

1 SENATE BILL NO. 181

2 INTRODUCED BY K. VAN DYK

3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING OR ELIMINATING BOARDS AND COUNCILS WITHIN
 5 THE DEPARTMENT OF TRANSPORTATION; REVISING TRANSPORTATION COMMISSION MEMBERSHIP
 6 CRITERIA TO INCORPORATE AN AERONAUTICS COMPONENT; ADDING TO THE TRANSPORTATION
 7 COMMISSION'S DUTIES; ELIMINATING THE BOARD OF AERONAUTICS, THE RAIL SERVICE
 8 COMPETITION COUNCIL, AND THE SCENIC-HISTORIC BYWAYS ADVISORY COUNCIL; REVISING
 9 PLANNING DUTIES FOR THE DEPARTMENT OF TRANSPORTATION TO ENCOMPASS FORMER DUTIES
 10 OF THE RAIL SERVICES COMPETITION COUNCIL; AMENDING SECTIONS 2-15-2502, 60-2-601, 60-2-602,
 11 60-11-101, 67-1-101, 67-1-301, 67-1-302, 67-1-304, 67-1-307, AND 67-11-202, MCA; REPEALING SECTIONS
 12 2-15-2506, 2-15-2511, AND 67-1-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN
 13 APPLICABILITY DATE."

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

16
 17 **Section 1.** Section 2-15-2502, MCA, is amended to read:

18 **"2-15-2502. Transportation commission.** (1) There is a transportation commission composed of five
 19 members. One member must be a resident of and appointed from each of these districts, each composed of the
 20 counties named:

21 (a) District 1. Lincoln, Flathead, Sanders, Lake, Mineral, Missoula, Ravalli, Granite, Powell;

22 (b) District 2. Deer Lodge, Silver Bow, Beaverhead, Madison, Gallatin, Meagher, Broadwater, Jefferson,
 23 Park;

24 (c) District 3. Glacier, Toole, Liberty, Hill, Blaine, Pondera, Teton, Chouteau, Cascade, Lewis and Clark;

25 (d) District 4. Carter, Powder River, Fallon, Custer, Rosebud, Garfield, Phillips, Valley, McCone, Prairie,
 26 Dawson, Wibaux, Richland, Roosevelt, Daniels, Sheridan;

27 (e) District 5. Golden Valley, Stillwater, Carbon, Big Horn, Yellowstone, Musselshell, Judith Basin,
 28 Fergus, Petroleum, Treasure, Wheatland, Sweet Grass.

29 (2) Of the members appointed from districts 1, 3, 4, and 5:

30 (a) at least one must have specific knowledge of Indian culture and tribal transportation needs. ~~The~~

1 ~~member provided for under this subsection must be selected by~~ When considering nominees for this position,
 2 ~~the governor after consultation with the Montana members of the Montana-Wyoming tribal leaders council~~ may
 3 ~~consult with tribal governments recognized by this state.~~

4 (b) at least one must be knowledgeable about air transportation. This knowledge may be acquired as
 5 a pilot, an airport manager, an aerial applicator, a person who is or has been engaged in aviation education, an
 6 active fixed base operator of a flying service or a flying school, or a Montana-based representative of interstate
 7 commercial airline operators.

8 (3) Two members may not be residents of the same district at the time of appointment or during their
 9 respective terms of office.

10 (4) Not more than three members may at the time of appointment or during their respective terms be
 11 members of the same political party.

12 (5) An elective state official or state officer, during the term of office to which elected or appointed, or a
 13 state employee may not be a member of the commission.

14 (6) A resolution, motion, or other decision of the commission may not be adopted or passed without the
 15 favorable vote of at least three members.

16 (7) The commission is allocated to the department of transportation for administrative purposes only as
 17 prescribed in 2-15-121.

18 (8) The commission is designated as a quasi-judicial board for purposes of 2-15-124; however, the
 19 provision of 2-15-124(1) that at least one member of a quasi-judicial board be an attorney does not apply to the
 20 commission.

21 (9) The commission may adopt rules necessary for its government.

22 (10) The director of transportation or the director's designee shall act as liaison between the commission
 23 and the department."

24

25 **Section 2.** Section 60-2-601, MCA, is amended to read:

26 **"60-2-601. Scenic-historic byways program -- advisory council -- expenditure of funds.** (1) There
 27 is a scenic-historic byways program. The commission may designate roads to be included as part of the program
 28 and may add or delete roads from the program. The commission may not designate a road as a scenic-historic
 29 byway without the concurrence of the affected local governments and the agencies responsible for maintenance
 30 and operation of the road. A road or right-of-way across federal land that was granted by 43 U.S.C. 932 and

1 recognized by 43 U.S.C. 1701 may be considered for inclusion in the program.

2 ~~———(2) Notwithstanding the provision of 2-15-122, the commission shall appoint an advisory council for the~~
3 ~~scenic-historic byways program.~~

4 ~~———(3) The advisory council is a technical oversight council composed of no more than 11 members who~~
5 ~~must have expertise in one or more of the subjects of tourism, visual assessment, Montana history, resource~~
6 ~~protection, economic development, transportation, or planning. One member of the advisory council must be a~~
7 ~~representative of the Montana chamber of commerce.~~

8 ~~(4)(2) The advisory council~~ The department shall:

9 ~~———(a) assist the department and the commission in designing the program;~~

10 ~~(b)(a)~~ (a) review applications for nominating roads to the scenic-historic byways program; and

11 ~~(c)(b)~~ (b) recommend to the commission roads that should be included in or deleted from the scenic-historic
12 byways program.

13 ~~(5)(3)~~ (3) The department, upon the direction of the commission, may expend any funds appropriated for
14 or otherwise available to the scenic-historic byways program."

15

16 **Section 3.** Section 60-2-602, MCA, is amended to read:

17 **"60-2-602. Scenic-historic byways program -- rules.** (1) The department shall adopt rules to effectively
18 administer the scenic-historic byways program. The rules must include the criteria that will be considered for
19 designating a road for inclusion in the scenic-historic byways program.

20 (2) In developing the criteria; to be included in the rules; for designating a road for inclusion in the
21 scenic-historic byways program, the ~~advisory council~~; commission; and the department shall specifically address:

22 (a) factors that allow each locality choosing to participate in or seeking participation in the scenic-historic
23 byways program the opportunity to:

24 (i) enhance the experience of the traveling public;

25 (ii) stimulate or allow for economic development and new marketing strategies; or

26 (iii) preserve intrinsic resources for the benefit of future generations;

27 (b) a methodology by which a locality choosing to participate in or seeking participation in the
28 scenic-historic byways program may participate in the national scenic byways program, described in section 1047
29 of Public Law 102-240;

30 (c) means by which a road may be excluded from designation as a scenic-historic byway by:

- 1 (i) an incorporated municipality for a road or segment of a road within its jurisdiction; or
- 2 (ii) a landowner for a road or segment of a road adjacent to the landowner's private property;
- 3 (d) factors to be considered in assessing the intrinsic, scenic, historic, recreational, cultural,
- 4 archaeological, educational, or natural qualities of the road nominated for inclusion in the scenic-historic byways
- 5 program;
- 6 (e) factors to be considered in a locality's corridor management plan, including that the plan:
- 7 (i) serves as a visioning tool to provide direction for enhancing and marketing the corridor, but not as a
- 8 land management document, zoning tool or mandate, highway improvement scoping or prioritization document,
- 9 or highway management document;
- 10 (ii) accommodates commerce and commercial vehicles and maintains a safe and efficient level of
- 11 highway services;
- 12 (iii) protects private property rights, including assurances that the private property rights of a person who
- 13 owns land adjacent to or visible from the road are not in any way diminished by the road being designated a
- 14 scenic-historic byway or are accommodated through mutually agreeable compensation;
- 15 (iv) precludes the locality having adopted the corridor management plan from establishing goals or
- 16 commitments outside the locality's jurisdiction; and
- 17 (v) has accommodated all jurisdictions affected or to be affected by the designation of a road as a
- 18 scenic-historic byway; and
- 19 (f) procedures to ensure that localities choosing to participate in the scenic-historic byways program:
- 20 (i) may exclude from designation any segment of a highway that is inconsistent with the state's criteria
- 21 for designating scenic-historic byways. Within an excluded segment, a locality may allow off-premises advertising
- 22 in the form of billboards or painted signs, subject to applicable federal, state, or local laws.
- 23 (ii) may use signage recognized as exceptions or as information signs in all areas along a designated
- 24 route, provided that the signage complies with 23 U.S.C. 131, Title 60, chapter 5, part 5, Title 75, chapter 15, part
- 25 1, and all applicable state or locally adopted rules, requirements, and restrictions."

26

27 **NEW SECTION. Section 4. Role of transportation commission.** In addition to its other duties under

28 Title 60, the transportation commission established in 2-15-2502 shall provide advice and recommendations to

29 the department on:

- 30 (1) rail planning activities under 60-11-101;

1 (2) the department's activities under the Montana Essential Freight Rail Act in 60-11-113 through
2 60-11-116;

3 (3) the development of any cooperative partnerships with other states and federal agencies to promote
4 rail service competition;

5 (4) relations with Class I railroads; and

6 (5) any proposed expansion of existing rail lines and the construction of new rail lines in the state.

7

8 **Section 5.** Section 60-11-101, MCA, is amended to read:

9 **"60-11-101. Rail planning.** The department of transportation may administer rail planning activities,
10 including but not limited to:

11 (1) the development of a comprehensive and coordinated plan to increase rail service competition that
12 results in reliable and adequate service at reasonable rates in the state;

13 (2) an assessment of ways to assist Montanans impacted by high rates and poor rail service;

14 (3) an evaluation of the state's railroad taxation practices to ensure reasonable competition while
15 minimizing any transfer of tax burden; and

16 (4) analysis of the feasibility of developing legal structures to facilitate the growth of producer
17 transportation investment cooperatives and rural transportation infrastructure authorities."

18

19 **Section 6.** Section 67-1-101, MCA, is amended to read:

20 **"67-1-101. Definitions.** Unless the context requires otherwise, in this title, the following definitions apply:

21 (1) "Aeronautics" means transportation by aircraft; the operation, construction, repair, or maintenance
22 of aircraft, aircraft power plants and accessories, including the repair, packing, and maintenance of parachutes;
23 the design, establishment, construction, extension, operation, improvement, repair, or maintenance of airports,
24 restricted landing areas, or other air navigation facilities; and air instruction.

25 (2) (a) "Aeronautics instructor" means an individual engaged in giving instruction or offering to give
26 instruction in aeronautics, either in flying or ground subjects, or both, for hire or reward, without advertising that
27 occupation, without calling the facilities an "air school" or anything equivalent to an "air school", and without
28 employing or using other instructors.

29 (b) The term does not include an instructor in a public school or university of this state or an institution
30 of higher learning accredited and approved for carrying on collegiate work while engaged in duties as an

1 instructor.

2 (3) "Air carrier" means a person or corporation owning, controlling, operating, or managing aircraft as
3 a scheduled common carrier of passengers or freight for compensation within this state.

4 (4) "Aircraft" means a contrivance used or designed for navigation of or flight in the air.

5 (5) "Aircrew" includes:

6 (a) an individual who engages, as the person in command or as pilot, mechanic, or member of the crew,
7 in the navigation of aircraft while under way;

8 (b) an individual who is directly in charge of the inspection, maintenance, overhauling, or repair of aircraft
9 engines, propellers, or appliances except for an individual employed outside the United States, an individual
10 employed by a manufacturer of aircraft, aircraft engines, propellers, or appliances to perform duties as inspector
11 or mechanic in connection with them, and an individual performing inspection or mechanical duties in connection
12 with aircraft owned or operated by the individual; and

13 (c) an individual who serves in the capacity of aircraft dispatcher or air traffic control tower operator.

14 (6) "Air instruction" means the imparting of aeronautical information by an aeronautics instructor or in
15 or by an air school or flying club.

16 (7) "Air navigation" means the operation or navigation of aircraft in the air space over this state or upon
17 an airport or restricted landing area within this state.

18 (8) "Air navigation facility" means a facility used in, available for use in, or designed for use in the aid of
19 air navigation, including airports, restricted landing areas, and structures, mechanisms, lights, beacons, marks,
20 communicating systems, or other instrumentalities or devices used or useful as an aid or constituting an
21 advantage or convenience to the safe taking off, navigation, and landing of aircraft or the safe and efficient
22 operation or maintenance of an airport or restricted area and any combination of these facilities.

23 (9) "Airport" means an area of land or water that is intended or designed for the landing and takeoff of
24 aircraft, whether or not facilities are provided for the shelter, servicing, or repair of aircraft or for receiving or
25 discharging passengers or cargo, and all appurtenant areas used or suitable for airport buildings or other airport
26 facilities and all appurtenant rights-of-way.

27 (10) "Airport authority" or "authority" means a regional airport authority or municipal airport authority
28 created under chapter 11 and the governing body of a municipality that has determined to exercise the powers
29 of a municipal airport authority under 67-11-102.

30 (11) "Airport hazard" means a structure, object of natural growth, or use of land that obstructs the air

1 space required for the flight of aircraft in landing or taking off at an airport or restricted landing area or is otherwise
2 hazardous to landing or taking off.

3 (12) "Airport protection privileges" means easements through or other interests in air space over land or
4 water, interests in airport hazards outside the boundaries of airports or restricted landing areas, and other
5 protection privileges, the acquisition or control of which is necessary to ensure safe approaches to the landing
6 areas of airports and restricted landing areas and the safe and efficient operation of airports or restricted landing
7 areas.

8 (13) (a) "Air school" means a person engaged in giving or offering to give instruction in aeronautics, either
9 in flying or ground subjects, or both, for or without hire or reward, and advertising or representing to the public
10 that the person gives or offers to give that instruction.

11 (b) The term does not include a public school or university of this state or an institution of higher learning
12 accredited and approved for carrying on collegiate work.

13 ~~———— (14) "Board" means the board of aeronautics provided for in 2-15-2506.~~

14 ~~(15)~~(14) "Bonds" means bonds, notes, interim certificates, debentures, or similar obligations issued by
15 an authority under chapter 11.

16 ~~(16)~~(15) "Building or structure" means any edifice, structure, or construction of any kind, character, or
17 description and any object of natural growth erected, constructed, grown, located or proposed to be erected,
18 constructed, grown, or located within the airport affected area designated pursuant to 67-7-201, including any
19 edifice, structure, or construction or object within the restricted zones erected, constructed, placed, or located on
20 or over land or water, or both.

21 ~~(17)~~(16) "Civil aircraft" means an aircraft other than a public aircraft.

22 ~~(18)~~(17) "Commercial air operator" means any person owning, controlling, operating, or managing aircraft
23 for any commercial purpose for compensation.

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

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

26 (20) "Flying club" means a person other than an individual that, neither for profit nor reward, owns, leases,
27 or uses one or more aircraft for the purpose of instruction or pleasure, or both.

28 (21) "Governing body" means, except as provided in 67-7-103, a city commission, town council, or county
29 commission and the boards, departments, and divisions of those entities, by whatever name they are known, that
30 have charge of finances and management of a municipality or a county.

1 (22) "Height of buildings and structures" means, for the purposes of Title 67, chapter 7, the vertical
2 distance measured from the ground or surface level of the airport on the side adjacent to the building or structure
3 to the level of the highest point of the building or structure.

4 (23) "Municipal airport authority" or "municipal authority" means a municipal airport authority created
5 under 67-11-102.

6 (24) "Municipality" means a county, city, village, or town of this state and any other political subdivision,
7 public corporation, authority, or district in this state authorized by law to acquire, establish, construct, maintain,
8 improve, and operate airports and other air navigation facilities.

9 (25) "Navigable air space" means air space above the minimum altitudes of flight prescribed by the laws
10 of this state or by regulations of the department.

11 (26) "NPIAS airport" means an airport that is included in the federal aviation administration's national plan
12 of integrated airport systems.

13 (27) "Operation of aircraft" or "operate aircraft" means the use of aircraft for the purpose of air navigation
14 and includes the navigation or piloting of aircraft. A person who causes or authorizes the operation of aircraft,
15 whether with or without the right of legal control, in the capacity of owner, lessee, or otherwise, of the aircraft,
16 operates the aircraft.

17 (28) "Person" means an individual, firm, partnership, private, municipal, or public corporation, company,
18 association, joint-stock association, or body politic and includes a trustee, receiver, assignee, or other similar
19 representative.

20 (29) "Political subdivision" has the same meaning as municipality.

21 (30) "Public aircraft" means an aircraft used exclusively in the service of any government or of a political
22 subdivision of a government, including the government of a state, territory, or possession of the United States,
23 or the District of Columbia, but not including a government-owned aircraft engaged in carrying persons or property
24 for commercial purposes.

25 (31) "Real property" means lands, structures, buildings, and interests in land, including lands under water
26 and riparian rights, and all things and rights usually included within the term real property, including not only fee
27 simple absolute but also all lesser interests, such as easements, rights-of-way, uses, leases, licenses, and all
28 other ~~incorporeal hereditaments~~ inherent intangible rights related to real property and every estate, interest, or
29 right, legal or equitable, pertaining to real property.

30 (32) "Regional airport authority" or "regional authority" means a regional airport authority created under

1 67-11-103.

2 (33) "Restricted landing area" means an area of land or water, or both, that is used or is made available
3 for the landing and takeoff of aircraft, the use of which must, except in case of emergency, be only as provided
4 by the department.

5 (34) "State airway" means a route in the navigable air space over and above the lands or waters of this
6 state, designated by the department as a route suitable for air navigation.

7 (35) "Structure" means any object constructed or installed by a person, including but not limited to
8 buildings, towers, smokestacks, and overhead transmission lines.

9 (36) "Tree" means any object of natural growth.

10 (37) "YDNL" means the 365-day average, in decibels, day-night average sound level as provided in 14
11 CFR 150.7."

12

13 **Section 7.** Section 67-1-301, MCA, is amended to read:

14 **"67-1-301. Money -- receipt and disbursement.** (1) All costs and expenses of administering this title,
15 including the salaries of employees of the department engaged in functions pertaining to aeronautics; ~~the~~
16 ~~expenses of members of the board;~~ and all other disbursements necessary to carry out the purposes of this title,
17 must be paid out of the following revenue:

18 (a) all gifts and all legislative appropriations to the department for aeronautics;

19 (b) all money received from any branch or department of the federal government or from other sources
20 for the purposes of this title or for the furtherance of aeronautics generally in this state.

21 (2) All money collected under subsection (1) must be deposited in the state treasury to the credit of the
22 department.

23 (3) (a) Except as provided in subsection (5), the following amounts must be deposited from the proceeds
24 of the 4-cent-a-gallon tax imposed on aviation fuel by 15-70-204(1)(a):

25 (i) in the state special revenue fund to the credit of the department, an amount equal to the proceeds of
26 2 cents a gallon collected under 15-70-204(1)(a) for the sole purpose of carrying out its functions pertaining to
27 aeronautics; and

28 (ii) in a separate account in the state special revenue fund to the credit of the department, an amount
29 equal to the proceeds of 2 cents a gallon to provide refunds pursuant to 15-70-221(5), to provide grants to
30 municipalities for airport development or improvement programs, and to provide navigational aids, safety

1 improvements, weather reporting services, and other aeronautical services for airports and landing fields and for
2 the state's airways.

3 (b) Money deposited in the account created in 67-1-306 may, with the approval of the ~~board~~ commission,
4 be used only to provide loans to local governments and state agencies for aeronautical purposes, including airport
5 improvement. The ~~board~~ commission shall establish procedures, including the interest rate charged, for providing
6 loans. Proceeds of all repayments of loans, including interest, made under this subsection (3)(b) must be
7 deposited in the account created in 67-1-306.

8 (c) Money deposited in the separate account established in subsection (3)(a)(ii) may, after refunds are
9 provided pursuant to 15-70-221(5) and with the approval of the ~~board~~ commission, be used only to provide grants
10 to municipalities for airport development or improvement programs and to provide navigational aids, safety
11 improvements, weather reporting services, and other aeronautical services for airports and landing fields and for
12 the state's airways. The ~~board~~ commission shall establish procedures for the awarding of grants.

13 (4) Except as provided in 15-70-221, the gasoline license tax imposed by the laws of this state on
14 aviation fuel purchased and used for the operation of airplanes or aircraft may not be refunded.

15 (5) Of the amount of aviation fuel tax collected from the scheduled passenger air carriers certified under
16 14 CFR, part 121 or 135, 25% must be deposited in an account separate from the account established in
17 subsection (3)(a)(ii) to be used only for pavement preservation grants, with the approval of the ~~board~~ commission,
18 on airports served by these air carriers."

19

20 **Section 8.** Section 67-1-302, MCA, is amended to read:

21 **"67-1-302. Industrial revenue projects.** The ~~board of aeronautics~~ commission may exercise the power
22 and authority of a municipality under Title 90, chapter 5, part 1, with respect to projects suitable for use by
23 commercial enterprises providing scheduled air transportation services primarily within the state if ~~such~~ the
24 projects are located within or based and used primarily within the state. For purposes of this section, the ~~board~~
25 ~~of aeronautics~~ shall commission must be considered a municipality and a governing body ~~thereof~~ of the
26 municipality under Title 90, chapter 5, part 1, and shall give notice of the public hearing required by 90-5-104 in
27 three newspapers published and circulating generally in the state and ~~shall~~ may not issue any bonds unless it
28 appears, after the public hearing, that the acquisition or ~~improvements~~ improvement of the project is in the public
29 interest of the state. For purposes of this section, projects suitable for commercial enterprises providing scheduled
30 air transportation services ~~shall~~ include but are not limited to aircraft parts, aircraft, hangars, storage and aircraft

1 maintenance facilities, fuel facilities, and other personal or real property suitable for use by a scheduled air
2 transportation enterprise."

3

4 **Section 9.** Section 67-1-304, MCA, is amended to read:

5 **"67-1-304. Airport grants and loans.** Any airport grant or loan that the department may be authorized
6 to issue may be issued only after review and approval of the grant or loan request by the ~~board~~ commission."

7

8 **Section 10.** Section 67-1-307, MCA, is amended to read:

9 **"67-1-307. Aeronautical loans.** Money deposited in the account created in 67-1-306 may, with the
10 approval of the ~~board~~ commission, be used only to provide loans to local governments and state agencies for
11 aeronautical purposes, including airport improvement. The ~~board~~ commission shall establish procedures,
12 including the interest rate charged, for providing loans. Proceeds of all repayments of loans, including interest,
13 made under this section must be deposited in the account created in 67-1-306."

14

15 **Section 11.** Section 67-11-202, MCA, is amended to read:

16 **"67-11-202. Rules.** An authority is authorized to adopt, amend, and repeal ~~such~~ any reasonable
17 resolutions, rules, and orders ~~as it shall deem~~ that the authority considers necessary for the management,
18 government, and use of any airport or air navigation facility owned by ~~it~~ the authority or under its control. ~~No A~~
19 rule, order, or standard prescribed by the ~~commission~~ authority may not be inconsistent with or contrary to
20 any act of the congress of the United States or any regulation promulgated or standard established pursuant
21 ~~thereto~~ to an act of congress. The authority shall keep on file at the principal office of the authority for public
22 inspection a copy of all its rules."

23

24 NEW SECTION. **Section 12. Repealer.** The following sections of the Montana Code Annotated are
25 repealed:

26 2-15-2506. Board of aeronautics -- qualification -- allocation -- quasi-judicial.

27 2-15-2511. Rail service competition council.

28 67-1-103. Board of aeronautics.

29

30 NEW SECTION. **Section 13. Codification instruction.** [Section 4] is intended to be codified as an

1 integral part of Title 60, chapter 11, and the provisions of Title 60, chapter 11, apply to [section 4].

2

3 NEW SECTION. **Section 14. Effective date -- applicability.** [This act] is effective on passage and
4 approval and applies to appointments to the transportation commission made on or after [the effective date of this
5 act].

6

- END -