

1 SENATE BILL NO. 31

2 INTRODUCED BY D. BERRY

3 BY REQUEST OF THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

4

5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS GOVERNING STATE TRUST
 6 LAND; AUTHORIZING THE USE OF HISTORIC RIGHT-OF-WAY EASEMENTS FOR EXISTING UTILITIES;
 7 EXTENDING THE DEADLINE FOR FILING AN APPLICATION FOR A HISTORIC RIGHT-OF-WAY DEED;
 8 CLARIFYING THAT FULL FAIR MARKET VALUE MUST BE OBTAINED FOR THE USE OF SCHOOL TRUST
 9 LANDS; EXTENDING THE EFFECTIVE PERIOD FOR HISTORIC RIGHT-OF-WAY DEEDS AND EASEMENTS;
 10 AMENDING SECTIONS 77-1-130, 77-1-208, 77-2-206, 77-2-325, AND 77-6-302, MCA, AND SECTION
 11 5, CHAPTER 461, LAWS OF 1997; REPEALING SECTIONS 77-5-211, 77-6-304, AND 77-6-305, MCA;
 12 AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

13

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

15

16 **Section 1.** Section 77-1-130, MCA, is amended to read:

17 **"77-1-130. (Temporary) Recognition of historic right-of-way -- criteria for right-of-way deed --**
 18 **conditions -- fees.** (1) A person or a county may apply to the department for a historic right-of-way deed
 19 to provide access to the applicant's private property, ~~or~~ to provide continuation of a county road, or to
 20 provide for authorization of existing utilities by filing an application with the department by October 1,
 21 ~~2004~~ 2006, on a form prescribed by the department. An application must be accompanied by:

22 (a) an application fee of \$50;

23 (b) a notarized affidavit:

24 (i) demonstrating that the applicant or the applicant's predecessor in interest used the right-of-way
 25 applied for before ~~1973-1977~~ 1997 and that the use has continued to the present;26 (ii) describing the purpose for which the right-of-way was used before ~~1973-1977~~ 1997; and27 (iii) demonstrating that the historic right-of-way applied for is the right-of-way demonstrated in the
 28 evidence provided in subsection (1)(c); and29 (c) (i) aerial photographs taken by an agency of the United States demonstrating use of the
 30 right-of-way applied for; or

1 (ii) other evidence of the use of the right-of-way applied for.

2 (2) The department shall review an application and other evidence submitted pursuant to
3 subsection (1) and shall issue a historic right-of-way deed in the name of the applicant if:

4 (a) the applicant pays the application fee provided in subsection (1)(a) and the fair market value
5 of the historic right-of-way as provided in subsection (4);

6 (b) the applicant has shown by substantial evidence the matters required in subsections (1)(b) and
7 (1)(c)(i) or (1)(c)(ii);

8 (c) the department has, if necessary, made a field inspection of the right-of-way applied for; and

9 (d) the deed is approved by the board.

10 (3) A historic right-of-way deed issued in the name of the applicant must contain the description
11 of the property of the applicant to which it is appurtenant as provided in the application, and the
12 right-of-way must thereafter be considered appurtenant to that dominant estate. A deed may be assigned
13 by the applicant to the applicant's successor in interest with the approval of the department. The
14 department ~~may not require a fee for the approval of an assignment and~~ may not withhold approval for
15 any reason other than that the use of the historic right-of-way is contrary to subsection (5).

16 (4) (a) At the time of issuing the historic right-of-way deed, the department shall collect from the
17 applicant the full market value of the acreage of the historic right-of-way ~~based on the following~~
18 ~~classifications of land:~~

19 ~~—— (i) \$37.50 per acre for state land classified as grazing land;~~

20 ~~—— (ii) \$275 per acre for state land classified as timber land;~~

21 ~~—— (iii) \$100 per acre for state land classified as crop land; and~~

22 ~~—— (iv) \$100 per acre for other land.~~

23 (b) ~~Amounts~~ The amount collected pursuant to subsection (4)(a) must be deposited in the
24 appropriate trust fund established for receipt of income from the land over which a historic right-of-way
25 is granted.

26 (5) If application is made in accordance with this section, a historic right-of-way deed must be
27 issued by the department, subject to the approval of the board, on the following terms:

28 (a) the right-of-way is only for the minimum width necessary, as negotiated by the department
29 and the applicant; and

30 (b) the right-of-way is only for the physical condition of the road or utility facilities existing on the

1 date the historic right-of-way deed is issued by the department.

2 (6) Issuance of a historic right-of-way deed pursuant to this section is exempt from the
3 requirements of Title 22, chapter 3, part 4, and Title 75, chapter 1, parts 1 and 2, ~~and Title 22, chapter~~
4 ~~3, part 4.~~

5 (7) The survey requirements of 77-2-102 may be waived by the department for the issuance of
6 a historic right-of-way deed if the department determines that there is sufficient information available to
7 define the boundaries of the right-of-way for the purposes of recording the easement.

8 (8) The department may attach conditions to a historic right-of-way deed necessary to ensure
9 compliance with this chapter. ~~However, the department may not require reversion of the right-of-way to~~
10 ~~the state.~~

11 (9) For the purposes of this section, "historic right-of-way deed" means a document issued by the
12 department granting to the applicant a nonexclusive easement over state land. (Terminates October 1,
13 ~~2003--sec. 5, Ch. 461, L. 1997~~ 2011.)"

14

15 **Section 2.** Section 77-1-208, MCA, is amended to read:

16 **"77-1-208. Cabin site licenses and leases -- method of establishing value.** (1) The board shall set
17 the annual fee based on full market value for each cabin site and for each licensee or lessee who at any
18 time wishes to continue or assign the license or lease. The fee must attain full market value based on
19 appraisal of the cabin site value as determined by the department of revenue. The licensee or lessee has
20 the option to pay the entire fee on March 1 or to divide the fee into two equal payments due March 1 and
21 September 1. The value may be increased or decreased as a result of the statewide periodic revaluation
22 of property pursuant to 15-7-111 without any adjustments as a result of phasing in values. An appeal of
23 a cabin site value determined by the department of revenue must be conducted pursuant to Title 15,
24 chapter 2.

25 (2) The board shall set the fee of each initial cabin site license or lease or each current cabin site
26 license or lease of a person who does not choose to retain the license or lease. The initial fee must be
27 based upon a system of competitive bidding. The fee for a person who wishes to retain that license or
28 lease must be determined under the method provided for in subsection (1).

29 (3) The board shall follow the procedures set forth in 77-6-302, 77-6-303, and through ~~77-6-306~~
30 for the disposal or valuation of any fixtures or improvements placed upon the property by the then-current

1 licensee or lessee and shall require the subsequent licensee or lessee whose bid is accepted by the board
2 to purchase those fixtures or improvements in the manner required by the board."

3

4 **Section 3.** Section 77-2-206, MCA, is amended to read:

5 **"77-2-206. Settlement for improvements.** If any state land is exchanged on which there are
6 improvements belonging to a lessee and some person other than the lessee is the transferee, that person
7 shall settle with the lessee for all improvements on the land belonging to the lessee before the exchange
8 is completed. The provisions of 77-6-301 through 77-6-303 and 77-6-306 relating to the payment and
9 settlement for improvements on state lands between a former lessee and a new lessee apply to the
10 settlement between a lessee and the transferee in an exchange. If settlement is not reached within 6
11 months of the date of exchange, all improvements become the property of the state unless the department
12 for good cause shown grants both parties additional time in which to exhaust arbitration."

13

14 **Section 4.** Section 77-2-325, MCA, is amended to read:

15 **"77-2-325. Settlement for improvements.** If any state land is sold on which there are
16 improvements belonging to a lessee and some person other than the lessee is the purchaser, that person
17 shall settle with the lessee for all improvements on the land belonging to the lessee before the issuance
18 of the certificate of purchase. The provisions of 77-6-301 through 77-6-303 and 77-6-306 relating to the
19 payment and settlement for improvements on state lands between a former lessee and a new lessee apply
20 to the settlement between a lessee and the purchaser. If settlement is not reached within 6 months of the
21 date of sale, all improvements become the property of the state unless the department for good cause
22 shown grants both parties additional time in which to exhaust arbitration."

23

24 **Section 5.** Section 77-6-302, MCA, is amended to read:

25 **"77-6-302. Compensation for improvements -- actual costs.** (1) When another person becomes
26 the lessee of the lands, the person shall pay to the former lessee the reasonable value of ~~these~~ the
27 improvements ~~at the time the new lessee takes possession~~. The reasonable value may not be less than
28 the full market value of the improvements.

29 (2) If the former lessee is unable to produce records establishing the reasonable value or if the
30 former lessee and the new lessee are unable to agree on the reasonable value of the improvements, the

1 value must be ascertained and fixed as provided in 77-6-306. The former lessee shall initiate this process
2 within 60 days of notification from the department that there is a new lessee. Failure to initiate the
3 process within this time period results in all improvements becoming the property of the state.

4 (3) Upon the termination of a lease, the department may grant a license to the former lessee to
5 remove the movable improvements from the land. Upon authorization, the movable improvements must
6 be removed within 60 days or they become the property of the state unless the department for good cause
7 grants additional time for the removal. The department shall charge the former lessee for the period of
8 time that the improvements remain on the land after the termination of the lease."

9

10 **Section 6.** Section 5, Chapter 461, Laws of 1997, is amended to read:

11 "Section 5. Termination. [This act] terminates October 1, ~~2003~~ 2011."

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13 NEW SECTION. **Section 7. Repealer.** Sections 77-5-211, 77-6-304, and 77-6-305, MCA, are
14 repealed.

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16 NEW SECTION. **Section 8. Effective date.** [This act] is effective on passage and approval.

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