

SENATE BILL NO. 354

INTRODUCED BY B. HAMLETT

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A BILL FOR AN ACT ENTITLED: "AN ACT REMOVING THE REQUIREMENT FOR A PERSON OR COUNTY TO PAY THE FAIR MARKET VALUE FOR HISTORIC RIGHTS-OF-WAY; AND AMENDING SECTION 77-1-130, MCA."

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

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

**"77-1-130. (Temporary) Recognition of historic right-of-way -- criteria for right-of-way deed -- conditions -- fees.** (1) ~~Because county roads provide access to state lands and access for private landowners that benefits the people of Montana,~~ a person or a county may apply to the department for a historic right-of-way deed to provide access to the applicant's private property, to provide continuation of a county road, or to provide for authorization of existing utilities by filing an application with the department by October 1, 2015, on a form prescribed by the department. An application must be accompanied by:

- (a) an application fee of \$50;
- (b) a notarized affidavit:
  - (i) demonstrating that the applicant or the applicant's predecessor in interest used the right-of-way applied for before 1997 and that the use has continued to the present;
  - (ii) describing the purpose for which the right-of-way was used before 1997; and
  - (iii) demonstrating that the historic right-of-way applied for is the right-of-way demonstrated in the evidence provided in subsection (1)(c); and
- (c) (i) aerial photographs taken by an agency of the United States demonstrating use of the right-of-way applied for; or
  - (ii) other evidence of the use of the right-of-way applied for.

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

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



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

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

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

5 (3) A historic right-of-way deed issued in the name of the applicant must contain the description of the  
6 property of the applicant to which it is appurtenant as provided in the application, and the right-of-way must  
7 thereafter be considered appurtenant to that dominant estate. A deed may be assigned by the applicant to the  
8 applicant's successor in interest with the approval of the department. The department may not withhold approval  
9 for any reason other than that the use of the historic right-of-way is contrary to subsection ~~(5)~~ (4).

10 ~~(4) (a) At the time of issuing the historic right-of-way deed, the department shall collect from the applicant~~  
11 ~~the full market value of the acreage of the historic right-of-way.~~

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

14 ~~(5)~~(4) If application is made in accordance with this section, a historic right-of-way deed must be issued  
15 by the department, subject to the approval of the board, on the following terms:

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

18 (b) the right-of-way is only for the physical condition of the road or utility facilities existing on the date the  
19 historic right-of-way deed is issued by the department.

20 ~~(6)~~(5) Issuance of a historic right-of-way deed pursuant to this section is exempt from the requirements  
21 of Title 22, chapter 3, part 4, and Title 75, chapter 1, parts 1 and 2.

22 ~~(7)~~(6) The survey requirements of 77-2-102 may be waived by the department for the issuance of a  
23 historic right-of-way deed if the department determines that there is sufficient information available to define the  
24 boundaries of the right-of-way for the purposes of recording the easement.

25 ~~(8)~~(7) The department may attach conditions to a historic right-of-way deed necessary to ensure  
26 compliance with this chapter.

27 ~~(9)~~(8) For the purposes of this section, "historic right-of-way deed" means a document issued by the  
28 department granting to the applicant a nonexclusive easement over state land. (Terminates October 1,  
29 2025--secs. 2 through 7, Ch. 325, L. 2011.)"

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