



AN ACT PROVIDING FOR THE DISPOSITION OF ANY FUNDS RECOVERED BY THE STATE OF MONTANA FROM PPL MONTANA, LLC, FOR THE USE OF NAVIGABLE RIVERBED LANDS FOR POWER GENERATION FROM 2000 THROUGH 2007; ESTABLISHING A STATE SPECIAL REVENUE ACCOUNT FOR ANY RECOVERED FUNDS FOR THE PURPOSE OF PURCHASING REAL PROPERTY; PROVIDING CONSIDERATIONS FOR THE BOARD OF LAND COMMISSIONERS TO TAKE INTO ACCOUNT WHEN DETERMINING WHETHER TO PURCHASE REAL PROPERTY AND APPURTENANCES; PROVIDING FOR THE DISPOSITION OF INTEREST AND INCOME TO THE GUARANTEE ACCOUNT FOR DISTRIBUTION TO PUBLIC SCHOOLS; PROVIDING FOR OFFSETTING OF LAND PURCHASES; ESTABLISHING LIMITS ON ACQUISITION; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTION 77-1-220, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

WHEREAS, on March 30, 2010, the Montana Supreme Court in PPL Montana, LLC v. State, 2010 MT 64, 355 Mont. 402, 229 P.3d 421 (2010), affirmed the decision by the Montana First Judicial District Court, Lewis and Clark County, that the use of navigable riverbed lands for power generation subjected PPL Montana to the payment of damages under Montana's hydroelectric resources laws and held that the navigable riverbeds are part of the state's public land trust under Article X, section 11, of the Montana Constitution; and

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

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

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

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

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

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

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

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

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

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

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

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

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

in and appurtenances to real property, the board shall consider the following:

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

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

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

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

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

Section 3. Section 77-1-220, MCA, is amended to read:

"77-1-220. Offsetting purchases -- proceeds -- records. (1) To the extent practical and consistent with the board's powers and duties pursuant to 77-1-202, the board shall offset purchases made pursuant to 77-1-218,

and 77-1-219, and [section 2] by selling an equal amount of land.

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

(a) purchasing additional lands; or

(b) the land banking process under 77-2-361 through 77-2-367.

(3) A separate record of the proceeds received from each sale of land must be maintained."

Section 4. Codification instruction. [Sections 1 and 2] are intended to be codified as an integral part of Title 77, chapter 1, part 2, and the provisions of Title 77, chapter 1, part 2, apply to [sections 1 and 2].

Section 5. Effective date. [This act] is effective on passage and approval.

Section 6. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to the use of funds identified in [section 1] prior to [the effective date of this act].

- END -

I hereby certify that the within bill,
SB 0410, originated in the Senate.

Secretary of the Senate

President of the Senate

Signed this _____ day
of _____, 2011.

Speaker of the House

Signed this _____ day
of _____, 2011.

SENATE BILL NO. 410

INTRODUCED BY BRENDEN, RIPLEY, ARTHUN, WALKER, LEWIS, MOORE, STEINBEISSER, JONES,
BROWN, VINCENT, TUTVEDT, JACKSON, BUTTREY, MOWBRAY, G. HINKLE

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