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SENATE BILL NO. 256

INTRODUCED BY C. GLIMM, B. USHER, M. NOLAND

A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING OWNERSHIP OF MONTANA LAND BY A FOREIGN ADVERSARY GOVERNMENT; PROHIBITING A FOREIGN ADVERSARY GOVERNMENT AND CITIZENS OF THAT FOREIGN GOVERNMENT FROM ACQUIRING, LEASING, OR HOLDING INTEREST IN MONTANA LAND REAL PROPERTY; AUTHORIZING THE BOARD OF LAND COMMISSIONERS TO ACQUIRE CERTAIN LAND IN VIOLATION OF THE ACT; PROVIDING EXCEPTIONS; PROVIDING DEFINITIONS; AND AMENDING SECTIONS 70-30-102, 77-1-101, AND 77-1-202, MCA."

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

NEW SECTION. **Section 1. Foreign ownership of land-real property -- foreign adversary government.** (1) (a) After December 31, 2023, a foreign adversary government may not purchase, acquire,

lease, or hold any interest in land-real property in the state.

(a)(b) Land-Real property in the state that is held by a foreign adversary government prior to December 31, 2023, must be transferred to comply with this section. ~~The transfer may be to a private entity.~~ For land-real property that does not comply with this subsection ~~(1)(a)~~ (1)(b) after December 31, 2023, the state, through the board of land commissioners, is authorized to exercise its power of eminent domain under Title 70, chapter 30. Land-Real property acquired by the state in eminent domain proceedings is classified as "state land" under 77-1-101 and may be disposed of through sales conducted by the board of land commissioners under the procedures for the disposition of state land under Title 77.

(b)(c) This section does not apply to a federally recognized Indian tribe or its government units and enterprises.

(c)(d) A transfer of an interest in land-real property in violation of this section is void voidable.

(d)(e) This section may not be applied in a manner inconsistent with any provision of any treaty between the United States and another country.

(2) For the purposes of this section, the following definitions apply:

1 (a) (i) "Foreign adversary government" means a foreign government, ~~or a~~ foreign nongovernment
 2 person, ~~including citizens of the foreign government, or a nongovernment person as determined by the federal~~
 3 ~~secretary of commerce that has~~ engaged in a long-term pattern or serious instances of conduct significantly
 4 adverse to the national security of the United States or security and safety of United States persons as defined
 5 in 47 U.S.C. 1607(c)(2) and 15 CFR 7.4(a)(4) ~~to include, including but not limited to~~ the following governments
 6 and political leaders:

7 ~~(i)(A)~~ the People's Republic of China, including the Hong Kong Special Administrative Region;

8 ~~(ii)(B)~~ the Republic of Cuba;

9 ~~(iii)(C)~~ the Islamic Republic of Iran;

10 ~~(iv)(D)~~ the Democratic People's Republic of Korea;

11 ~~(v)(E)~~ the Russian Federation; and

12 ~~(vi)(F)~~ Venezuelan politician Nicolás Maduro or the Maduro regime.

13 (ii) The term includes an individual who is a citizen of a foreign adversary government.

14 (iii) The term includes an entity:

15 (A) that is directly or indirectly owned or controlled by a foreign adversary government;

16 (B) for which a majority of the ownership interest is directly or indirectly owned or controlled by an
 17 individual who is a citizen of a foreign adversary government;

18 (C) for which a majority of the ownership interest is directly or indirectly owned or controlled by an
 19 entity described in subsection (2)(a)(iii)(A) or (2)(a)(iii)(B); or

20 (D) that is organized under the laws of a foreign adversary government.

21 (b) "Interest" means any estate, remainder, ~~or~~ reversion, leasehold interest, or mineral interest, or
 22 any portion of the estate, remainder, ~~or~~ reversion, leasehold interest, or mineral interest, or an option pursuant
 23 to which one party has a right to cause acquire legal or equitable title to Montana land real property. ~~The term~~
 24 ~~includes a percentage ownership interest in an entity if the foreign adversary government actually directs the~~
 25 ~~business and affairs of the entity without the requirement or consent of any other party.~~

26 (d) "Real property" has the meaning provided in 70-1-106.

27

28 **Section 2.** Section 70-30-102, MCA, is amended to read:

- 1 **"70-30-102. Public uses enumerated.** Subject to the provisions of this chapter, the right of eminent
2 domain may be exercised for the following public uses:
- 3 (1) all public uses authorized by the government of the United States;
- 4 (2) public buildings and grounds for the use of the state and all other public uses authorized by the
5 legislature of the state;
- 6 (3) public buildings and grounds for the use of any county, city, town, or school district;
- 7 (4) canals, aqueducts, flumes, ditches, or pipes conducting water, heat, or gas for the use of the
8 inhabitants of any county, city, or town;
- 9 (5) projects to raise the banks of streams, remove obstructions from streambanks, and widen,
10 deepen, or straighten stream channels;
- 11 (6) water and water supply systems as provided in Title 7, chapter 13, part 44;
- 12 (7) roads, streets, alleys, controlled-access facilities, and other publicly owned buildings and
13 facilities for the benefit of a county, city, or town or the inhabitants of a county, city, or town;
- 14 (8) acquisition of road-building material as provided in 7-14-2123;
- 15 (9) stock lanes as provided in 7-14-2621;
- 16 (10) parking areas as provided in 7-14-4501 and 7-14-4622;
- 17 (11) airport purposes as provided in 7-14-4801, 67-2-301, 67-7-210, and Title 67, chapters 10 and
18 11;
- 19 (12) urban renewal projects as provided in Title 7, chapter 15, parts 42 and 43, except that private
20 property may be acquired for urban renewal through eminent domain only if the property is determined to be a
21 blighted area, as defined in 7-15-4206(2)(a), (2)(h), (2)(k), or (2)(n), and may not be acquired for urban renewal
22 through eminent domain if the purpose of the project is to increase government tax revenue;
- 23 (13) housing authority purposes as provided in Title 7, chapter 15, part 44;
- 24 (14) county recreational and cultural purposes as provided in 7-16-2105;
- 25 (15) city or town athletic fields and civic stadiums as provided in 7-16-4106;
- 26 (16) county cemetery purposes pursuant to 7-11-1021, cemetery association purposes as provided
27 in 35-20-104, and state veterans' cemetery purposes as provided in 10-2-604;
- 28 (17) preservation of historical or archaeological sites as provided in 23-1-102 and 87-1-209(2);

- 1 (18) public assistance purposes as provided in 53-2-201;
- 2 (19) highway purposes as provided in 60-4-103 and 60-4-104;
- 3 (20) common carrier pipelines as provided in 69-13-104;
- 4 (21) water supply, water transportation, and water treatment systems as provided in 75-6-313;
- 5 (22) mitigation of the release or threatened release of a hazardous or deleterious substance as
- 6 provided in 75-10-720;
- 7 (23) the acquisition of nonconforming outdoor advertising as provided in 75-15-123;
- 8 (24) screening for or the relocation or removal of junkyards, motor vehicle graveyards, motor vehicle
- 9 wrecking facilities, garbage dumps, and sanitary landfills as provided in 75-15-223;
- 10 (25) water conservation and flood control projects as provided in 76-5-1108;
- 11 (26) acquisition of natural areas as provided in 76-12-108;
- 12 (27) acquisition of water rights for the natural flow of water as provided in 85-1-204;
- 13 (28) property and water rights necessary for waterworks as provided in 85-1-209 and 85-7-1904;
- 14 (29) conservancy district purposes as provided in 85-9-410;
- 15 (30) wharves, docks, piers, chutes, booms, ferries, bridges, private roads, plank and turnpike roads,
- 16 and railroads;
- 17 (31) canals, ditches, flumes, aqueducts, and pipes for:
- 18 (a) supplying mines, mills, and smelters for the reduction of ores;
- 19 (b) supplying farming neighborhoods with water and drainage;
- 20 (c) reclaiming lands; and
- 21 (d) floating logs and lumber on streams that are not navigable;
- 22 (32) sites for reservoirs necessary for collecting and storing water. However, reservoir sites must
- 23 possess a public use demonstrable to the district court as the highest and best use of the land.
- 24 (33) roads, tunnels, and dumping places for working mines, mills, or smelters for the reduction of
- 25 ores;
- 26 (34) outlets, natural or otherwise, for the flow, deposit, or conduct of tailings or refuse matter from
- 27 mines, mills, and smelters for the reduction of ores;
- 28 (35) an occupancy in common by the owners or the possessors of different mines of any place for

1 the flow, deposit, or conduct of tailings or refuse matter from their several mines, mills, or smelters for reduction
2 of ores and sites for reservoirs necessary for collecting and storing water for the mines, mills, or smelters.

3 However, the reservoir sites must possess a public use demonstrable to the district court as the highest and
4 best use of the land.

5 (36) private roads leading from highways to residences or farms;

6 (37) telephone or electrical energy lines, except that local government entities as defined in 2-7-

7 501, municipal utilities, or competitive electricity suppliers may not use this chapter to acquire existing

8 telephone or electrical energy lines and appurtenant facilities owned by a public utility or cooperative for the

9 purpose of transmitting or distributing electricity or providing telecommunications services;

10 (38) telegraph lines;

11 (39) sewerage of any:

12 (a) county, city, or town or any subdivision of a county, city, or town, whether incorporated or

13 unincorporated;

14 (b) settlement consisting of not less than 10 families; or

15 (c) public buildings belonging to the state or to any college or university;

16 (40) tramway lines;

17 (41) logging railways;

18 (42) temporary logging roads and banking grounds for the transportation of logs and timber

19 products to public streams, lakes, mills, railroads, or highways for a time that the court or judge may determine.

20 However, the grounds of state institutions may not be used for this purpose.

21 (43) underground reservoirs suitable for storage of natural gas;

22 (44) projects to mine and extract ores, metals, or minerals owned by the condemnor located

23 beneath or upon the surface of property where the title to the surface vests in others. However, the use of the

24 surface of property for strip mining or open-pit mining of coal (i.e., any mining method or process in which the

25 strata or overburden is removed or displaced in order to extract the coal) is not a public use, and eminent

26 domain may not be exercised for this purpose.

27 (45) projects to restore and reclaim lands that were strip-mined or underground-mined for coal and

28 not reclaimed in accordance with Title 82, chapter 4, part 2, and to abate or control adverse effects of strip or

1 underground mining on those lands.

2 (46) acquisition of Montana ~~land-real property~~ held by a foreign adversary government pursuant to
3 [section 1]."

4

5 **Section 3.** Section 77-1-101, MCA, is amended to read:

6 **"77-1-101. Definitions.** Unless the context requires otherwise and except for the definition of state
7 land in 77-1-701, in this title, the following definitions apply:

8 (1) "Board" means the board of land commissioners provided for in Article X, section 4, of the
9 Montana constitution.

10 (2) "Commercial or concentrated recreational use" means any recreational use that is organized,
11 developed, or coordinated, whether for profit or otherwise. Commercial or concentrated recreational use
12 includes all outfitting activity and all activities not included within the definition of general recreational use.

13 (3) "Department" means the department of natural resources and conservation provided for in Title
14 2, chapter 15, part 33.

15 (4) "Distributable revenue" applies to all land trusts managed by the board, except property held
16 pursuant to the Morrill Act of 1862, 7 U.S.C. 301 through 308, and the Morrill Act of 1890, 7 U.S.C. 321 through
17 329, and includes:

18 (a) 95% of all revenue from the management of school trust lands and the common school
19 permanent fund, except for mineral royalties or land sale proceeds that are deposited directly in the permanent
20 fund;

21 (b) the interest and income described in 20-9-341, less any unrealized gains or losses;

22 (c) the interest and income received from the leasing, licensing, or other use of state trust lands;

23 and

24 (d) subject to 17-3-1003, the proceeds and income from the sale of timber from capitol building
25 land grant and university system lands.

26 (5) (a) "General recreational use" includes noncommercial and nonconcentrated hunting, fishing,
27 and other activities determined by the board to be compatible with the use of state lands.

28 (b) The term does not include the use of streams and rivers by the public under the stream access

1 laws provided in Title 23, chapter 2, part 3.

2 (6) "Legally accessible state lands" means state lands that can be accessed by:

3 (a) dedicated public road, right-of-way, or easement;

4 (b) public waters;

5 (c) adjacent federal, state, county, or municipal land if the land is open to public use; or

6 (d) adjacent contiguous private land if permission to cross the land has been secured from the

7 landowner. The granting of permission by a private landowner to cross private property in a particular instance

8 does not subject the state land that is accessed to general recreational use by members of the public, other

9 than those granted permission.

10 (7) "Noxious weeds" or "weeds" means any exotic plant species established or that may be

11 introduced in the state that may render land unfit for agriculture, forestry, livestock, wildlife, or other beneficial

12 uses or that may harm native plant communities and that is designated:

13 (a) as a statewide noxious weed by rule of the department of agriculture; or

14 (b) as a district noxious weed by a district weed board organized under 7-22-2103.

15 (8) (a) "State land" or "lands" means:

16 (i) lands granted to the state by the United States for any purpose, either directly or through

17 exchange for other lands;

18 (ii) lands deeded or devised to the state from any person; and

19 (iii) lands acquired by the state from a foreign adversary government pursuant to [section 1]; and

20 ~~(iii)~~(iv) lands that are the property of the state through the operation of law.

21 (b) The term does not include:

22 (i) lands that the state conveys through the issuance of patent;

23 (ii) lands that are used for building sites, campus grounds, or experimental purposes by a state

24 institution and that are the property of that institution;

25 (iii) lands that the board of regents of higher education has authority to dispose of pursuant to 20-

26 25-307; or

27 (iv) lands acquired through investments under the provisions of 17-6-201.

28 (9) "State trust land" means lands or property interests held in trust by the state:

- 1 (a) under Article X, sections 2 and 11, of the Montana constitution;
- 2 (b) through The Enabling Act of Congress (approved February 22, 1889, 25 Stat. 676), as
- 3 amended; and
- 4 (c) through the operation of law for specified trust beneficiaries.
- 5 (10) "Weed management" or "control" has the meaning provided in 7-22-2101."

6

7 **Section 4.** Section 77-1-202, MCA, is amended to read:

8 **"77-1-202. Powers and duties of board.** (1) The board shall exercise general authority, direction,
9 and control over the care, management, acquisition, and disposition of state lands and, subject to the
10 investment authority of the board of investments, the funds arising from the leasing, use, sale, and disposition
11 of those lands or otherwise coming under its administration. In the exercise of these powers, the guiding
12 principle is that these lands and funds are held in trust for the support of education and for the attainment of
13 other worthy objects helpful to the well-being of the people of this state as provided in The Enabling Act. The
14 board shall administer this trust to:

- 15 (a) secure the largest measure of legitimate and reasonable advantage to the state; and
- 16 (b) provide for the long-term financial support of education.
- 17 (2) It is consistent with the powers and duties provided in subsection (1) that the people are
- 18 entitled to general recreational use of state lands to the extent that the trusts are compensated for the value of
- 19 the recreation.
- 20 (3) When acquiring land for the state, the board shall determine the value of the land after an
- 21 appraisal by a qualified land appraiser."

22

23 **NEW SECTION. Section 5. Codification instruction.** [Section 1] is intended to be codified as an
24 integral part of Title 76, and the provisions of Title 76 apply to [section 1].

25

- END -