescribe a procedure for setting all fees and rental
13 rates for the use of state lands for any purpose. The procedure should establish provisions for notice, public
14 comment, public hearings, and appeal."

15

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

17 **"77-1-301. Powers and duties of the department.** (1) Under the direction of the board and subject
18 to the provisions of [sections 1 and 2], the department has charge of the selecting, exchange, classification,
19 appraisal, leasing, management, sale, or other disposition of the state lands. It shall perform ~~such~~ other
20 duties that the board directs, the purpose of the department demands, or the statutes require.

21 (2) It shall collect and receive all ~~moneys~~ money payable to the state through its office as fees,
22 rentals, royalties, interest, penalties, or payments on mortgages or lands purchased from the state or
23 derived from any other source. It shall issue a receipt for each cash payment or whenever requested by the
24 payer."

25

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

27 **"77-1-402. Basis for classification or reclassification.** (1) The classification or reclassification ~~shall~~
28 must be so made as to place state land in the class ~~which~~ that best accomplishes the powers and duties
29 of the board, as specified in 77-1-202 and 77-1-203, and the objectives of [sections 1 and 2]. When state
30 lands are classified or reclassified ~~in accordance with these duties and responsibilities,~~ special attention shall

1 must be paid to the capability of the land to support an actual or proposed land use authorized by each
2 classification.

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

5

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

7 "**77-1-601. Statement of policy.** It is in the best interest and to the great advantage of the state
8 of Montana, when consistent with [sections 1 and 2], to seek the highest development of state-owned
9 lands in order that they might be placed to their highest and best use and thereby derive greater revenue
10 for the support of the common schools, the university system, and other institutions benefiting ~~therefrom~~
11 from the lands, and that in so doing the economy of the local community as well as the state is benefited
12 as a result of the impact of ~~such~~ the development."

13

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

15 "**77-2-105. Termination of easements.** Whenever lands granted for any of the purposes mentioned
16 in 77-2-101(2) ~~shall~~ cease to be used for ~~such~~ easement purposes, ~~said~~ the easement ~~shall forthwith~~
17 ~~terminate~~ terminates upon notice to that effect to the person to whom ~~such~~ the grant was made, served
18 at ~~his last known~~ the person's last-known post-office address. Upon termination of the easement, the
19 provisions of [sections 1 and 2] apply."

20

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

22 "**77-2-201. Exchange of land with United States or tribal governments.** (1) (a) ~~The~~ Subject to the
23 provisions of [sections 1 and 2], the board may enter into contracts or agreements with the United States
24 or any department ~~thereof~~ of the United States having jurisdiction for the waiving and relinquishment to
25 the United States of any rights of the state in and to sections 16 and 36 of any township and to any other
26 parcel of state lands, provided that the state shall, in lieu of the rights ~~so~~ waived and relinquished, receive
27 from the United States other lands of equal or greater value.

28 (b) The current user of the land transferred to the United States may continue to enjoy the use of
29 the land under terms and conditions required by the federal government and in accordance with P.L.
30 88-607, as amended, (43 U.S.C. 1411 through 1418), and the current user of the land received from the

1 United States may continue to utilize the land on the terms and conditions imposed by law or by the board.

2 (2) The board may enter into a contract or agreement with a tribal government as defined in
 3 18-11-102 or with the United States for the relinquishment to the tribal government or to the United States
 4 in trust for the tribal government of any rights of the state to some or all state lands located wholly within
 5 the exterior boundaries of the tribal government's reservation as recognized by the federal government;
 6 however, the state, in exchange for these relinquished rights, must receive from the tribal government or
 7 the United States lands of equal or greater value. ~~No~~ A contract or agreement may not be entered into
 8 under this section without first consulting with the board of county commissioners of the county or
 9 counties in which the lands to be exchanged are located."

10
 11 **Section 16.** Section 77-2-202, MCA, is amended to read:

12 "**77-2-202. Exchange of land with counties.** ~~The~~ Subject to the provisions of [sections 1 and 2],
 13 the board may accept on behalf of the state title in fee simple to any land owned by a county in the state
 14 and may convey in exchange ~~therefor~~ for the land state land of approximately the same area and of a value
 15 not higher than the land received from the county if the exchange will result in consolidating the state lands
 16 into more compact bodies."

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

19 "**77-2-203. Exchange for private land.** (1) ~~The~~ Subject to the provisions of [sections 1 and 2], the
 20 board is authorized to exchange state land for private land provided that the private land is of equal or
 21 greater value, as determined by the board after appraisal by a qualified land appraiser, than the state land
 22 and as closely as possible equal in area. The contents of the appraisal must be made available to any person
 23 who makes a written request to the board. The board shall place priority on exchanges ~~which~~ that result
 24 in consolidation of state lands into more compact bodies. This section does not apply to exchanges
 25 undertaken under 76-12-107.

26 (2) If the requirements of 77-2-204 and subsection (1) of this section ~~and 77-2-204~~ are met, state
 27 lands bordering on navigable lakes and streams or other bodies of water with significant public use value
 28 may be exchanged for private land if the private land borders on similar navigable lakes, streams, or other
 29 bodies of water."

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

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

10

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

12 **"77-2-207. Approval or disapproval of exchanges.** All exchanges of state lands are subject to
13 approval and confirmation by the board and are subject to the provisions of [sections 1 and 2]. ~~and no~~ An
14 exchange is not considered completed until after ~~such~~ approval and confirmation. The board ~~has the power~~
15 ~~and it is its duty to~~ shall disapprove any exchange ~~which~~ that in its opinion would be disadvantageous to
16 the state."

17

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

19 **"77-2-211. Exchange of timbered, cut-over, or burned-over lands.** ~~The~~ Subject to the provisions
20 of [sections 1 and 2], the board may accept on behalf of the state title in fee simple to any timbered lands
21 or lands from which the timber has been cut or burned and in exchange ~~therefor~~ for the land may convey
22 similar state land, not to exceed an equal value, as determined by the board after appraisal by a qualified
23 land appraiser, ~~of similar state land~~. However, ~~no such~~ an exchange may not be made except that which
24 in the opinion of the board will benefit the public interest. For the purpose of ~~such~~ an exchange, all state
25 lands, including those referred to in ~~77-2-303(3), 77-2-311, and~~ 77-5-101, are subject to be offered for
26 ~~such~~ exchange, and any restrictions against their sale or disposal are, for the purpose of ~~such~~ an exchange,
27 released."

28

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

30 **"77-2-212. Rules.** ~~The~~ Subject to the provisions of [sections 1 and 2], the board shall adopt ~~and~~

1 ~~promulgate such~~ rules and methods of procedure affecting ~~or touching the~~ exchanges of lands under
 2 77-2-211 through 77-2-217 ~~as that~~ in its judgment ~~seems advisable to the end that~~ are in the public
 3 ~~interests may be conserved~~ interest."

4
 5 **Section 22.** Section 77-2-217, MCA, is amended to read:

6 "77-2-217. **Status of exchanged lands.** All lands taken in exchange under 77-2-211 through
 7 77-2-216 for lands granted by the United States to the state of Montana prior to July 1, 1931, ~~shall be~~ are
 8 subject to the same restrictions, limitations, and provisions as the lands granted by the United States are
 9 now subject to, including the provisions of [sections 1 and 2]. All lands granted by the state in carrying out
 10 ~~such exchanges shall thereafter~~ must be free from the restrictions and limitations provided by The Enabling
 11 Act ~~of the state of Montana~~ or the other grant from the United States."

12
 13 **Section 23.** Section 77-2-301, MCA, is amended to read:

14 "77-2-301. **Sales of state land under board control.** The board ~~is hereby vested with the power and~~
 15 ~~authority to~~ may decide when sales of state lands are to be held and what state lands are to be offered for
 16 sale, subject to the limitations of this title and [sections 1 and 2], as the best interests of the state ~~may~~
 17 ~~appear to require. As a general rule and except as provided in 77-2-318, no sale of state lands shall be held~~
 18 ~~unless applications have been made for the purchase of lands within one county by prospective purchasers~~
 19 ~~representing at least 12 families."~~

20
 21 **Section 24.** Section 77-2-302, MCA, is amended to read:

22 "77-2-302. **Disposition of former institutions and certain federal land grants.** (1) Notwithstanding
 23 any other section in this chapter, any lands, including buildings, formerly used as or by a state institution
 24 ~~which that~~ are no longer used for institutional purposes ~~may~~ must be disposed of in whole or in part on
 25 ~~such~~ terms and in ~~such a~~ manner ~~as that~~ the board, after consultation with the appropriate legislative
 26 committee, ~~may determine~~ determines to be in the state's best interest, subject to The Enabling Act ~~and,~~
 27 constitutional restrictions, and [sections 1 and 2]. Disposal of ~~such the~~ property ~~shall~~ may not be finally
 28 concluded until 60 days' public notice of the terms of the proposed disposal ~~shall~~ have been given.

29 (2) Notwithstanding any other section in this chapter, any lands, including buildings, granted to
 30 the state by the United States pursuant to the Comprehensive Environmental Response, Compensation, and

1 Liability Act of 1980, 42 U.S.C. 9601, et seq., or acquired by the state as remedial action pursuant to
 2 75-10-704, 75-10-711, or 75-10-712 ~~may~~ must be disposed of, consistent with [sections 1 and 2], in
 3 whole or in part on ~~such~~ terms and in ~~such a~~ manner as that the board, after consultation with the director
 4 of the department of health and environmental sciences, determines to be in the state's best interest."

5

6 **Section 25.** Section 77-2-306, MCA, is amended to read:

7 **"77-2-306. Who may purchase.** (1) State lands ~~shall~~ must be sold only to citizens of the United
 8 States, persons who have declared their intentions to become citizens, corporations organized under the
 9 laws of this state, or towns, cities, counties, or consolidated local governments of this state. ~~No~~ A person
 10 ~~shall be~~ is not qualified to purchase state land who has not reached the age of 18 years. As far as it is
 11 possible to determine, the lands ~~shall~~ must be sold only to actual settlers or to persons who will improve
 12 the ~~same~~ lands and not to persons who are likely to hold ~~such~~ the lands for speculative purposes intending
 13 to resell the ~~same~~ lands at a higher price without having added anything to their value.

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

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

24

25 **Section 26.** Section 77-2-308, MCA, is amended to read:

26 **"77-2-308. Approval or disapproval of sales.** All sales of state lands ~~shall be~~ are subject to the
 27 approval and confirmation by the board and are subject to the conditions of [sections 1 and 2], ~~and no~~. A
 28 sale ~~shall be deemed completed~~ is not considered complete until after ~~such~~ approval and confirmation by
 29 the board. The board shall ~~have the power and it shall be its duty to~~ disapprove any sale ~~which~~ that in its
 30 opinion would be disadvantageous to the state."

1 **Section 27.** Section 77-2-309, MCA, is amended to read:

2 "**77-2-309. Discretion of board with respect to surveying and platting.** ~~Except as provided in~~
3 ~~77-2-312, it shall be~~ It is entirely optional with the board whether or not state lands or any part thereof
4 ~~shall~~ state lands must be surveyed, platted, and laid off into blocks and lots ~~as herein provided~~, as may
5 appear to be for the best interests of the state."

6

7 **Section 28.** Section 77-2-318, MCA, is amended to read:

8 "**77-2-318. Sale of leased cabin or home sites or city or town lots.** (1) At the request of the lessee
9 and if consistent with the orderly development and management of state lands and consistent with
10 [sections 1 and 2], the board may make available for sale, in the manner provided in this part, any leased
11 cabin or home site or city or town lot that was under lease on October 1, 1989.

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

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

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

22 (5) Upon a sale of leased land, the department shall, upon compliance with 77-2-101 through
23 77-2-106, grant a permanent easement across state lands to secure access using current routes."

24

25 **Section 29.** Section 77-2-324, MCA, is amended to read:

26 "**77-2-324. Preference to lessee of land.** ~~The~~ For sales of land pursuant to [sections 1 and 2], the
27 lessee of the land need not make a higher bid than others, but ~~he shall have~~ the lessee has the option to
28 match the high bid and must be given the preference. If the lessee matches the high bid, bidding must
29 be reopened to all bidders, with the lessee retaining the right of preference to match the ultimate high bid
30 and be awarded the sale."

1 **Section 30.** Section 77-2-325, MCA, is amended to read:

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

11

12 **Section 31.** Section 77-2-328, MCA, is amended to read:

13 **"77-2-328. Additional rules.** The board may prescribe ~~such~~ additional rules for the conduct of these
14 sales ~~as~~ that in its judgment the interests of the state and the provisions of [sections 1 and 2] may
15 demand."

16

17 **Section 32.** Section 77-2-329, MCA, is amended to read:

18 **"77-2-329. Terms of payment.** (1) ~~Every~~ Each purchaser of state land shall pay on the day of sale
19 that portion of the purchase price ~~as he~~ that the purchaser may desire, but ~~in no case~~ the portion may not
20 be less than 10% of the total sales price. ~~In case the balance on the purchase price is not an exact multiple~~
21 ~~of \$25, then he shall pay such additional sum as is necessary to reduce the balance to an even multiple~~
22 ~~of \$25.~~

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

25

26 **Section 33.** Section 77-2-351, MCA, is amended to read:

27 **"77-2-351. Sale to or exchange of property with public entity.** Notwithstanding any other section
28 in this chapter, any lands may be sold to or exchanged for other land or for other consideration with
29 another public entity on terms and in a manner as the board, after consultation with the appropriate
30 legislative committee, may determine to be in the state's best interest, subject to The Enabling Act ~~and~~

1 constitutional restrictions, and [sections 1 and 2]. The sale or exchange of the property may not be finally
 2 concluded until 60 days' public notice of the terms of the proposed sale or exchange has been given."

3
 4 **Section 34.** Section 77-3-102, MCA, is amended to read:

5 **"77-3-102. Mining leases authorized.** (1) The board may, in its discretion, subject to the other
 6 provisions of this part and [sections 1 and 2], lease state lands, including the beds of navigable streams
 7 and the beds of navigable bodies of water and the reserved mineral rights of the state in lands sold or
 8 leased by the state, to any person, association, or corporation, for the purpose of prospecting for or mining
 9 metalliferous minerals or gems.

10 (2) These leases may be for a period of time determined by the board, subject to limitations
 11 contained in the grants by which the state has acquired title to the lands or mineral rights ~~se~~ leased and
 12 subject to the limitations of [sections 1 and 2].

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

16 (4) In ~~short the board~~ in making the leases, the board may exercise business discretion, ~~se~~ as long
 17 as the provisions of this part is are not violated."

18
 19 **Section 35.** Section 77-3-201, MCA, is amended to read:

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

27
 28 **Section 36.** Section 77-3-207, MCA, is amended to read:

29 **"77-3-207. Land leased for other purposes.** ~~Such~~ The portions of the section or other subdivision
 30 of the land on which ~~such~~ mineral deposits are located ~~as~~ that are not needed for the quarrying or digging

1 and removal of the stone, limestone, oil shale, clay, sand, or gravel may be leased for grazing or agricultural
 2 purposes the same as other state lands, subject to the provisions of [sections 1 and 2]. ~~In the case that~~
 3 If grazing or agricultural leases are issued, they shall must provide for a right-of-way across the land for the
 4 removal of the stone, limestone, oil shale, clay, gravel, sand, or other deposits, but the rights of the lessee
 5 shall must also be ~~duly~~ protected."

6
 7 **Section 37.** Section 77-3-301, MCA, is amended to read:

8 **"77-3-301. Coal leases authorized.** The board may, subject to the provisions of [sections 1 and
 9 2], lease in ~~such a manner as that~~ it considers in the best interests of the state any state lands to which
 10 the title is vested in the state and in which the coal or coal rights are not reserved by the United States for
 11 exploring for, mining, removing, selling, and disposing of the coal ~~therein,~~ upon the terms and conditions
 12 ~~herein~~ stated in this part and subject to ~~such rules as that~~ the board prescribes."

13
 14 **Section 38.** Section 77-3-303, MCA, is amended to read:

15 **"77-3-303. Rules relating to coal leasing.** The board ~~shall have the power and authority to may~~
 16 prescribe ~~such~~ additional rules and ~~to do and perform~~ all ~~acts and things not inconsistent~~ consistent with
 17 The Enabling Act, the constitution, [sections 1 and 2], and the statutes of this state as it ~~may deem~~
 18 considers necessary and ~~proper~~ relating to the leasing of state land for coal mining purposes."

19
 20 **Section 39.** Section 77-3-401, MCA, is amended to read:

21 **"77-3-401. Oil and gas leases authorized.** (1) The board is ~~hereby authorized and empowered to~~
 22 may lease, in ~~such a manner as that~~ it may determine, ~~not inconsistent~~ and that is consistent with The
 23 Enabling Act ~~and,~~ the constitution, and [sections 1 and 2], any state lands to which the title has vested
 24 in the state and in which the oil and gas rights are not reserved by the United States, for prospecting and
 25 exploring for oil and gas, mining, drilling, developing, and removing the ~~same oil and gas,~~ upon the terms
 26 and conditions ~~herein~~ prescribed in this part to any person, association, corporation, domestic or foreign,
 27 or municipality qualified under the constitution and the laws of the state.

28 (2) ~~This power and The~~ authority to lease state lands for ~~such~~ oil and gas development purposes
 29 ~~shall extend~~ extends to and ~~include~~ includes all lands owned by the state under navigable lakes and streams
 30 and ~~shall also extend~~ extends to and ~~include~~ includes all those state lands ~~which~~ that have been sold but

1 in which the oil and gas rights have been reserved by the state; ~~but, However, in such cases and in all~~
 2 cases ~~where~~ in which the lands are under lease for grazing, agriculture, or similar purposes, care ~~shall~~ must
 3 be taken in issuing the oil and gas leases to protect the rights of the purchaser or lessee."

4
 5 **Section 40.** Section 77-3-402, MCA, is amended to read:

6 "77-3-402. **Rules.** (1) The board ~~shall have the power and authority to~~ may prescribe ~~such~~ rules
 7 and ~~to~~ may do ~~and perform~~ all ~~acts and things not inconsistent~~ consistent with The Enabling Act, the
 8 constitution, [sections 1 and 2], and the statutes of this state as it may ~~deem~~ consider necessary ~~and~~
 9 ~~proper relating to~~ for the leasing of state lands for oil and gas exploration and development. The board shall
 10 formulate rules ~~not inconsistent~~ consistent with law governing the leasing of state lands for oil and gas
 11 exploration and development ~~which shall~~. The rules must be compiled and printed periodically.

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

14
 15 **Section 41.** Section 77-3-407, MCA, is amended to read:

16 "77-3-407. ~~New leases on~~ Sale of lands leased prior to February 28, 1953. (1) In the case of all
 17 leases issued under the provisions in force prior to February 28, 1953, where oil or gas is being produced,
 18 the board shall, at the expiration ~~thereof~~ of the lease or on termination for any cause, advertise the land
 19 ~~held thereunder for re-leasing and lease the same~~ sale and sell the land to the highest responsible bidder
 20 ~~therefor~~ at public auction ~~on the terms then existing for such leasing~~. Any person, association, firm, or
 21 corporation who held ~~such~~ the lease ~~at the~~ upon expiration ~~thereof shall have the privilege of re-leasing~~ has
 22 preference in purchasing the same at such land by matching the highest responsible bid ~~offered therefor,~~
 23 upon ~~such~~ terms and conditions as that may be prescribed by the board or the legislature.

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

29
 30 **Section 42.** Section 77-3-441, MCA, is amended to read:

1 **"77-3-441. Restriction on new lease following termination of old lease.** ~~In all cases where~~ When
 2 an oil and gas lease issued after March 3, 1955, is surrendered for cancellation before its expiration,
 3 relinquished to the state, or canceled through proceedings on the part of the state, ~~no~~ a new lease on the
 4 lands ~~under such lease~~ may not be issued ~~within 30 days from the date of cancellation or relinquishing.~~ This
 5 restriction does not apply, however, in cases of bona fide assignment."

6

7 **Section 43.** Section 77-3-442, MCA, is amended to read:

8 **"77-3-442. Disposition of property of lessee upon termination of lease.** (1) Upon the termination
 9 for any cause of any lease issued under this part, the former lessee has 6 months after the date of the
 10 termination to remove all machinery, fixtures, improvements, buildings, and equipment belonging to ~~him~~
 11 the former lessee on the premises, except for casing in the wells and other equipment or apparatus
 12 necessary for the preservation of any oil or gas well or wells. ~~As to such casing, equipment, and apparatus,~~
 13 ~~any succeeding lessee or, in the event there is no succeeding lessee,~~ If the state wishing wishes to have
 14 ~~such~~ the property left upon the premises, the state shall pay the reasonable value ~~thereof~~ of the property
 15 to the former lessee.

16 (2) If the ~~succeeding lessee or the~~ board is unable to agree with the former lessee upon the
 17 reasonable cash value of ~~such~~ the casing, equipment, and apparatus, the ~~succeeding lessee or the state,~~
 18 ~~as the case may be,~~ shall pay in cash to the former lessee a sum fixed as a reasonable price by a board of
 19 three appraisers, one of whom ~~shall~~ must be chosen by the successful bidder, one chosen by the former
 20 lessee, and the third chosen by the other two ~~so chosen~~ appraisers. ~~Its~~ The appraisal ~~shall~~ must be reported
 21 to the respective parties in writing and is final and conclusive.

22 (3) The former lessee may remain in possession and manage the land and property formerly
 23 covered by ~~his~~ the lease until the value of the casing, equipment, and apparatus ~~which that~~ the succeeding
 24 ~~lessee or the state~~ desires to have left upon the premises is fixed in the manner provided in this section and
 25 has been paid to ~~him~~ the former lessee in cash. During the time the former lessee remains in ~~such~~
 26 possession, ~~he~~ the former lessee may retain the same share of the products of the premises as inured to
 27 ~~him~~ the former lessee during the term of ~~his~~ the lease. ~~Should~~ If the state ~~or other bidder~~ does not desire
 28 any of the lessee's property as provided in this section, the lessee shall properly plug all wells and remove
 29 all of ~~his~~ the lessee's property from the lands."

30

1 **Section 44.** Section 77-3-501, MCA, is amended to read:

2 "77-3-501. **Lease for underground storage of natural gas authorized.** (1) The board is hereby
3 authorized ~~and empowered~~ to lease, ~~in such manner and upon such terms as that~~ it may determine, ~~not~~
4 ~~inconsistent~~ and that are consistent with The Enabling Act, ~~and~~ the constitution, and [sections 1 and 2],
5 state lands to which the title has vested in the state, subject to existing rights, for use for the underground
6 storage of natural gas upon the terms and conditions ~~herein~~ prescribed in this part, to any natural gas public
7 utility authorized to do business in this state and engaged in the business of transporting or distributing
8 natural gas by means of pipelines into, within, or through this state for ultimate public use.

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

12
13 **Section 45.** Section 77-3-502, MCA, is amended to read:

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

19
20 **Section 46.** Section 77-4-101, MCA, is amended to read:

21 "77-4-101. **Geothermal leases authorized.** (1) The board may, consistent with the provisions of
22 [sections 1 and 2], lease state-owned lands, including the beds of navigable streams and the beds of
23 navigable bodies of water, to persons, associations, or corporations for prospecting, exploration, well
24 construction, and the production of geothermal resources.

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

26
27 **Section 47.** Section 77-4-103, MCA, is amended to read:

28 "77-4-103. **Rules.** The board shall adopt rules, consistent with the provisions of [sections 1 and
29 2], governing the issuance of geothermal resource leases and the conduct of all geothermal operations. The
30 board may also require the applicant for a geothermal lease to pay an application fee."

1 **Section 48.** Section 77-4-128, MCA, is amended to read:

2 "**77-4-128. Permission for and disposition of improvements.** (1) A geothermal lessee of state lands
3 has the right to place upon the leased lands a reasonable amount of improvements, ~~provided that such~~ if
4 the improvements are directly related to the purpose of the lease.

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

9 (3) In determining the value of these improvements, the original cost, the present condition, and
10 the suitability of the improvements for the uses ordinarily made of geothermal resources ~~shall~~ must be
11 considered.

12 (4) The former lessee may, ~~however,~~ remove or dispose of the movable improvements from the
13 land within ~~60 days~~ 6 months from the expiration of ~~his~~ the lease except for the well casing and other
14 equipment necessary for the preservation of any geothermal well. If not removed within ~~60 days~~ 6 months,
15 improvements ~~shall~~ become the property of the state unless the board ~~shall grant~~ grants additional time for
16 ~~the removal thereof.~~ Before a certificate of purchase is issued to the ~~new lessee~~ he the purchaser,
17 the purchaser shall show that ~~he has paid the former lessee~~ the value of the improvements has been paid
18 to the former lessee as agreed upon by them or as fixed ~~and determined~~ under 77-4-129, that ~~he the~~
19 purchaser has offered to pay the fixed value of the improvements ~~as so fixed and determined~~, or that the
20 former lessee elects to remove the improvements."

21

22 **Section 49.** Section 77-4-129, MCA, is amended to read:

23 "**77-4-129. Procedure to fix value of improvements.** (1) If the owner of any improvements on state
24 lands of the type authorized by law at the time they were placed ~~thereon~~ on the land desires to sell these
25 improvements to the ~~new lessee~~ purchaser and they are unable to agree on the value ~~thereof~~ of the
26 improvements, the value ~~shall~~ must be ascertained and fixed by three arbitrators, one of whom ~~shall~~ must
27 be appointed by the owner of the improvements, one by the ~~new lessee~~ purchaser, and the third by the
28 other two arbitrators ~~so appointed~~. The reasonable compensation that the arbitrators ~~may~~ fix ~~shall~~ must be
29 paid in equal shares by the owner of the improvements and the ~~new lessee~~ purchaser. The value of the
30 improvements ~~so ascertained and fixed~~ is binding on both parties.

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

6
 7 **Section 50.** Section 77-6-102, MCA, is amended to read:

8 **"77-6-102. Surface leases authorized.** Under the general direction and control of the board, the
 9 department shall, consistent with the provisions of [sections 1 and 2], lease all agricultural and grazing
 10 lands and all town lots, city lots, and lands valuable for commercial development open to leasing upon
 11 proper application."

12
 13 **Section 51.** Section 77-6-103, MCA, is amended to read:

14 **"77-6-103. Lease of state land to United States for military purposes authorized.** The board, when
 15 it considers it in the public interest, may, consistent with the provisions of [sections 1 and 2], lease to the
 16 United States for military purposes any state land, whether ~~such~~ the land was received by the state through
 17 federal land grants or whether ~~such~~ the land consists of so-called "mortgage lands", on ~~such~~ terms and
 18 conditions ~~as~~ that it considers necessary to promote the public welfare and protect the interests of the
 19 state. Rental ~~shall be~~ is payable at the end of each year of the lease."

20
 21 **Section 52.** Section 77-6-116, MCA, is amended to read:

22 **"77-6-116. Voluntary termination of lease ~~to allow concurrence with federal conservation reserve~~**
 23 **~~program -- competitive bidding required.~~** (1) A lessee of state land ~~who wishes to enter the state land in~~
 24 ~~the federal conservation reserve program~~ may request voluntary termination of the remainder of the lease
 25 prior to scheduled expiration ~~in order to seek a renewal lease that will run concurrently with the federal~~
 26 ~~program.~~ The lessee shall apply for voluntary termination to the department on a form prescribed by the
 27 department. The form must specify:

28 (a) the name of the lessee and a designation of the leased land for which voluntary termination is
 29 sought; and

30 (b) the scheduled termination date of the lease; ~~and~~

1 ~~(e) the term of eligibility of the land under the federal conservation reserve program.~~

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

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

10

11 **Section 53.** Section 77-6-202, MCA, is amended to read:

12 "**77-6-202. Lease by competitive bidding -- full market value required.** (1) When the department
13 receives an application to lease an unleased tract not subject to sale pursuant to [sections 1 and 2], it shall
14 advertise for bids on the tract. The tract must be leased to the highest bidder unless the board determines
15 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
16 accept a bid that is below full market value determined by taking into account recommendations of the
17 state land board advisory council. If the high bid is rejected, the board shall set forth the reasons for the
18 rejection in writing. The lease may be issued, at a rental to be determined by the board, to the first bidder
19 willing to pay the board determined rental whose name is selected through a random selection process from
20 all bidders on the tract.

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

22

23 **Section 54.** Section 77-6-203, MCA, is amended to read:

24 "**77-6-203. Bid deposit.** (1) A person bidding for the lease of state lands not sold pursuant to
25 [sections 1 and 2] shall deposit with the department, as evidence of good faith, a certified check, cashier's
26 check, or money order in an amount equal to 20% of the annual rental bid in the case of grazing land and
27 an amount equal to \$1 per acre for each acre of agricultural land contained in the lease in the case of
28 agricultural land on which the bid is made on a crop share basis.

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

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

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

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

9
 10 **Section 55.** Section 77-6-204, MCA, is amended to read:

11 "**77-6-204. Notification of termination of lease -- offer.** When a lease expires, is canceled, or is
 12 voluntarily terminated ~~under 77-6-116~~, the department shall immediately notify the holder of the lease ~~and~~
 13 ~~all persons who have expressed an interest in leasing the land during or immediately preceding the term~~
 14 ~~of the expired, canceled, or terminated lease~~ and offer the land for sale in accordance with [sections 1 and
 15 2]."

16
 17 **Section 56.** Section 77-6-205, MCA, is amended to read:

18 "**77-6-205. Renewal Leases Purchase preference right for lessees.** (1) A lessee of state land ~~classified~~
 19 classified as agricultural, grazing, town lot, city lot, or land valuable for commercial development ~~who has~~
 20 ~~paid all rentals due the state~~ whose lease has expired or who has voluntarily terminated a lease under
 21 77-6-116 is entitled to ~~have the lease renewed for a period not to exceed the maximum lease period~~
 22 ~~provided in 77-6-109 at any time within 30 days prior to its bid for purchase of the state land following~~
 23 ~~expiration or within 30 days following voluntary termination if no other applications for lease of the land~~
 24 ~~have been received 30 days prior to the expiration of the lease or within 30 days following voluntary~~
 25 ~~termination.~~ The ~~renewal~~ purchase must be at the full market ~~rental rate~~ value established by the board,
 26 ~~taking into account recommendations of the state land board advisory council,~~ for the renewal period and
 27 is subject to any other conditions that are at the time of the ~~renewal~~ purchase imposed by law as terms
 28 of the lease purchase. Except as provided in 77-6-212, ~~if other applications have been received~~, the holder
 29 of the lease has the preference right to lease purchase the land covered by the former lease by meeting the
 30 highest bid made by any other applicant, in accordance with 77-2-324. ~~Applications for lease of lands in~~

1 ~~this section must be given preference in the order of their receipt at the office of the department.~~

2 (2) ~~The board shall accept the highest bid. If the lessee exercises the preference right and believes~~
 3 ~~the bid to be excessive, the lessee may request an administrative hearing. The request must contain a~~
 4 ~~statement of reasons why the lessee believes the bid not to be in the state's best interest. The department~~
 5 ~~shall grant the request for a hearing if it determines that the statement indicates evidence that the bid may~~
 6 ~~not be in the state's best interests. The board may, after the hearing, reduce the rental from the amount~~
 7 ~~bid if the lessee shows that the bid is not in the best interest of the state because it is above community~~
 8 ~~standards for a lease of the land, would cause damage to the tract, or would impair its long-term~~
 9 ~~productivity. If the board reduces the bid, it shall set forth its findings and conclusions in writing and inform~~
 10 ~~the lessee and competitive bidder of the reduction. It is the duty of the board to secure the best lessees~~
 11 ~~possible, so that the state may receive the maximum return possible with the least injury occurring to the~~
 12 ~~land.~~

13 ~~(3) A renewal lease may be canceled pursuant to 77-6-113, 77-6-208, 77-6-209, or 77-6-210 for~~
 14 ~~a violation by the lessee that occurred during the previous lease term but no more than 3 years prior to the~~
 15 ~~date on which the notice of cancellation required by 77-6-211 is issued. Cancellation procedures instituted~~
 16 ~~but not completed before renewal are applicable to the renewal lease.~~

17 ~~(4) A renewal lease may be voluntarily terminated pursuant to 77-6-116. (Bracketed language in~~
 18 ~~subsection (1) terminates March 1, 1996 sec. 17, Ch. 586, L. 1993.)"~~

19
 20 **Section 57.** Section 77-6-206, MCA, is amended to read:

21 **"77-6-206. Withdrawal of lands from leasing.** ~~Notwithstanding the foregoing provisions, the~~ The
 22 ~~board may withdraw any agricultural or grazing land from further leasing for such period as the board~~
 23 ~~determines to be in the best interest of the state. Bids for leases and applications for renewals of leases~~
 24 ~~of state agricultural lands or state grazing lands shall be in writing and sealed and shall be submitted to the~~
 25 ~~board at the office of the department. Land withdrawn from leasing is subject to sale pursuant to [sections~~
 26 1 and 2]."

27
 28 **Section 58.** Section 77-6-208, MCA, is amended to read:

29 **"77-6-208. Assignment of leases -- subleasing -- loss of preference right.** (1) Leases to state lands
 30 may be assigned on blanks prescribed by the department, but an assignment is not binding on the state

1 unless the assignment is filed with the department and approved by it and payment made of the assignment
2 fee under 77-1-302.

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

6 (3) (a) If a lessee, other than a holder of a commercial lease, subleases state lands on terms less
7 advantageous to the sublessee than the terms given by the state, the department shall cancel the lease,
8 subject to the appeal procedure provided in 77-6-211.

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

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

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

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

20

21 **Section 59.** Section 77-6-211, MCA, is amended to read:

22 **"77-6-211. Procedure to cancel lease -- appeal.** (1) When the department cancels a lease pursuant
23 to 77-6-113, 77-6-208, 77-6-209, or 77-6-210, it shall immediately notify the lessee by certified mail of
24 the cancellation and the reasons ~~therefor~~ for cancellation. The date of cancellation is 15 days from the date
25 the notice is received by the lessee.

26 (2) The lessee has 15 days after the receipt of the notice to file with the department a notice of
27 appeal for a hearing before the board. If notice of appeal is filed, the lease remains in effect until the
28 decision of the board. Within 10 days after notice of appeal has been filed, the department shall set the
29 time and place of hearing and ~~shall~~ notify the lessee. The board may, after 10 days' notice to the lessee,
30 change the time and place of hearing.

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

8
 9 **Section 60.** Section 77-6-302, MCA, is amended to read:

10 "**77-6-302. Compensation for improvements -- actual costs.** (1) When another person ~~becomes the~~
 11 ~~lessee of~~ purchases the lands, the person shall pay to the former lessee the reasonable value of these
 12 improvements at the time the ~~new lessee~~ purchaser takes possession. The reasonable value may not be
 13 less than the full market value of the improvements.

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

17
 18 **Section 61.** Section 77-6-303, MCA, is amended to read:

19 "**77-6-303. Determination of compensation.** (1) In determining the value of these improvements,
 20 consideration ~~shall~~ must be given to their original cost, their present condition, their suitability for the
 21 uses ordinarily made of the lands on which they are located, and to the general state of cultivation of the
 22 land, its productive capacity as affected by former use, and its condition with reference to the infestation
 23 of noxious weeds. Consideration ~~shall~~ must be given to all actual improvements and to all known effects
 24 that the use and occupancy of the land have had upon its productive capacity and desirableness for the
 25 ~~new lessee~~ purchaser.

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

1 **Section 62.** Section 77-6-304, MCA, is amended to read:

2 "**77-6-304. Removal of improvements.** The former lessee may, ~~however,~~ remove the movable
3 improvements on the land and dispose of them to parties other than the ~~lessee purchaser~~. If ~~he~~ the former
4 lessee fails to remove the improvements from the land within ~~60 days~~ 6 months from the date of the
5 expiration of ~~his~~ the lease, all of the improvements become the property of the ~~state purchaser~~ unless the
6 department for good cause grants additional time for their removal."

7

8 **Section 63.** Section 77-6-305, MCA, is amended to read:

9 "**77-6-305. Settlement regarding improvements prerequisite to issuance of new lease certificate**
10 **of purchase.** Before a lease certificate of purchase is issued to the ~~new lessee purchaser~~, the ~~lessee~~
11 purchaser shall show that the former lessee has been paid the value of the improvements pursuant to
12 77-6-302 or as determined under 77-6-306 or that the former lessee elects to remove the improvements."

13

14 **Section 64.** Section 77-6-306, MCA, is amended to read:

15 "**77-6-306. Arbitrators to fix value of improvements.** (1) If the owner of any improvements on state
16 lands of the type authorized by law at the time they were placed on state lands desires to sell these
17 improvements to the ~~new lessee purchaser~~ and they are unable to agree on the value of the improvements
18 pursuant to 77-6-302, the value must be ascertained and fixed by three arbitrators, one of whom is
19 appointed by the owner of the improvements, one by the ~~new lessee purchaser~~, and the third by the two
20 arbitrators ~~so appointed~~. If any party refuses to appoint an arbitrator within 15 days of being requested to
21 do so by the commissioner, the commissioner may appoint an arbitrator for that party. An arbitrator
22 appointed by the commissioner has the same duties and powers as if appointed by one of the parties. The
23 value of the improvements must be ascertained and fixed pursuant to 77-6-302.

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

26 (3) The fixed value of the improvements ~~ascertained and fixed~~ is binding on both parties. If either
27 party is dissatisfied with the valuation, the party may within 10 days appeal from the decision to the
28 department, ~~which~~. The department shall examine the records pertaining to the costs of the improvements,
29 and except as provided in subsection (4), its decision is final. The department shall charge and collect the
30 actual cost of the reexamination to the owner and the ~~new lessee purchaser~~ in the proportion as, in its

1 judgment, justice may demand.

2 (4) If either party is dissatisfied with the valuation fixed by the department, the party may within
3 30 days after receipt of the department's decision petition the district court in the county in which the
4 majority of the state land is located or the district court of Lewis and Clark County for judicial review of the
5 decision."

6

7 **Section 65.** Section 77-6-501, MCA, is amended to read:

8 **"77-6-501. Agricultural leases.** (1) As to agricultural lands, all leases except lease renewals upon
9 which the lessee has made improvements at the lessee's expense, as provided in subsection (3), must be
10 continued or made upon a crop share rental basis of not less than ~~one-fourth~~ one-third of the annual crops
11 to the state or the ~~usual landlord's share prevailing in the district~~ lessee's cash lease, whichever is greater.
12 The board may, however, approve special crop share rentals of less than ~~one-fourth~~ one-third for high
13 production cost crops, such as but not limited to potatoes and sugar beets, or for high production cost
14 methods when these methods would result in more income to the state. The board may not delegate the
15 authority to approve special crop share rentals.

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

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

24

25 **Section 66.** Section 77-6-506, MCA, is amended to read:

26 **"77-6-506. Date when rental due -- penalty -- cancellation for nonpayment.** (1) For grazing leases,
27 the grazing portion of leases containing both agricultural and grazing land, and agricultural leases not based
28 on a crop share, the rental for the first year of the lease ~~shall~~ must be paid at or before the time of the
29 execution of the lease; ~~however,~~ However, in the case of leases ~~which that~~ take effect on and after
30 October 1 and before the expiration of the coming February, both the rental for the fractional year and for

1 the next full year beginning March 1 ~~shall~~ must be paid and collected at the time of issuing the lease. If the
 2 United States is the lessee of state lands for grazing purposes, the rental ~~shall~~ must be payable at the end
 3 of each year of the lease. The rental for each succeeding year on leases ~~hereafter~~ issued, with the
 4 exception of leases ~~wherein~~ in which the United States is the lessee, is due and payable before March 1.
 5 If the rental is not paid before March 1, a ~~\$25~~ \$100 penalty shall be imposed on the lessee. If the full rental
 6 and the ~~\$25~~ \$100 penalty are not paid by April 1, the entire lease is canceled.

7 (2) For agricultural leases and the agricultural portion of leases containing both grazing and
 8 agricultural land, when the rental is paid on a crop share basis or on a crop share/cash basis, the rental is
 9 due in cash on or before November 15 of the year in which the crop is harvested. If the rental is not paid
 10 on or before November 15 of the year of crop harvest, a ~~\$25~~ \$100 penalty shall be imposed on the lessee.
 11 If the full rental and the ~~\$25~~ \$100 penalty are not paid on or before December 31 of the year in which the
 12 crop is harvested, the entire lease is canceled. The department may extend the deadline in writing. If the
 13 lessee does not make the rental payment by the date of extension, the entire lease is canceled. Any rental
 14 payment made after November 15 of the year in which the crop is harvested, including payment made after
 15 an extension of the deadline, must include the ~~\$25~~ \$100 penalty.

16 (3) For all state land leases and licenses other than those described in subsections (1) and (2), the
 17 department shall impose a ~~\$25~~ \$100 penalty for failure to make a rental payment by any deadline
 18 established by statute, rule, or in the lease or license.

19 (4) At least 2 weeks prior to the final deadline for payment under subsection (1) or (2), the
 20 department shall send by certified mail to each lessee who has not made payment a letter notifying the
 21 lessee that the lease is canceled if payment and the ~~\$25~~ \$100 penalty are not received by the final
 22 deadline. The notice ~~shall~~ must be sent to the lessee at the address given in the lease.

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

26 (6) The penalties collected pursuant to this section must be deposited into the same trust account
 27 as the rentals from the state land to which the penalties apply."
 28

29 NEW SECTION. **Section 67. Repealer.** Sections 77-2-303, 77-2-307, 77-2-311, 77-2-312,
 30 77-2-330, 77-2-331, 77-2-332, 77-2-333, and 77-3-302, MCA, are repealed.

1 **NEW SECTION.** **Section 68. Saving clause.** [This act] does not affect rights and duties that
2 matured, penalties that were incurred, or proceedings that were begun before [the effective date of this
3 act].

4

5 **NEW SECTION.** **Section 69. Codification instruction.** [Sections 1 and 2] are intended to be
6 codified as an integral part of Title 77, chapter 2, part 3, and the provisions of Title 77, chapter 2, part 3,
7 apply to [sections 1 and 2].

8

9 **NEW SECTION.** **Section 70. Effective date.** [This act] is effective on passage and approval.

10

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0218, 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 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; removing the acreage limitation applicable to the purchase of state lands; increasing the time limit for a lessee to remove improvements; increasing agricultural lease crop share rental to one-third; increasing rental penalties to \$100; 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. The following acreage of state trust lands will be excepted from sales in accordance with Section 1 of the proposed bill:
 - a. 150,000 agricultural acres (600 lease agreements) in the Conservation Reserve Program. (excepted from sale because of value for recreation - Section 1(1)(h)).
 - b. 1,400,000 grazing acres (3,000 lease agreements) (1/3 of total grazing acres that is valuable for recreation and/or subject to rapid appreciation - Section 1(1)(h)).
 - c. 500,000 forested acres (this represents all of the forested acres); 214,000 acres in designated state forest units - Section 1(1)(b); and the remaining 286,000 is valuable for recreation and/or subject to rapid appreciation - Section 1(1)(h).
 - d. 6,200,000 acres of mineral estate not subject to sale.
(All acreage figures provided here are estimates based upon DSL land ownership records).
2. Approximately 3,150,000 acres (8,250 agreements) will be subject to sale. That acreage includes:
 - a. 410,000 acres of agricultural land (2,400 agreements);
 - b. 2,710,000 acres of grazing land (5,500 lease agreements);
 - c. 10,000 acres of other uses (200 agreements);
 - d. and 20,000 acres of islands, abandoned channels of navigable riverbeds and beds of navigable lakes (150 agreements).
3. One-tenth of the total lease agreements (825) are renewed each year. Therefore, there will be sales of approximately 315,000 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.

(continued on page 2)

David Lewis 1-22-95
DAVID LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

ROGER DE BRUYCKER, PRIMARY SPONSOR DATE

Fiscal Note for HB0218, as introduced

HB 218

(continued)

4. The following values are the minimum expected from sales of the various classes of land:
 - a. Grazing land - \$75/acre.
 - b. Agricultural land - \$285/acre.
 - c. Other land and islands, abandoned channels, etc. - \$200/acre.
 - d. No appreciation in land value will occur on the lands subject to sale during the biennium.
5. Multiplying the acreage for sale (assumption 2) by the values per acre (assumption 3) would produce total sales revenues per one full year at \$32,610,000.
6. All tracts put up for sale will sell and the State Land Board will approve all sales.
7. Other agencies owning land that is subject to sale will process their own sales.
8. Administration and management of those lands excepted from sale, those lands not subject to renewal until future years, and the reserved mineral estates will continue at current levels.
9. The current land administration programs are not staffed or funded to carry out a sales program as is proposed. Options to remedy this situation would be to either provide funding and FTEs to the Department of State Lands (DSL) to conduct all aspects of the sales or to contract out specific aspects or the entire process of sales. DSL analysis of the options indicated that it would probably be more cost efficient to contract out the sale process. Therefore, the expenditures listed and explained below assume that the entire process would be contracted out.
 - a. Contracting out the sales of the state lands could be done with costs similar to those associated with the real estate industry. Real estate commissions range from 6% on residential properties to 10% on vacant land. Most of the DSL lands sold will be vacant lands. Real estate commissions generally do not include required actions to sell trust lands such as appraisals, legal costs and title clearance costs, environmental reviews and auction costs. However, with this volume of sales and the likely competition for contracts, it is assumed that total contracted sales costs would be around 10%. \$32,610,000 in sales x 10% = \$3,261,000 in contracted services would be required under this option.
 - b. DSL would require a staff to oversee the contracted services contract(s), process the results of the sales through the State Land Board and produce the finalized deeds. The projected staff and budget would be as follows:

Salaries and Benefits				
<u>FTE</u>	<u>Title</u>	<u>Grade</u>	<u>FY96</u>	<u>FY97</u>
1	Sales Program Supervisor	17	\$39,948	\$40,091
1	Real Estate Attorney	15	\$33,920	\$34,039
3	Contract Officers	14	\$94,092	\$94,425
<u>3</u>	<u>Administrative Personnel</u>	<u>12</u>	<u>\$80,847</u>	<u>\$81,126</u>
8	ANNUAL TOTAL		\$248,807	\$249,681

The annual operating expenses for the DSL sales program staff is estimated at \$25,000/year to cover rent, travel, communications, and miscellaneous expenses. Capital expenditures would include 8 computers @ \$3,000, and office equipment of \$1,100 per FTE. The total capital would then be \$32,800.

Capital expenditures would be in the first year only.

10. The five year average of agricultural lease rentals is \$8,152,602. 95% of the leased agricultural rentals are at a ¼ crop share rental. Therefore, \$7,744,972 is generated from ¼ crop share leases. The balance of the revenues come from leases with cash rents or at a competitive bid of higher than ¼ crop share. Increasing the crop share rental to a 1/3 crop share as proposed would generate \$10,316,303/year incrop rentals. This would amount to an increase of \$2,571,331/year.

(continued on page 3)

(continued)

11. Surface rentals for FY96 will not show a reduction due to anticipated extensions of that year's lease renewals to allow for the sales program to be implemented. Surface revenues from current leased uses will decrease by 6% per year from FY97 on (60% of the total land base will be sold at a rate of 10% sold per year). Surface use revenues have averaged \$14,000,000 over the past five years. With the proposed change in crop share rentals under section 65 (see assumption 10), the surface rentals will increase by \$2,571,331/yr. Therefore, the expected reduction in FY97 surface rental revenues would be $\$16,571,331 \times .06 = \$994,280$.
12. Assume 6.5% interest return on investment of permanent funds (based on information from the Board of Investments considering the nature of investments that are allowed for school trust funds by the Montana Constitution). $.065 \times \$32,610,000 = \$2,119,650$ would be the additional interest expected in the second year of the biennium after a full year of sales has been completed.
13. 300 late payment penalties are assessed and paid per year under current law. 300 late payments \times \$25 penalty = \$7,500/year. Under the proposed law, 300 late payments \times \$100 penalty = \$30,000. Therefore, the increase in penalty revenues would be \$22,500.

FISCAL IMPACT:

	<u>FY96</u>	<u>FY97</u>
	<u>Difference</u>	<u>Difference</u>
<u>Expenditures:</u>		
FTE	8.00	8.00
Personal Services	248,807	249,681
Operating Expenses	3,286,000	3,286,000
Equipment	<u>32,800</u>	<u>0</u>
Total	3,567,607	3,535,681
<u>Revenues:</u>		
Permanent Trust Revenues	32,610,000	32,610,000
Distributable Income From		
Surface rentals (SEA)	0	(994,280)
Distributable Interest Income (SEA)	0	2,119,650
Agricultural Rentals (SEA)	2,571,331	2,571,331
Late Payment Penalties (GF)	<u>22,500</u>	<u>22,500</u>
Total	35,203,831	36,329,201
<u>Net Impact:</u>	31,636,224	32,793,520

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

Increased private ownership in all counties with subsequent increased tax base to counties. The sales program as proposed may influence state real estate markets due to large amounts of land being placed on the market.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

Eventual elimination of 60% of the surface school trust acreage. Elimination of the 60% of the surface school trust land asset. Increase in the permanent trust funds.

(continued on page 4)

TECHNICAL NOTES:

1. Section 1 does not exclude the beds of navigable lakes from the sales requirement. Under U.S. Supreme Court case law, the state cannot sell these lands. This could be corrected by adding "or lakes" after rivers on page 2, line 30.
2. Section 2 (2) prohibits the department from issuing new surface leases and surface lease renewals. There is no exception for lands not sold because they are exempted from the sale requirement in section 1, because no person entered the minimum acceptable bid at the sale, or because the board disapproves a sale.
3. Section 77-2-306 (section 25 of HB0218) limits the persons who may purchase the land. This probably violates the state's duty under the Montana Constitution and the Enabling Act to maximize revenues. (This is a defect in the existing statute.)
4. Although Section 1 requires sale of land, Section 77-2-308 (Section 26 of the bill) allows the board to reject any sale it considers to be disadvantageous to the state. If the latter provision is read to give the board broad discretion to disapprove sales, it conflicts with Section 1.
5. The terms "subject to [Sections 1 and 2]" and equivalent language in Sections 34, 35, 37, 39, and 40, have no meaning. These sections deal with mineral leasing; however, Sections 1 and 2 contain no limitations on mineral leasing.
6. Section 42 prohibits leasing of the state's mineral estate for oil and gas after the surface estate is sold. This would violate the state's duty to maximize trust income as required in the Enabling Act and Montana Constitution.
7. Section 53 is internally inconsistent. Subsection (1) requires that the unleased tracts not subject to sale under Sections 1 and 2 be leased. Subsection (2) prohibits those tracts from being leased.
8. Section 58 makes no substantive change to 77-6-208.
9. The term "lessee's cash lease" used in Section 65 has no commonly accepted meaning and is not defined.
10. Section 77-3-302 clarifies that the department's right to lease coal extends to lands in which the department owns the mineral estate only. Under HB0218, the department will retain the mineral rights in all lands sold. Section 67 repeals 77-3-302. If the purpose for the repealer is to prohibit issuance of coal leases for a state severed mineral, it conflicts with the trust duty to maximize revenues.