

## 1 SENATE BILL NO. 435

2 INTRODUCED BY BRENDEN, BALES, DE. BARRETT, BLACK, CURTISS, GEBHARDT, RIPLEY, STAHL,  
3 STEINBEISSER, TUTVEDT

4  
5 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THE APPROVAL OF THE BOARD OF LAND  
6 COMMISSIONERS FOR LAND PURCHASES BY STATE AGENCIES; PROVIDING THAT LAND PURCHASES  
7 MAY NOT, TO THE EXTENT THAT IS PRACTICAL, RESULT IN A NET GAIN IN LAND OWNERSHIP BY THE  
8 STATE; PROVIDING EXCEPTIONS; AMENDING SECTIONS 2-17-101, 18-2-105, 18-2-111, 22-3-1003,  
9 23-1-102, 67-2-301, 75-15-223, 76-12-107, 77-2-364, 82-4-239, 82-4-371, 82-4-445, 85-1-209, 87-1-209,  
10 87-1-285, AND 87-1-703, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE  
11 APPLICABILITY DATE."

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

14  
15 **Section 1.** Section 2-17-101, MCA, is amended to read:

16 **"2-17-101. Allocation of space.** (1) The department of administration shall determine the space  
17 required by state agencies other than the university system and shall allocate space in buildings owned or leased  
18 by the state, based on each agency's need. To efficiently and effectively allocate space, the department  
19 periodically shall identify the amount, location, and nature of space used by each agency.

20 (2) An agency requiring additional space shall notify the department. The department, in consultation  
21 with the agency, shall determine the amount and nature of the space needed and locate space within a building  
22 owned or leased by the state to meet the agency's requirements. If space is not available in a building owned or  
23 leased by the state, the department shall locate space to be leased in an appropriate building or recommend  
24 alternatives to leasing, such as remodeling or exchanging space with another agency. A state agency may not  
25 lease, rent, or purchase property for quarters without prior approval of the department.

26 (3) (a) The location of the chambers for the house of representatives must be determined in the sole  
27 discretion of the house of representatives. The location of the chambers of the senate must be determined in the  
28 sole discretion of the senate.

29 (b) Subject to 2-17-108, the department, with the advice of the legislative council, shall allocate other  
30 space for the use of the legislature, including but not limited to space for committee rooms and legislative offices.

1 (4) For state agencies located in a city other than Helena, the department shall consolidate the offices  
 2 of these agencies in a single, central location within the city whenever the consolidation would result in a cost  
 3 savings to the state while permitting sufficient space and facilities for the agencies. The department may  
 4 purchase, lease, or acquire, by exchange or otherwise, land and buildings in the city to achieve consolidation.  
 5 ~~Land purchases must be approved by the board of land commissioners. Land purchases may not, to the extent~~  
 6 ~~that is practical, result in a net gain in land ownership by the state.~~ Offices of the law enforcement services  
 7 division and motor vehicle division of the department of justice are exempted from consolidation."  
 8

9 **Section 2.** Section 18-2-105, MCA, is amended to read:

10 **"18-2-105. General powers and duties of department of administration.** (1) In carrying out powers  
 11 relating to the construction of buildings, the department of administration may:

- 12 (1)(a) inspect buildings not under construction;  
 13 (2)(b) contract with the federal government for advance planning funds;  
 14 (3)(c) transfer funds and authority to agencies and accept funds and authority from agencies;  
 15 (4)(d) subject to 2-17-135 and subsection (2) of this section, purchase, lease, and acquire by exchange  
 16 or otherwise, land and buildings in Lewis and Clark County and equipment and furnishings for the buildings;  
 17 (5)(e) issue and sell bonds and other securities;  
 18 (6)(f) maintain an inventory of all buildings;  
 19 (7)(g) appoint a project representative to supervise architects' and consulting engineers' inspection of  
 20 construction of buildings to ensure that all construction is in accordance with the contracts, plans, and  
 21 specifications. The cost of supervision may be charged against money available for construction.

22 (8)(h) negotiate deductive changes, not to exceed 7% of the total cost of a project, with the lowest  
 23 responsible bidder when the lowest responsible bid causes the project cost to exceed the appropriation or with  
 24 the lowest responsible bidders, if multiple contracts will be awarded on the project, when the total of the lowest  
 25 responsible bids causes the project cost to exceed the appropriation. A bidder is not required to negotiate a bid  
 26 but is required to honor the bid for the time specified in the bidding documents. The department may terminate  
 27 negotiations at any time.

28 (2) ~~Land purchases must be approved by the board of land commissioners. Land purchases may not,~~  
 29 ~~to the extent that is practical, result in a net gain in land ownership by the state."~~  
 30

1           **Section 3.** Section 18-2-111, MCA, is amended to read:

2           **"18-2-111. Policy regarding practice of architecture -- preparation of working drawings by**  
3 **department limited.** (1) It is the policy of the state not to engage in the practice of architecture. However, this  
4 policy may not be construed as prohibiting the department of administration from:

5           (a) engaging in preplanning functions necessary to prepare a building program for presentation to the  
6 legislature;

7           (b) supervising construction as provided in ~~48-2-105(7)~~ 18-2-105(1)(g); or

8           (c) preparing working drawings for minor projects.

9           (2) The department of administration may not prepare working drawings for the construction of a building,  
10 with the exception of repair or maintenance projects, when the total cost of the construction will exceed \$75,000."

11

12           **Section 4.** Section 22-3-1003, MCA, is amended to read:

13           **"22-3-1003. Powers of commission -- contracts -- rules.** (1) (a) The Montana heritage preservation  
14 and development commission may contract with private organizations to assist in carrying out the purpose of  
15 22-3-1001. The term of a contract may not exceed 20 years.

16           (b) The provisions of Title 18 may not be construed as prohibiting contracts under this section from being  
17 let by direct negotiation. The contracts may be entered into directly with a vendor and are not subject to state  
18 procurement laws.

19           (c) Architectural and engineering review and approval do not apply to the historic renovation projects  
20 or projects at historic sites unless stated in specific state appropriations for construction permitted under the  
21 commission's jurisdiction.

22           (d) The contracts must provide for the payment of prevailing wages.

23           (e) A contract for supplies or services, or both, may be negotiated in accordance with commission rules.

24           (f) Management activities must be undertaken to encourage the profitable operation of properties.

25           (g) Contracts may include the lease of property managed by the commission. Provisions for the renewal  
26 of a contract must be contained in the contract.

27           (2) (a) Except as provided in subsection (2)(b), the commission may not contract for the construction of  
28 a building, as defined in 18-2-101, in excess of \$300,000 without the consent of the legislature. Building  
29 construction must be in conformity with applicable guidelines developed by the national park service of the U.S.  
30 department of the interior, the Montana historical society, and the Montana department of fish, wildlife, and parks.

1 Funding for these projects must pass through directly to the commission.

2 (b) The commission may contract for the preservation, stabilization, or maintenance of existing structures  
3 or buildings for an amount that exceeds \$300,000 without legislative consent if the commission determines that  
4 waiting for legislative consent would cause unnecessary damage to the structures or buildings or would result  
5 in a significant increase in cost to conduct those activities in the future.

6 (3) (a) Subject to subsection (3)(b), the commission, as part of a contract, shall require that a portion of  
7 any profit be reinvested in the property and that a portion be used to pay the administrative costs of the property  
8 and the commission.

9 (b) (i) Until the balance in the cultural and aesthetic trust reaches \$7,750,000, the commission shall  
10 deposit the portion of profits not used for administrative costs and restoration of the properties in the cultural and  
11 aesthetic trust.

12 (ii) Once the balance in the cultural and aesthetic trust reaches \$7,750,000, the commission shall deposit  
13 the portion of profits not used for administrative costs and restoration of the properties in the general fund.

14 (c) It is the intent of the 58th legislature that no general fund money be provided for the operations and  
15 maintenance of Virginia City and Nevada City beyond what has been appropriated by the 55th legislature.

16 (4) The commission may solicit funds from other sources, including the federal government, for the  
17 purchase, management, and operation of properties.

18 (5) (a) The commission may use volunteers to further the purposes of this part.

19 (b) The commission and volunteers stand in the relationship of employer and employee for purposes  
20 of and as those terms are defined in Title 39, chapter 71. The commission shall provide each volunteer with  
21 workers' compensation coverage, as provided in Title 39, chapter 71, during the course of the volunteer's  
22 assistance.

23 (6) Volunteers are not salaried employees and are not entitled to wages and benefits. The commission  
24 may, in its discretion, reimburse volunteers for their otherwise uncompensated out-of-pocket expenses, including  
25 but not limited to their expenditures for transportation, food, and lodging.

26 (7) The commission shall establish a subcommittee composed of an equal number of members of the  
27 Montana historical society board of trustees and commission members to review and recommend the sale of  
28 personal property from the former Bovey assets acquired by the 55th legislature. A recommendation to sell may  
29 be presented to the commission only if the recommendation is supported by a majority of the members of the  
30 subcommittee.

- 1 (8) The commission shall adopt rules establishing a policy for making acquisitions and sales of real and  
2 personal property. With respect to each acquisition or sale, the policy must give consideration to:
- 3 (a) whether the property represents the state's culture and history;
- 4 (b) whether the property can become self-supporting;
- 5 (c) whether the property can contribute to the economic and social enrichment of the state;
- 6 (d) whether the property lends itself to programs to interpret Montana history;
- 7 (e) whether the acquisition or sale will create significant social and economic impacts to affected local  
8 governments and the state;
- 9 (f) whether the sale is supported by the director of the Montana historical society;
- 10 (g) whether the commission should include any preservation covenants in a proposed sale agreement  
11 for real property;
- 12 (h) whether the commission should incorporate any design review ordinances established by Virginia  
13 City into a proposed sale agreement for real property; and
- 14 (i) other matters that the commission considers necessary or appropriate.
- 15 (9) Except as provided in subsection (11), the proceeds of any sale under subsection (8) must be placed  
16 in the account established in 22-3-1004.
- 17 (10) Public notice and the opportunity for a hearing must be given in the geographical area of a proposed  
18 acquisition or sale of real property before a final decision to acquire or sell the property is made. The commission  
19 shall approve proposals for acquisition or sale of real property and recommend the approved proposal to the  
20 board of land commissioners. Land purchases must be approved by the board of land commissioners. Land  
21 purchases may not, to the extent that is practical, result in a net gain in land ownership by the state. THE NET GAIN  
22 RESTRICTION DOES NOT APPLY TO LAND ACQUIRED FOR THE PURPOSES OF ECONOMIC DEVELOPMENT OR MAINTAINING  
23 HISTORIC LAND USE.
- 24 (11) The commission, working with the board of investments, may establish trust funds to benefit historic  
25 properties. Interest from any trust fund established under this subsection must be used to preserve and manage  
26 assets owned by the commission. Funds from the sale of personal property from the Bovey assets must be  
27 placed in a trust fund, and interest from the trust fund must be used to manage and protect the remaining  
28 personal property.
- 29 (12) Prior to the convening of each regular session, the commission shall report to the governor and the  
30 legislature, as provided in 5-11-210, concerning financial activities during the prior biennium, including the

1 acquisition or sale of any assets."  
2

3 **Section 5.** Section 23-1-102, MCA, is amended to read:

4 **"23-1-102. Powers and duties of department of fish, wildlife, and parks.** (1) The department shall  
5 make a study to determine the scenic, historic, archaeologic, scientific, and recreational resources of the state.  
6 The department may by purchase, lease, agreement, or acceptance of donations acquire for the state any areas,  
7 sites, or objects that in its opinion should be held, improved, and maintained as state parks, state recreational  
8 areas, state monuments, or state historical sites. The department, with the consent of the commission, may  
9 acquire by condemnation, pursuant to Title 70, chapter 30, lands or structures for the purposes provided in  
10 87-1-209(2).

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

14 (3) A contract, for any of the purposes of this part, may not be entered into or another obligation incurred  
15 until money has been appropriated by the legislature or is otherwise available. If the contract or obligation pertains  
16 to acquisition of areas or sites ~~in excess of either 100 acres or \$100,000 in value~~, the board of land  
17 commissioners shall specifically approve the acquisition. Land purchases may not, to the extent that is practical,  
18 result in a net gain in land ownership by the state, EXCEPT THAT A CUMULATIVE TOTAL OF 3,000 ACRES MAY BE HELD  
19 FOR FISHING ACCESS SITES AND PUBLIC ACCESS. THE NET GAIN RESTRICTION DOES NOT APPLY TO LAND ACQUIRED FOR  
20 THE PURPOSES OF ECONOMIC DEVELOPMENT OR MAINTAINING HISTORIC LAND USE.

21 (4) The department has jurisdiction, custody, and control of all state parks, recreational areas, public  
22 camping grounds, historical sites, and monuments, except wayside camps and other public conveniences  
23 acquired, improved, and maintained by the department of transportation and contiguous to the state highway  
24 system. The department may designate lands under its control as state parks, state historical sites, state  
25 monuments, or by any other designation that it considers appropriate. The department may remove or change  
26 the designation of any area or portion of an area and may name or change the name of any area. The department  
27 may lease those portions of designated lands that are necessary for the proper administration of the lands in  
28 keeping with the basic purpose of this part."  
29

30 **Section 6.** Section 67-2-301, MCA, is amended to read:

1           **"67-2-301. State airports -- acquisition.** (1) The department may, on behalf of and in the name of this  
2 state:

3           (a) subject to subsection (6), acquire real or personal property by purchase, gift, devise, lease,  
4 condemnation proceedings pursuant to Title 70, chapter 30, or otherwise for the purpose of establishing and  
5 constructing airports, restricted landing areas, and other air navigation facilities;

6           (b) acquire in like manner, own, control, establish, construct, enlarge, improve, maintain, equip, operate,  
7 regulate, and police airports, restricted landing areas, and other air navigation facilities either within or outside  
8 of this state;

9           (c) prior to acquisition, make investigations, surveys, and plans;

10           (d) erect, install, construct, and maintain facilities at those airports for the servicing of aircraft and for the  
11 comfort and accommodation of air travelers; and

12           (e) dispose of any property, airport, restricted landing area, or other air navigation facility by sale, lease,  
13 or otherwise in accordance with the laws of this state governing the disposition of other similar property of the  
14 state.

15           (2) The department may not acquire or take over an airport, restricted landing area, or other air  
16 navigation facility owned or controlled by a municipality of this state without the consent of the municipality. The  
17 department may erect, equip, operate, and maintain at an airport all buildings and equipment necessary and  
18 proper to establish, maintain, and conduct the airport and air navigation facilities connected with the airport.

19           (3) When necessary, in order to provide unobstructed air space for the landing and taking off of aircraft  
20 utilizing airports and restricted landing areas acquired or operated under the provisions of this title, the  
21 department may acquire, in the manner provided for the acquisition of property for airport purposes, easements  
22 through or other interests in air space over land or water, interests in airport hazards outside the boundaries of  
23 the airports or restricted landing areas, and other airport protection privileges that are necessary to ensure safe  
24 approaches to the landing areas of airports and restricted landing areas and the safe and efficient operation of  
25 them. The department may also acquire in the same manner the right or easement, for a term of years or  
26 perpetually, to place or maintain suitable marks for the daytime marking and suitable lights for the nighttime  
27 marking of airport hazards, including the right of ingress and egress to or from the airport hazards for the purpose  
28 of maintaining and repairing the lights and marks. This authority does not limit the right, power, or authority of the  
29 state or a municipality to zone property adjacent to an airport or restricted landing area pursuant to a law of this  
30 state.

1 (4) The department may engage in the activities listed in subsections (1) through (3) jointly with the  
2 United States, with other states, and with municipalities or other agencies of this state.

3 (5) For the purpose of acquiring any property that it is authorized to acquire, the department may  
4 exercise the right of eminent domain, in the name of the state, in the manner provided in Title 70, chapter 30. The  
5 acquisition of property for any of the purposes listed in this section is a public use.

6 ~~(6) Land purchases must be approved by the board of land commissioners. Land purchases may not,  
7 to the extent that is practical, result in a net gain in land ownership by the state.~~

8

9 **Section 7.** Section 75-15-223, MCA, is amended to read:

10 **"75-15-223. Authority to acquire interest in land for screening and removal of junkyards, motor  
11 vehicle graveyards, motor vehicle wrecking facilities, garbage dumps, and sanitary landfills.** (1) When the  
12 department of transportation determines that it is in the best interests of the state, it may acquire land or interest  
13 in land that may be necessary to provide adequate screening for junkyards, motor vehicle graveyards, motor  
14 vehicle wrecking facilities, garbage dumps, and sanitary landfills.

15 (2) When the department of transportation determines that the topography of the land adjoining the  
16 highway will not permit adequate or economically feasible screening, it may acquire by gift, purchase, exchange,  
17 or condemnation interest in land that may be necessary to secure the relocation, removal, or disposal of  
18 junkyards, motor vehicle graveyards, motor vehicle wrecking facilities, garbage dumps, or sanitary landfills that  
19 were either lawfully:

20 (a) in existence on October 22, 1965;

21 (b) along any highway made a part of the interstate or primary systems on or after October 22, 1965,  
22 and before January 1, 1968; or

23 (c) established on or after January 1, 1968.

24 (3) The department of transportation shall pay just compensation to the owner for the relocation, removal,  
25 or disposal of any facility. Condemnation must be exercised pursuant to Title 60, chapter 4, and Title 70, chapter  
26 30.

27 (4) Any new site chosen by the department of transportation pursuant to subsection (2) for the relocation  
28 of a garbage dump or sanitary landfill must be approvable as the site of a solid waste management system  
29 pursuant to Title 75, chapter 10, part 2, and the rules promulgated under authority of that part.

30 ~~(5) Land purchases under this section must be approved by the board of land commissioners. Land~~

1 purchases may not, to the extent that is practical, result in a net gain in land ownership by the state."

2

3 **Section 8.** Section 76-12-107, MCA, is amended to read:

4 **"76-12-107. Methods of bringing land under part. (1)** A natural area, as defined in 76-12-104, may  
5 become subject to the provisions of this part in any of the following ways:

6 ~~(1)~~(a) designation by the board on lands controlled by the board;

7 ~~(2)~~(b) designation by the legislature on lands owned by the state of Montana;

8 ~~(3)~~(c) subject to subsection (2), acquisition by the board by purchase with consent of the property owner  
9 of sufficient interests in private property to protect the natural area; ~~provided, however~~ However, that the transfer  
10 of surface property or development rights ~~shall~~ may not alter the rights attending the subsurface estate if owned  
11 by another party;

12 ~~(4)~~(d) gift accepted by the board under the authority of 77-1-213, including conservation easements,  
13 provided that lands accepted must be protected and managed as natural areas and money accepted must be  
14 used in accordance with the purposes of this part;

15 ~~(5)~~(e) trade of state-owned trust land for a natural area on federal, county, or private land, provided;  
16 ~~however~~, that lands received in exchange for trust lands should be equal in value to the exchanged trust land and  
17 as closely as possible equal in area; or

18 ~~(6)~~(f) registration of land by the department, following appropriate documentation and owner consent,  
19 that has been designated, dedicated, or otherwise protected as a natural area by the owner, including a private  
20 landowner, public interest group, or other land management agency.

21 (2) Land purchases must be approved by the board of land commissioners. Land purchases may not,  
22 to the extent that is practical, result in a net gain in land ownership by the state."

23

24 **Section 9.** Section 77-2-364, MCA, is amended to read:

25 **"77-2-364. Land banking purchases.** (1) The board may select and purchase, lease, receive by  
26 donation, hold in trust, or in any manner acquire for and in the name of the state of Montana, in trust for the  
27 beneficiaries specified in sections 10 through 19 of The Enabling Act of Congress (approved February 22, 1889,  
28 25 Stat. 676), as amended, any interest in real property and improvements, tracts, and leaseholds of land that  
29 the board considers proper in order to best provide prudent, maximum, long-term revenue for the beneficiaries.

30 (2) Sales of state land may be initiated only by the board, by the department, or at the request of a

1 lessee, pursuant to 77-1-202, 77-1-301, 77-2-301, or 77-2-308. The board shall ensure that the full market value  
2 of the land sold is realized for each trust by using the appraisal, sale, advertising, and competitive bid procedures  
3 contained within 77-2-303, 77-2-321, 77-2-322, 77-2-323, and 77-2-324. The estimated fair market value must  
4 be determined by a Montana-licensed and Montana-certified appraiser.

5 (3) When it is not inconsistent with the purpose of the trust, the board shall purchase land possessing  
6 legal access for all legal purposes.

7 (4) When purchasing land, easements, or improvements for the existing trusts, the board shall develop  
8 and apply appraisal and revenue projection procedures to ensure that the land or easements proposed for  
9 purchase or that the improvements proposed to be acquired are likely to produce more net revenue for the  
10 affected trust than the revenue that was produced from the land that was sold. The board may not purchase land,  
11 easements, or improvements pursuant to 77-2-361 through 77-2-367 unless it has first prudently determined that  
12 the land, easements, or improvements are likely to produce a greater or equal annual rate of return, as may be  
13 reasonably expected over a 20-year accounting period for Class 1, 3, and 4 lands and over a 60-year accounting  
14 period for Class 2 lands, as described in 77-1-401, with an acceptable level of risk for the affected trust, than the  
15 current annual rate of return from the state land that has been sold pursuant to 77-2-363. As guidance, the board  
16 shall use generally accepted accounting standards and the Uniform Appraisal Standards for Federal Land  
17 Acquisitions published by the U.S. department of justice and the appraisal institute.

18 (5) Prior to purchasing any land, easements, or improvements, the board shall determine that the  
19 financial risks and benefits of the purchase are prudent, financially productive investments that are consistent with  
20 the board's fiduciary duty as a reasonably prudent trustee of a perpetual trust. For the purposes of implementing  
21 77-2-361 through 77-2-367, that duty requires the board to:

22 (a) discharge its duties with the care, skill, prudence, and diligence that a prudent person acting in a  
23 similar capacity with the same resources and familiar with similar matters should exercise in the conduct of an  
24 enterprise of similar character and aims;

25 (b) diversify the land holdings of each trust to minimize the risk of loss and maximize the sustained rate  
26 of return;

27 (c) discharge its duties and powers solely in the interest of and for the benefit of the trust managed;

28 (d) discharge its duties subject to the fiduciary standards set forth in 72-34-114; and

29 (e) maintain, as closely as possible, the existing land base of each trust, consistent with the state's  
30 fiduciary duty.

1 (6) Prior to purchasing a parcel of land in excess of 160 acres in any particular county, the board shall  
2 consult with the county commissioners of the county in which the parcel is located.

3 (7) Land purchases under 77-2-361 through 77-2-367 may not, to the extent that is practical, result in  
4 a net gain in land ownership by the state over the amount of land owned on April 17, 2003. THE NET GAIN  
5 RESTRICTION DOES NOT APPLY TO LAND ACQUIRED FOR THE PURPOSES OF ECONOMIC DEVELOPMENT OR MAINTAINING  
6 HISTORIC LAND USE."

7

8 **Section 10.** Section 82-4-239, MCA, is amended to read:

9 **"82-4-239. Reclamation.** (1) The department may have reclamation work done by its employees, by  
10 employees of other governmental agencies, by soil conservation districts, or through contracts with qualified  
11 persons. The board may construct, operate, and maintain plants for the control and treatment of water pollution  
12 resulting from mine drainage.

13 (2) Any funds or any public works programs available to the department must be used and expended  
14 to reclaim and rehabilitate lands that have been subjected to strip mining or underground mining and that have  
15 not been reclaimed and rehabilitated in accordance with the standards of this part. The department shall  
16 cooperate with federal, state, and private agencies to engage in cooperative projects under this section.

17 (3) Agents, employees, or contractors of the department may enter upon any land for the purpose of  
18 conducting studies or exploratory work to determine whether the land has been strip- or underground-mined and  
19 not reclaimed and rehabilitated in accordance with the requirements of this part and to determine the feasibility  
20 of restoration, reclamation, abatement, control, or prevention of any adverse effects of past coal-mining practices.  
21 Upon request of the director of the department, the attorney general shall bring an injunctive action to restrain  
22 any interference with the exercise of the right to enter and inspect granted in this subsection. The action must  
23 be brought in the county in which the mine is located.

24 (4) (a) The department shall take the actions described in subsection (4)(b) when it makes a finding of  
25 fact that:

26 (i) land or water resources have been adversely affected by past coal-mining practices;

27 (ii) the adverse effects are at a stage at which, in the public interest, action to restore, reclaim, abate,  
28 control, or prevent should be taken; and

29 (iii) the owners of the land or water resources where entry must be made to restore, reclaim, abate,  
30 control, or prevent the adverse effects of past coal-mining practices are not known or readily available or the

1 owners will not give permission for the department or its agents, employees, or contractors to enter upon the  
2 property to restore, reclaim, abate, control, or prevent the adverse effects of past coal-mining practices.

3 (b) After giving notice by mail to the owner, if known, and any purchaser under contract for deed, if  
4 known, or, if neither is known, by posting notice on the premises and advertising in a newspaper of general  
5 circulation in the county in which the land lies, the agents, employees, or contractors of the department may enter  
6 on the property adversely affected by past coal-mining practices and on any other property necessary for access  
7 to the mineral property to do all things necessary or expedient to restore, reclaim, abate, control, or prevent the  
8 adverse effects of past coal-mining practices.

9 (c) Action taken under subsection (4)(b) is not an act of condemnation of property or of trespass, but  
10 rather is an exercise of the power granted by Article IX, sections 1 and 2, of the Montana constitution.

11 (5) (a) Within 6 months after the completion of projects to restore, reclaim, abate, control, or prevent  
12 adverse effects of past coal-mining practices on privately owned land, the department shall itemize the money  
13 expended and may file a statement of those expenses in the office of the clerk and recorder of the county in which  
14 the land lies, together with a notarized appraisal by an independent appraiser of the value of the land before the  
15 restoration, reclamation, abatement, control, or prevention of adverse effects of past coal-mining practices if the  
16 money expended resulted in a significant increase in property value. The statement constitutes a lien upon the  
17 land. The lien may not exceed the amount determined by the appraisal to be the increase in the market value of  
18 the land as a result of the restoration, reclamation, abatement, control, or prevention of the adverse effects of past  
19 coal-mining practices. A lien under this subsection (5)(a) may not be filed against the property of a person who  
20 owned the surface prior to May 2, 1977, and who did not consent to, participate in, or exercise control over the  
21 mining operation that necessitated the reclamation performed under this part.

22 (b) The landowner may petition within 60 days of the filing of the lien to determine the increase in the  
23 market value of the land as a result of the restoration, reclamation, abatement, control, or prevention of the  
24 adverse effects of past coal-mining practices. The amount reported to be the increase in value of the premises  
25 constitutes the amount of the lien and must be recorded with the statement provided for in this section. Any party  
26 aggrieved by the decision may appeal as provided by law.

27 (c) The lien provided in this section must be recorded at the office of the county clerk and recorder. The  
28 statement constitutes a lien upon the land as of the date of the expenditure of the money and has priority as a  
29 lien second only to the lien of real estate taxes imposed upon the land.

30 (6) The department may acquire the necessary property by gift or purchase. Land purchases must be

1 approved by the board of land commissioners. Land purchases may not, to the extent that is practical, result in  
 2 a net gain in land ownership by the state. If the property cannot be acquired by gift or purchase at a reasonable  
 3 cost, proceedings may be instituted in the manner provided in Title 70, chapter 30, against all nonaccepting  
 4 landholders if:

- 5 (a) the property is necessary for successful reclamation;
- 6 (b) the acquired land after restoration, reclamation, abatement, control, or prevention of the adverse  
 7 effects of past coal-mining practices will serve recreation and historic purposes or conservation and reclamation  
 8 purposes or provide open space benefits; and
- 9 (c) (i) permanent facilities, such as treatment plants or relocated stream channels, will be constructed  
 10 on the land for the restoration, reclamation, abatement, control, or prevention of the adverse effects of past strip-  
 11 or underground-coal-mining practices; or
- 12 (ii) acquisition of coal refuse disposal sites and all coal refuse on the land will serve the purposes of this  
 13 part because public ownership is desirable to meet emergency situations and prevent recurrences of the adverse  
 14 effects of past coal-mining practices."

15

16 **Section 11.** Section 82-4-371, MCA, is amended to read:

17 **"82-4-371. Reclamation of abandoned mine sites.** (1) Agents, employees, or contractors of the  
 18 department may enter upon property for the purpose of conducting studies or exploratory work to determine  
 19 whether the property has been mined and not reclaimed and rehabilitated in accordance with the requirements  
 20 of this part and to determine the feasibility of restoration or reclamation of the property or abatement, control, or  
 21 prevention of the adverse effects of past mining practices. The department may bring an injunctive action to  
 22 restrain interference with the exercise of the right to enter and inspect granted in this subsection.

23 (2) (a) The department may enter upon property pursuant to subsection (2)(b) if it makes a finding that:  
 24 (i) land or water resources on the property have been adversely affected by past mining practices;  
 25 (ii) the adverse effects are at a stage that, in the public interest, action to restore or reclaim the property  
 26 or to abate, control, or prevent the adverse effects should be taken; and

27 (iii) the owners of the land or water resources where entry must be made to restore or reclaim the  
 28 property or to abate, control, or prevent the adverse effects of past mining practices are not known or readily  
 29 available or the owners will not give permission for the department or its agents, employees, or contractors to  
 30 enter upon the property to restore or reclaim the property or to abate, control, or prevent the adverse effects of

1 past mining practices.

2 (b) If the department has made findings pursuant to subsection (2)(a), agents, employees, or contractors  
3 of the department may enter upon property adversely affected by past mining practices and other property  
4 necessary for access to the adversely affected property to do all things necessary or expedient to restore or  
5 reclaim the property or to abate, control, or prevent the adverse effects of past mining practices after:

6 (i) giving notice by mail to the owner, if known, and a purchaser under contract for deed, if known; or

7 (ii) if neither is known, posting notice upon the property and advertising in a newspaper of general  
8 circulation in the county in which the property lies.

9 (c) Entry upon property pursuant to this section is not an act of condemnation of property or of trespass  
10 but rather an exercise of the power granted by Article IX, sections 1 and 2, of the Montana constitution.

11 (3) The board may acquire the necessary property by gift or purchase, ~~or if~~. Land purchases must be  
12 approved by the board of land commissioners. Land purchases may not, to the extent that is practical, result in  
13 a net gain in land ownership by the state. If the property cannot be acquired by gift or purchase at a reasonable  
14 cost, proceedings may be instituted in the manner provided in Title 70, chapter 30, against all nonaccepting  
15 landholders if:

16 (a) acquisition of the property is necessary for successful reclamation;

17 (b) the acquired property after restoration or reclamation or after abatement, control, or prevention of the  
18 adverse effects of past mining practices will serve recreation and historic purposes or conservation and  
19 reclamation purposes or provide open space benefits; and

20 (c) (i) permanent facilities, such as treatment plants or relocated stream channels, will be constructed  
21 on the property for the restoration or reclamation of the property or for abatement, control, or prevention of the  
22 adverse effects of past mining practices; or

23 (ii) acquisition of refuse disposal sites and all refuse on the sites will serve the purposes of this part in  
24 that public ownership is desirable to meet emergency situations and prevent recurrences of the adverse effects  
25 of past mining practices.

26 (4) The department may record in the office of the clerk and recorder in the county in which property that  
27 has been reclaimed pursuant to 82-4-424 or this section is located a notice that the property has been mined and  
28 reclaimed. The notice must include the date and a brief description of the reclamation."

29

30 **Section 12.** Section 82-4-445, MCA, is amended to read:

1           **"82-4-445. Reclamation of abandoned mine sites.** (1) Agents, employees, or contractors of the  
 2 department may enter upon property for the purpose of conducting studies or exploratory work to determine  
 3 whether the property has been mined and not reclaimed and rehabilitated in accordance with the requirements  
 4 of this part and to determine the feasibility of restoration or reclamation of the property or abatement, control, or  
 5 prevention of the adverse effects of past mining practices. The department may bring an injunctive action to  
 6 restrain interference with the exercise of the right to enter and inspect granted in this subsection.

7           (2) (a) The department may enter upon property pursuant to subsection (2)(b) if it makes a finding that:

8           (i) land or water resources on the property have been adversely affected by past mining practices;

9           (ii) the adverse effects are at a stage that, in the public interest, action to restore or reclaim the property  
 10 or to abate, control, or prevent the adverse effects should be taken; and

11           (iii) the owners of the land or water resources where entry must be made to restore or reclaim the  
 12 property or to abate, control, or prevent the adverse effects of past mining practices are not known or readily  
 13 available or the owners will not give permission for the department or its agents, employees, or contractors to  
 14 enter upon the property to restore or reclaim the property or to abate, control, or prevent the adverse effects of  
 15 past mining practices.

16           (b) If the department has made findings pursuant to subsection (2)(a), agents, employees, or contractors  
 17 of the department may enter upon property adversely affected by past mining practices and other property  
 18 necessary for access to the adversely affected property to do all things necessary or expedient to restore or  
 19 reclaim the property or to abate, control, or prevent the adverse effects of past mining practices after:

20           (i) giving notice by mail to the owner, if known, and a purchaser under contract for deed, if known; or

21           (ii) if neither is known, posting notice upon the property and advertising in a newspaper of general  
 22 circulation in the county in which the property lies.

23           (c) Entry upon property pursuant to this section is not an act of condemnation of property or of trespass  
 24 but rather an exercise of the power granted by Article IX, sections 1 and 2, of the Montana constitution.

25           (3) The board may acquire the necessary property by gift or purchase, ~~or if~~. Land purchases must be  
 26 approved by the board of land commissioners. Land purchases may not, to the extent that is practical, result in  
 27 a net gain in land ownership by the state. If the property cannot be acquired by gift or purchase at a reasonable  
 28 cost, proceedings may be instituted in the manner provided in Title 70, chapter 30, against all nonaccepting  
 29 landholders if:

30           (a) acquisition of the property is necessary for successful reclamation;

1 (b) the acquired property after restoration or reclamation or after abatement, control, or prevention of the  
 2 adverse effects of past mining practices will serve recreation and historic purposes or conservation and  
 3 reclamation purposes or provide open space benefits; and

4 (c) (i) permanent facilities, such as treatment plants or relocated stream channels, will be constructed  
 5 on the property for the restoration or reclamation of the property or for abatement, control, or prevention of the  
 6 adverse effects of past mining practices; or

7 (ii) acquisition of refuse disposal sites and all refuse on the sites will serve the purposes of this part in  
 8 that public ownership is desirable to meet emergency situations and prevent recurrences of the adverse effects  
 9 of past mining practices.

10 (4) The department may record in the office of the clerk and recorder in the county in which property that  
 11 has been reclaimed pursuant to 82-4-424 or this section is located a notice that the property has been mined and  
 12 reclaimed. The notice must include the date and a brief description of the reclamation."

13

14 **Section 13.** Section 85-1-209, MCA, is amended to read:

15 **"85-1-209. Acquisition of property by department.** (1) The department may acquire by purchase or  
 16 exchange, upon terms and conditions and in a manner it considers proper, and may acquire by condemnation,  
 17 in accordance with Title 70, chapter 30, any land, rights, water rights, easements, franchises, and other property  
 18 considered necessary for the construction, operation, and maintenance of works. Land purchases must be  
 19 approved by the board of land commissioners. Land purchases may not, to the extent that is practical, result in  
 20 a net gain in land ownership by the state. THE NET GAIN RESTRICTION DOES NOT APPLY TO LAND ACQUIRED FOR THE  
 21 PURPOSES OF ECONOMIC DEVELOPMENT OR MAINTAINING HISTORIC LAND USE. Title to property purchased or  
 22 condemned must be taken in the name of the department. The department is under no obligation to accept and  
 23 pay for any property condemned under this chapter except from the funds provided by this chapter. In any  
 24 proceedings to condemn, orders may be made by the court that has jurisdiction of the suit, action, or proceeding  
 25 that may be warranted by law and the facts.

26 (2) In a condemnation proceeding brought under Title 70, chapter 30, for the purpose of carrying out this  
 27 chapter, all persons interested in the title of or holding liens upon the property sought to be taken, as disclosed  
 28 by the public records, must be made parties and the court in the action shall partition and distribute the damages  
 29 awarded, if any, among those persons. If there is controversy between the condemnees, the court may direct the  
 30 amount of the damage awarded to be paid into court to be allocated in further appropriate proceedings either at

1 law or in equity.

2 (3) Taking possession of the property sought to be condemned may not be delayed by reason of any  
3 dispute between the rival claimants or the failure to join any of them as a party to the condemnation proceedings.

4 (4) If water rights are acquired or exercised by the department in connection with two or more works or  
5 projects, the department by order shall apportion or allocate to each of the works or projects the part of the water  
6 rights that the department determines is necessary. Upon the adoption of the order, the water rights are  
7 considered a part of each of the works or projects to the extent that the water rights have been apportioned or  
8 allocated to the works or projects."

9

10 **Section 14.** Section 87-1-209, MCA, is amended to read:

11 **"87-1-209. Acquisition and sale of lands or waters.** (1) The department, with the consent of the  
12 commission and, ~~in the case of land acquisition involving more than 100 acres or \$100,000 in value,~~ the approval  
13 of the board of land commissioners, may acquire by purchase, lease, agreement, gift, or devise and may acquire  
14 easements upon lands or waters for the purposes listed in this subsection. Land purchases may not, to the extent  
15 that is practical, result in a net gain in land ownership by the state, EXCEPT THAT A CUMULATIVE TOTAL OF 3,000  
16 ACRES MAY BE HELD FOR FISHING ACCESS SITES AND PUBLIC ACCESS. The department may develop, operate, and  
17 maintain acquired lands or waters:

18 (a) for fish hatcheries or nursery ponds;

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

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

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

24 (e) for state parks and outdoor recreation;

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

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

29 (3) (a) Subject to section 2(3), Chapter 560, Laws of 2005, the department, with the consent of the  
30 commission, may dispose of lands and water rights acquired by it on those terms after public notice as required

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

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

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

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

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

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

4 (6) The department, with the consent of the commission and the approval of the board of land  
 5 commissioners, is authorized to utilize the installment contract method to facilitate the acquisition of wildlife  
 6 management areas in which game and nongame fur-bearing animals and game and nongame birds may breed  
 7 and replenish and areas that provide access to fishing sites for the public. The total cost of installment contracts  
 8 may not exceed the cost of purchases authorized by the department and appropriated by the legislature. Land  
 9 purchases may not, to the extent that is practical, result in a net gain in land ownership by the state, EXCEPT THAT  
 10 A CUMULATIVE TOTAL OF 3,000 ACRES MAY BE HELD FOR FISHING ACCESS SITES AND PUBLIC ACCESS.

11 (7) The department is authorized to enter into leases of land under its control in exchange for services  
 12 to be provided by the lessee on the leased land."  
 13

14 **Section 15.** Section 87-1-285, MCA, is amended to read:

15 **"87-1-285. Fishing access enhancement program created -- private landowner assistance to**  
 16 **promote public fishing access -- rules.** (1) The department may establish programs of landowner assistance  
 17 that encourage public access to and across private lands for purposes of fishing and may adopt rules to carry  
 18 out program purposes. Rules may address but are not limited to incentives for private landowners who allow  
 19 public fishing access on or across their lands, where legal access does not presently exist. Participation in the  
 20 fishing access enhancement program is established through a cooperative agreement between a landowner and  
 21 the department, including other resource management agencies when appropriate, that allows access for public  
 22 fishing with certain restrictions or use rules.

23 (2) The department may also develop similar voluntary programs that are designed to promote public  
 24 access across private lands for fishing purposes.

25 (3) Participation in a program established under subsection (1) is voluntary. Programs may not be  
 26 structured in a manner that provides assistance to a private landowner who charges a fee for fishing access to  
 27 private land that is enrolled in the program or who does not provide reasonable public fishing access to private  
 28 land that is enrolled in the program. The commission shall develop criteria by which tangible benefits are allocated  
 29 to participating landowners, and the department may distribute the benefits to participating landowners.

30 (4) Funds from the account established pursuant to 87-1-605 may be used to purchase or lease public

1 fishing access at county road bridge crossings or for necessary parking facilities, trails, or ramps to facilitate  
 2 fishing access to public waters at bridge crossings. Land purchases must be approved by the board of land  
 3 commissioners. Land purchases may not, to the extent that is practical, result in a net gain in land ownership by  
 4 the state, EXCEPT THAT A CUMULATIVE TOTAL OF 3,000 ACRES MAY BE HELD FOR FISHING ACCESS SITES AND PUBLIC  
 5 ACCESS."

6  
 7 **Section 16.** Section 87-1-703, MCA, is amended to read:

8 **"87-1-703. Cooperative agreements on federally owned land.** (1) ~~The department, in the name of~~  
 9 ~~the state and with the approval of the governor, shall have the power to~~ may:

10 (a) enter into cooperative agreements on federally owned lands with the government of the United  
 11 States, ~~or with any department or bureau thereof of the government of the United States,~~ or with an individual or  
 12 individuals, private corporations, or partnerships for the purpose of carrying on any fish restoration projects  
 13 created and established under the provisions of 87-1-701 through 87-1-703; ~~and shall have the power to~~

14 (b) acquire by purchase, either by cash or ~~upon~~ in installments, ~~or by lease,~~ or by gift, or by devise or  
 15 individually or in conjunction with the government of the United States or some department or bureau ~~thereof such~~  
 16 of the government of the United States lands or other property or an interest therein in lands or property as may  
 17 be necessary for the purpose of carrying on any fish restoration and management projects created and  
 18 established under the provisions of ~~said the~~ Dingell-Johnson bill of the congress of the United States, ~~and the,~~

19 (2) Land purchases must be approved by the board of land commissioners. Land purchases may not,  
 20 to the extent that is practical, result in a net gain in land ownership by the state, EXCEPT THAT A CUMULATIVE TOTAL  
 21 OF 3,000 ACRES MAY BE HELD FOR FISHING ACCESS SITES AND PUBLIC ACCESS.

22 (3) The state ~~does reserve~~ reserves to itself, acting through its legislature, the right to direct the  
 23 department to abandon any fish restoration and management projects created and established as the state may  
 24 in its judgment think proper. The department ~~shall have no power to~~ may not exercise the right of eminent domain  
 25 to condemn or acquire property under 87-1-701 through 87-1-703."

26  
 27 NEW SECTION. **Section 17. Effective date.** [This act] is effective on passage and approval.

28  
 29 NEW SECTION. **Section 18. Retroactive applicability.** [Section 9] applies retroactively, within the  
 30 meaning of 1-2-109, to April 17, 2003.

31 - END -