

1 SENATE BILL NO. 155

2 INTRODUCED BY C. VINCENT

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THE PREPARATION OF AN ENVIRONMENTAL
5 IMPACT STATEMENT FOR ALL LAND ACQUISITIONS PROPOSED BY THE DEPARTMENT OF FISH,
6 WILDLIFE, AND PARKS; PROVIDING AN EXCEPTION; AND AMENDING SECTIONS 23-1-102, 87-1-209, AND
7 87-1-218, MCA."

8

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

10

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

12 **"23-1-102. Powers and duties of department of fish, wildlife, and parks.** (1) The department shall
13 make a study to determine the scenic, historic, archaeologic, scientific, and recreational resources of the state.
14 ~~The~~ Subject to 87-1-209, the department may by purchase, lease, agreement, or acceptance of donations acquire
15 for the state any areas, sites, or objects that in its opinion should be held, improved, and maintained as state
16 parks, state recreational areas, state monuments, or state historical sites. The department, with the consent of
17 the commission, may acquire by condemnation, pursuant to Title 70, chapter 30, lands or structures for the
18 purposes provided in 87-1-209(2).

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

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

26 (4) The department has jurisdiction, custody, and control of all state parks, recreational areas, public
27 camping grounds, historical sites, and monuments, except wayside camps and other public conveniences
28 acquired, improved, and maintained by the department of transportation and contiguous to the state highway
29 system. The department may designate lands under its control as state parks, state historical sites, state
30 monuments, or by any other designation that it considers appropriate. The department may remove or change

1 the designation of any area or portion of an area and may name or change the name of any area. The department
2 may lease those portions of designated lands that are necessary for the proper administration of the lands in
3 keeping with the basic purpose of this part."

4

5 **Section 2.** Section 87-1-209, MCA, is amended to read:

6 **"87-1-209. (Temporary) Acquisition and sale of land or water.** (1) Subject to 87-1-218 and subsection
7 (8) of this section, the department, with the consent of the commission and, in the case of land acquisition
8 involving more than 100 acres or \$100,000 in value, the approval of the board of land commissioners, may
9 acquire by purchase, lease, agreement, gift, or devise and may acquire easements upon land or water for the
10 purposes listed in this subsection. Any acquisition of land or water rights for purposes of this subsection, except
11 that portion of acquisitions made with funds provided under 87-1-242(1), must include an additional 20% above
12 the purchase price to be used for maintenance of land or water acquired by the department. The additional
13 amount above the purchase price or \$300,000, whichever is less, must be deposited in the account established
14 in 87-1-230. As used in this subsection, "maintenance" means that term as defined in and consistent with the
15 good neighbor policy in 23-1-127(2). The department may develop, operate, and maintain acquired land or water
16 rights:

17 (a) for fish hatcheries or nursery ponds;

18 (b) as land or water suitable for game, bird, fish, or fur-bearing animal restoration, propagation, or
19 protection;

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

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

23 (e) for state parks and outdoor recreation;

24 (f) to extend and consolidate by exchange, land or water rights suitable for these purposes.

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

28 (3) (a) Subject to section 2(3), Chapter 560, Laws of 2005, the department, with the consent of the
29 commission, may dispose of land and water rights acquired by it on those terms after public notice as required
30 by subsection (3)(b) of this section, without regard to other laws that provide for sale or disposal of state land and

1 with or without reservation, as it considers necessary and advisable. The department, with the consent of the
2 commission, may convey department land and water rights for full market value to other governmental entities
3 or to adjacent landowners without regard to the requirements of subsection (3)(b) or (3)(c) if the land is less than
4 10 acres or if the full market value of the interest to be conveyed is less than \$20,000. When the department
5 conveys land or water rights to another governmental entity or to an adjacent landowner pursuant to this
6 subsection, the department, in addition to giving notice pursuant to subsection (3)(b), shall give notice by mail
7 to the landowners whose property adjoins the department property being conveyed.

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

12 (c) The notice must advertise for cash bids to be presented to the director within 60 days from the date
13 of the first publication. Each bid must be accompanied by a cashier's check or cash deposit in an amount equal
14 to 10% of the amount bid. The highest bid must be accepted upon payment of the balance due within 10 days
15 after mailing notice by certified mail to the highest bidder. If that bidder defaults on payment of the balance due,
16 then the next highest bidders must be similarly notified in succession until a sale is completed. Deposits must be
17 returned to the unsuccessful bidders except bidders defaulting after notification.

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

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

30 (5) The department shall convey land and water rights without covenants of warranty by deed executed

1 by the governor or in the governor's absence or disability by the lieutenant governor, attested by the secretary
2 of state and further countersigned by the director.

3 (6) Subject to 87-1-218, the department, with the consent of the commission, is authorized to utilize the
4 installment contract method to facilitate the acquisition of wildlife management areas in which game and nongame
5 fur-bearing animals and game and nongame birds may breed and replenish and areas that provide access to
6 fishing sites for the public. The total cost of installment contracts may not exceed the cost of purchases authorized
7 by the department and appropriated by the legislature.

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

10 (8) Except for acquisitions made pursuant to subsection (4), the department shall prepare an
11 environmental impact statement in accordance with Title 75, chapter 1, part 2, for all proposed land acquisitions.
12 (Terminates June 30, 2013--sec. 8, Ch. 427, L. 2009.)

13 **87-1-209. (Effective July 1, 2013) Acquisition and sale of lands or waters.** (1) Subject to 87-1-218
14 and subsection (8) of this section, the department, with the consent of the commission and, in the case of land
15 acquisition involving more than 100 acres or \$100,000 in value, the approval of the board of land commissioners,
16 may acquire by purchase, lease, agreement, gift, or devise and may acquire easements upon lands or waters
17 for the purposes listed in this subsection. The department may develop, operate, and maintain acquired lands
18 or waters:

19 (a) for fish hatcheries or nursery ponds;

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

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

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

25 (e) for state parks and outdoor recreation;

26 (f) to extend and consolidate by exchange, lands or waters suitable for these purposes.

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

30 (3) (a) Subject to section 2(3), Chapter 560, Laws of 2005, the department, with the consent of the

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

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

14 (c) The notice must advertise for cash bids to be presented to the director within 60 days from the date
15 of the first publication. Each bid must be accompanied by a cashier's check or cash deposit in an amount equal
16 to 10% of the amount bid. The highest bid must be accepted upon payment of the balance due within 10 days
17 after mailing notice by certified mail to the highest bidder. If that bidder defaults on payment of the balance due,
18 then the next highest bidders must be similarly notified in succession until a sale is completed. Deposits must be
19 returned to the unsuccessful bidders except bidders defaulting after notification.

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

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

1 easement grant or acquisition made pursuant to this subsection to the commission at its next regular meeting.

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

5 (6) Subject to 87-1-218, the department, with the consent of the commission, is authorized to utilize the
6 installment contract method to facilitate the acquisition of wildlife management areas in which game and nongame
7 fur-bearing animals and game and nongame birds may breed and replenish and areas that provide access to
8 fishing sites for the public. The total cost of installment contracts may not exceed the cost of purchases authorized
9 by the department and appropriated by the legislature.

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

12 (8) Except for acquisitions made pursuant to subsection (4), the department shall prepare an
13 environmental impact statement in accordance with Title 75, chapter 1, part 2, for all proposed land acquisitions."

14

15 **Section 3.** Section 87-1-218, MCA, is amended to read:

16 **"87-1-218. Notice of proposed land acquisitions.** (1) For all land acquisitions proposed pursuant to
17 87-1-209, the department shall provide notice to the board of county commissioners in the county where the
18 proposed acquisition is located.

19 (2) The notice must be provided at least 30 days before the proposed acquisition appears before the
20 commission for its consent.

21 (3) The notice must include:

22 (a) a description of the proposed acquisition, including acreage and the use proposed by the department;

23 (b) an estimate of the measures and costs the department plans to undertake in furtherance of the
24 proposed use, including operating, staffing, and maintenance costs;

25 (c) an estimate of the property taxes payable on the proposed acquisition and a statement that if the
26 department acquires the land pursuant to 87-1-603, the department would pay a sum equal to the amount of
27 taxes that would be payable on the county assessment of the property if it was taxable to a private citizen;

28 (d) information on how to obtain a copy of the environmental impact statement prepared pursuant to
29 87-1-209(8); and

30 ~~(d)~~(e) a draft agenda of the meeting at which the proposed acquisition will be presented to the

1 commission and information on how the board of county commissioners may provide comment."

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3 NEW SECTION. **Section 4. Saving clause.** [This act] does not affect rights and duties that matured,
4 penalties that were incurred, or proceedings that were begun before [the effective date of this act].

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- END -