

SENATE BILL NO. 274
INTRODUCED BY R. LAIBLE

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS GOVERNING STATE-OWNED LAND; REVISING PROCEDURES RELATED TO THE SALE, LEASE, AND PURCHASE OF LAND BY THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS; REVISING REQUIREMENTS FOR LAND APPRAISALS INVOLVING STATE TRUST LAND; REVISING INVENTORY REQUIREMENTS FOR STATE LAND; REQUIRING CONSIDERATION OF PUBLIC ACCESS TO CONSERVATION EASEMENTS PURCHASED WITH PUBLIC FUNDS; REVISING REPORTING REQUIREMENTS FOR LAND BANKING; REQUIRING PAYMENTS TO COUNTIES FOR ALL LAND OWNED BY THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS WITHIN A COUNTY; AMENDING SECTIONS 23-1-102, 23-1-108, 76-6-201, 76-6-206, 77-1-101, 77-1-403, 77-1-404, 77-2-201, 77-2-203, 77-2-207, 77-2-213, 77-2-366, 85-1-804, 85-1-805, 87-1-209, AND 87-1-603, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

Section 1. Section 23-1-102, MCA, is amended to read:

"23-1-102. Powers and duties of department of fish, wildlife, and parks. (1) The department shall make a study to determine the scenic, historic, archaeological, scientific, and recreational resources of the state. The department may by purchase, lease, agreement, or acceptance of donations acquire for the state any areas, sites, or objects that in its opinion should be held, improved, and maintained as state parks, state recreational areas, state monuments, or state historical sites. The department, with the consent of the commission, may acquire by condemnation, pursuant to Title 70, chapter 30, lands or structures for the purposes provided in 87-1-209(2).

(2) The department may accept in the name of the state, in fee or otherwise, any areas, sites, or objects conveyed, entrusted, donated, or devised to the state. It may accept gifts, grants, bequests, or contributions of money or other property to be spent or used for any of the purposes of this part.

(3) A contract, for any of the purposes of this part, may not be entered into or another obligation incurred until money has been appropriated by the legislature or is otherwise available. ~~If the contract or obligation pertains to acquisition of areas or sites in excess of either 100 acres or \$100,000 in value, the board of land commissioners shall specifically approve the acquisition.~~

(4) The department has jurisdiction, custody, and control of all state parks, recreational areas, public camping grounds, historical sites, and monuments, except wayside camps and other public conveniences acquired, improved, and maintained by the department of transportation and contiguous to the state highway system. The department may designate lands under its control as state parks, state historical sites, state monuments, or by any other designation that it considers appropriate. The department may remove or change the designation of any area or portion of an area and may name or change the name of any area. The department may lease those portions of designated lands that are necessary for the proper administration of the lands in keeping with the basic purpose of this part."

Section 2. Section 23-1-108, MCA, is amended to read:

"23-1-108. Acquisition of certain state parks, monuments, or historical sites. (1) Any person, association, or representative of a governing unit may submit a proposal for the acquisition of a site or area described in 23-1-102 from the income of the trust fund created in 15-35-108 to the department of fish, wildlife, and parks by July 1 of the year preceding the convening of a legislative session.

(2) The fish, wildlife, and parks commission shall present to the legislature by the 15th day of any legislative session a list of areas, sites, or objects that were proposed for purchase for use as state parks, state recreational areas, state monuments, or state historical sites with the money contained in the parks account. The list must contain:

- (a) the purpose for which each area, site, or object would be used;
- (b) the estimated cost of each area, site, or object;
- (c) the reasons given by the requestor for needing each area, site, or object;
- (d) a priority order recommended by the department for each area, site, or object;
- (e) the recommendation of the department as to when each area, site, or object is needed; and
- (f) any long-range plans associated with the area, site, or object and the estimated cost of the long-range plans.

(3) The legislature must appropriate funds from this account before any park, area, monument, or site may be purchased."

Section 3. Section 76-6-201, MCA, is amended to read:

"76-6-201. Conservation easements in general. (1) ~~Where~~ If a public body acquires ~~under this chapter~~ an less than a fee interest in land ~~less than fee~~ under this chapter, this acquisition ~~shall~~ must be by conservation

easement.

(2) A conservation easement may be applied to urban or nonurban land.

(3) A purchase of a conservation easement by a public body under this chapter must provide for public access to the property subject to the conservation easement."

Section 4. Section 76-6-206, MCA, is amended to read:

"76-6-206. Review by local planning authority. In order to minimize conflict with local comprehensive planning, all conservation easements ~~shall be~~ are subject to review prior to recording by the appropriate local planning authority for the county within which the land lies. It ~~shall be~~ is the responsibility of the entity acquiring the conservation easement to present the proposed conveyance of the conservation easement to the appropriate local planning authority. The local planning authority ~~shall have~~ has 90 days from receipt of the proposed conveyance within which to review and ~~to~~ comment upon the relationship of the proposed conveyance to comprehensive planning for the area. The review must include the requirement for public access provided in 76-6-201(3). ~~Such~~ The comments ~~will not be~~ are not binding on the proposed grantor or grantee but ~~shall be~~ are merely advisory in nature. The proposed conveyance may be recorded after comments have been received from the local planning authority or the local planning authority has indicated in writing it will not have ~~no~~ comments or 90 days have elapsed, whichever occurs first."

Section 5. 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) "Fair market value" means the price that would be agreed to by a willing and informed seller and buyer, taking into consideration the highest and best reasonably available use and the value for that use, provided the current use may not be presumed to be the highest and best use.

~~(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 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) (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."

Section 6. Section 77-1-403, MCA, is amended to read:

"77-1-403. Capability inventory. A capability inventory ~~shall~~ must be made for all state land and must be considered prior to changing the classification of state lands ~~land~~. ~~Such~~ The inventory ~~shall~~ must include, ~~when appropriate to the classification,~~ information on:

- (1) soils capability;₁
- (2) vegetation;₁

- (3) wildlife use;¹
- (4) mineral characteristics, resources and assessments, including a market analysis of the mineral resources;
- (5) public use;¹
- (6) aesthetic values;¹
- (7) cultural values, resources and assessment of those resources;
- (8) surrounding land use, and any other resource;¹
- (9) zoning; or planning information ~~which that~~ is related to the classification; and
- (10) any other inventories and assessments required by law or that the department determines are necessary."

Section 7. Section 77-1-404, MCA, is amended to read:

"77-1-404. Records of state lands. All field books, plats, maps, and records of the department ~~shall~~ must show the class to which each tract ~~therein~~ of state land belongs and whether it the state land belongs to the public schools of the state,¹ or to a state institution,¹ or ~~other~~ to another entity according to the grant or instrument by which title to the land has passed to the state. ~~They shall~~ The records must also show whether or not the coal or other minerals in the land are reserved by the United States and ~~shall~~ must contain any other information the department considers necessary. The information required by this section must be reflected in the index required by 77-1-705."

Section 8. Section 77-2-201, MCA, is amended to read:

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

(b) The current user of the land transferred to the United States may continue to enjoy the use of the land under terms and conditions required by the federal government and in accordance with Public Law 88-607, as amended, {43 U.S.C. 1411 through 1418}, and the current user of the land received from the United States may continue to ~~utilize~~ use the land on the terms and conditions imposed by law or by the board.

(2) The board may enter into a contract or agreement with a tribal government as defined in 18-11-102

or with the United States for the relinquishment to the tribal government or to the United States in trust for the tribal government of any rights of the state to some or all state lands located wholly within the exterior boundaries of the tribal government's reservation as recognized by the federal government; ~~however~~ However, the state, in exchange for these relinquished rights, must receive from the tribal government or the United States lands of equal or greater value. ~~No~~ A contract or agreement may not be entered into under this section without first consulting with the board of county commissioners of the county or counties in which the lands to be exchanged are located.

(3) In considering a proposed exchange under this section, the board shall consider the impact of the proposed exchange on public access to all land involved in the proposed exchange."

Section 9. Section 77-2-203, MCA, is amended to read:

"77-2-203. Exchange for nongovernment, state government, and other state and local public entity land. (1) Subject to subsection (2), the board is authorized to exchange state land for land owned by:

- (a) the state or an agency of the state;
- (b) a political subdivision of the state, including a county, city, town, public corporation, or district created pursuant to state law;
- (c) any other public body of the state; or
- (d) a nongovernmental entity, including but not limited to an individual, association, partnership, or corporation.

(2) The board may exchange the land described in subsection (1) if the land is of equal or greater value, as determined by the board after appraisal by a qualified land appraiser, than the state land and as closely as possible equal in area. The contents of the appraisal must be made available to any person who makes a written request to the board. The board shall place priority on exchanges that result in consolidation of state lands into more compact bodies. This section does not apply to exchanges undertaken under 76-12-107.

(3) If the requirements of 77-2-204 and subsections (1) and (2) of this section are met, state lands bordering on navigable lakes and streams or other bodies of water with significant public use value may be exchanged for nongovernment-owned land if the nongovernment-owned land borders on similar navigable lakes, streams, or other bodies of water.

(4) In considering a proposed exchange under this section, the board shall consider the impact of the proposed exchange on public access to all land involved in the proposed exchange."

Section 10. Section 77-2-207, MCA, is amended to read:

"77-2-207. Approval or disapproval of exchanges. All exchanges of state lands are subject to approval and confirmation by the board, and ~~no~~ an exchange is not considered completed until after ~~such~~ approval and confirmation. The board has the power and ~~it is its~~ duty to disapprove any exchange ~~which~~ that in its opinion would be disadvantageous to the state. The board may not approve an exchange that requires a cash donation from the nonstate party."

Section 11. Section 77-2-213, MCA, is amended to read:

"77-2-213. Department to investigate. When a proposal for an exchange pursuant to 77-2-211 is made and the owners of the respective tracts involved seem agreeable to negotiate ~~such exchanges~~ the exchange, the proposal ~~shall~~ must be referred to the department, ~~and the~~ The department shall thoroughly investigate all the lands involved in the proposal and estimate the value of all of the lands and consider every factor in connection with the proposal ~~as~~ that may affect the public interest, including public access to all land involved in the proposed exchange."

Section 12. Section 77-2-366, MCA, is amended to read:

"77-2-366. Land banking process -- time limit -- report to environmental quality council. (1) State land may not be sold through the land banking process pursuant to 77-2-361 through 77-2-367 after October 1, 2008. Land banking purchases under 77-2-364 may continue after October 1, 2008, until all the proceeds in the state land bank fund are expended or revert to the public school fund or the permanent fund of the respective trust pursuant to 77-2-362(2)(d).

(2) The department shall provide a report to the environmental quality council by July 1, ~~2008~~, of each year that describes the results of the land banking program in detail. At a minimum, the report must summarize the sale and purchase transactions made through the program by type, location, acreage, value, and trust beneficiary. The environmental quality council shall make any recommendations that it determines necessary regarding the implementation of the state land banking process, including recommendations for legislation."

Section 13. Section 85-1-804, MCA, is amended to read:

"85-1-804. Appraisal of project lands -- adjustment of lease fee. The department of revenue shall appraise project lands owned by the department and shall maintain records of the appraisals. ~~Not less than~~ Subject to the requirements of 85-1-805, at least once during the term of a lease, the department of revenue shall

reappraise the project lands and adjust the lease fee accordingly. ~~The~~ Except as provided in 85-1-805, the department may not increase a lease fee for a current lessee more than 2% a year during any period of 10 consecutive years."

Section 14. Section 85-1-805, MCA, is amended to read:

"85-1-805. Full market value required -- cabin site procedure. (1) The department shall determine the full market value of project lands. The department may not accept a bid that is below full market value.

(2) If project land is leased for a cabin site, the department shall set the annual fee based on full market value for each cabin site and for each licensee or lessee who at any time wishes to continue or assign the license or lease. The fee must reflect full market value based on the appraisal of the cabin site as determined by the department of revenue. The licensee or lessee has the option to pay the entire fee on March 1 or to divide the fee into two equal payments due March 1 and September 1. The value may be increased or decreased as a result of the statewide periodic revaluation of property pursuant to 15-7-111 without any adjustments as a result of phasing in values. An appeal of a cabin site value determined by the department of revenue must be conducted pursuant to Title 15, chapter 15.

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

Section 15. Section 87-1-209, MCA, is amended to read:

"87-1-209. Acquisition and sale of lands ~~land~~ or waters ~~water~~. (1) (a) The department, with the consent of the commission and, ~~in the case of land acquisition involving more than 100 acres or \$100,000 in value,~~ the approval of the board of land commissioners, may acquire land or water by purchase, lease, agreement, gift, or devise and may acquire easements upon ~~lands~~ land or ~~waters~~ water for the purposes listed in ~~this~~ subsection (1)(b). The proposed acquisition presented to the commission and the board of land commissioners must contain:

- (i) the purpose for which the land or water would be used;
- (ii) the estimated cost of the land or water;
- (iii) the reasons for needing the land or water;
- (iv) the recommendation of the department as to when the land or water is needed; and

(v) any long-range plans associated with the land or water and the estimated cost of the long-range plans.

(b) The department may develop, operate, and maintain acquired ~~lands~~ land or ~~waters~~ water:

~~(a)~~(i) for fish hatcheries or nursery ponds;

~~(b)~~(ii) ~~as lands or water suitable~~ for game, bird, fish, or fur-bearing animal restoration, propagation, or protection;

~~(c)~~(iii) for public hunting, fishing, or trapping areas;

~~(d)~~(iv) to capture, propagate, transport, buy, sell, or exchange any game, birds, fish, fish eggs, or fur-bearing animals needed for propagation or stocking purposes or to exercise control measures of undesirable species;

~~(e)~~(v) for state parks and outdoor recreation; or

~~(f)~~(vi) to extend and consolidate by exchange, ~~lands~~ land or ~~waters~~ water suitable for these purposes.

(2) The department, with the consent of the commission, may acquire by condemnation, as provided in Title 70, chapter 30, ~~lands~~ land or structures for the preservation of historical or archaeological sites that are threatened with destruction or alteration.

(3) (a) Subject to section 2(3), Chapter 560, Laws of 2005, the department, with the consent of the commission, may dispose of ~~lands~~ land and water rights acquired by it on those terms after public notice as required by subsection (3)(b) of this section, without regard to other laws that provide for sale or disposal of state ~~lands~~ land and with or without reservation, as it considers necessary and advisable. The department, with the consent of the commission, may convey department ~~lands~~ land and water rights for full market value to other governmental entities or to adjacent landowners without regard to the requirements of subsection (3)(b) or (3)(c) if the land is less than 10 acres or if the full market value of the interest to be conveyed is less than \$20,000. When the department conveys land or water rights to another governmental entity or to an adjacent landowner pursuant to this subsection, the department, in addition to giving notice pursuant to subsection (3)(b), shall give notice by mail to the landowners whose property adjoins the department property being conveyed.

(b) Subject to section 2(3), Chapter 560, Laws of 2005, notice of sale describing the ~~lands~~ land or ~~waters~~ water to be disposed of must be published once a week for 3 successive weeks in a newspaper with general circulation printed and published in the county where the ~~lands~~ land or ~~waters~~ are water is situated or, if a newspaper is not published in that county, then in any newspaper with general circulation in that county.

(c) The notice must advertise for cash bids to be presented to the director within 60 days from the date of the first publication. Each bid must be accompanied by a cashier's check or cash deposit in an amount equal

to 10% of the amount bid. The highest bid must be accepted upon payment of the balance due within 10 days after mailing notice by certified mail to the highest bidder. If that bidder defaults on payment of the balance due, then the next highest bidders must be similarly notified in succession until a sale is completed. Deposits must be returned to the unsuccessful bidders except bidders defaulting after notification.

(d) The department shall reserve the right to reject any bids that do not equal or exceed the full market value of the ~~lands~~ land and ~~waters~~ water as determined by the department. If the department does not receive a bid that equals or exceeds fair market value, it may then sell the ~~lands~~ land or water rights at private sale. The price accepted on any private sale must exceed the highest bid rejected in the bid process.

(4) When necessary and advisable for the management and use of department property, the director is authorized to grant or acquire from willing sellers right-of-way easements for purposes of utilities, roads, drainage facilities, ditches for water conveyance, and pipelines if the full market value of the interest to be acquired is less than \$20,000. Whenever possible, easements must include a weed management plan. Approval of the commission is not required for grants and acquisitions made pursuant to this subsection. In granting any right-of-way pursuant to this subsection, the department shall obtain a fair market value, but the department is not otherwise required to follow the disposal requirements of subsection (3). The director shall report any easement grant or acquisition made pursuant to this subsection to the commission at its next regular meeting.

(5) The department shall convey ~~lands~~ land and water rights without covenants of warranty by deed executed by the governor or in the governor's absence or disability by the lieutenant governor, attested by the secretary of state and further countersigned by the director.

(6) The department, with the consent of the commission, is authorized to ~~utilize~~ use the installment contract method to facilitate the acquisition of wildlife management areas in which game and nongame fur-bearing animals and game and nongame birds may breed and replenish and areas that provide access to fishing sites for the public. The total cost of installment contracts may not exceed the cost of purchases authorized by the department and appropriated by the legislature.

(7) The department is authorized to enter into leases of land under its control in exchange for services to be provided by the lessee on the leased land."

Section 16. Section 87-1-603, MCA, is amended to read:

"87-1-603. Payments to counties for department-owned land ~~—exceptions.~~ Before November 30 of each year, the treasurer of each county in which the department owns any land shall describe the land, state the number of acres in each parcel, and request the drawing of a warrant to the county in a sum equal to the

amount of taxes which would be payable on county assessment of the property were it taxable to a private citizen. The director shall approve or disapprove the request. The director may disapprove a request only if the director finds it to be inconsistent with this section. If the director disapproves a request, the director shall return it with an explanation detailing the reasons for the disapproval to the appropriate county treasurer for correction. If the director approves a request, the director shall transmit it to the department of administration, which shall draw a warrant payable to the county in the amount shown on the request and shall send the warrant to the county treasurer. The warrant is payable out of any funds to the credit of the department of fish, wildlife, and parks. ~~A payment may not be made to a county in which the department owns less than 100 acres. A payment may not be made to a county for lands owned by the department for game or bird farms or for fish hatchery purposes or lands acquired and managed for the purposes of Title 23, chapter 1."~~

NEW SECTION. **Section 17. Effective date.** [This act] is effective July 1, 2007.

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