

SENATE BILL NO. 65

INTRODUCED BY B. HAWKS

BY REQUEST OF THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING TRUST LAND FUNDING LAWS; DEFINING "DISTRIBUTABLE REVENUE"; PROVIDING A NEW FUNDING FORMULA; REVISING LAWS GOVERNING TRUST LAND ADMINISTRATION ACCOUNTS AND THEIR USES; CREATING AN EARNINGS RESERVE ACCOUNT; CREATING THE FOREST IMPROVEMENT ACCOUNT; ELIMINATING THE RESOURCE DEVELOPMENT ACCOUNT, THE RECREATIONAL USE ACCOUNT, THE STATE TIMBER SALE ACCOUNT, AND THE STATE SPECIAL REVENUE ACCOUNT FOR COMMERCIAL LEASING RENTAL PAYMENTS; TRANSFERRING UNENCUMBERED BALANCES; REQUIRING THE BOARD OF REGENTS TO DESIGNATE HOW CERTAIN TIMBER SALE PROCEEDS ARE DISTRIBUTED; AMENDING SECTIONS 17-2-107, 17-3-1003, 18-2-107, 20-9-341, 20-9-620, 20-25-422, 77-1-101, 77-1-108, 77-1-109, 77-1-127, 77-1-605, 77-1-613, 77-1-802, 77-1-808, 77-1-809, 77-1-810, 77-1-815, 77-1-905, 77-2-328, 77-2-362, 77-5-204, AND 77-5-219, MCA; REPEALING SECTIONS 77-1-602, 77-1-604, 77-1-606, 77-1-607, 77-1-608, AND 77-1-609, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

SECTION 1. SECTION 17-2-107, MCA, IS AMENDED TO READ:

"17-2-107. Accurate accounting records and interentity loans. (1) The department shall record receipts and disbursements for treasury funds and for accounting entities within treasury funds and shall maintain records in a manner that reflects the total cash and invested balance of each fund and each accounting entity. The department shall adopt the necessary procedures to ensure that interdepartmental or intradepartmental transfers of money or loans do not result in inflation of figures reflecting total governmental costs and revenue.

(2) (a) ~~Subject~~ Except as provided in 77-1-108 and subject to 17-2-105, when the expenditure of an appropriation from a fund designated in 17-2-102(1) through (3) is necessary and the cash balance in the accounting entity from which the appropriation was made is insufficient, the department may authorize a temporary loan, bearing no interest, of unrestricted money from other accounting entities if there is reasonable evidence that the income will be sufficient to repay the loan within 1 calendar year and if the loan is recorded in the state accounting records. An accounting entity receiving a loan or an accounting entity from which a loan is

made may not be so impaired that all proper demands on the accounting entity cannot be met even if the loan is extended.

(b) (i) When an expenditure from a fund or subfund designated in 17-2-102(4) is necessary and the cash balance in the fund or subfund from which the expenditure is to be made is insufficient, the commissioner of higher education may authorize a temporary loan, bearing interest as provided in subsection (4) of this section, of money from the agency's other funds or subfunds if there is reasonable evidence that the income will be sufficient to repay the loan within 1 calendar year and if the loan is recorded in the state accounting records. A fund or subfund receiving a loan or from which a loan is made may not be so impaired that all proper demands on the fund or subfund cannot be met even if the loan is extended.

(ii) One accounting entity within each fund or subfund designated in 17-2-102(4) must be established for the sole purpose of recording loans between the funds or subfunds. This accounting entity is the only accounting entity within each fund or subfund that may receive a loan or from which a loan may be made.

(c) A loan made under subsection (2)(a) or (2)(b) must be repaid within 1 calendar year of the date on which the loan is approved unless it is extended under subsection (3) or by specific legislative authorization.

(3) Under unusual circumstances, the director of the department or the board of regents may grant one extension for up to 1 year for a loan made under subsection (2)(a) or (2)(b). The director or board shall prepare a written justification and proposed repayment plan for each loan extension authorized and shall furnish a copy of the written justification and proposed repayment plan to the house appropriations and senate finance and claims committees at the next legislative session.

(4) Any loan from the current unrestricted subfund to funds designated in 17-2-102(4)(a)(iv) and (4)(b) through (4)(f) must bear interest at a rate equivalent to the previous fiscal year's average rate of return on the board of investments' short-term investment pool.

(5) If for 2 consecutive fiscal yearends a loan or an extension of a loan has been authorized to the same accounting entity as provided in subsection (2) or (3), the department or the commissioner of higher education shall submit to the legislative finance committee by September 1 of the following fiscal year a written report containing an explanation as to why the second loan or extension was made, an analysis of the solvency of the accounting entity or accounting entities within the university fund or subfund, and a plan for repaying the loans.

(6) If for 2 consecutive fiscal yearends an accounting entity in a fund or subfund designated in 17-2-102(4) has a negative cash balance, the commissioner of higher education shall submit to the legislative finance committee by September 1 of the following fiscal year a written report containing an explanation as to why the accounting entity has a negative cash balance, an analysis of the solvency of the accounting entity, and a plan

to address any problems concerning the accounting entity's negative cash balance or solvency.

(7) (a) An accounting entity in a fund designated in 17-2-102(1) through (3) may not have a negative cash balance at fiscal yearend. The department may, however, allow a fund type within each agency to carry a negative balance at any point during the fiscal year if the negative cash balance does not exist for more than 7 working days.

(b) (i) Except as provided in subsection (7)(b)(ii) of this section, a unit of the university system shall maintain a positive cash balance in the funds and subfunds designated in 17-2-102(4).

(ii) If a fund or subfund inadvertently has a negative cash balance, the department may allow the fund or subfund to carry the negative cash balance for no more than 7 working days. If the negative cash balance exists for more than 7 working days, a transaction may not be processed through the statewide accounting system for that fund or subfund.

(8) Notwithstanding the provisions of subsections (2) through (4), the department may authorize loans to accounting entities in the federal and state special revenue funds with long-term repayment whenever necessary because of the timing of the receipt of agreed-upon reimbursements from federal, private, or other governmental entity sources for disbursements made. If possible, the loans must be made from funds other than the general fund. The department may approve the loans if the requesting agency can demonstrate that the total loan balance does not exceed total receivables from federal, private, or other governmental entity sources and receivables have been billed on a timely basis. The loan must be repaid under terms and conditions that may be determined by the department or by specific legislative authorization.

(9) A loan may not be authorized under this section to any fund or accounting entity that is owed federal or other third-party funds unless the requesting agency certifies to the agency approving the loan that it has and will continue to bill the federal government or other third party for the requesting agency's share of costs incurred in the fund or accounting entity on the earliest date allowable under federal or other third-party regulations applicable to the program. The requesting agency shall recertify its timely billing status to the agency that approved the loan at least monthly during the term of the loan. If at any time the requesting agency fails to recertify the timely billing, the agency that approved the loan shall cancel the loan and return the money to its original source."

Section 2. Section 17-3-1003, MCA, is amended to read:

"17-3-1003. Support of state institutions. (1) For the support and endowment of each state institution, there is annually and perpetually appropriated, after any deductions made under 77-1-109, ~~Title 77, chapter 1,~~

~~part 6, and 77-2-362~~, the income from all permanent endowments for the institution and from all land grants as provided by law. All money received or collected in connection with permanent endowments by all higher educational institutions, reformatory, custodial and penal institutions, state hospitals, and sanitariums, for any purpose, except revenue pledged to secure the payment of principal and interest of obligations incurred for the purchase, construction, equipment, or improvement of facilities at units of the Montana university system and for the refunding of obligations or money that constitutes temporary deposits, all or part of which may be subject to withdrawal or repayment, must be paid to the state treasurer, who shall deposit the money to the credit of the proper fund.

(2) Except as provided in subsections (1) and (3), all money received from the investment of grants of a state institution and all money received from the leasing of lands granted to a state institution must be deposited with the state treasurer of Montana for each institution, to the credit of the state special revenue fund.

(3) Except as provided in 77-1-109 and subsection (4) of this section, all money received from the sale of timber from lands granted to a state institution must be deposited to the credit of the permanent trust fund for the support of the institution.

(4) The board of regents shall designate, at least once a biennium, whether the timber sale proceeds from Montana university system lands must be distributed to the beneficiaries or placed in the permanent fund."

Section 3. Section 18-2-107, MCA, is amended to read:

"18-2-107. Deposit of capitol building grant revenue. (1) The state treasurer shall deposit in a capital projects fund all revenue from the capitol building land grant after any deductions made under 77-1-109, ~~Title 77, chapter 1, part 6, and 77-2-362~~.

(2) The funds must be held and dedicated for the purpose of constructing capitol buildings or additions to buildings in accordance with the provisions of section 12 of The Enabling Act."

Section 4. Section 20-9-341, MCA, is amended to read:

"20-9-341. Definition of interest and income money. (1) ~~As~~ Subject to deductions made under 77-1-109, as used in this title, the term "interest and income money" means the total of the following revenue, as provided for by Article X, section 5, of the 1972 Montana constitution:

- (a) 95% of the interest received from the investment of the public school fund;
- (b) 95% of the interest received from the investment of any other school funds held in trust by the state board of land commissioners;

(c) 95% of the income received from the leasing of or sale of timber from state school lands ~~after any deductions that may be made under the provisions of Title 77, chapter 1, part 6;~~ and

(d) 95% of any other income derived from any other covenant affecting the use of state school lands.

(2) The remaining 5% of the revenue described in subsections (1)(a) through (1)(d) must be annually credited to the public school fund after any deductions made under 77-1-109."

Section 5. Section 20-9-620, MCA, is amended to read:

"20-9-620. Definition. (1) As used in 20-9-621, 20-9-622, and this section, "distributable revenue" means, except for that portion of revenue described in 20-9-343(4)(a)(ii) and ~~available on or after July 1, 2003, 77-1-607, and 77-1-613~~ 77-1-109, 95% of all revenue from the management of school trust lands and the permanent fund, including timber sale proceeds, lease fees, interest, dividends, and net realized capital gains.

(2) The term does not include mineral royalties or land sale proceeds that are deposited directly in the permanent fund or net unrealized capital gains that remain in the permanent fund until realized."

Section 6. Section 20-25-422, MCA, is amended to read:

"20-25-422. Support of university system. (1) For the support and endowment of the university, there is annually and perpetually appropriated:

(a) the university fund income, the proceeds and revenue from the grant of any estate or interest disposed of pursuant to 20-25-307, and all other sums of money appropriated by law to the university fund after any deductions made under 77-1-109 ~~and Title 77, chapter 1, part 6;~~

(b) all tuition and matriculation fees; and

(c) all contributions derived from public or private bounty.

(2) The entire income of all the funds must be placed at the disposal of the board of regents by transfer to its treasurer and must be kept separate and distinct from all other funds. The income must be used solely for the support of the colleges and departments of the university or those connected with the colleges and departments.

(3) All means derived from other public or private bounty must be exclusively devoted to the specific objects designated by the donor."

Section 7. Section 77-1-101, MCA, is amended to read:

"77-1-101. Definitions. Unless the context requires otherwise and except for the definition of state land

in 77-1-701, in this title, the following definitions apply:

(1) "Board" means the board of land commissioners provided for in Article X, section 4, of the Montana constitution.

(2) "Commercial or concentrated recreational use" means any recreational use that is organized, developed, or coordinated, whether for profit or otherwise. Commercial or concentrated recreational use includes all outfitting activity and all activities not included within the definition of general recreational use.

(3) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(4) "Distributable revenue" applies to all land trusts managed by the board, except property held pursuant to the Morrill Act of 1862, 7 U.S.C. 301 through 308, and the Morrill Act of 1890, 7 U.S.C. 321 through 329, and includes:

(a) 95% of all revenue from the management of school trust lands and the common school permanent fund;

(b) 95% of the interest and income described in 20-9-341, less any unrealized gains or losses;

(c) the income received from the leasing, licensing, or other use of state trust lands; and

(d) subject to 17-3-1003, the proceeds and income from the sale of timber from capitol building land grant and university system lands.

~~(4)~~(5) (a) "General recreational use" includes noncommercial and nonconcentrated hunting, fishing, and other activities determined by the board to be compatible with the use of state lands.

(b) ~~General recreational use~~ The term does not include the use of streams and rivers by the public under the stream access laws provided in Title 23, chapter 2, part 3.

~~(5)~~(6) "Legally accessible state lands" means state lands that can be accessed by:

(a) dedicated public road, right-of-way, or easement;

(b) public waters;

(c) adjacent federal, state, county, or municipal land if the land is open to public use; or

(d) adjacent contiguous private land if permission to cross the land has been secured from the landowner. The granting of permission by a private landowner to cross private property in a particular instance does not subject the state land that is accessed to general recreational use by members of the public, other than those granted permission.

~~(6)~~(7) "Noxious weeds" or "weeds" means any exotic plant species established or that may be introduced in the state that may render land unfit for agriculture, forestry, livestock, wildlife, or other beneficial uses or that

may harm native plant communities and that is designated:

- (a) as a statewide noxious weed by rule of the department of agriculture; or
- (b) as a district noxious weed by a district weed board organized under 7-22-2103.

~~(7)~~(8) (a) "State land" or "lands" means:

(i) lands granted to the state by the United States for any purpose, either directly or through exchange for other lands;

(ii) lands deeded or devised to the state from any person; and

(iii) lands that are the property of the state through the operation of law.

(b) The term does not include:

(i) lands that the state conveys through the issuance of patent;

(ii) lands that are used for building sites, campus grounds, or experimental purposes by a state institution and that are the property of that institution;

(iii) lands that the board of regents of higher education has authority to dispose of pursuant to 20-25-307;

or

(iv) lands acquired through investments under the provisions of 17-6-201.

~~(8)~~(9) "Weed management" or "control" has the meaning provided in 7-22-2101."

Section 8. Section 77-1-108, MCA, is amended to read:

"77-1-108. Trust land administration account -- administrative costs -- appropriation. (1) There is a trust land administration account in the state special revenue fund. Money in the account is available to the department by appropriation and must be used to pay the costs of administering state trust lands. This includes the cost of managing assets, including but not limited to real property and monetary assets.

(2) Appropriations from the account for each fiscal year may not exceed ~~the sum of 1 1/8% of the book value balance in the permanent funds administered by the department,~~ an amount equal to 25% of the distributable revenue, as defined in 77-1-101, generated in the fiscal year completed prior to the legislative session that will appropriate money for the next biennium. This excludes revenue generated by the forest improvement fee provided for in 77-5-204 other than the fund containing proceeds derived from land granted to the state pursuant to the Morrill Act of 1862, 7 U.S.C. 301 through 308, and the Morrill Act of 1890, 7 U.S.C. 321 through 329, on the first day of January preceding the new biennium and 10% of the revenue deposited in the capitol building land grant trust fund in the last-completed fiscal year prior to the new biennium.

(3) (a) Pursuant to subsection (1), the administrative costs must be determined for each land trust. The

department may adopt rules regarding the calculation of administrative costs as necessary.

(b) Each fiscal year, the department shall compare administrative costs for each land trust to the amount of revenue that land trust generates for the account. If the amount of revenue deposited pursuant to 77-1-109(2) exceeds the administrative costs for a specific land trust, the excess revenue must be distributed as provided in subsection (4) OF THIS SECTION.

(c) If revenue deposited from a specific land trust is insufficient to defray the administrative costs associated with managing that land trust and the money held for that trust in the earnings reserve account, established in [section 22 25], is also insufficient, the board may use funds deposited from other trusts in the earnings reserve account RECEIVE A GENERAL FUND LOAN PURSUANT TO 17-2-107 to offset the difference. Those funds must be reimbursed with A GENERAL FUND LOAN MADE PURSUANT TO THIS SUBSECTION (3)(C) MUST BE repaid WITHIN 5 YEARS AND MUST BEAR interest at a rate of return equal to that earned by the board of investments' short-term investment pool during that period.

(3)(4) (a) Except as provided in ~~subsection (4)~~ subsections (4)(b) and (5), up to one-third of the unreserved distributable revenue funds remaining in the account at the end of a fiscal year ~~must~~ may be transferred to the earnings reserve account, provided for in [section 22 25], and accounted for by trust. The remaining unreserved revenue must be transferred to each of the permanent funds in proportionate shares to each fund's contribution to the account as calculated in 77-1-109(3).

(b) At the end of the fiscal year, unreserved funds received pursuant to 77-1-109(2)(a)(ii) and (2)(a)(iii) must be transferred to each of the permanent funds or to the appropriate trust or distributed to the beneficiary in proportionate shares to each fund's contribution to the account.

(4)(a)(5) (a) The amount of \$80,000 each biennium is transferred from the state general fund to an account in the state special revenue fund. The account is statutorily appropriated, as provided in 17-7-502, to the department for the purposes of administering the land granted to the state pursuant to the Morrill Act of 1862, 7 U.S.C. 301 through 308, and the Morrill Act of 1890, 7 U.S.C. 321 through 329. Any unexpended portion of the statutory appropriation may be retained in the account and used for the administration of the Morrill Act land.

(b) At the end of each fiscal year, the department shall pay from the appropriation in subsection (4) (5)(a) to the trust containing proceeds derived from land granted to the state pursuant to the Morrill Act of 1862, 7 U.S.C. 301 through 308, and the Morrill Act of 1890, 7 U.S.C. 321 through 329, an amount calculated to be the cost of administering the investment of the fund derived from that trust. The payment must be based upon the percentage that the Morrill Act fund constitutes of the total fund derived from all trust lands. IF THE APPROPRIATION IN SUBSECTION (5)(A) IS INSUFFICIENT TO PAY THE CALCULATED ADMINISTRATIVE COST, A GENERAL FUND LOAN MAY BE

USED PURSUANT TO 17-2-107 TO OFFSET THE DIFFERENCE. A GENERAL FUND LOAN MADE PURSUANT TO THIS SUBSECTION (5)(B) MUST BE REPAID WITHIN 5 YEARS AND MUST BEAR INTEREST AT A RATE OF RETURN EQUAL TO THAT EARNED BY THE BOARD OF INVESTMENTS' SHORT-TERM INVESTMENT POOL DURING THAT PERIOD."

SECTION 9. SECTION 77-1-108, MCA, IS AMENDED TO READ:

"77-1-108. Trust land administration account -- administrative costs -- appropriation. (1) There is a trust land administration account in the state special revenue fund. Money in the account is available to the department by appropriation and must be used to pay the costs of administering state trust lands. This includes the cost of managing assets, including but not limited to real property and monetary assets.

(2) Appropriations from the account for each fiscal year may not exceed ~~the sum of 1 1/8% of the book value balance in the permanent funds administered by the department;~~ an amount equal to 25% of the distributable revenue, as defined in 77-1-101, generated in the fiscal year completed prior to the legislative session that will appropriate money for the next biennium. This excludes revenue generated by the forest improvement fee provided for in 77-5-204 other than the fund containing proceeds derived from land granted to the state pursuant to the Morrill Act of 1862, 7 U.S.C. 301 through 308, and the Morrill Act of 1890, 7 U.S.C. 321 through 329, on the first day of January preceding the new biennium and 10% of the revenue deposited in the capitol building land grant trust fund in the last completed fiscal year prior to the new biennium.

(3) (a) Pursuant to subsection (1), the administrative costs must be determined for each land trust. The department may adopt rules regarding the calculation of administrative costs as necessary.

(b) Each fiscal year, the department shall compare administrative costs for each land trust to the amount of revenue that land trust generates for the account. If the amount of revenue deposited pursuant to 77-1-109(2) exceeds the administrative costs for a specific land trust, the excess revenue must be distributed as provided in subsection (4) of this section.

(c) If revenue deposited from a specific land trust is insufficient to defray the administrative costs associated with managing that land trust and the money held for that trust in the earnings reserve account, established in [section 25], is also insufficient, the board may receive a general fund loan pursuant to 17-2-107 to offset the difference. A general fund loan made pursuant to this subsection (3)(c) must be repaid within 5 years and must bear interest at a rate of return equal to that earned by the board of investments' short-term investment pool during that period.

~~(3)(4)~~ (a) Except as provided in ~~subsection (4)~~ subsections (4)(b) and (5), up to one-third of the unreserved distributable revenue funds remaining in the account at the end of a fiscal year must may be

transferred to the earnings reserve account, provided for in [section 25], and accounted for by trust. The remaining unreserved revenue must be transferred to each of the permanent funds in proportionate shares to each fund's contribution to the account as calculated in 77-1-109(3).

(b) At the end of the fiscal year, unreserved funds received pursuant to 77-1-109(2)(a)(ii) must be transferred to each of the permanent funds or to the appropriate trust or distributed to the beneficiary in proportionate shares to each fund's contribution to the account.

~~(4) (a)~~ (5) (a) The amount of \$80,000 each biennium is transferred from the state general fund to an account in the state special revenue fund. The account is statutorily appropriated, as provided in 17-7-502, to the department for the purposes of administering the land granted to the state pursuant to the Morrill Act of 1862, 7 U.S.C. 301 through 308, and the Morrill Act of 1890, 7 U.S.C. 321 through 329. Any unexpended portion of the statutory appropriation may be retained in the account and used for the administration of the Morrill Act land.

(b) At the end of each fiscal year, the department shall pay from the appropriation in subsection ~~(4) (5)(a)~~ to the trust containing proceeds derived from land granted to the state pursuant to the Morrill Act of 1862, 7 U.S.C. 301 through 308, and the Morrill Act of 1890, 7 U.S.C. 321 through 329, an amount calculated to be the cost of administering the investment of the fund derived from that trust. The payment must be based upon the percentage that the Morrill Act fund constitutes of the total fund derived from all trust lands. If the appropriation in subsection (5)(a) is insufficient to pay the calculated administrative cost, a general fund loan may be used pursuant to 17-2-107 to offset the difference. A general fund loan made pursuant to this subsection (5)(b) must be repaid within 5 years and must bear interest at a rate of return equal to that earned by the board of investments' short-term investment pool during that period."

Section 10. Section 77-1-109, MCA, is amended to read:

"77-1-109. Deposits of proceeds in trust land administration account. (1) The amount of money that is deposited into the trust land administration account established in 77-1-108 may not exceed an amount equal to 25% of distributable revenue generated in the fiscal year completed prior to the legislative session that will appropriate money for the next biennium. This excludes revenue generated by the forest improvement fee provided for in 77-5-204.

~~(1)(2)~~ (a) Subject to subsection (1), the The department shall, ~~until the deposit equals the amount appropriated for the fiscal year pursuant to 77-1-108,~~ deposit into the trust land administration account ~~created by 77-1-108~~ the following:

(i) distributable revenue;

~~(i) mineral royalties;~~

~~(ii)(ii) the proceeds or income from the sale of easements and timber, except timber from public school and Montana university system lands;~~

~~(iii) 5% of the interest and income annually credited to the public school fund in accordance with 20-9-341 mineral royalties; and~~

(iv) fees collected pursuant to 77-2-328.

(b) As deposits are made, they must be identified and accounted for by trust.

~~(b)(c) The department may not make deductions from interest or income generated from lands granted to the state pursuant to the Morrill Act of 1862, 7 U.S.C. 301 through 308, and the Morrill Act of 1890, 7 U.S.C. 321 through 329.~~

~~(2)(3) After the deposits in subsection (1) (2) have been made, the remainder of the proceeds, other than proceeds from timber from Montana university system lands and other than those purchased pursuant to 17-6-340, must be deposited in the appropriate permanent fund and the capitol building land grant trust fund accordance with 17-3-1003, 18-2-107, and 20-9-341(2). Timber proceeds from university system lands must be paid over to the state treasurer, who shall deposit the money to the credit of the proper fund for use as provided in 17-3-1003(1). Royalty payments purchased pursuant to 17-6-340 must be used as provided in that section and 20-9-622.~~

~~(3) The amount of money that is deposited into the trust land administration account may not exceed 4 1/8% of the book value balance in each of the permanent funds, other than the fund containing proceeds derived from lands granted to the state pursuant to the Morrill Act of 1862, 7 U.S.C. 301 through 308, and the Morrill Act of 1890, 7 U.S.C. 321 through 329, administered by the department on the first day of January preceding the new biennium and 10% of the previous fiscal year revenue deposited into the capitol building land grant trust fund."~~

SECTION 11. SECTION 77-1-109, MCA, IS AMENDED TO READ:

"77-1-109. Deposits of proceeds in trust land administration account. (1) The amount of money that is deposited into the trust land administration account established in 77-1-108 may not exceed an amount equal to 25% of distributable revenue generated in the fiscal year completed prior to the legislative session that will appropriate money for the next biennium. This excludes revenue generated by the forest improvement fee provided for in 77-5-204.

~~(1)(2) (a) Subject to subsection (1), the~~ The department shall, until the deposit equals the amount

appropriated for the fiscal year pursuant to ~~77-1-108~~, deposit into the trust land administration account created by ~~77-1-108~~ the following:

(i) distributable revenue;

~~(i) mineral royalties;~~

~~(ii)~~(ii) the proceeds or income from the sale of easements and timber, except timber from public school and Montana university system lands; and

~~(iii) 5% of the interest and income annually credited to the public school fund in accordance with 20-9-341; and~~

~~(iv)~~(iii) fees collected pursuant to 77-2-328.

(b) As deposits are made, they must be identified and accounted for by trust.

~~(b)~~(c) The department may not make deductions from interest or income generated from lands granted to the state pursuant to the Morrill Act of 1862, 7 U.S.C. 301 through 308, and the Morrill Act of 1890, 7 U.S.C. 321 through 329.

~~(2)~~(3) After the deposits in subsection ~~(4)~~ (2) have been made, the remainder of the proceeds, other than proceeds from timber from Montana university system lands and other than those purchased pursuant to 17-6-340, must be deposited in ~~the appropriate permanent fund and the capitol building land grant trust fund~~ accordance with 17-3-1003, 18-2-107, and 20-9-341(2). Timber proceeds from university system lands must be paid over to the state treasurer, who shall deposit the money to the credit of the proper fund for use as provided in 17-3-1003~~(4)~~. Royalty payments purchased pursuant to 17-6-340 must be used as provided in that section and 20-9-622.

~~(3) The amount of money that is deposited into the trust land administration account may not exceed 1 1/8% of the book value balance in each of the permanent funds, other than the fund containing proceeds derived from lands granted to the state pursuant to the Morrill Act of 1862, 7 U.S.C. 301 through 308, and the Morrill Act of 1890, 7 U.S.C. 321 through 329, administered by the department on the first day of January preceding the new biennium and 10% of the previous fiscal year revenue deposited into the capitol building land grant trust fund."~~

Section 12. Section 77-1-127, MCA, is amended to read:

"77-1-127. Department authorized to control weeds -- billing for weed control. (1) If the lessee, licensee, or permittee fails to take corrective action or if a request for an administrative hearing is not made within the time specified in the notice, the department may enter state land covered by the lease, license, or permit and

institute appropriate weed control measures. The department may enter into an agreement with a commercial applicator, as defined in 80-8-102, or with the appropriate weed management district organized under 7-22-2102 to control the weeds. The commercial applicator or the weed management district shall agree to carry any insurance required by the department.

(2) The department shall submit a bill to the lessee, licensee, or permittee itemizing the hours of labor, material, and equipment time and listing the actual total cost incurred by the department to take the weed control measures, together with a penalty not exceeding 50% of the total cost. The bill must specify and order a payment due date of 30 days from the date the bill is sent. If payment is not received within 30 days, the department may cancel the lease, license, or permit. Money recovered under this section must be placed in the ~~resource development trust land administration~~ account established in ~~77-1-604~~ 77-1-108, except that penalties collected must be distributed annually to the trusts for the lands on which the weed control action was taken.

(3) If a person receiving an order to take corrective action requests an administrative hearing, the department may not institute control measures until the matter is finally resolved, except in case of an emergency. In an emergency, the person is liable for department costs allowed by this section only to the extent determined appropriate by the director or the court that finally resolves the matter."

Section 13. Section 77-1-605, MCA, is amended to read:

"77-1-605. Types of resource developments. (1) The developments contemplated by this part may include those projects that will develop or conserve the various state land resources, including water, both surface and underground, grazing land, agricultural land, ~~and timber land, and other land~~ to the benefit of the state. They may also include expenses necessary to perfect title to lands claimed by the state ~~which that~~ are suitable for development and other expenses or costs ~~which that~~ in the judgment of the board are desirable or necessary in order to develop or increase the value of the land or the revenue ~~therefrom~~ from the land.

(2) The department may use funds appropriated from the trust land administration account provided for in 77-1-108 for the purposes of subsection (1)."

Section 14. Section 77-1-613, MCA, is amended to read:

"77-1-613. ~~Deduction of portion of income received from~~ Administrative costs associated with sale of timber from state trust lands --creation of account. (1) ~~There is an account in the state special revenue fund called the state timber sale account. Money in the account may be appropriated by the legislature for use by the department in the manner set out in this section to enhance the revenue creditable to the trusts.~~

There must be placed in the account an amount from timber sales on state lands, other than land granted to the state pursuant to the Morrill Act of 1862, 7 U.S.C. 301 through 308, and the Morrill Act of 1890, 7 U.S.C. 321 through 329, each fiscal year equal to the amount appropriated from the account for the corresponding fiscal year The department may use funds appropriated from the trust land administration account provided for in 77-1-108 for timber sale preparation, documentation, administration, and contract harvesting costs.

~~(2) Timber sale program funds deducted under subsection (1) must be directly applied to timber sale preparation, timber sale documentation, and contract harvesting costs as provided in 77-5-219.~~

~~(3)~~(2) In order to increase the volume of timber sold at the earliest possible time while continuing to meet the requirements of applicable state and federal laws and in order to avoid unnecessary delays and extra costs that would result from increasing its permanent staff, the department may contract for services that will enable achievement of the purposes of this section and that will achieve the highest net return to the trusts.

~~(4)~~(3) To maximize overall return to the trusts, the timely salvage of timber must be considered. However, salvage timber sales may not adversely affect the implementation of green timber sales programs conducted pursuant to 77-5-201."

Section 15. Section 77-1-802, MCA, is amended to read:

"77-1-802. (Temporary) Recreational use -- fee. (1) The fee for recreational use on state trust land must attain full market value whether the license is sold on an individual basis or on a group basis through an agreement with the department of fish, wildlife, and parks as provided in 77-1-815.

(2) Money received by the department from the sale of recreational use licenses must be credited as follows:

(a) Except as provided in subsection (2)(b), license fees must be apportioned on a pro rata basis to the land trusts, in proportion to the respective trust's percentage of acreage in the total acreage of all state land trusts.

(b) ~~Two dollars from the fee for each license~~ Revenue from recreational use license fees, less 50 cents from the fee for each license that must ~~to~~ be returned to the license dealer as a commission, is distributable revenue and must be deposited pursuant to 77-1-109 and used to pay for administrative costs as provided in 77-1-108 in the state lands recreational use account established by 77-1-808.

(3) The department may contract with the department of fish, wildlife, and parks for the distribution and sale of recreational use licenses through the license agents appointed by and the administrative offices of the department of fish, wildlife, and parks and in accordance with the provisions of Title 87, chapter 2, part 9. (Void on occurrence of contingency--sec. 8, Ch. 596, L. 2003.)

77-1-802. (Effective on occurrence of contingency) Recreational use license -- fee. (1) The fee for a recreational use license must attain full market value.

(2) Money received by the department from the sale of recreational use licenses must be credited as follows:

(a) Except as provided in subsection (2)(b), license fees must be apportioned on a pro rata basis to the land trusts, in proportion to the respective trust's percentage contribution to the total acreage of all state land trusts.

(b) ~~Two dollars from the fee for each license~~ Revenue from recreational use license fees, less 50 cents ~~from the fee for each license that must~~ to be returned to the license dealer as a commission, is distributable revenue and must be deposited pursuant to 77-1-109 and used to pay for administrative costs as provided in 77-1-108 in the state lands recreational use account established by 77-1-808.

(3) The department may contract with the department of fish, wildlife, and parks for the distribution and sale of recreational use licenses through the license agents appointed by and the administrative offices of the department of fish, wildlife, and parks and in accordance with the provisions of Title 87, chapter 2, part 9."

Section 16. Section 77-1-808, MCA, is amended to read:

"77-1-808. (Temporary) State lands recreational use account. ~~(1) There is a state lands recreational use account in the state special revenue fund provided for in 17-2-102.~~

~~(2) There must be deposited in the account:~~

~~(a) all revenue received from the recreational use license established by 77-1-802;~~

~~(b) 10% of the revenue received as a result of an agreement with the department of fish, wildlife, and parks for the use and impacts of hunting, fishing, and trapping as provided in 77-1-815; and~~

~~(c) money received by the department in the form of legislative appropriations, reimbursements, gifts, federal funds, or appropriations from any source intended to be used for the purposes of this account.~~

(3) Money ~~deposited in the~~ appropriated for the purpose of managing recreational use of state lands recreational use account must be used by the department for the following purposes:

~~(a)~~(1) compensation pursuant to 77-1-809 for damage to the improvements of leases that has been proved to be caused by recreational users;

~~(b)~~(2) assistance in weed control management necessary as a result of recreational use of state lands;

~~(c)~~(3) protection of the resource value of the trust assets;

~~(d)~~(4) administration and management for the implementation of recreational use of state lands; and

~~(e)(5)~~ maintenance of roads necessary for public recreational use of state trust land. (Void on occurrence of contingency--sec. 8, Ch. 596, L. 2003.)

77-1-808. (Effective on occurrence of contingency) State lands recreational use account. ~~(1) There is a state lands recreational use account in the state special revenue fund provided for in 17-2-102.~~

~~(2) There must be deposited in the account:~~

~~(a) all revenue received from the recreational use license established by 77-1-802; and~~

~~(b) money received by the department in the form of legislative appropriations, reimbursements, gifts, federal funds, or appropriations from any source intended to be used for the purposes of this account.~~

~~(3) Money deposited in the~~ appropriated for the purpose of managing recreational use of state lands ~~recreational use account~~ must be used by the department for the following purposes:

~~(a)(1)~~ compensation pursuant to 77-1-809 for damage to the improvements of leases that has been proved to be caused by recreational users;

~~(b)(2)~~ assistance in weed control management necessary as a result of recreational use of state lands;

~~(c)(3)~~ protection of the resource value of the trust assets; and

~~(d)(4)~~ administration and management for the implementation of recreational use of state lands."

Section 17. Section 77-1-809, MCA, is amended to read:

"77-1-809. Compensation for damage to improvements, growing crops, or livestock. A lessee may apply to the department for reimbursement of documented costs of repair to or replacement of improvements, growing crops, or livestock damaged by recreational users of state lands. The application must include an affidavit by the applicant setting forth the nature of the loss, allegations and reasonable proof supporting the involvement of recreational users, and documentation of repair or replacement costs. Upon review of the application and supporting proof and upon additional investigation as required, the department shall grant, modify, or deny the claim. The department, by reason of payment to the lessee for damage to improvements, is entitled to be subrogated to the rights of the lessee to recover the amount paid from the party causing the damage. Payments under this section must be made from appropriations from the ~~state lands recreational use~~ trust land administration account established by ~~77-1-808~~ 77-1-108, and the liability of the department for damage payments is limited to ~~the available appropriation~~ 10% of revenue received from the recreational use fee and deposited in the account. Claim applications are to be considered in the order they are received."

Section 18. Section 77-1-810, MCA, is amended to read:

"77-1-810. Weed control management. (1) The department shall establish a weed control management program for the control of noxious weeds reasonably proved to be caused by the recreational use of state lands. The department may by rule establish a noxious weed management program that may include direct compensation for noxious weed control activities or participation in district and county weed control projects or department-initiated weed control activities.

(2) Funding for this program must come from appropriations from the ~~state lands recreational use trust land administration account pursuant to 77-1-808~~ provided for in 77-1-108."

Section 19. Section 77-1-815, MCA, is amended to read:

"77-1-815. (Temporary) Recreational use agreement for hunting, fishing, and trapping on legally accessible state trust land. (1) The board is authorized to enter into an agreement with the department of fish, wildlife, and parks to compensate state trust land beneficiaries for the use and impacts associated with hunting, fishing, and trapping on legally accessible state trust land as defined in department rule. The department may impose restrictions it considers necessary to coordinate the uses of state trust land or to preserve the purposes of the various trust lands. Hunting, fishing, and trapping on state trust land must be conducted in accordance with rules and provisions provided in this part.

(2) An agreement may be issued to the department of fish, wildlife, and parks for a term of up to 10 years. Through this agreement, the board shall recover for the beneficiaries of the trust the full market value for the use and impacts associated with hunting, fishing, and trapping on legally accessible state trust land. ~~Ten percent of the gross receipts from the agreement must be deposited in the state lands recreational use account established in 77-1-808. The remaining 90%~~ The department may use funds appropriated from the trust land administration account provided for in 77-1-108 to implement and manage the agreement. Except as provided for in 17-7-304, any unexpended amount in the account that resulted from recreational use fees must be apportioned on a pro rata basis to the land trusts, in proportion to the respective trust's percentage of acreage in the total acreage of all state land trusts.

(3) Any agreement entered into is subject to the following conditions:

(a) The department maintains sole discretion, throughout the term of the agreement, with regard to identifying legally accessible parcels, coordinating uses on state trust land, and making any other necessary state trust land management decisions.

(b) An agreement between the department and the department of fish, wildlife, and parks may not convey any additional authority to the department of fish, wildlife, and parks.

(4) During any period that the department of fish, wildlife, and parks and the department have reached an agreement as provided in subsection (1), an individual recreational use license under 77-1-801 or 77-1-802 may not be required for a member of the public to hunt, fish, or trap upon legally accessible state trust land. (Void on occurrence of contingency--sec. 8, Ch. 596, L. 2003.)"

Section 20. Section 77-1-905, MCA, is amended to read:

"77-1-905. Rental provisions for commercial leasing -- payments and credits -- administration -- lease options. (1) The first year's annual rental payment for state trust land leased for commercial purposes must be paid by cashier's check, and payment is due upon execution of the lease. The department may require the lessee of state trust land for commercial purposes to pay the department's cost of the request for proposals process, including publication and other reasonable expenses. Failure to pay the first year's rental at the time of lease execution must result in the cancellation of the lease and forfeiture of all money paid. In the event of cancellation or in the event that the successful proposer is offered and does not accept the lease, the board may enter into negotiations with other persons who submitted a proposal for commercial purposes in response to the department request for proposals on that tract.

(2) The board shall specify in any commercial lease an annual rental equal to the full market rental value of the land. The annual rent may not be less than the product of the appraised value of the land multiplied by a rate that is 2 percentage points a year less than the rate of return of the unified investment program administered by the board of investments pursuant to 17-6-201. The rate of return from the unified investment program used in this subsection must be determined no less than 30 days prior to the execution of the competitive bid. A commercial lease may include a rental adjustment formula established by the board that periodically adjusts the annual rent provided for in the lease at frequencies specified in the lease. The board may allow a credit against the annual rent due for payments made by the lessee on behalf of the state of Montana for construction of structures and improvements, special improvement district assessments, annexation fees, or other city or county fees attributable to the state's property interest in land leased for commercial purposes. The board may accept as lawful consideration in-kind payments of services or materials equal to the full market value of the rent calculated to be owed on any commercial lease. A lease issued under this part may include an amortization schedule to be used to determine the value to the lessee of improvements when the lease is terminated.

(3) ~~Except for rent received from lands granted to the state pursuant to the Morrill Act of 1862, 7 U.S.C. 301 through 308, and the Morrill Act of 1890, 7 U.S.C. 321 through 329, the~~ The department may use up to 10% of the annual rent received from a commercial lease funds appropriated from the trust land administration account

provided for in 77-1-108 to contract with realtors, property managers, surveyors, legal counsel, or lease administrators to administer the commercial lease, either singly or in common with other leases, or to provide assistance to the department in the administration of commercial leases.

(4) In anticipation of entering into a commercial lease, the board may issue an option to lease at a rental rate that the board determines to be appropriate. An option to lease may not exceed a term of 2 years. An option to lease may not be construed to grant a right of immediate possession or control over the land but may only preserve the optionholder's exclusive right to obtain a commercial lease on the land in the future."

Section 21. Section 77-2-328, MCA, is amended to read:

"77-2-328. Additional rules -- deposit of fees. The board may prescribe any additional rules for the conduct of sales of state land as in its judgment the interests of the state may demand. The rules may not include a deduction of fees from land granted to the state pursuant to the Morrill Act of 1862, 7 U.S.C. 301 through 308, and the Morrill Act of 1890, 7 U.S.C. 321 through 329. Any fees collected by a rule adopted pursuant to this section must be deposited in the trust land administration account as provided in ~~77-4-408~~ 77-1-109."

Section 22. Section 77-2-362, MCA, is amended to read:

"77-2-362. State land bank fund -- statutory appropriation -- rules. (1) There is a state land bank fund. The proceeds from the sale of state trust land authorized by 77-2-361 through 77-2-367 must be deposited into the state land bank fund. The purpose of the state land bank fund is to temporarily hold proceeds from the sale of trust land pending the purchase of other land, easements, or improvements for the benefit of the beneficiaries of the respective trusts. A separate record of the proceeds received from the sale of trust land for each of the respective trusts must be maintained. Proceeds from the sale of lands that are part of a trust land grant may be used only to purchase land for the same trust.

(2) (a) Proceeds deposited in the state land bank fund, except earnings on those proceeds, are statutorily appropriated, as provided in 17-7-502, to the department for the purposes described in 77-2-361 through 77-2-367. All earnings on the proceeds deposited in the state land bank fund are subject to the provisions of Article X, sections 5 and 10, of the Montana constitution.

(b) ~~Except as provided in subsection (2)(c), up to 10% of the proceeds in the state land bank fund~~ Funds appropriated from the trust land administration account provided for in 77-1-108 may be used by the department to fund the transactional costs of buying, selling, appraising, or marketing real property. Transactional costs may include realtor's fees, title reports, title insurance, legal fees, and other costs that may be necessary to complete

a conveyance of real property.

(c) Proceeds from the sale of lands held pursuant to the Morrill Act of 1862, 7 U.S.C. 301 through 308, and the Morrill Act of 1890, 7 U.S.C. 321 through 328, may not be used for any transactional costs or trust administration purposes for those lands.

(d) The department may hold proceeds from the sale of state land in the state land bank fund for a period not to exceed 10 years after the effective date of each sale. If, by the end of the 10th year, the proceeds from the subject land sale have not been encumbered to purchase other lands, easements, or improvements within the state, the proceeds from that sale must be deposited in the public school fund or in the permanent fund of the respective trust as required by law, along with any earnings on the proceeds from the land sale, unless the time period is extended by the legislature.

(3) The board shall adopt rules providing for the implementation and administration of the state land bank fund, purchases, and sales."

Section 23. Section 77-5-204, MCA, is amended to read:

"77-5-204. Sale of timber -- fee for forest improvement. (1) The board may sell timber on state lands or other forest products removed from state lands, as provided in 77-5-214 through 77-5-219, at a per-unit price when, in the board's judgment, it is in the best interest of the state, provided that live timber is not sold for less than full market value.

(2) Timber sold or cut from state lands must be cut and removed under rules that may be prescribed by the board for standing timber preservation and fire prevention. In all cases, the board shall require the person cutting the timber to pile and burn or otherwise dispose of the brush and slash in the manner that may be prescribed by the board.

(3) Before the sale of timber is granted, the value of the timber must be appraised under the direction of the department, upon the request and subject to the approval of the board. An appraisal must show as nearly as possible the per-unit value, when appropriate, of all merchantable forest products.

(4) In addition to the price of the forest products established under subsection (1), the board may require a timber or other forest product purchaser to pay a fee for forest improvement unless the timber is to be harvested from land granted to the state pursuant to the Morrill Act of 1862, 7 U.S.C. 301 through 308, and the Morrill Act of 1890, 7 U.S.C. 321 through 329. Revenue from the fee must be deposited in the ~~state special revenue fund~~ forest improvement account, established in [section 23 26], to the credit of the department and, as appropriated by the legislature, may be used only for:

- (a) disposing of logging slash;
- (b) acquiring access and maintaining roads necessary for timber harvesting on state lands;
- (c) reforestation, thinning, and otherwise improving the condition and income potential of forested state lands; and
- (d) complying with legal requirements for timber harvesting."

Section 24. Section 77-5-219, MCA, is amended to read:

"77-5-219. Contract harvesting account -- authorized expenditures -- termination. (1) An account, called the contract harvesting account, must be created as a subaccount of the ~~timber sale trust land administration~~ trust land administration account established in ~~77-1-613~~ 77-1-108, in which to deposit gross revenue and for the payment of expenditures associated with contract harvesting sales. All proceeds of the sale of forest products from a contract harvesting sale must be deposited into this account and must be retained in the account to be used to pay for all contract harvesting costs, as provided in subsection (2).

(2) Expenditures may be credited against the account for contract harvesting costs. Personnel services costs for state employees may not be credited against the account.

(3) An amount equal to the contract harvesting costs must be retained in the account and must be deducted from the gross proceeds to determine the net proceeds. The net proceeds from the sale of the forest products must be distributed to the appropriate trust.

(4) An initial account balance must be created by transferring up to \$500,000 into the contract harvesting account from the ~~timber sale trust land administration~~ trust land administration account.

(5) If the contract harvesting program is terminated or discontinued for more than 10 years, any balance remaining in the contract harvesting account in excess of \$500,000 must be distributed to the appropriate trust. The remaining balance up to \$500,000 must be transferred back to the ~~timber sale trust land administration~~ trust land administration account provided for in ~~77-1-613~~ 77-1-108."

NEW SECTION. Section 25. Earnings reserve account. (1) There is an earnings reserve account in the state special revenue fund.

(2) Funds are deposited in the earnings reserve account in accordance with the provisions of 77-1-108(4)(a) and must be accounted for by trust.

(3) The balance of this account may not exceed two times the appropriation to the trust land administration account for the last completed fiscal year prior to the legislative session that will appropriate money

for the next biennium.

(4) The earnings reserve account must be invested. Any interest earned must be deposited in the earnings reserve account in proportionate share to each fund's contribution to the account.

NEW SECTION. Section 26. Forest improvement account. (1) There is a forest improvement account in the state special revenue fund.

(2) Forest improvement fees collected pursuant to 77-5-204 must be deposited in the forest improvement account and accounted for by trust.

(3) Funds in the forest improvement account must be invested. Any interest earned must be deposited in the forest improvement account in proportionate share to each fund's contribution to the account.

NEW SECTION. Section 27. Unencumbered balances -- transfer. (1) Except as provided in 17-7-304, any unencumbered fund balances remaining at the end of the fiscal year prior to [the effective date of this act] must be transferred to the earnings reserve account, established in [section ~~22~~ 25], from the former:

- (a) resource development account;
- (b) state timber sale account;
- (c) state lands recreational use account; and
- (d) state special revenue account into which commercial leasing revenue was deposited pursuant to 77-1-905(3).

(2) The distribution of any unencumbered balances must occur:

- (a) in proportionate share to each fund's contribution to the accounts; and
- (b) within 3 months of [the effective date of this act].

NEW SECTION. Section 28. Repealer. Sections 77-1-602, 77-1-604, 77-1-606, 77-1-607, 77-1-608, and 77-1-609, MCA, are repealed.

NEW SECTION. Section 29. Codification instruction. [Section ~~22~~ 25] is intended to be codified as an integral part of Title 77, chapter 1, part 1, and the provisions of Title 77, chapter 1, part 1, apply to [section ~~22~~ 25].

NEW SECTION. Section 30. Codification instruction. [Section ~~23~~ 26] is intended to be codified as

an integral part of Title 77, chapter 5, part 2, and the provisions of Title 77, chapter 5, part 2, apply to [section ~~23~~
26].

NEW SECTION. Section 31. Effective date. ~~[This act]~~ (1) EXCEPT AS PROVIDED IN SUBSECTION (2), [THIS
ACT] is effective July 1, 2009.

(2) [SECTIONS 9 AND 11] ARE EFFECTIVE JULY 1, 2013.

- END -

