

Statutory Impediments to Private Funding of Oversize Routes
For the Senate Joint Resolution No. 26 Study

Prepared For the Revenue and Transportation Interim Committee
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April 2014

This briefing provides an overview of whether there are any statutory impediments to the private, cooperative funding of routes to accommodate oversize vehicles. This information was requested as part of the Revenue and Transportation Interim Committee's Senate Joint Resolution No. 26 (SJR 26) study of the movement of oversize loads. A [previous briefing](#) about Alberta's High Load Corridors discussed how the Oil Sands Community Alliance coordinated funding for oversize load corridors in Alberta. This briefing analyzes whether there are any barriers to a similar approach in Montana.

At the December 2013 Revenue and Transportation Interim Committee meeting, James McCord of Bay Ltd. discussed the basic changes necessary to allow the movement of oversize loads: raising or burying power and telecommunication lines, installing traffic signals that can be swivelled, and constructing turnouts in high traffic areas.¹ Statutory authority related to those types of changes is discussed below.

Department of Transportation Authority

The Department of Transportation (MDT) is the "custodian" of federal-aid and state highways, and local jurisdictions are custodians for roads and streets under their authority. Section [60-1-102](#) provides that the Legislature intends:

- (1) to place a high degree of trust in the hands of those officials whose duty it is, within the limits of available funds, to plan, develop, operate, maintain, and protect the highway facilities of this state for present as well as or future use;
- (2) to make the department of transportation custodian of the federal-aid and state highways and to impose similar responsibilities upon the boards of county commissioners with respect to county roads and upon municipal officials with respect to the streets under their jurisdiction. . .

The following sections discuss statutory authority specific to the types of improvements made to accommodate oversize loads.

Wires and Cables

The movement of wires and cables is addressed in [Title 69, chapter 4, part 6](#), and requires the owner of the wires or cables to provide workers to move or raise the cables and the mover to pay the cost.² If two or more entities wish to cooperatively fund the movement of wires and cables in a particular area, there does not seem to be any prohibition against sharing costs.

¹Bay Ltd., [Presentation to Revenue & Transportation Interim Committee](#), December 4, 2013.

²For more information see: Megan Moore, "[Background Report on Provisions for Oversize Vehicles](#)," September 2013, pp. 5-6.

Traffic Control Devices

Section [61-8-203](#) requires MDT to "place and maintain traffic control devices" on highways under its jurisdiction, and section [61-8-206](#) gives local authorities the same responsibility for highways under their jurisdiction. Neither section addresses whether a private entity can voluntarily fund a desired type of traffic control device, such as one that swivels to accommodate an oversize load.

MDT has a process for allowing the private funding of traffic control devices. MDT and the entity wishing to fund the traffic control device agree on a contractor, and MDT issues an encroachment permit. If the construction involves earth-disturbing activities, an environmental review is required. Once the traffic control device is constructed, ownership is transferred to the entity with jurisdiction over the highway (the state, a county, or a city).³ This process could also be used if multiple entities share the costs.

Turnouts

There is no specific authority in statute to construct turnouts. However, section [60-2-201](#) addresses the general powers of MDT, which include in part:

- (1) The department may plan, lay out, alter, construct, reconstruct, improve, repair, and maintain highways on the federal-aid systems and state highways according to priorities established by and on projects selected and designated by the commission.

A private entity that needs to construct a turnout in order to move an oversize load would face a process similar to the one discussed above for traffic control devices. Again, there does not seem to be any prohibition on one or more entities covering the costs.

Conclusion

There is no prohibition on one or more entities funding the types of improvements needed to accommodate an oversize load such as the movement of wires and cables, installation of a swivelling traffic signal, or construction of a turnout. Oversize vehicles traveling on a route that accommodates oversize vehicles would still be required to obtain a 32-J oversize load permit, however one might expect the process to be simplified because arrangements would not have to be made for raising wires, moving traffic signals, or constructing turnouts.

There are several options for encouraging or ensuring that there are no impediments to multiple entities funding the modifications necessary for the movement of oversize vehicles:

1. The committee could request a bill to amend statute to expressly allow such shared funding.
2. The committee could request a bill for a resolution to encourage private companies to cooperate in creating oversize corridors.
3. The committee could include in the SJR 26 final report a recommendation that private entities share the costs and collaborate in creating routes to accommodate oversize vehicles.

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³Conversation with Duane Williams, Administrator of Motor Carrier Services Division, Montana Department of Transportation, April 23, 2014.