

SENATE BILL NO. 145

Gray E. Engler
Denny

INTRODUCED BY *Kennan* ~~*Keating Cartress*~~ ~~*Tammy*~~ ~~*Walt*~~ ~~*DeBenedictis*~~
John Truitt, *Spurgeon Jenkins*, *M. Hanson*, *Storall*

A BILL FOR AN ACT ENTITLED: "AN ACT RELATING TO PUBLIC RESOURCE LAND; PROVIDING FOR TRANSITION TO STATE OWNERSHIP AND CONTROL OF CERTAIN LAND WITHIN STATE BOUNDARIES UPON CONGRESSIONAL OR JUDICIAL APPROVAL; PROVIDING FOR MANAGEMENT BY THE BOARD OF LAND COMMISSIONERS; ESTABLISHING A MULTIPLE-USE POLICY FOR MANAGEMENT OF THE RESOURCE LAND; PROVIDING A PENALTY; AND PROVIDING AN EFFECTIVE DATE."

WHEREAS, the intent of the framers of the Constitution of the United States was to guarantee to each of the states sovereignty over all matters within its boundaries, except for those powers specifically granted to the United States as agent of the states; and

WHEREAS, Public Law 52 and Montana Ordinance No. 1 both state that it is intended that Montana be admitted into the Union on an equal footing with the original states; and

WHEREAS, the attempted imposition upon the State of Montana by the Congress of the United States of a requirement in the Statehood Act that the State of Montana and its people "disclaim all right and title to the unappropriated public lands lying within [its] boundaries", as a condition precedent to acceptance of Montana into the Union, was an act arguably beyond the power of the Congress of the United States and is thus voidable; and

WHEREAS, Article I, section 8, of the Constitution of the United States limits to 10 square miles the land holdings of Congress for a seat of government and requires the consent of the legislature of the state in which land is located for the purchase of lands for the erection of military installations, dock-yards, and other federal buildings; and

WHEREAS, the purported right of ownership and control of the unappropriated public land in the State of Montana by the United States is arguably without foundation, and it is contended that the purported right violates the clear intent of the Constitution of the United States; and

WHEREAS, the exercise of that dominion and control of the public land in the State of Montana by the United States works a severe, continuous, and debilitating hardship upon the people of the State of Montana.

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

2

3 NEW SECTION. **Section 1. Short title.** [Sections 1 through 8] may be cited as the "Montana Land
4 Reformation Act".

5

6 NEW SECTION. **Section 2. Definitions.** As used in [sections 1 through 8], the following definitions
7 apply:

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

10 (2) "Multiple use" means the management of Montana resource land to provide a sustained yield
11 of forage for livestock and game and to provide conservation and preservation of the state's natural
12 resources, wildlife habitat, wilderness areas, and historical sites and artifacts while also allowing the
13 development and continuation of compatible uses of the land for hunting, recreation, mining, timber
14 production, agriculture, and production and transmission of energy and other public utility services in a
15 manner that provides the greatest benefit to the citizens of this state.

16 (3) "Resource land" means all land, water, and minerals, including oil and gas, not previously
17 appropriated, within the boundaries of this state, except:

18 (a) that to which title is held by a private person or entity;

19 (b) that to which title is held by the state or any of its political subdivisions or units of local
20 government;

21 (c) that which is controlled by the United States department of defense or buildings and
22 appurtenant structures, together with sufficient lands to accommodate the land used and occupied by the
23 United States for necessary governmental functions on [the effective date of this act];

24 (d) that which is a national park, national monument, Indian reservation or land held in trust for
25 Indians, wildlife refuge, or national wilderness system land specifically designated as such by congress prior
26 to [the effective date of this act], except that if a wildlife refuge exceeds 400,000 acres in size, all
27 unappropriated public land lying within the boundaries of the refuge is resource land;

28 (e) that which is within the state and that has been administered by the United States under
29 international treaties or interstate compacts.

30 (4) "Sustained yield" means the maintenance of a high-level annual or regular periodic output of

1 the various renewable resources of state lands consistent with multiple use.

2

3 NEW SECTION. **Section 3. Ownership of resource land.** (1) Upon approval of the congress of
4 the United States or upon authority derived from a decision of the United States supreme court and subject
5 to rights existing on [the effective date of this act], fee title to all resource land is vested in this state from
6 and after the congressional action or judicial decision and is subject to the exclusive jurisdiction and control
7 of the state.

8 (2) Until equivalent measures are enacted by the legislature, the rights and privileges of the people
9 granted under the provisions of existing federal law are preserved under administration of the board.

10

11 NEW SECTION. **Section 4. Management.** (1) The board shall manage resource land acquired
12 under [sections 1 through 8] in a manner that:

13 (a) provides for the optimum benefit of and use by all the people of Montana;

14 (b) conforms with established concepts of multiple use and sustained yield that permit the
15 development of uses of the resource land for hunting, recreation, mining, timber production, and agriculture
16 and the development, production, and transmission of energy and other public utility services; and

17 (c) ensures conservation and protection of watersheds, wildlife habitat, and historic, scenic, fish
18 and wildlife, recreational, and natural values.

19 (2) The board shall develop a plan for the transfer and management of resource land. This plan
20 must be submitted to the legislature prior to January 1, 1997, and is subject to its approval. The
21 management plan must address:

22 (a) management of the lands pursuant to subsection (1);

23 (b) policy regarding public access and use of the lands to ensure that existing rights of public
24 access and use are not diminished;

25 (c) conservation of lands for wildlife habitat or recreational purposes;

26 (d) policy regarding use or transfer of lands to municipalities and other governmental entities for
27 public purposes;

28 (e) the establishment of fees, rentals, royalties, interest, and penalties at rates that will result in
29 management of the lands without a loss of general fund revenue to the state; and

30 (f) disposal of revenue in a manner to ensure that local government receipts are not diminished.

1 **NEW SECTION. Section 5. Sale, transfer, or exchange of land prohibited.** (1) Any sale, transfer,
2 or exchange of resource land vested in this state under the terms of [sections 1 through 8] is void unless:

3 (a) the sale, transfer, or exchange is made strictly in conformity with and pursuant to laws, rules,
4 and regulations of the United States that govern the sale, transfer, and exchange of resource land when
5 the title to the land was vested in the United States; or

6 (b) there has been first established by a preponderance of the evidence at public hearings held in
7 each county where the resource land is located that the sale, transfer, or exchange is established as
8 necessary for a compelling public need and is not in any manner, directly or indirectly, for private gain or
9 profit.

10 (2) A sale, transfer, or exchange of resource land may not be made without an act of the legislature
11 approving the sale, transfer, or exchange.

12
13 **NEW SECTION. Section 6. When board authorization required -- injunction -- penalty.** (1) A
14 person who intends to perform or who actually performs any act with respect to the use or management
15 of resource land under color of any statute, ordinance, regulation, custom, or usage of the United States
16 or otherwise shall obtain written authorization from the board approving or confirming that act. The
17 authorization may be given only to the extent that it is authorized under the laws of this state.

18 (2) A person who fails to obtain written authorization from the board as required by subsection (1)
19 may be enjoined by the board in a court of competent jurisdiction from attempting to perform or from
20 continuing to perform any act for which authorization is required.

21 (3) A person who receives money or other consideration from the purported sale or other
22 disposition of resource land made contrary to the provisions of [section 5] is liable in damages to the state
23 in an amount equal to the money received or equal to the value of the other consideration received.

24
25 **NEW SECTION. Section 7. Penalty.** In addition to the liability specified in [section 6(3)], a person
26 convicted of attempting to exercise jurisdiction or control over resource land contrary to the laws of this
27 state shall be imprisoned for a term not to exceed 10 years.

28
29 **NEW SECTION. Section 8. Authority of attorney general.** The attorney general is vested with
30 exclusive authority to commence any action to protect the interest of the state in its public resource land

1 against claims of the federal government to the land, including joining with other western states in proposed
2 litigation on this issue, or to defend any action brought by the federal government.

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4 NEW SECTION. **Section 9. Effective date.** [This act] is effective July 1, 1995.

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-END-

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INTRODUCED BY *Kevin* *Keating* *Carters* *Town* *Jeff* *DeBorja*
John *Trent*, *Sprague* *John* *McE* *Stovall*

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