

HOUSE BILL NO. 386

INTRODUCED BY Z. BROWN

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A BILL FOR AN ACT ENTITLED: "AN ACT REVISING REQUIREMENTS FOR THE SALE TO OR EXCHANGE WITH PUBLIC ENTITIES OF STATE PARKS, STATE RECREATIONAL AREAS, STATE MONUMENTS, AND STATE HISTORIC SITES; PROVIDING NOTICE PROVISIONS; REQUIRING APPROVAL OF THE BOARD OF LAND COMMISSIONERS FOR CERTAIN TRANSACTIONS; AND AMENDING SECTIONS 77-2-351 AND 87-1-209, MCA."

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

**NEW SECTION. Section 1. Sale to or exchange of property with public entity.** (1) Notwithstanding any other provisions of Title 23, chapter 1, Title 77, chapter 2, or 87-1-209, a state park, state recreational area, state monument, or state historic site may be sold to another public entity or exchanged for other land or for other consideration with another public entity on terms and in a manner that the board, after consultation with the legislative council and approval by the board of land commissioners pursuant to subsection (4), may determine to be in the state's best interest.

(2) The board may accept as partial or total consideration for the transfer of the land a binding commitment by the transferee to use the property to provide a community service or a benefit that fulfills a public recreation, natural or cultural resource protection, or open space purpose.

(3) The sale or exchange of the property may not be finally concluded until 60 days' public notice of the terms of the proposed sale or exchange has been given.

(4) A sale or transfer of land pursuant to this part in excess of 100 acres or \$100,000 in value must be approved by the board of land commissioners.

(5) As used in this section, "public entity" means any county, city, municipal corporation, or school district.

**Section 2.** Section 77-2-351, MCA, is amended to read:

**"77-2-351. Sale to or exchange of property with public entity.** (1) ~~Notwithstanding~~ Except as provided in [section 1] and notwithstanding any other section in this chapter, any lands may be sold to or exchanged for



1 other land or for other consideration with another public entity on terms and in a manner that the board, after  
 2 consultation with the ~~appropriate legislative committee~~ legislative council, may determine to be in the state's best  
 3 interest, subject to The Enabling Act and constitutional restrictions.

4 (2) In the case of land that is not granted to or held by the state in trust for the support of the common  
 5 schools, for a state institution, or for another specific purpose, the board may accept as partial or total  
 6 consideration for the transfer of the land a binding commitment by the transferee to use the property to provide  
 7 a community service or a benefit that fulfills a public purpose.

8 (3) The sale or exchange of the property may not be finally concluded until 60 days' public notice of the  
 9 terms of the proposed sale or exchange has been given.

10 (4) As used in this section, "public entity" means any county, city, municipal corporation, school district,  
 11 regional water authority provided for in Title 75, chapter 6, part 3, or special improvement or taxing district."  
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13 **Section 3.** Section 87-1-209, MCA, is amended to read:

14 **"87-1-209. Acquisition and sale of lands or waters.** (1) Subject to 87-1-218 and subsection (8) of this  
 15 section, the department, with the consent of the commission or the board and, in the case of land acquisition  
 16 involving more than 100 acres or \$100,000 in value, the approval of the board of land commissioners, may  
 17 acquire by purchase, lease, agreement, gift, or devise and may acquire easements upon lands or waters for the  
 18 purposes listed in this subsection. The department may develop, operate, and maintain acquired lands 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 board, may acquire by condemnation, as provided in Title  
 28 70, chapter 30, lands or structures for the preservation of historic or archaeological sites that are threatened with  
 29 destruction or alteration.

30 (3) (a) ~~Subject~~ Except as provided in [section 1] and subject to section 2(3), Chapter 560, Laws of 2005,

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

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

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

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

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

1 department is not otherwise required to follow the disposal requirements of subsection (3). The director shall  
2 report any easement grant or acquisition made pursuant to this subsection to the commission or the board at its  
3 next regular meeting.

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

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

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

14 (8) Approval of the board for the acquisition or disposal of land or water pursuant to this section is  
15 required only for land and water administered under Title 23, chapter 1, or Title 23, chapter 2, parts 1 and 4."

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17 **NEW SECTION. Section 4. Codification instruction.** [Section 1] is intended to be codified as an  
18 integral part of Title 23, chapter 1, part 1, and the provisions of Title 23, chapter 1, part 1, apply to [section 1].

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20 **NEW SECTION. Section 5. Saving clause.** [This act] does not affect rights and duties that matured,  
21 penalties that were incurred, or proceedings that were begun before [the effective date of this act].

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