

## An Overview of 77-1-130, MCA & Related Legislation and Litigation

### 1889

- Congress passes the Enabling Act of 1889 (Ch. 180, 25 Stat. 676):
  - Section 10 grants sections 16 and 36 of every township to the states “for the support of common schools”
  - Section 11 requires “That all lands herein granted for educational purposes shall be disposed of only at public sale ... the proceeds to constitute a permanent school fund, the interest of which only shall be expended in support of said schools.”
- Montana adopts the state’s 1889 Constitution:
  - Article X, section 4 creates the State Board of Land Commissioners, which has “the direction, control, leasing, and sale of the school lands of the state, and the lands granted or which may hereafter be granted for the support and benefit of various state educational institutions....”
  - Article XVII, section 1 requires that any land granted to the state by Congress, and any estate or interest therein, may be disposed of only if the full market value of that estate or interest is paid or safely secured to the state.

### 1932

- Congress amends section 11 of the Enabling Act to include the following language:

The State may also, upon such terms as it may prescribe, grant such easements or rights in any of the lands granted by this Act, as may be acquired in privately owned lands through proceedings in eminent domain: *Provided, however,* That none of such lands nor any estate or interest therein, shall ever be disposed of except in pursuance of general laws providing for such disposition, nor **unless the full market value of the estate or interest disposed of, to be ascertained in such manner as may be provided by law, has been paid or safely secured to the State.** Act of May 7, 1932 (Ch. 172, 47 Stat. 150) (emphasis added).

### 1972

- Montana adopts the 1972 Constitution, which maintains much of the language from the 1889 Constitution related to the management and disposal of school trust lands:
  - Article X, section 4 grants the State Board of Land Commissioners the authority to “direct, control, lease, exchange, and sell school lands” and related lands granted to benefit various state educational institutions as provided by law.
  - Article X, section 11 provides for the disposition of public trust lands:
    - Subsection (1) requires certain lands to be held in trust for the people for the respective purposes for which the lands have been or may be granted, donated, or devised
    - Subsection (2) provides: “No such land or any estate or interest therein shall ever be disposed of except in pursuance of general laws providing for such disposition, or until the full market value of the estate or interest disposed of, to be ascertained in such manner as may be provided by law, has been paid or safely secured to the state.”

### 1997

- The 55<sup>th</sup> Legislature passes HB 607, codified at 77-1-130, MCA:
  - The statute authorizes a person or a county to apply to DNRC for a historic right-of-way deed, to provide access to private property or to provide continuation of a county road. The deadline for applications is October 1, 2001.
  - The statute describes the information required in the application, such as demonstrating that use of the right-of-way dates to before 1973.

- The statute also establishes the specific fees applicable to historic right of way deeds depending on the type of land over which the right of way exists - \$37.50 per acre of grazing land; \$275 per acre of timber land; and \$100 per acre of crop land or other land.
- The bill includes a termination date of October 1, 2003.

## 1999

- Montanans for the Responsible Use of the School Trust v. State, 1999 MT 263 (“MonTrust”):
  - MonTrust challenges the constitutionality of 14 laws, including specifically the fees set out in the new 77-1-130.
  - The Montana Supreme Court first reiterates that the federal government’s grant of lands under the 1889 Enabling Act constitutes a trust, with the state serving as the trustee of those lands through State Board of Land Commissioners. Further, Court states that the terms of this trust are set out in the Enabling Act and in the state Constitution. Finally, the provisions in the state Constitution are limits upon the Legislature’s power of disposal of the lands; the trust’s requirement that full market value be obtained for the trust lands is one example of these limits.
  - In reaching its decision that 77-1-130 is unconstitutional, the Court adopts the district court’s finding that the amounts for the fees set in statute were based on the median values for the classifications of land in 1972 (see ¶ 21). Because the fees set in 1997 are based on 1972 land values, the Court holds this statute violates the state’s obligation to obtain full market value for school trust lands.

## 2001

- Following the MonTrust decision, the 2001 Legislature passes SB 31, amending 77-1-130.
  - The bill expands access to historic right-of-way deeds to include authorizing applications for existing utilities and struck the language regarding classifications of land from subsection (4)(a), leaving that subsection to read: “At the time of issuing the historic right-of-way deed, the department shall collect from the applicant the full market value of the acreage of the historic right-of-way.”
  - The application deadline is also extended to October 1, 2006 and the termination date for the statute is extended to October 1, 2011

## 2005

- Section 77-1-130 is amended in 2005 by HB 114:
  - The application deadline is extended again, to October, 1, 2011, and the termination date is extended to October 1, 2016.

## 2011

- HB 297 provides an extension for the application deadline and termination date for 77-1-130:
  - The deadline to apply for a history right of way deed is extended to October 1, 2015.
  - The termination date is extended to October 1, 2025.

## 2015

- The 2015 Legislature passes SB 229, amending 77-1-130:
  - The application deadline is extend to October 1, 2021.
  - The termination date is extended to October 1, 2031.