

SENATE BILL NO. 250

INTRODUCED BY DEBBY BARRETT, BRENDEN, FIELDER, HAMLETT, RIPLEY, THOMAS

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING REQUIREMENTS FOR THE GOOD NEIGHBOR POLICY AND FOR LAND ACQUISITIONS BY THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS; PRIORITIZING MAINTENANCE ON ACQUIRED LANDS; DEDICATING FUNDS FOR MAINTENANCE OF ACQUIRED LANDS; REPEALING THE SUNSET ON GOOD NEIGHBOR LAWS; AMENDING SECTIONS 23-1-126, 87-1-209, AND 87-1-230, MCA; REPEALING SECTION 8, CHAPTER 427, LAWS OF 2009; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 23-1-126, MCA, is amended to read:

"23-1-126. (Temporary) Good neighbor policy -- public recreational land. (1) The good neighbor policy of public land use, as applied to public recreational land, seeks a goal of no impact upon adjoining private and public land by preventing impact on the adjoining land from noxious weeds, trespass, litter, noise and light pollution, streambank erosion, and loss of privacy. To facilitate the good neighbor policy regarding impact to adjoining land from noxious weeds, the department of fish, wildlife, and parks shall, prior to purchasing any land where noxious weeds are present, develop a noxious weed management agreement that complies with the county weed management district's noxious weed management program, as required in 7-22-2154.

(2) In order to implement the good neighbor policy expeditiously, the legislature finds it necessary to require the department of fish, wildlife, and parks to place maintenance as a priority:

(a) over additional development at all state parks and fishing access sites; ~~and~~

(b) on recreational land or water acquired pursuant to 87-1-209 for public hunting, fishing, trapping, or outdoor recreation-; and

(c) over additional land acquisition.

(3) The restriction in subsection (2) does not apply to:

(a) activities directly related to the historic preservation, restoration, or protection of assets in state parks;

(b) at the discretion of the department of fish, wildlife, and parks, projects on the Missouri reach of the Missouri-Madison hydropower project or the Clark Fork basin hydropower project, undertaken pursuant to the

1 federal energy regulatory commission's hydropower relicensing requirements and in conjunction with private
2 entities, political subdivisions of the state of Montana, and federal agencies;

3 (c) at the discretion of the department of fish, wildlife, and parks, projects on Fort Peck reservoir
4 undertaken in conjunction with the U.S. army corps of engineers; or

5 (d) partnership projects as designated within the park master plan.

6 (4) Any development in state parks and fishing access sites beyond those defined as maintenance in
7 23-1-127(1) must be approved by the legislature. ~~(Terminates June 30, 2013--sec. 8, Ch. 427, L. 2009.)~~

8 ~~———— 23-1-126. (Effective July 1, 2013) Good neighbor policy -- public recreational lands. (1) The good
9 neighbor policy of public land use, as applied to public recreational lands, seeks a goal of no impact upon
10 adjoining private and public lands by preventing impact on those adjoining lands from noxious weeds, trespass,
11 litter, noise and light pollution, streambank erosion, and loss of privacy.~~

12 ~~———— (2) In order to implement the good neighbor policy expeditiously, the legislature finds it necessary to
13 require the department of fish, wildlife, and parks to place maintenance as a priority over additional development
14 at all state parks and fishing access sites.~~

15 ~~———— (3) The restriction in subsection (2) does not apply to:~~

16 ~~———— (a) development and improvement projects for which the legislature has appropriated funds prior to
17 October 1, 1999;~~

18 ~~———— (b) activities directly related to the historic preservation, restoration, or protection of assets in state parks;~~

19 ~~———— (c) at the discretion of the department of fish, wildlife, and parks, projects on the Missouri reach of the
20 Missouri-Madison hydropower project or the Clark Fork basin hydropower project, undertaken pursuant to the
21 federal energy regulatory commission's hydropower relicensing requirements and in conjunction with private
22 entities, political subdivisions of the state of Montana, and federal agencies;~~

23 ~~———— (d) at the discretion of the department of fish, wildlife, and parks, projects on Fort Peck reservoir
24 undertaken in conjunction with the U.S. army corps of engineers; or~~

25 ~~———— (e) partnership projects as designated within the park master plan.~~

26 ~~———— (4) Any development in state parks and fishing access sites beyond those defined as maintenance in
27 23-1-127 must be approved by the legislature."~~

28

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

30 **"87-1-209. (Temporary) Acquisition and sale of land or water.** (1) Subject to 87-1-218, the

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

10 (a) for fish hatcheries or nursery ponds;

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

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

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

16 (e) for state parks and outdoor recreation;

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

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

21 (3) (a) Subject to section 2(3), Chapter 560, Laws of 2005, the department, with the consent of the
22 commission, may dispose of land and water rights acquired by it on those terms after public notice as required
23 by subsection (3)(b) of this section, without regard to other laws that provide for sale or disposal of state land and
24 with or without reservation, as it considers necessary and advisable. The department, with the consent of the
25 commission, may convey department land and water rights for full market value to other governmental entities
26 or to adjacent landowners without regard to the requirements of subsection (3)(b) or (3)(c) if the land is less than
27 10 acres or if the full market value of the interest to be conveyed is less than \$20,000. When the department
28 conveys land or water rights to another governmental entity or to an adjacent landowner pursuant to this
29 subsection, the department, in addition to giving notice pursuant to subsection (3)(b), shall give notice by mail
30 to the landowners whose property adjoins the department property being conveyed.

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

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

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

15 (e) When spending money from the sale or disposal of land or water rights pursuant to this subsection
16 (3), the department shall, as a first option, use the money for maintenance of other land or water in the
17 department's possession before using the money to acquire additional land or water rights.

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

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

29 (6) Subject to 87-1-218, the department, with the consent of the commission, is authorized to utilize the
30 installment contract method to facilitate the acquisition of wildlife management areas in which game and nongame

1 fur-bearing animals and game and nongame birds may breed and replenish and areas that provide access to
 2 fishing sites for the public. The total cost of installment contracts may not exceed the cost of purchases authorized
 3 by the department and appropriated by the legislature.

4 (7) The department is authorized to enter into leases of land under its control in exchange for services
 5 to be provided by the lessee on the leased land. (Terminates June 30, 2013--sec. 8, Ch. 427, L. 2009.)

6 ~~87-1-209. (Effective July 1, 2013) Acquisition and sale of lands or waters. (1) Subject to 87-1-218,~~
 7 ~~the department, with the consent of the commission and, in the case of land acquisition involving more than 100~~
 8 ~~acres or \$100,000 in value, the approval of the board of land commissioners, may acquire by purchase, lease,~~
 9 ~~agreement, gift, or devise and may acquire easements upon lands or waters for the purposes listed in this~~
 10 ~~subsection. The department may develop, operate, and maintain acquired lands or waters:~~

11 ~~—— (a) for fish hatcheries or nursery ponds;~~

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

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

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

17 ~~—— (e) for state parks and outdoor recreation;~~

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

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

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

1 mail to the landowners whose property adjoins the department property being conveyed.

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

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

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

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

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

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

1 by the department and appropriated by the legislature.

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

4

5 **Section 3.** Section 87-1-230, MCA, is amended to read:

6 **"87-1-230. (Temporary) Maintenance account -- annual report.** (1) There is a maintenance account
 7 in the state special revenue fund. ~~In addition to the funds~~

8 (2) Funds set aside for maintenance of land or water acquired by the department pursuant to
 9 87-1-209(1); must be dedicated to maintenance on only the acquired land or water.

10 (3) the The department shall also deposit into the maintenance account:

11 (a) funds dedicated for development and maintenance of real property used for wildlife habitat under
 12 87-1-242(4)(a);

13 (b) interest earned on the account; ~~and~~ AND

14 (c) any other money that the department considers appropriate or necessary for maintenance of the
 15 department's land or water; ~~and.~~

16 ~~—— (d) subject to 87-1-209(3)(e), proceeds from the sale or disposal of land or water rights.~~

17 ~~(2)(4)~~ (4) Funds deposited in the account are statutorily appropriated, as provided in 17-7-502, to the
 18 department and may be used only for maintenance of any land or water acquired by the department.

19 ~~(3)(5)~~ (5) (a) The department shall provide an annual report regarding deposits into and withdrawals from
 20 the account established in subsection (1) to the oversight subcommittee of the environmental quality council for
 21 the purpose of demonstrating the use of funds in the account toward the good neighbor policy.

22 (b) The report must describe the types of maintenance completed by fish, wildlife, and parks region and
 23 maintenance plans for the subsequent fiscal year.

24 (c) The report is due to the environmental quality council by September 1 following the end of each fiscal
 25 year. ~~(Terminates June 30, 2013--sec. 8, Ch. 427, L. 2009.)"~~

26

27 NEW SECTION. **Section 4. Repealer.** Section 8, Chapter 427, Laws of 2009, is repealed.

28

29 NEW SECTION. **Section 5. Effective date.** [This act] is effective on passage and approval.

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