

1 HOUSE BILL NO. 42

2 INTRODUCED BY D. BAUM

3 BY REQUEST OF THE TRANSPORTATION INTERIM COMMITTEE

4

5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING HIGHWAY AND TRANSPORTATION

6 LAWS UNDER TITLE 60 AND RELATED STATUTES FOR CLARITY AND CONSISTENCY; UNIFYING

7 SUBSTANTIVELY SIMILAR DEFINITIONS OF "ABANDONMENT"; REORGANIZING DEFINITIONS FOR

8 CONFORMITY WITH THE BILL DRAFTING MANUAL; REORGANIZING TITLE 60, CHAPTER 4, PART 2;

9 PROVIDING AND REVISING DEFINITIONS; AMENDING SECTIONS 7-14-2101, 7-14-2601, 22-3-1101, 60-1-

10 103, 60-2-107, 60-2-112, 60-2-115, 60-2-134, 60-2-220, 60-2-240, 60-3-206, 60-3-211, 60-4-201, 60-4-202, 60-

11 4-203, 60-4-209, 60-4-213, 60-4-214, 60-4-215, 60-4-216, 60-4-217, 60-4-218, 60-4-401, 60-4-601, 60-5-102,

12 60-6-106, AND 60-11-111, MCA; AND REPEALING SECTIONS 60-4-208 AND 60-11-112, MCA."

13

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

15

16 **Section 1.** Section 7-14-2101, MCA, is amended to read:

17 **"7-14-2101. General powers of county relating to roads and bridges -- definitions.** (1) The board

18 of county commissioners, under the limitations and restrictions that are prescribed by law, may:

19 (a) (i) lay out, maintain, control, and manage county roads and bridges within the county;

20 (ii) subject to 15-10-420, levy taxes for the laying out, maintenance, control, and management of

21 the county roads and bridges within the county as provided by law;

22 (b) (i) in the exercise of sound discretion, jointly with other counties, lay out, maintain, control,

23 manage, and improve county roads and bridges in adjacent counties, wholly or in part as agreed on between

24 the boards of the counties concerned;

25 (ii) subject to 15-10-420, levy taxes for the laying out, maintenance, control, management, and

26 improvement of county roads and bridges in adjacent counties or shared jointly with other counties, as agreed

27 on between the boards of the counties concerned and as provided by law;

28 (c) (i) enter into agreements for adjusted annual contributions over not more than 6 years toward

1 the cost of joint highway or bridge construction projects entered into in cooperation with other counties, the
2 state, or the United States;

3 (ii) subject to 15-10-420, place a joint project in the budget and levy taxes for a joint project as
4 provided by law.

5 (2) (a) Following a public hearing, a board of county commissioners may accept by resolution a
6 road that has not previously been considered a county road but that has been laid out, constructed, and
7 maintained with state department of transportation or county funds.

8 (b) A survey is not required of an existing county road that is accepted by resolution by a board of
9 county commissioners.

10 (c) A road that is abandoned by the state may be designated as a county road upon the
11 acceptance and approval by resolution of a board of county commissioners.

12 (d) A road on a final subdivision plat that is dedicated to public use is not considered a county road
13 until the board of county commissioners approves by resolution the adoption of the road as a county road as
14 provided in subsection (4)(b)(ii).

15 (3) The board of county commissioners may adopt regulations for unincorporated areas within a
16 county governing:

17 (a) the assignment of numerical physical addresses except for roads under the jurisdiction of a
18 federal, state, or tribal entity if that entity objects to the assignment; and

19 (b) the naming of roads except roads under the jurisdiction of a federal, state, or tribal entity unless
20 that entity consents to the naming.

21 (4) Unless the context requires otherwise, for the purposes of this chapter, the following definitions
22 apply:

23 (a) "Bridge" includes rights-of-way or other interest in land, abutments, superstructures, piers, and
24 approaches except dirt fills.

25 (b) "County road" means:

26 (i) a road that is petitioned by real property owners, approved by resolution, and opened by a
27 board of county commissioners in accordance with this title;

28 (ii) a road that is dedicated for public use in the county and approved by resolution by a board of

1 county commissioners;

2 (iii) a road that has been acquired by eminent domain pursuant to Title 70, chapter 30, and
3 accepted by resolution as a county road by a board of county commissioners;

4 (iv) a road that has been gained by the county in an exchange with the state as provided in 60-4-
5 201 [section 16]; or

6 (v) a road that has been the subject of a request under 7-14-2622 and for which a legal route has
7 been recognized by a district court as provided in 7-14-2622."

8

9 **Section 2.** Section 7-14-2601, MCA, is amended to read:

10 **"7-14-2601. Petition to establish, alter, or abandon a county road -- definitions.** (1) Any 10, or a
11 majority, of the real property owners of a road district that is taxable for road purposes may petition the board in
12 writing to open, establish, construct, change, abandon, or discontinue any county road in the district.

13 (2) When the road petitioned for is on the dividing line between two counties, the same procedure
14 must be followed except that a copy of the petition must be presented to each board. The two boards shall act
15 jointly.

16 (3) As used in this part, unless the context requires otherwise:

17 (a) ~~"abandonment" or "vacation" means cessation of the use of a right-of-way or easement or of~~
18 ~~activity on a right-of-way or easement with no intention to reclaim or use it again~~ has the meaning provided in
19 60-1-103;

20 (b) "board" means the board of county commissioners; and

21 (c) "vacation" has the meaning provided in 60-1-103."

22

23 **Section 3.** Section 22-3-1101, MCA, is amended to read:

24 **"22-3-1101. Tower Rock -- historic site.** (1) A 136-acre site that encompasses Tower Rock, a
25 geologic structure listed in the national register of historic places on March 18, 2002, may not be sold or
26 transferred to a nonstate entity and must remain intact as the property of the state of Montana to recognize the
27 national and local historic significance of the Lewis and Clark expedition, whose members named the rock
28 formation, according to notations in the July 16 and 17, 1805, journals of Meriwether Lewis.

1 (2) The department of transportation may transfer the land to another state agency, and the
2 provisions of 60-4-201 through 60-4-203 and [section 16] do not apply. In any transfer of the site, the
3 department of transportation may retain access rights where the site abuts interstate 15."

4
5 **Section 4.** Section 60-1-103, MCA, is amended to read:

6 **"60-1-103. General definitions.** Subject to additional definitions contained in this title that are
7 applicable to specific chapters or sections and unless the context otherwise requires, in this title, the following
8 definitions apply:

9 (1) "Abandonment" ~~means cessation of use of right-of-way or an easement or cessation of activity~~
10 ~~on the right-of-way or easement with no intention to reclaim or use again. Abandonment is sometimes called~~
11 ~~vacation or "vacation" means cessation of the use of a right-of-way or easement or of activity on a right-of-way~~
12 or easement with no intention to reclaim or use the right-of-way or easement again.

13 (2) "Bridge" means any bridge constructed by the department, together with all appurtenances,
14 additions, alterations, improvements, and replacements and the approaches to the bridge, lands used in
15 connection with the bridge, and improvements incidental or integral to the bridge.

16 (3) "Commission" means the transportation commission provided for in 2-15-2502.

17 (4) "Commission-designated highway systems" means the following as defined in this section:

18 (a) national highway system;

19 (b) primary highway system;

20 (c) secondary highway system; and

21 (d) urban highway system.

22 (5) "Condemnation" means taking by exercise of the right of eminent domain, as provided in Title
23 70, chapter 30, and chapter 4 of this title.

24 (6) "Construction" means supervising, inspecting, actual building, and all expenses incidental to
25 the construction or reconstruction of a highway, including locating, surveying, mapping, and costs of right-of-
26 way or other interests in land and elimination of hazards at railway grade crossings.

27 (7) "Control of access" means the condition in which the right of owners or occupants of abutting
28 land or other persons to access, light, air, or view in connection with a highway is fully or partially controlled by

1 public authority.

2 (8) "County road" means any public highway opened, established, constructed, maintained,
3 abandoned, or discontinued by a county in accordance with Title 7, chapter 14.

4 (9) "Department" means the department of transportation provided for in Title 2, chapter 15, part
5 25.

6 (10) "Director" means the director of transportation, a position provided for in 2-15-2501.

7 (11) "Easement" means a right acquired by public authority to use or control property for a
8 designated purpose.

9 (12) "Eminent domain" means the right of the state to take private property for public use.

10 (13) "Federal-aid highway funds" means those funds available for expenditure by the department
11 pursuant to Title 23, U.S.C., or other federally available funds for highways.

12 (14) "Fee simple" means an absolute estate or ownership in property, including unlimited power of
13 alienation.

14 (15) "Financial district" means a transportation commission district established in 2-15-2502.

15 (16) "Highway" includes rights-of-way or other interests in land, embankments, retaining walls,
16 culverts, sluices, drainage structures, bridges, railroad-highway crossings, tunnels, signs, guardrails, and
17 protective structures.

18 (17) "Highway", "road", and "street", whether the terms appear together or separately or are
19 preceded by the adjective "public", are general terms denoting a public way for purposes of vehicular travel and
20 include the entire area within the right-of-way.

21 (18) "Highway authority" means the entity at any level of government authorized by law to construct
22 and maintain highways.

23 (19) "Interstate highway" means a highway that is part of the Dwight D. Eisenhower system of
24 interstate and defense highways described in Title 23, U.S.C., and is a subcomponent of the national highway
25 system.

26 (20) "Maintenance" means the preservation of the entire highway, including surface, shoulders,
27 roadsides, structures, and traffic control devices that are necessary for the safe and efficient use of the
28 highway.

1 (21) "National highway system" means that system of public highways designated by the
2 commission and approved by the secretary of transportation, as provided in Title 23, U.S.C., including interstate
3 highways.

4 (22) "Primary highway system" means those highways that have been functionally classified, in
5 accordance with federal requirements, as either principal or minor arterials and designated by the commission
6 as being on the primary highway system.

7 (23) "Public highways" means all streets, roads, highways, bridges, and related structures:

8 (a) built and maintained with appropriated funds of the United States or the state or any political
9 subdivision of the state;

10 (b) dedicated to public use;

11 (c) acquired by eminent domain, as provided in Title 70, chapter 30, and chapter 4 of this title; or

12 (d) acquired by adverse use by the public, with jurisdiction having been assumed by the state or
13 any political subdivision of the state.

14 (24) "Right-of-way" is a general term denoting land, property, or any interest in land or property,
15 usually in a strip, acquired for or devoted to highway purposes.

16 (25) "Scenic-historic byway" means a public road or segment of a public road that has been
17 designated as a scenic-historic byway by the commission, as provided in 60-2-601.

18 (26) "Secondary highway system" means those highways that are outside department-designated
19 urban boundaries and that have been functionally classified, in accordance with federal requirements, as either
20 minor arterials or major collectors and designated by the commission, in cooperation with the boards of county
21 commissioners, as being on the secondary highway system.

22 (27) "State highways" means the highways throughout the state that are not located on a
23 commission-designated highway system but that are on the state maintenance system.

24 (28) "Urban highway system" means the highways and streets that are in and near incorporated
25 cities with populations of over 5,000 and within urban boundaries established by the department and that are
26 functionally classified, in accordance with federal requirements, as either arterials or major collectors and
27 designated by the commission, in cooperation with local government authorities, as being on the urban highway
28 system."

1

2 **Section 5.** Section 60-2-107, MCA, is amended to read:

3 **"60-2-107. Abandonment of highways -- discontinuance of maintenance -- exchange of**
4 **roadways -- public notice required.** (1) ~~Except as provided in 60-4-213 through 60-4-218, the~~ The
5 commission may abandon highways on the commission-designated highway systems and state highways
6 pursuant to 60-4-209.

7 (2) ~~Except as provided in 60-4-213 through 60-4-218, before~~ Before abandoning or discontinuing
8 maintenance on a highway, the commission shall hold a public hearing in the county or counties affected by the
9 abandonment. The commission may elect to offer to transfer the liability for and the maintenance of a highway
10 to another agency or agencies that may in turn elect to take responsibility for the highway. The commission
11 shall notify the board of county commissioners in writing of its intent to abandon a highway and hold a public
12 hearing. The commission shall publish for 3 consecutive weeks in local newspapers within the county the notice
13 of abandonment and public hearing.

14 (3) ~~Except as provided in 60-4-213 through 60-4-218, the~~ The commission may enter into an
15 agreement with a unit of local government, on mutually beneficial terms, to exchange property interests or
16 responsibilities, including maintenance, on any portion of a commission-designated highway system or state
17 highway and on any portion of a county road or city street.

18 (4) The commission may not abandon a highway, road, or right-of-way used to provide existing
19 legal access to public land or waters, including access for public recreational use as defined in 23-2-301 and as
20 permitted in 23-2-302, unless another highway, road, or right-of-way provides substantially the same access.

21 (5) The commission may not abandon a highway, road, or right-of-way used to access private land
22 if the access benefits two or more landowners unless all the landowners agree to the abandonment."
23

24 **Section 6.** Section 60-2-112, MCA, is amended to read:

25 **"60-2-112. Competitive bidding -- reciprocity -- definition.** (1) Except as provided in subsections
26 (2) through (6), if the estimated cost of any work exceeds \$50,000, the commission shall award the contract by
27 competitive bidding to the lowest responsible and responsive bidder. The award must be made upon the notice
28 and terms that the commission prescribes by its rules. However, except when prohibited by federal law, the

1 commission shall make awards and contracts in accordance with 18-1-102.

2 (2) The commission may award a contract by means other than competitive bidding if it determines
3 that special circumstances so require. The commission shall specify the special circumstances in writing.

4 (3) The commission may enter into contracts with units of local government for the construction of
5 projects without competitive bidding if it finds that the work can be accomplished at lower total costs, including
6 total costs of labor, materials, supplies, equipment usage, engineering, supervision, clerical and accounting
7 services, administrative costs, and reasonable estimates of other costs attributable to the project.

8 (4) The commission may delegate to the department the authority to enter, without competitive
9 bidding, agreed-upon price contracts for projects costing \$50,000 or less.

10 (5) The commission may award a design-build contract under the design-build contracting program
11 if the provisions of 60-2-137 have been met. The commission may also award a contract using an alternative
12 project delivery method under 60-2-120.

13 (6) The commission or the department may not enter into a contract for a state-funded highway
14 project or a construction project with a bidder whose operations are not headquartered in the United States
15 unless:

16 (a) the foreign country, or province or other political subdivision of that country, in which the bidder
17 is headquartered affords companies based in the United States open, fair, and nondiscriminatory access to
18 bidding on highway projects and construction projects located in the foreign country, or province or other
19 political subdivision of that country; and

20 (b) the department has entered into a reciprocity agreement with or has exchanged letters of
21 information with the foreign country, or province or other political subdivision of that country, that addresses:

22 (i) the equal and fair treatment of bids originating in the United States and in the foreign country,
23 or province or other political subdivision of that country;

24 (ii) specific ownership requirements and tax policies in the United States and in the foreign
25 country, or province or other political subdivision of that country, that may result in the unequal treatment of all
26 bids received, regardless of their origin;

27 (iii) the means by which contractors from both the United States and the foreign country, or
28 province or other political subdivision of that country, are notified of highway projects and construction projects

1 available for bid; and

2 (iv) any other differences in public policy or procedure that may result in the unequal treatment of
3 bids originating in the United States or in the foreign country, or province or other political subdivision of that
4 country, for projects located in either the United States or the foreign country, or province or other political
5 subdivision of that country.

6 (7) ~~For the purposes of~~ As used in subsection (6), "construction" has the meaning provided in 18-
7 2-101."

8

9 **Section 7.** Section 60-2-115, MCA, is amended to read:

10 **"60-2-115. Contract let by commission -- time for final payment of contract price -- interest --**

11 **definitions.** (1) Subject to subsections (2) through (4), the department shall comply with the 30-day time period
12 for payment of contracts as provided in 18-2-306 for all contracts let by the commission in accordance with this
13 part.

14 (2) For the final payment on a contract, the department shall, within 30 days after a request by the
15 contractor for final acceptance, perform an inspection of the project and notify the contractor of whether the
16 department has granted or refused final acceptance.

17 (3) If the department notifies the contractor that the department has granted final acceptance, the
18 department shall make the final payment of the contract price specified in the contract to the other party to the
19 contract within 90 days after the notice.

20 (4) (a) If the department notifies the contractor that the department has refused final acceptance,
21 the department shall include with the notice a list of all deficiencies that must be cured before the department
22 will grant final acceptance.

23 (b) After the contractor has cured all of the deficiencies, the contractor shall request final
24 acceptance by the department. Within 30 days after the contractor's request, the department shall perform an
25 inspection of all of the cured deficiencies.

26 (c) If the department notifies the contractor of its final acceptance, the department shall make the
27 final payment as provided in subsection (3).

28 (d) If the department notifies the contractor that the department has refused final acceptance, the

1 department shall:

2 (i) notify the contractor of any remaining deficiencies; and

3 (ii) grant final acceptance, subject to any remedy provided under the provisions of Title 28, chapter

4 2.

5 (5) When the department grants final acceptance, the department shall immediately consider the
6 contract complete and close the contract.

7 (6) ~~For the purposes of~~ As used in this section, the following definitions apply:

8 (a) "Final acceptance" means the department's acceptance of the construction, maintenance, or
9 public works project upon certification by the architect, project engineer, or other representative of the
10 department of final completion of the project.

11 (b) "Final completion" means that the project has been completed in accordance with the terms
12 and conditions of the contract documents and all warranties have expired."

13

14 **Section 8.** Section 60-2-134, MCA, is amended to read:

15 **"60-2-134. Definitions.** ~~For the purposes of~~ As used in 18-8-204, 18-8-205, 60-2-111, 60-2-112, 60-
16 2-120, 60-2-137, and this section, the following definitions apply:

17 (1) (a) "Alternative project delivery method" means a process approved by the commission and
18 recognized by the U.S. department of transportation, federal highway administration, for federal participation
19 under the United States Code and federal regulations.

20 (b) The term does not include a design-build contract awarded by the commission under 60-2-
21 111(3).

22 (2) "Design-build contracting" means the process of entering into a single contract between the
23 commission and a design-build contractor in which the design-build contractor agrees to design and build a
24 highway, structure, or facility or any other items required in a request for proposals.

25 (3) "Design-build contractor" means an individual, partnership, corporation, joint venture, or other
26 legally recognized entity that is appropriately licensed in Montana and that provides the necessary design and
27 construction services, including contract administration.

28 (4) "Design-build or alternative project delivery criteria package" means the document provided by

the department that contains the information necessary to guide a prospective design-build contractor in the preparation and submission of a proposal for a design-build or alternative project delivery project.

(5) "Request for proposals" means a part of the design-build or alternative project delivery criteria package that contains a detailed scope of work, including design concepts, technical requirements and specifications, the time allowed for design and construction, the department's estimated cost of the project, the deadline for submitting a proposal, the selection criteria, and a copy of the contract.

(6) "Request for qualifications" means a part of the design-build or alternative project delivery criteria package that contains the desired minimum qualifications of the design-build or alternative project delivery contractor, a scope of work statement, the project requirements, the amount of reimbursement that the commission has determined will be paid to prospective contractors who qualify for the short list but are not awarded a contract, if applicable, and the selection criteria that the department will use in compiling the short list of prospective design-build contractors to consider."

Section 9. Section 60-2-220, MCA, is amended to read:

"60-2-220. Cultural heritage areas -- signs -- location and design -- funding. (1) Cultural heritage areas are established:

(a) encompassing Silver Bow County and Deer Lodge County;

(b) encompassing Miles City.

(2) Subject to the provisions of federal law, the department shall, as funds are available under subsection (4), erect and maintain at specified locations on the primary and interstate highways in the appropriate areas signs identifying those areas as cultural heritage areas.

(3) The consolidated governments of Butte-Silver Bow and Anaconda-Deer Lodge and the city of Miles City shall design the signs and designate the general locations for the signs. The department shall determine the exact location of each sign.

(4) The department may accept money from other state agencies, federal agencies, local governments, or private persons for the purposes of subsections (2) and (3) and may expend the money received for those purposes.

(5) ~~As used in this section, "department" means the department of transportation provided for in 2-~~

1 15-2501."

2

3 **Section 10.** Section 60-2-240, MCA, is amended to read:

4 **"60-2-240. Use of postconsumer recycled materials in highway construction projects --**

5 **definition.** (1) The department shall use postconsumer recycled material in federal and state highway
6 construction projects, including but not limited to use as:

7 (a) roadway fill material;

8 (b) roadway aggregates;

9 (c) bedding material;

10 (d) foundation material; and

11 (e) filter material.

12 (2) The department shall take procedural steps to provide for the incorporation of postconsumer
13 recycled material into a highway project to ensure that:

14 (a) road construction projects use postconsumer recycled material when the cost is less than or
15 equal to the cost of other materials used for the same purpose; and

16 (b) engineering standards demonstrate the acceptable use of postconsumer recycled material for
17 a project.

18 (3) ~~For the purposes of~~ As used in this section, "postconsumer recycled material" means recycled
19 glass processed into glass cullet, reclaimed asphalt and concrete, and recycled tires."

20

21 **Section 11.** Section 60-3-206, MCA, is amended to read:

22 **"60-3-206. Apportionment of funds to secondary highway system -- definitions.** (1) Each fiscal
23 year the department shall apportion at least 65% of the federal-aid highway funds allocated for the secondary
24 highway system among the districts for capital construction needs. The remainder of the funds must be used by
25 the department for secondary highway system pavement preservation. The proportion that each district
26 receives is computed on the following basis:

27 (a) 30% in the ratio of land area in each district to the total land area in the state;

28 (b) 35% in the ratio of the rural population in each district to the total rural population in the state;

(c) 30% in the ratio of the rural road mileage in each district to the total rural road mileage in the state; and

(d) 5% in the ratio of the rural bridge square footage in each district to the total rural bridge square footage in the state.

(2) To the extent necessary to permit orderly programming and construction of projects, obligations in a district may exceed the amount apportioned to that district if a majority of the boards of county commissioners of the counties in another district approve the donation of the extra amount. The amount of excess obligations must be deducted from future apportionments to that recipient district and returned to the donor district.

(3) ~~For the purposes of~~ As used in this section, terms are defined as follows the following definitions apply:

(a) "Capital construction" means a highway or bridge project undertaken to improve structural strength, increase capacity, or eliminate hazardous design features. A capital construction project may include paved or gravel road reconstruction and rehabilitation.

(b) "District" means the transportation commission districts identified in 2-15-2502.

(c) "Pavement preservation" means a project undertaken to extend the useful life of a paved road.

(d) "Rural bridge square footage" means the total square footage of all deck areas of structures 20 feet long or longer located on the roadways that are used to calculate rural road mileage as provided in subsection (3)(f).

(e) "Rural population" means the total population of all of the counties in a district as reported in the latest decennial federal census less the population in cities over 5,000 persons and their unincorporated fringe urban areas as determined by the department, using the latest decennial federal census.

(f) (i) "Rural road mileage" means all road mileage on roads functionally classified and approved by the transportation commission as major collectors or minor arterials, exclusive of road mileage on the primary highway system.

(ii) Road mileage within national parks or road mileage that lies within incorporated cities over 5,000 persons and their unincorporated fringe urban areas, whose population is determined by the department, using the latest decennial federal census, is not considered rural road mileage.

(iii) Rural road mileage reported by the road inventory of the department must be used in determining rural road mileage.

(4) For the purpose of determining secondary highway capital construction priorities within a district, each board of county commissioners in a district has one vote and the department has two votes. An existing paved secondary highway may not be converted to a graveled surface without the concurrence of the board of county commissioners in the county where the road is located."

Section 12. Section 60-3-211, MCA, is amended to read:

"60-3-211. Apportionment of state funds to urban highway system -- definition. (1) Each fiscal year, the department shall apportion the federal-aid highway funds allocated for the urban highway system to the urban areas in the state as delineated and reported in the latest federal census with populations of 5,000 or more in the ratio of urban population in each urban area to the total urban population in all urban areas in the state.

(2) To the extent necessary to permit orderly programming and construction of projects, obligations in any urban area may exceed the amount apportioned to that urban area. The amount of any excess obligations must be deducted from future apportionments to that urban area.

~~(2)(3)~~ For the purpose of As used in this section, "urban population" is defined as population within the urban area, as reported in the latest federal census, with a population of 5,000 or more and that population within the adjusted and federal highway administration-approved fringe areas based on the latest federal census.

~~(3) To the extent necessary to permit orderly programming and construction of projects, obligations in any urban area may exceed the amount apportioned to that urban area. The amount of any excess obligations must be deducted from future apportionments to that urban area."~~

Section 13. Section 60-4-201, MCA, is amended to read:

"60-4-201. ~~Exchange of interest in real~~ Abandonment by transportation commission -- disposition of unnecessary highway property by department -- definitions. (1) A commission-designated highway system or state highway, once established, must continue until it is abandoned or vacated by

1 operation of law, by judgment of a court of competent jurisdiction, or by a proper order of the commission.

2 (2) An interest in real property acquired for the purpose of establishing a highway may be disposed
3 of by abandonment pursuant to 60-4-209.

4 (3) A right-of-way may be disposed of by right-of-way abandonment as defined in subsection (5) of
5 this section and as provided for in 60-4-213 through 60-4-218.

6 (4) The department may dispose of unnecessary highway property by:

7 (a) sale, as provided in 60-4-202 through 60-4-207; or

8 (b) exchange, as provided in 60-2-107.

9 (5) As used in this part, the following definitions apply:

10 (a) "Right-of-way abandonment" means cessation of the use of a right-of-way or of activity on a
11 right-of-way with no intention to reclaim or use the right-of-way again.

12 (b) "Unnecessary highway property" means ~~The department may determine that an interest in real~~
13 ~~property, however acquired by it, the department, that the department has determined is no longer necessary to~~
14 ~~the laying out, altering, construction, improvement, or maintenance of a highway. Except as provided in 60-4-~~
15 ~~213 through 60-4-218, the department may then exchange the interest, either as entire or partial consideration,~~
16 ~~for any other interest in real property needed for highway purposes. The department may establish the manner~~
17 ~~and terms and conditions for the exchange.~~

18 ~~(2) Except as provided in 60-4-213 through 60-4-218, prior to making the exchange, the~~
19 ~~department shall notify all landowners whose property is adjacent to the land proposed for exchange. If any of~~
20 ~~the landowners are interested in buying the land proposed for exchange, the landowners shall notify the~~
21 ~~department of their interest by registered letter within 30 days of the receipt of the notice of exchange from the~~
22 ~~department. Upon receipt of a notice of interest, the department shall offer the land proposed for exchange for~~
23 ~~sale as provided in 60-4-202 and 60-4-203.~~

24 ~~(3) The department may enter into an arrangement for exchange solely with a municipality or~~
25 ~~county for an interest in real property that is a public right-of-way used for transportation purposes. The~~
26 ~~department may transfer the interest to the municipality or county in exchange for the municipality or county~~
27 ~~assuming full interest and maintenance authority upon the following conditions:~~

28 ~~(a) the real property must be maintained as a public right-of-way for transportation purposes; and~~

1 (b) — no portion of the interest may be sold to or exchanged with private entities."

2
3 **Section 14.** Section 60-4-202, MCA, is amended to read:

4 **"60-4-202. Sale of interest in real property.** (1) The department may sell an interest in real property
5 if the department determines that the property is not necessary to the laying out, altering, construction,
6 improvement, or maintenance of a highway unnecessary highway property. Except as provided in 60-4-213
7 through 60-4-218 and subsection (2) of this section, if the interest is reasonably of a value in excess of \$10,000,
8 sale must be made to the highest bidder at public auction. The sale of an interest at auction must be conducted
9 as provided in 60-4-203.

10 (2) (a) The department may sell an interest in real property without a public auction directly to:

11 (i) a federal, state, tribal, or local government;

12 (ii) an agency of government;

13 (iii) a school district; or

14 (iv) a unit of the Montana university system.

15 (b) The department shall obtain fair market value for the property.

16 (3) ~~Except as provided in 60-4-213 through 60-4-218, before~~ Before the department sells an
17 ~~interest in real property~~ unnecessary highway property as provided in subsection (2), the department shall
18 notify all landowners whose property is adjacent to the land proposed for sale. If any of the landowners are
19 interested in buying the land proposed for sale, the landowners shall notify the department of their interest by
20 registered letter within 30 days of the receipt of the notice of sale from the department. Upon receipt of a notice
21 of interest, the department shall offer the land for sale as provided in 60-4-203 and this section."

22
23 **Section 15.** Section 60-4-203, MCA, is amended to read:

24 **"60-4-203. Conduct of sale.** (1) ~~Except as provided in 60-4-213 through 60-4-218~~ To sell
25 unnecessary highway property pursuant to 60-4-202, the department shall publish notice of the sale once a
26 week for 4 successive weeks in a newspaper published in the county in which the interest is located and on the
27 department's website. The sale may be held in person in the county where the property is located or through an
28 online auction.

- 1 (2) The notice of sale must contain:
- 2 (a) the day, date, and time of the beginning of the sale;
- 3 (b) a list of all the tracts to be offered for sale with the legal description, which includes the
- 4 township and range, section number, and subdivision, or reference to the block and lot if surveyed;
- 5 (c) the number of acres in unplatted lands;
- 6 (d) the appraised value per acre and the appraised value of each lot;
- 7 (e) a quarter section listing of nonirrigable farm lands, with grazing lands listed in larger tracts not
- 8 exceeding one section;
- 9 (f) a consecutive series of sales numbers for advertised tracts, if appropriate; and
- 10 (g) the terms and conditions of the sale and any additional information the department considers
- 11 useful.
- 12 (3) ~~Except as provided in 60-4-213 through 60-4-218, before~~ Before the sale of an interest having
- 13 a value in excess of \$10,000, the department must have the interest appraised at a price representing a fair
- 14 market value. The appraised value must be stated in the published notice.
- 15 (4) ~~Except as provided in 60-4-213 through 60-4-218, a~~ A sale of an interest may not be made
- 16 unless it has been appraised within 6 months prior to the date of the sale. A sale may not be made for less than
- 17 90% of the appraised value.
- 18 (5) ~~Except as provided in 60-4-213 through 60-4-218, title~~ Title to an interest may not pass from
- 19 the state until the purchaser has paid the full amount of the purchase price into the state treasury to the credit of
- 20 the department."
- 21

22 NEW SECTION. **Section 16. Exchange of unnecessary highway property.** (1) The department

23 may exchange unnecessary highway property, either as entire or partial consideration, for any other interest in

24 real property needed for highway purposes. The department may establish the manner of the exchange and the

25 terms and conditions for it.

26 (2) Before making the exchange, the department shall notify all landowners whose property is

27 adjacent to the land proposed for exchange. If any of the landowners are interested in buying the land proposed

28 for exchange, the landowners shall notify the department of their interest by registered letter within 30 days of

1 the receipt of the notice of exchange from the department. Upon receipt of a notice of interest, the department
2 shall offer the land proposed for exchange for sale as provided in 60-4-202 and 60-4-203.

3 (3) The department may enter into an arrangement for exchange solely with a municipality or
4 county for an interest in real property that is a public right-of-way used for transportation purposes. The
5 department may transfer the interest to the municipality or county in exchange for the municipality or county
6 assuming full interest and maintenance authority under the following conditions:

7 (a) the real property must be maintained as a public right-of-way for transportation purposes; and

8 (b) no portion of the interest may be sold to or exchanged with private entities.

9
10 **Section 17.** Section 60-4-209, MCA, is amended to read:

11 **"60-4-209. Abandoned highway property -- title vests in contiguous owner.** (1) ~~Except as~~
12 ~~provided in 60-4-213 through 60-4-218, upon Following~~ abandonment by the state in the manner provided in
13 60-2-107 and subsection (2) of this section of an interest in real property acquired for the purpose of
14 ~~establishment of establishing~~ a highway, the owner of contiguous real property or the owner's successor in
15 interest is vested with the abandoned interest to the extent provided in subsection (3) of this section.

16 (2) For the purposes of this section:

17 (a) a fee simple interest may be abandoned only by the proper order of the commission; and

18 (b) an interest of less than fee simple may be abandoned in the manner provided in subsection
19 (2)(a), by operation of law, and by judgment of a court of competent jurisdiction.

20 (3) ~~Except as provided in 60-4-213 through 60-4-218, the The~~ interest acquired by the contiguous
21 property owner under subsection (1) is the abandoned interest or portion of the interest:

22 (a) if there are different contiguous property owners on each side of the abandoned interest,
23 bounded on one side by the contiguous property and on the remaining two opposite sides by lines following the
24 shortest distance from the extreme ends of the contiguous property abutting upon the abandoned interest to the
25 center of the abandoned interest; and

26 (b) if the owners of the contiguous property on each side of the abandoned interest are the same,
27 bounded on two opposite sides by the contiguous properties and on the two remaining opposite sides by lines
28 following the shortest distance from the extreme ends of the contiguous property on one side of the abandoned

1 interest to the extreme ends of the contiguous property on the other side of the abandoned interest.

2 (4) For the ~~purpose~~ purposes of this section, an interest in property abandoned by a proper order
3 of the commission includes an interest in property that the commission determines to be unnecessary to the
4 laying out, altering, construction, improvement, or maintenance of a highway, whether or not the commission
5 determines to sell the interest.

6 (5) ~~Except as provided in 60-4-213 through 60-4-218, the~~ The interest acquired by a contiguous
7 property owner under subsection (3) is conditioned ~~upon~~ on the use of the property for agricultural or
8 noncommercial purposes. If the property is used for commercial purposes or for purposes of future subdivision
9 or other similar development, the property must revert to the state for sale pursuant to this part. This restriction
10 applies to all subsequent holders of title to the property.

11 (6) This section does not provide for abandonment of only a portion of a right-of-way or for
12 abandonment of highway property for which the contiguous property has been subdivided prior to
13 abandonment."

14

15 **Section 18.** Section 60-4-213, MCA, is amended to read:

16 **"60-4-213. Purpose.** The purpose of 60-4-213 through 60-4-218 is to provide for the ~~abandonment~~
17 ~~disposal~~ of an interest in real property that the department has determined is not necessary to the laying out,
18 altering, construction, improvement, or maintenance of a road or highway by right-of-way abandonment. The
19 ~~current abandonment statute, 60-4-209, does not provide for abandonment of only a portion of the right-of-way~~
20 ~~or for abandonment of highway property where the contiguous property has been subdivided prior to~~
21 ~~abandonment."~~

22

23 **Section 19.** Section 60-4-214, MCA, is amended to read:

24 **"60-4-214. Definitions.** As used in 60-4-213 through 60-4-218, unless the context requires otherwise,
25 the following definitions apply:

26 (1) "Abandoned interest" means the fee simple or lesser interest in the subject property after the
27 right-of-way abandonment has been ordered by the commission.

28 (2) ~~"Abandonment" means cessation of use of right-of-way or activity on the right-of-way with no~~

1 intention to reclaim or use the right-of-way again.

2 (2) "Contiguous property" means subdivided parcels along one side of the length of the remainder.

3 (3) "Remainder" means the area lying between the centerline and the new right-of-way line as
4 determined by the department, in its sole discretion, as necessary for the reconstruction and maintenance of a
5 road or highway.

6 (4) "Subject property" means that portion of highway right-of-way for which right-of-way
7 abandonment is sought."

8

9 **Section 20.** Section 60-4-215, MCA, is amended to read:

10 **"60-4-215. Application of other laws.** (1) The provisions of 60-2-107(1) through (3), ~~60-4-201, 60-4-~~
11 ~~202, 60-4-203, and 60-4-209(1) and (3) through (5)~~ do not apply to abandonment under 60-4-213 through 60-4-
12 218.

13 (2) The provisions of 60-2-107(4) and (5) apply to right-of-way abandonment under 60-4-213
14 through 60-4-218 to the extent that reasonable access must remain after the right-of-way abandonment."

15

16 **Section 21.** Section 60-4-216, MCA, is amended to read:

17 **"60-4-216. Procedure for right-of-way abandonment.** (1) Upon receipt of a petition, in writing, for
18 the right-of-way abandonment of the subject property from three or more owners of contiguous property, the
19 department shall prepare an exhibit, setting forth the boundaries of the subject property and identifying the
20 remainder.

21 (2) The department shall prepare an order of right-of-way abandonment to propose to the
22 commission.

23 (3) The proposed order must state that the subject property is subject to all easements and utilities
24 apparent or of record.

25 (4) Before abandoning the subject property, the commission shall notify the board of county
26 commissioners in writing of its intent to ~~abandon~~ effect the right-of-way abandonment of the subject property
27 and shall hold a public hearing in the county or counties affected by the right-of-way abandonment.

28 (5) The commission shall publish the notice of proposed abandonment and public hearing for 3

1 successive weeks in local newspapers within the county.

2 (6) The commission, in its sole discretion, may enter an order ~~abandoning~~ disposing of the subject
3 property by right-of-way abandonment.

4 (7) The order with exhibits attached must be recorded by the department in the office of the clerk
5 and recorder in the county or counties in which the subject property is located."
6

7 **Section 22.** Section 60-4-217, MCA, is amended to read:

8 **"60-4-217. Criteria for right-of-way abandonment.** (1) Subject to subsection (2), the commission
9 shall enter an order ~~abandoning~~ disposing of the subject property by right-of-way abandonment upon finding
10 that:

11 (a) the department has determined that the cost of disposing of the subject property by sale
12 pursuant to 60-4-202 or exchange pursuant to 60-4-201 exceeds the fair market value of the subject property;

13 (b) a remainder exists to provide reasonable access; and

14 (c) at least one of the following applies:

15 (i) the disposal qualifies as an exception to 23 CFR 710.403(d);

16 (ii) reimbursement of federal funds is not required; or

17 (iii) the commission agrees to any required reimbursement of federal funds.

18 (2) An owner of contiguous property who does not object to the proposed receipt of title to the
19 abandoned interest is considered to have consented to the receipt of title."
20

21 **Section 23.** Section 60-4-218, MCA, is amended to read:

22 **"60-4-218. Title.** (1) The department is not responsible for apportioning the abandoned interest
23 among the owners of the contiguous property, and the provisions of 60-4-209(3) do not apply to ~~this the right-~~
24 of-way abandonment.

25 (2) By ~~consummating~~ effecting the right-of-way abandonment, neither the department nor the
26 commission gives the covenants set forth in 30-11-110 or warrants title.

27 (3) The interest acquired by each owner of contiguous property is the abandoned interest in the
28 subject property between the extension of the boundaries of the contiguous property, extending on the same

1 course and intersecting with the linear boundary of the remainder."

2

3 **Section 24.** Section 60-4-401, MCA, is amended to read:

4 **"60-4-401. Occupancy and relocation -- definitions.** ~~For the purposes of~~ As used in this part,
5 ~~unless otherwise indicated the context requires otherwise,~~ the following definitions apply:

6 (1) (a) "Cost of relocation" means the amount paid by the utility for material, labor, and equipment
7 properly attributable to the relocation after deducting any increase in the value of the new facility and any
8 salvage value derived from the old facility.

9 (b) "Cost of relocation" does not mean engineering costs for designing, locating, staking,
10 inspecting, or any other incidental costs of engineering.

11 (2) "Facility" means a utility's tracks, pipes, mains, conduits, cables, wires, towers, poles, and other
12 equipment and appliances impacted by a project on a commission-designated highway system or state
13 highway.

14 (3) "Utility" includes publicly, privately, and cooperatively owned utilities, including water and sewer
15 facilities."

16

17 **Section 25.** Section 60-4-601, MCA, is amended to read:

18 **"60-4-601. Interstate right-of-way -- department role -- definitions.** (1) The department of
19 transportation may grant a right-of-way use agreement for the use of longitudinal right-of-way along interstate
20 highways in the state for eligible projects that:

21 (a) provide evidence that construction and completion will result in a significant investment, a
22 documented positive significant fiscal impact, or both, to the Montana economy within the first year of operation;

23 (b) are in the public interest; and

24 (c) are approved by the federal highway administration.

25 (2) To request a right-of-way use agreement in accordance with this section, the owner of an
26 eligible project ~~must~~ shall submit an application to the department that demonstrates compliance with
27 subsection (1). ~~The applicant must~~ and pay an application fee of \$100. The department shall work with the
28 applicant and the federal highway administration throughout the review process and approve or deny the

1 application within 90 days of final approval by the federal highway administration.

2 (3) (a) Except as provided in subsections (3)(b) and (3)(c), the department and the applicant shall
3 agree to the payment of the fair market value of the portion of the right-of-way where the project will be located
4 prior to the right-of-way use agreement being granted.

5 (b) Applicants who seek an exception to paying the fair market value shall submit a request and
6 justification to the department. The department shall submit to the federal highway administration the fair
7 market value exception request for approval. If approved, the department may not charge the applicant for the
8 right-of-way use agreement.

9 (c) An applicant may propose to the department an alternative to payment of fair market value by
10 offering a comparable in-kind contribution.

11 (4) The department shall allow approved applicants for eligible projects to:

12 (a) enter into a right-of-way use agreement for a maximum 30-year term with the possibility of
13 renewal upon expiration of the original term; and

14 (b) use the right-of-way for the construction and maintenance of project facilities in a safe and
15 efficient manner as set forth in the right-of-way use agreement.

16 (5) Any relocation of facilities occupying the right-of-way is subject to 60-4-403. The department
17 shall work with applicants to minimize the potential for any future project impacts that may require the relocation
18 of facilities occupying the right-of-way.

19 (6) The department may adopt rules necessary for the administration of this section, including
20 application fees to be paid by an applicant seeking a right-of-way use agreement and any rules necessary to
21 ensure the state is not prevented from receiving federal funds for highway purposes.

22 (7) ~~For the purposes of~~ As used in this section, the following definitions apply:

23 (a) "Eligible project" means a pipeline, fiber optic or other communications-type cables, wireless
24 facility, associated infrastructure, and dedicated power sources.

25 (b) "Fair market value" means \$100 a mile for each year, or \$3,000 a mile for a 30-year term right-
26 of-way use agreement. Applicants may choose to pay annually or in a lump sum for the full length of the term.

27 (c) "Public interest", including the determination of clean energy and broadband infrastructure
28 projects that provide connectivity to Montana citizens, is determined by state policy and federal highway

1 administration guidance and regulation, including but not limited to 23 CFR 710.403."

2

3 **Section 26.** Section 60-5-102, MCA, is amended to read:

4 **"60-5-102. Definitions.** ~~When As~~ used in this chapter, unless the context requires otherwise, the
5 following definitions apply:

6 (1) "Arterial highway" means a state highway designated by the commission as part of the
7 noninterstate component of the national highway system, the primary highway system, and any highway so
8 designated as a part of the secondary highway system that has been constructed and is being used primarily
9 for through traffic on a continuous route.

10 (2) "Controlled-access facility" means and includes streets, alleys, public roads, private roads, and
11 ways of passage intersecting a controlled-access highway and real property contiguous to the right-of-way of a
12 controlled-access highway.

13 (3) "Controlled-access highway" means those portions of an interstate highway, throughway, or
14 throughway intersection that the commission designates for through traffic or other commission-designated
15 highway system or state highway over, from, or to which owners or occupants of abutting land or other persons
16 have no easement of access or only a limited easement of access, light, air, or view. It also means those
17 portions of spurs to interstate highways that the commission designates as unsafe or impeded by unrestricted
18 access of traffic from intersecting streets or alleys or public or private roads or ways of passage.

19 (4) "Existing highway" means and includes highways, roads, and streets established, constructed,
20 and in use on March 2, 1955. It does not include highways, roads, or streets established, constructed, and in
21 use after that date or highways, roads, or streets or portions of highways, roads, or streets relocated after that
22 date.

23 (5) "Highway authorities" or "authority" means the entities in state, county, and municipal
24 governments that have authority to construct, repair, and maintain highways, roads, and streets.

25 (6) "Throughway" means a portion of an arterial highway constructed and used for carrying traffic
26 partially or entirely around a town or city or a portion of a town or city.

27 (7) "Throughway intersection area" means an area within a radius of 300 feet from the point of
28 intersection of the centerlines of a throughway and a public road, street, or highway."

1

2 **Section 27.** Section 60-6-106, MCA, is amended to read:

3 **"60-6-106. Limitation of authority within and exclusion outside of incorporated municipalities --**
4 **~~exclusion outside incorporated municipalities~~---inclusion due to lack of local ordinances -- definition.**

5 (1) (a) Municipalities incorporated under Title 7, chapter 2, part 41, have the authority to enact ordinances in
6 accordance with state and federal laws governing the placement of impermanent encroachments on sidewalks
7 of a commission-designated highway system or state highway right-of-way without the necessity of permitting
8 by the department of transportation for individual encroachments as described in 60-6-101.

9 (b) This provision is limited to sidewalks as defined in 61-8-102.

10 (2) (a) This provision specifically excludes all commission-designated highway systems and state
11 highway rights-of-way outside of incorporated municipality boundaries.

12 (b) A sidewalk encroachment requiring or resulting in a permanent attachment to or a modification
13 of a commission-designated highway system or state highway right-of-way must abide by the requirements of
14 60-6-101 through 60-6-105.

15 (3) (a) An incorporated municipality that has not enacted an ordinance regulating the placement of
16 an impermanent encroachment on a sidewalk shall default to the permitting process as described in 60-6-101
17 until it enacts a regulating ordinance.

18 (b) After enacting a regulating ordinance:

19 (i) the municipality shall indemnify the state, including costs and fees, for all claims for damages
20 caused by the municipality's enactment of an ordinance, approval of the impermanent encroachment on a
21 sidewalk, and placement of the impermanent encroachment on a sidewalk; and

22 (ii) 60-6-101 through 60-6-105 do not apply to the impermanent encroachment on a sidewalk
23 except as provided by this section.

24 (4) The department of transportation shall communicate identified violations of state or federal law,
25 including the Americans with Disabilities Act of 1990, 42 U.S.C. 12101, et seq., as amended, to the
26 incorporated municipalities for enforcement within their boundaries. This communication must include
27 references to the state or federal law that was violated. If an incorporated municipality has not acted to address
28 the violation within 7 days, the department of transportation is authorized to proceed with removal of the

1 violation as described in 60-6-101 through 60-6-105.

2 (5) ~~"Impermanent encroachment"~~ As used in this section, "impermanent encroachment" means:

3 (a) an object that is not permanently affixed to the sidewalk of a commission-designated highway
4 system or state highway right-of-way or that does not require the modification of the sidewalk of a commission-
5 designated highway system or state highway right-of-way; or

6 (b) an occupied encroachment above grade level."

7

8 **Section 28.** Section 60-11-111, MCA, is amended to read:

9 **"60-11-111. Identification and acquisition of railroad rights-of-way -- identification of railroad**

10 **lines for rehabilitation -- definitions.** (1) Identification of those railroad lines proposed for abandonment in the
11 state of Montana that may have potential for local transportation service or future use as transportation
12 corridors is necessary to determine the feasibility of acquisition by the state and to allow the state to negotiate
13 for acquisition of those railroad lines or easements in the lines.

14 (2) Identification of those railroad branch lines in the state that may have potential for local rail
15 freight transportation service is necessary to determine the feasibility of providing loans or grants to the owner
16 or operator of the railroad line as provided in 60-11-120.

17 (3) The department of transportation:

18 (a) shall identify railroad rights-of-way in this state that may be abandoned and research the
19 feasibility of acquisition by the state of Montana of those rights-of-way that may be abandoned;

20 (b) shall identify, under the state rail planning program, railroad branch lines that should be
21 preserved for continued operation;

22 (c) may negotiate for and acquire easements in the rights-of-way or the railroad rights-of-way and
23 attendant facilities identified pursuant to subsection (3)(a) and:

24 (i) hold all acquired lands in trust for transportation purposes; and

25 (ii) upon creation of an appropriate local authority, other than an agency of state government, shall
26 transfer to the local authority all attendant facilities and all rights and responsibility to operate and maintain
27 transportation services over the lands acquired ~~in pursuant to this~~ subsection (3)(c);

28 (d) shall cooperate with and assist persons representing recreational, transportation, and utility

1 interests and other interested persons, including adjacent landowners, in acquiring ownership or easement of
2 abandoned railbeds; and

3 (e) shall establish procedures, including the use of federal funds received for rail freight assistance
4 programs under former 49 U.S.C. 1654, for providing loans and grants under 60-11-120.

5 (4) Abandoned rights-of-way acquired and held in trust pursuant to subsection (3)(c)(i) must be
6 administered by the department of natural resources and conservation, as prescribed in Title 77, until the land
7 is needed for transportation purposes.

8 (5) As used in this section, the following definitions apply:

9 (a) "Railbed" means the fee or lessor interest in the land 8 1/2 feet to either side of the centerline
10 of the railroad track.

11 (b) "Recreational interest" means a local government or a not-for-profit corporation that has as its
12 stated purpose the development, use, or maintenance of public recreational trails."

13
14 NEW SECTION. Section 29. Repealer. The following sections of the Montana Code Annotated are
15 repealed:

16 60-4-208. Abandonment or vacation of commission-designated highway system or state
17 highways.

18 60-11-112. Definitions.

19
20 NEW SECTION. Section 30. Codification instruction. [Section 16] is intended to be codified as an
21 integral part of Title 60, chapter 4, part 2, and the provisions of Title 60, chapter 4, part 2, apply to [section 16].

22 - END -