

1 SENATE BILL NO. 363

2 INTRODUCED BY J. BRENDEN

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING A STATE SPECIAL REVENUE INVASIVE SPECIES
5 DETECTION AND CONTROL ACCOUNT TO BE ADMINISTERED BY THE DEPARTMENT OF FISH, WILDLIFE,
6 AND PARKS; ESTABLISHING A SURCHARGE ON LAND TRANSACTIONS INVOLVING THE DEPARTMENT
7 OF FISH, WILDLIFE, AND PARKS; PROVIDING AN ALLOCATION TO THE ACCOUNT FROM THE
8 SURCHARGE; LIMITING THE COSTS OF ADMINISTERING THE FUNDS RECEIVED FROM THE
9 SURCHARGE; AMENDING SECTION 87-1-209, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

12
13 **NEW SECTION. Section 1. Invasive species detection and control account.** (1) There is an invasive
14 species detection and control account within the state special revenue fund established in 17-2-102. The account
15 is administered by the department of fish, wildlife, and parks.

16 (2) There must be paid into the invasive species detection and control account:

17 (a) money allocated from a 10% surcharge on land transactions involving the department of fish, wildlife,
18 and parks pursuant to 87-1-209;

19 (b) money transferred from the general fund or received from any other lawful source, including but not
20 limited to gifts, grants, donations, securities, or other assets, public or private; and

21 (c) any interest earned on the account.

22 (3) Money deposited in the account is available to the department of fish, wildlife, and parks by
23 appropriation and must be used to pay costs associated with the detection, control, or management of invasive
24 species or for the costs of administering the invasive species detection and control account.

25 (4) Costs incurred for administering the invasive species detection and control account may not exceed
26 10% of all deposits received from the surcharge described in 87-1-209.

27
28 **Section 2.** Section 87-1-209, MCA, is amended to read:

29 **"87-1-209. (Temporary) Acquisition and sale of land or water.** (1) Subject to 87-1-218, the
30 department, with the consent of the commission and, in the case of land acquisition involving more than 100

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

- 9 (a) for fish hatcheries or nursery ponds;
10 (b) as land or water suitable for game, bird, fish, or fur-bearing animal restoration, propagation, or
11 protection;
12 (c) for public hunting, fishing, or trapping areas;
13 (d) to capture, propagate, transport, buy, sell, or exchange any game, birds, fish, fish eggs, or fur-bearing
14 animals needed for propagation or stocking purposes or to exercise control measures of undesirable species;
15 (e) for state parks and outdoor recreation;
16 (f) to extend and consolidate by exchange, land or water rights suitable for these purposes.

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

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

30 (b) Subject to section 2(3), Chapter 560, Laws of 2005, notice of sale describing the land or water rights

1 to be disposed of must be published once a week for 3 successive weeks in a newspaper with general circulation
2 printed and published in the county where the land or water right is situated or, if a newspaper is not published
3 in that county, then in any newspaper with general circulation in that county.

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

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

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

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

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

30 (7) The department is authorized to enter into leases of land under its control in exchange for services

1 to be provided by the lessee on the leased land.

2 (8) Any land transaction authorized by this section, including but not limited to the purchase or sale of
3 an easement, must include a surcharge of 10% above the purchase price to be paid by the buyer and deposited
4 into the invasive species detection and control account established in [section 1]. The 10% surcharge is in
5 addition to the 20% surcharge designated for the maintenance account in subsection (1).

6 (9) For purposes of this section, "invasive species" has the same meaning as provided in 80-7-1003.
7 (Terminates June 30, 2013--sec. 8, Ch. 427, L. 2009.)

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

13 (a) for fish hatcheries or nursery ponds;

14 (b) as lands or water suitable for game, bird, fish, or fur-bearing animal restoration, propagation, or
15 protection;

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

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

19 (e) for state parks and outdoor recreation;

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

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

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

1 department conveys land or water rights to another governmental entity or to an adjacent landowner pursuant
2 to this subsection, the department, in addition to giving notice pursuant to subsection (3)(b), shall give notice by
3 mail to the landowners whose property adjoins the department property being conveyed.

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

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

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

18 (4) When necessary and advisable for the management and use of department property, the director
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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 lands and water rights without covenants of warranty by deed executed
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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.

6 (8) Any land transaction authorized by this section, including but not limited to the purchase or sale of
7 an easement, must include a surcharge of 10% above the purchase price to be paid by the buyer and deposited
8 into the invasive species detection and control account established in [section 1].

9 (9) For purposes of this section, "invasive species" has the same meaning as provided in 80-7-1003."

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11 NEW SECTION. Section 3. Codification instruction. [Section 1] is intended to be codified as an
12 integral part of Title 87, chapter 1, and the provisions of Title 87, chapter 1, apply to [section 1].

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14 NEW SECTION. Section 4. Effective date. [This act] is effective July 1, 2011.

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- END -