

1 SENATE BILL NO. 256  
2 INTRODUCED BY C. GLIMM, B. USHER, M. NOLAND

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING OWNERSHIP OF MONTANA LAND BY A  
5 FOREIGN ADVERSARY GOVERNMENT; PROHIBITING A FOREIGN ADVERSARY GOVERNMENT AND  
6 CITIZENS OF THAT FOREIGN GOVERNMENT FROM ACQUIRING, LEASING, OR HOLDING INTEREST IN  
7 MONTANA ~~LAND~~ REAL PROPERTY; AUTHORIZING THE BOARD OF LAND COMMISSIONERS TO  
8 ACQUIRE CERTAIN LAND IN VIOLATION OF THE ACT; PROVIDING EXCEPTIONS; PROVIDING  
9 DEFINITIONS; ~~AND~~ AMENDING SECTIONS 70-30-102, 77-1-101, AND 77-1-202, MCA; AND PROVIDING  
10 EFFECTIVE DATES."

11  
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13  
14 NEW SECTION. Section 1. Foreign ownership of land REAL PROPERTY -- foreign adversary

15 government. (1) (A) After December 31, 2023, a foreign adversary government may not purchase, acquire,  
16 lease, or hold any interest in ~~land~~ REAL PROPERTY in the state.

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

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

26 (e)(D) A transfer of an interest in ~~land~~ REAL PROPERTY in violation of this section is void VOIDABLE.

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

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

2 (a) (i) "Foreign adversary government" means a foreign government, ~~or a~~ foreign nongovernment  
3 person, ~~including citizens of the foreign government,~~ OR A NONGOVERNMENT PERSON AS DETERMINED BY THE  
4 FEDERAL SECRETARY OF COMMERCE THAT HAS engaged in a long-term pattern or serious instances of conduct  
5 significantly adverse to the national security of the United States or security and safety of United States persons  
6 as defined in 47 U.S.C. 1607(c)(2) and 15 CFR 7.4(a)(4) ~~to include,~~ INCLUDING BUT NOT LIMITED TO the following  
7 governments and political leaders:

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

9 (ii)(B) the Republic of Cuba;

10 (iii)(C) the Islamic Republic of Iran;

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

12 (v)(E) the Russian Federation; and

13 (vi)(F) Venezuelan politician Nicolás Maduro OR THE MADURO REGIME.

14 (ii) THE TERM INCLUDES AN INDIVIDUAL WHO IS A CITIZEN OF A FOREIGN ADVERSARY GOVERNMENT.

15 (iii) THE TERM INCLUDES AN ENTITY:

16 (A) THAT IS DIRECTLY OR INDIRECTLY OWNED OR CONTROLLED BY A FOREIGN ADVERSARY GOVERNMENT;

17 (B) FOR WHICH A MAJORITY OF THE OWNERSHIP INTEREST IS DIRECTLY OR INDIRECTLY OWNED OR

18 CONTROLLED BY AN INDIVIDUAL WHO IS A CITIZEN OF A FOREIGN ADVERSARY GOVERNMENT;

19 (C) FOR WHICH A MAJORITY OF THE OWNERSHIP INTEREST IS DIRECTLY OR INDIRECTLY OWNED OR

20 CONTROLLED BY AN ENTITY DESCRIBED IN SUBSECTION (2)(A)(III)(A) OR (2)(A)(III)(B); OR

21 (D) THAT IS ORGANIZED UNDER THE LAWS OF A FOREIGN ADVERSARY GOVERNMENT.

22 (b) "Interest" means any estate, remainder, ~~or~~ reversion, LEASEHOLD INTEREST, OR MINERAL

23 INTEREST, or ANY portion of the estate, remainder, ~~or~~ reversion, LEASEHOLD INTEREST, OR MINERAL INTEREST, or

24 an option pursuant to which one party has a right to ~~cause~~ ACQUIRE legal or equitable title to Montana land REAL

25 PROPERTY. The term includes a percentage ownership interest in an entity if the foreign adversary government

26 ~~actually directs the business and affairs of the entity without the requirement or consent of any other party.~~

27 (c) "REAL PROPERTY" HAS THE MEANING PROVIDED IN 70-1-106.

28

1 **NEW SECTION. Section 2. Delegation to negotiate for authority.** (1) Prior to the 68th legislature of  
2 the state of Montana adjourning sine die, or by October 1, 2023, the speaker of the house and the president of  
3 the senate shall form a delegation to negotiate with the federal government for authority to implement [section  
4 1].

5 (2) The delegation must include the sponsor of [this act], a member of the governor's staff, a  
6 member of the attorney general's staff, and at least one legislator with experience in negotiation with the federal  
7 government.

8 (3) The delegation shall travel during the biennium beginning July 1, 2023, to Washington, D.C.,  
9 and seek to engage in negotiations with the United States department of state, the United States department of  
10 commerce, or the United States Congress.

11  
12 **Section 3.** Section 70-30-102, MCA, is amended to read:

13 **"70-30-102. Public uses enumerated.** Subject to the provisions of this chapter, the right of eminent  
14 domain may be exercised for the following public uses:

- 15 (1) all public uses authorized by the government of the United States;
- 16 (2) public buildings and grounds for the use of the state and all other public uses authorized by the  
17 legislature of the state;
- 18 (3) public buildings and grounds for the use of any county, city, town, or school district;
- 19 (4) canals, aqueducts, flumes, ditches, or pipes conducting water, heat, or gas for the use of the  
20 inhabitants of any county, city, or town;
- 21 (5) projects to raise the banks of streams, remove obstructions from streambanks, and widen,  
22 deepen, or straighten stream channels;
- 23 (6) water and water supply systems as provided in Title 7, chapter 13, part 44;
- 24 (7) roads, streets, alleys, controlled-access facilities, and other publicly owned buildings and  
25 facilities for the benefit of a county, city, or town or the inhabitants of a county, city, or town;
- 26 (8) acquisition of road-building material as provided in 7-14-2123;
- 27 (9) stock lanes as provided in 7-14-2621;
- 28 (10) parking areas as provided in 7-14-4501 and 7-14-4622;

**Amendment - 2nd Reading-yellow - Requested by: Brad Molnar - (S) Committee of Whole**

- 2023

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- 1 (11) airport purposes as provided in 7-14-4801, 67-2-301, 67-7-210, and Title 67, chapters 10 and  
2 11;
- 3 (12) urban renewal projects as provided in Title 7, chapter 15, parts 42 and 43, except that private  
4 property may be acquired for urban renewal through eminent domain only if the property is determined to be a  
5 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  
6 through eminent domain if the purpose of the project is to increase government tax revenue;
- 7 (13) housing authority purposes as provided in Title 7, chapter 15, part 44;
- 8 (14) county recreational and cultural purposes as provided in 7-16-2105;
- 9 (15) city or town athletic fields and civic stadiums as provided in 7-16-4106;
- 10 (16) county cemetery purposes pursuant to 7-11-1021, cemetery association purposes as provided  
11 in 35-20-104, and state veterans' cemetery purposes as provided in 10-2-604;
- 12 (17) preservation of historical or archaeological sites as provided in 23-1-102 and 87-1-209(2);
- 13 (18) public assistance purposes as provided in 53-2-201;
- 14 (19) highway purposes as provided in 60-4-103 and 60-4-104;
- 15 (20) common carrier pipelines as provided in 69-13-104;
- 16 (21) water supply, water transportation, and water treatment systems as provided in 75-6-313;
- 17 (22) mitigation of the release or threatened release of a hazardous or deleterious substance as  
18 provided in 75-10-720;
- 19 (23) the acquisition of nonconforming outdoor advertising as provided in 75-15-123;
- 20 (24) screening for or the relocation or removal of junkyards, motor vehicle graveyards, motor vehicle  
21 wrecking facilities, garbage dumps, and sanitary landfills as provided in 75-15-223;
- 22 (25) water conservation and flood control projects as provided in 76-5-1108;
- 23 (26) acquisition of natural areas as provided in 76-12-108;
- 24 (27) acquisition of water rights for the natural flow of water as provided in 85-1-204;
- 25 (28) property and water rights necessary for waterworks as provided in 85-1-209 and 85-7-1904;
- 26 (29) conservancy district purposes as provided in 85-9-410;
- 27 (30) wharves, docks, piers, chutes, booms, ferries, bridges, private roads, plank and turnpike roads,  
28 and railroads;

- 1 (31) canals, ditches, flumes, aqueducts, and pipes for:
- 2 (a) supplying mines, mills, and smelters for the reduction of ores;
- 3 (b) supplying farming neighborhoods with water and drainage;
- 4 (c) reclaiming lands; and
- 5 (d) floating logs and lumber on streams that are not navigable;
- 6 (32) sites for reservoirs necessary for collecting and storing water. However, reservoir sites must
- 7 possess a public use demonstrable to the district court as the highest and best use of the land.
- 8 (33) roads, tunnels, and dumping places for working mines, mills, or smelters for the reduction of
- 9 ores;
- 10 (34) outlets, natural or otherwise, for the flow, deposit, or conduct of tailings or refuse matter from
- 11 mines, mills, and smelters for the reduction of ores;
- 12 (35) an occupancy in common by the owners or the possessors of different mines of any place for
- 13 the flow, deposit, or conduct of tailings or refuse matter from their several mines, mills, or smelters for reduction
- 14 of ores and sites for reservoirs necessary for collecting and storing water for the mines, mills, or smelters.
- 15 However, the reservoir sites must possess a public use demonstrable to the district court as the highest and
- 16 best use of the land.
- 17 (36) private roads leading from highways to residences or farms;
- 18 (37) telephone or electrical energy lines, except that local government entities as defined in 2-7-
- 19 501, municipal utilities, or competitive electricity suppliers may not use this chapter to acquire existing
- 20 telephone or electrical energy lines and appurtenant facilities owned by a public utility or cooperative for the
- 21 purpose of transmitting or distributing electricity or providing telecommunications services;
- 22 (38) telegraph lines;
- 23 (39) sewerage of any:
- 24 (a) county, city, or town or any subdivision of a county, city, or town, whether incorporated or
- 25 unincorporated;
- 26 (b) settlement consisting of not less than 10 families; or
- 27 (c) public buildings belonging to the state or to any college or university;
- 28 (40) tramway lines;

1 (41) logging railways;

2 (42) temporary logging roads and banking grounds for the transportation of logs and timber  
3 products to public streams, lakes, mills, railroads, or highways for a time that the court or judge may determine.

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

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

6 (44) projects to mine and extract ores, metals, or minerals owned by the condemnor located  
7 beneath or upon the surface of property where the title to the surface vests in others. However, the use of the  
8 surface of property for strip mining or open-pit mining of coal (i.e., any mining method or process in which the  
9 strata or overburden is removed or displaced in order to extract the coal) is not a public use, and eminent  
10 domain may not be exercised for this purpose.

11 (45) projects to restore and reclaim lands that were strip-mined or underground-mined for coal and  
12 not reclaimed in accordance with Title 82, chapter 4, part 2, and to abate or control adverse effects of strip or  
13 underground mining on those lands.

14 (46) acquisition of Montana land-REAL PROPERTY held by a foreign adversary government pursuant  
15 to [section 1]."

16

17 **Section 4.** Section 77-1-101, MCA, is amended to read:

18 **"77-1-101. Definitions.** Unless the context requires otherwise and except for the definition of state  
19 land in 77-1-701, in this title, the following definitions apply:

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

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

25 (3) "Department" means the department of natural resources and conservation provided for in Title  
26 2, chapter 15, part 33.

27 (4) "Distributable revenue" applies to all land trusts managed by the board, except property held  
28 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

1 329, and includes:

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

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

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

7 and

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

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

12 (b) The term does not include the use of streams and rivers by the public under the stream access  
13 laws provided in Title 23, chapter 2, part 3.

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

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

16 (b) public waters;

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

18 (d) adjacent contiguous private land if permission to cross the land has been secured from the  
19 landowner. The granting of permission by a private landowner to cross private property in a particular instance  
20 does not subject the state land that is accessed to general recreational use by members of the public, other  
21 than those granted permission.

22 (7) "Noxious weeds" or "weeds" means any exotic plant species established or that may be  
23 introduced in the state that may render land unfit for agriculture, forestry, livestock, wildlife, or other beneficial  
24 uses or that may harm native plant communities and that is designated:

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

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

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

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

1 exchange for other lands;

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

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

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

5 (b) The term does not include:

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

7 (ii) lands that are used for building sites, campus grounds, or experimental purposes by a state  
8 institution and that are the property of that institution;

9 (iii) lands that the board of regents of higher education has authority to dispose of pursuant to 20-  
10 25-307; or

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

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

13 (a) under Article X, sections 2 and 11, of the Montana constitution;

14 (b) through The Enabling Act of Congress (approved February 22, 1889, 25 Stat. 676), as  
15 amended; and

16 (c) through the operation of law for specified trust beneficiaries.

17 (10) "Weed management" or "control" has the meaning provided in 7-22-2101."  
18

19 **Section 5.** Section 77-1-202, MCA, is amended to read:

20 **"77-1-202. Powers and duties of board.** (1) The board shall exercise general authority, direction,  
21 and control over the care, management, acquisition, and disposition of state lands and, subject to the  
22 investment authority of the board of investments, the funds arising from the leasing, use, sale, and disposition  
23 of those lands or otherwise coming under its administration. In the exercise of these powers, the guiding  
24 principle is that these lands and funds are held in trust for the support of education and for the attainment of  
25 other worthy objects helpful to the well-being of the people of this state as provided in The Enabling Act. The  
26 board shall administer this trust to:

27 (a) secure the largest measure of legitimate and reasonable advantage to the state; and

28 (b) provide for the long-term financial support of education.



