

1 SENATE BILL NO. 410

2 INTRODUCED BY J. BRENDEN

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE DISPOSITION OF ANY FUNDS
5 RECOVERED BY THE STATE OF MONTANA FROM PPL MONTANA, LLC, FOR THE USE OF NAVIGABLE
6 RIVERBED LANDS FOR POWER GENERATION FROM 2000 THROUGH 2007; ESTABLISHING A STATE
7 SPECIAL REVENUE ACCOUNT FOR ANY RECOVERED FUNDS FOR THE PURPOSE OF PURCHASING
8 REAL PROPERTY; PROVIDING CONSIDERATIONS FOR THE BOARD OF LAND COMMISSIONERS TO TAKE
9 INTO ACCOUNT WHEN DETERMINING WHETHER TO PURCHASE REAL PROPERTY AND
10 APPURTENANCES; PROVIDING FOR THE DISPOSITION OF INTEREST AND INCOME TO THE
11 GUARANTEE ACCOUNT FOR DISTRIBUTION TO PUBLIC SCHOOLS; PROVIDING FOR OFFSETTING OF
12 LAND PURCHASES; ESTABLISHING LIMITS ON ACQUISITION AND ADMINISTRATIVE COSTS; PROVIDING
13 RULEMAKING AUTHORITY; AMENDING SECTIONS 77-1-101, 77-1-108, 77-1-109, AND 77-1-220, MCA; AND
14 PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."
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16 WHEREAS, on March 30, 2010, the Montana Supreme Court in PPL Montana, LLC v. State, 2010 MT
17 64, 355 Mont. 402, 229 P.3d 421 (2010), affirmed the decision by the Montana First Judicial District Court, Lewis
18 and Clark County, that the use of navigable riverbed lands for power generation subjected PPL Montana to the
19 payment of damages under Montana's hydroelectric resources laws and held that the navigable riverbeds are
20 part of the state's public land trust under Article X, section 11, of the Montana Constitution; and

21 WHEREAS, the Montana Supreme Court affirmed the judgment entered for the State of Montana in the
22 amount of \$40,956,180, plus postjudgment interest, as compensatory damages for PPL Montana's use of
23 state-owned riverbeds from 2000 through 2007; and

24 WHEREAS, the Montana Supreme Court determined the riverbeds are held "in trust for the people", but
25 it did not determine which specific beneficiaries are entitled to recovery from the award of compensatory damages
26 and postjudgment interest; and

27 WHEREAS, the Montana Supreme Court did not determine whether past, present, or future beneficiaries
28 are entitled to compensation; and

29 WHEREAS, in 1937 the Montana Legislature enacted legislation providing that when a navigable stream
30 changes course, the abandoned bed belongs to the State of Montana to be held in trust for the benefit of public

1 schools by enacting section 1, Chapter 36, Laws of 1937, now codified as section 77-1-102, MCA; and

2 WHEREAS, PPL Montana petitioned the United States Supreme Court to review the Montana Supreme
3 Court's decision and overturn the award of damages; and

4 WHEREAS, compensatory damages and postjudgment interest have not been paid to the state based
5 on PPL Montana's pending appeal to the United States Supreme Court; and

6 WHEREAS, it is the Legislature's intent to balance the interest of past, present, and future beneficiaries
7 by clarifying that any money received by the State of Montana from PPL Montana as a result of the litigation cited
8 in this preamble must be used to purchase higher-producing state lands while selling lower-producing state lands;
9 and

10 WHEREAS, it is the Legislature's intent to distribute to the public schools the net interest and income
11 earned on real property and appurtenances purchased.

12

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

14

15 **NEW SECTION. Section 1. Public land trust acquisition account.** (1) There is a public land trust
16 acquisition account in the state special revenue fund established in 17-2-102. Any funds recovered by the state
17 as a result of the claim that PPL Montana, LLC, owes compensation to the state for using state-owned riverbeds
18 from 2000 through 2007 and any interest that accumulates on the funds must be deposited in the account. The
19 account must be administered by the department and is subject to the provisions of Article X, section 11, of the
20 Montana constitution.

21 (2) Money deposited in the account pursuant to subsection (1) may be used only for costs associated
22 with evaluating potential purchases and for the purpose of purchasing interests in and appurtenances to real
23 property in accordance with [section 2]. Any interest earned on money deposited in the account must be
24 deposited in the guarantee account provided for in 20-9-622 for distribution to public schools on a monthly basis.

25

26 **NEW SECTION. Section 2. Public land trust purchases.** (1) Subject to legislative appropriation, the
27 board is authorized to evaluate potential purchases and purchase interests in and appurtenances to real property
28 from the proceeds of the account established in [section 1] pursuant to the limitations of 77-1-220, [section 1],
29 and this section. Transactional costs may not exceed 7% of the purchase price of acquired property. Prior to
30 purchasing interests in and appurtenances to real property, the board shall consider the following:

- 1 (a) the income-generating potential of the real property and appurtenances;
 2 (b) the opportunity for sustainable forest management activities and outcomes as described in 76-13-701
 3 and 76-13-702;
 4 (c) the opportunity for recreational use of the real property and appurtenances consistent with Title 77,
 5 chapter 1, part 8; and
 6 (d) the cost-benefits of potential real property and appurtenance purchases. This cost-benefit analysis
 7 must be made available to the public upon request.

8 (2) Prior to purchasing any real property and appurtenances, the board shall determine that the benefits
 9 of the purchase are significant and outweigh the financial risks. In order to reach that determination, the board
 10 shall examine the purchase of any real property and appurtenances as if the board had a fiduciary duty as a
 11 reasonably prudent trustee of a perpetual trust. For the purposes of this section, that duty requires the board to:

- 12 (a) discharge its duties with the care, skill, and diligence that a prudent person acting in a similar capacity
 13 with the same resources and familiar with similar matters should exercise in the conduct of an enterprise of similar
 14 character and aims;
 15 (b) manage the land holdings purchased pursuant to this section in accordance with an asset
 16 management plan to minimize the risk of loss and maximize the sustained rate of return;
 17 (c) discharge its duties and powers solely in the interest of and for the benefit of the public land trust; and
 18 (d) discharge its duties subject to the fiduciary standards set forth in 72-34-114.

19 (3) All interests in real property and appurtenances acquired under this section must be managed
 20 pursuant to this title and are subject to the provisions of Article X, section 11, of the Montana constitution.

21 (4) After deductions for administrative costs pursuant to 77-1-109, the net interest and income earned
 22 on real property and appurtenances purchased with funds from the account established in [section 1] must be
 23 distributed to the guarantee account provided for in 20-9-622 for distribution to public schools.

24
 25 **Section 3.** Section 77-1-101, MCA, is amended to read:

26 **"77-1-101. Definitions.** Unless the context requires otherwise and except for the definition of state land
 27 in 77-1-701, in this title, the following definitions apply:

- 28 (1) "Board" means the board of land commissioners provided for in Article X, section 4, of the Montana
 29 constitution.
 30 (2) "Commercial or concentrated recreational use" means any recreational use that is organized,

1 developed, or coordinated, whether for profit or otherwise. Commercial or concentrated recreational use includes
2 all outfitting activity and all activities not included within the definition of general recreational use.

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

5 (4) "Distributable revenue" applies to all land trusts managed by the board, except property acquired for
6 the public land trust under [section 2] and property held pursuant to the Morrill Act of 1862, 7 U.S.C. 301 through
7 308, and the Morrill Act of 1890, 7 U.S.C. 321 through 329, and includes:

8 (a) 95% of all revenue from the management of school trust lands and the common school permanent
9 fund;

10 (b) 95% of the interest and income described in 20-9-341, less any unrealized gains or losses;

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

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

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

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

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

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

20 (b) public waters;

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

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

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

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

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

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

2 (i) lands granted to the state by the United States for any purpose, either directly or through exchange
3 for other lands;

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

5 (iii) lands that are the property of the state through the operation of law.

6 (b) The term does not include:

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

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

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

11 or

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

13 (9) "Weed management" or "control" has the meaning provided in 7-22-2101."

14

15 **Section 4.** Section 77-1-108, MCA, is amended to read:

16 **"77-1-108. Trust land administration account -- administrative costs -- appropriation.** (1) There is
17 a trust land administration account in the state special revenue fund. Money in the account is available to the
18 department by appropriation and must be used to pay the costs of administering state trust lands. This includes
19 the cost of managing assets, including but not limited to real property and monetary assets.

20 (2) Appropriations from the account for each fiscal year may not exceed an amount equal to 25% of the
21 distributable revenue, as defined in 77-1-101, generated in the fiscal year completed prior to the legislative
22 session that will appropriate money for the next biennium and 12% of anticipated revenue generated by public
23 trust land property that was acquired pursuant to [section 2]. This excludes revenue generated by the forest
24 improvement fee provided for in 77-5-204.

25 (3) (a) Pursuant to subsection (1), the administrative costs must be determined for each land trust.
26 Administrative costs for public land trust property that was acquired pursuant to [section 2] may not exceed 12%
27 of the income received from the leasing, licensing, or other use of the land. The department may adopt rules
28 regarding the calculation of administrative costs as necessary.

29 (b) Each fiscal year, the department shall compare administrative costs for each land trust to the amount
30 of revenue that land trust generates for the account. If the amount of revenue deposited pursuant to 77-1-109(2)

1 exceeds the administrative costs for a specific land trust, the excess revenue must be distributed as provided in
2 subsection (4) of this section.

3 (c) If revenue deposited from a specific land trust is insufficient to defray the administrative costs
4 associated with managing that land trust and the money held for that trust in the earnings reserve account
5 established in 77-1-132 is also insufficient, the board may receive a general fund loan pursuant to 17-2-107 to
6 offset the difference. A general fund loan made pursuant to this subsection (3)(c) must be repaid within 5 years
7 and must bear interest at a rate of return equal to that earned by the board of investments' short-term investment
8 pool during that period.

9 (4) (a) Except as provided in subsections (4)(b) and (5), up to one-third of the unreserved distributable
10 revenue remaining in the account at the end of a fiscal year may be transferred to the earnings reserve account
11 provided for in 77-1-132 and accounted for by trust. The remaining unreserved revenue must be transferred to
12 each of the permanent funds in proportionate shares to each fund's contribution to the account.

13 (b) At the end of the fiscal year, unreserved funds received pursuant to 77-1-109(2)(a)(ii), ~~and (2)(a)(iii),~~
14 ~~and (2)(a)(v)~~ must be transferred to each of the permanent funds or to the appropriate trust or distributed to the
15 beneficiary in proportionate shares to each fund's contribution to the account.

16 (5) (a) The amount of \$80,000 each biennium is transferred from the state general fund to an account
17 in the state special revenue fund. The account is statutorily appropriated, as provided in 17-7-502, to the
18 department for the purposes of administering the land granted to the state pursuant to the Morrill Act of 1862, 7
19 U.S.C. 301 through 308, and the Morrill Act of 1890, 7 U.S.C. 321 through 329. Any unexpended portion of the
20 statutory appropriation may be retained in the account and used for the administration of the Morrill Act land.

21 (b) At the end of each fiscal year, the department shall pay from the appropriation in subsection (5)(a)
22 to the trust containing proceeds derived from land granted to the state pursuant to the Morrill Act of 1862, 7
23 U.S.C. 301 through 308, and the Morrill Act of 1890, 7 U.S.C. 321 through 329, an amount calculated to be the
24 cost of administering the investment of the fund derived from that trust. The payment must be based upon the
25 percentage that the Morrill Act fund constitutes of the total fund derived from all trust lands. If the appropriation
26 in subsection (5)(a) is insufficient to pay the calculated administrative cost, a general fund loan may be used
27 pursuant to 17-2-107 to offset the difference."
28

29 **Section 5.** Section 77-1-109, MCA, is amended to read:

30 **"77-1-109. Deposits of proceeds in trust land administration account.** (1) The amount of money that

1 is deposited into the trust land administration account established in 77-1-108 may not exceed an amount equal
 2 to 25% of distributable revenue generated in the fiscal year completed prior to the legislative session that will
 3 appropriate money for the next biennium and 12% of revenue generated by public trust land property that was
 4 acquired pursuant to [section 2]. This excludes revenue generated by the forest improvement fee provided for
 5 in 77-5-204.

6 (2) (a) Subject to subsection (1), the department shall deposit into the trust land administration account
 7 the following:

8 (i) distributable revenue;

9 (ii) the proceeds or income from the sale of easements and timber, except timber from public school and
 10 Montana university system lands;

11 (iii) mineral royalties; ~~and~~

12 (iv) fees collected pursuant to 77-2-328; and

13 (v) 12% of the income received from the leasing, licensing, or other use of public land trust property that
 14 was acquired pursuant to [section 2].

15 (b) As deposits are made, they must be identified and accounted for by trust.

16 (c) The department may not make deductions from interest or income generated from lands granted to
 17 the state 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
 18 through 329.

19 (3) After the deposits in subsection (2) have been made, the remainder of the proceeds, other than
 20 proceeds from timber from Montana university system lands and other than those purchased pursuant to
 21 17-6-340, must be deposited in accordance with 17-3-1003, 18-2-107, ~~and~~ 20-9-341(2), and [section 2]. Timber
 22 proceeds from university system lands must be paid over to the state treasurer, who shall deposit the money to
 23 the credit of the proper fund for use as provided in 17-3-1003. Royalty payments purchased pursuant to 17-6-340
 24 must be used as provided in that section and 20-9-622."

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26 **Section 6.** Section 77-1-220, MCA, is amended to read:

27 "**77-1-220. Offsetting purchases -- proceeds -- records.** (1) To the extent practical and consistent with
 28 the board's powers and duties pursuant to 77-1-202, the board shall offset purchases made pursuant to 77-1-218,
 29 ~~and~~ 77-1-219, and [section 2] by selling an equal amount of land.

30 (2) Proceeds received from offsetting sales may not be used for:

