

SENATE BILL NO. 215
INTRODUCED BY K. TOOLE

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT AN ENTITY LOCATING UTILITY LINES AND FACILITIES WITHIN A STATE-OWNED OR STATE-CONTROLLED RIGHT-OF-WAY IS REQUIRED TO PAY A FEE TO BE DETERMINED BY THE APPROPRIATE DEPARTMENT NOT TO EXCEED \$1 FOR EACH LINEAR FOOT; PROVIDING THAT AN ENTITY LOCATING UTILITY LINES AND FACILITIES WITHIN A LOCAL GOVERNMENT-OWNED OR LOCAL GOVERNMENT-CONTROLLED RIGHT-OF-WAY IS REQUIRED TO PAY A FEE TO BE DETERMINED BY THE LOCAL GOVERNMENT NOT TO EXCEED \$1 FOR EACH LINEAR FOOT; ADDING A FEE OF A MAXIMUM OF \$1 FOR EACH LINEAR FOOT FOR UTILITY LINES AND FACILITIES THAT ARE LOCATED WITHIN A PUBLIC RIGHT-OF-WAY; PROVIDING THAT WHEN A RIGHT-OF-WAY IS OWNED OR CONTROLLED BY MORE THAN ONE ENTITY, ONLY ONE FEE MAY BE CHARGED AND THE PROCEEDS MUST BE DIVIDED PROPORTIONALLY TO THE OWNERSHIP PERCENTAGE OF THE RIGHT-OF-WAY; PROVIDING THAT IF THE RIGHT-OF-WAY IS OWNED OR CONTROLLED BY MORE THAN ONE ENTITY, THE ENTITY OWNING THE LARGEST PERCENTAGE OF THE RIGHT-OF-WAY SHALL SET THE FEE; REDUCING THE PERCENTAGE OF COSTS ASSOCIATED WITH THE RELOCATION OF UTILITIES THAT ARE PAID BY THE STATE; AMENDING SECTIONS 60-4-403 AND 69-4-101, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

NEW SECTION. Section 1. Fee for locating within state-owned or state-controlled right-of-way.

(1) An entity locating any wire, cable, plant, appliance, fixture, or fiber optics necessary for service into or over a state-owned or state-controlled right-of-way shall pay the department that owns or has control of that right-of-way a fee for each linear foot as prescribed by the department or the entity that owns or controls the greater percentage of the right-of-way. The fee may not exceed \$1 for each linear foot.

(2) If a right-of-way is controlled or owned by more than one entity, only one fee may be imposed. The entities controlling or owning the right-of-way shall divide the fee proceeds proportionally to their percentage of ownership in the right-of-way.

NEW SECTION. Section 2. Fee for locating within local government-owned or local

government-controlled right-of-way. (1) An entity locating any wire, cable, plant, appliance, fixture, or fiber optics necessary for service into or over a local government-owned or local government-controlled right-of-way shall pay the local government that owns or has control of that right-of-way a fee for each linear foot as prescribed by the local government or the entity that owns or controls the greater percentage of the right-of-way. The fee may not exceed \$1 for each linear foot.

(2) If a right-of-way is controlled or owned by more than one entity, only one fee may be imposed. The entities controlling or owning the right-of-way shall divide the fee proceeds proportionally to their percentage of ownership in the right-of-way.

(3) A right-of-way fee imposed under this section is not considered a sales tax and is exempt from the provisions of 7-1-112(1).

NEW SECTION. Section 3. Fee for locating within public right-of-way. (1) An entity locating any wire, cable, plant, appliance, fixture, or fiber optics necessary for service into or over a right-of-way controlled by the state or local government shall pay the department that owns or has control of that right-of-way a fee for each linear foot as prescribed by the department or the entity that owns or controls the greater percentage of the right-of-way. The fee may not exceed \$1 for each linear foot.

(2) If a right-of-way is controlled or owned by more than one entity, only one fee may be imposed. The entities controlling or owning the right-of-way shall divide the fee proceeds proportionally to their percentage of ownership in the right-of-way.

Section 4. Section 60-4-403, MCA, is amended to read:

"60-4-403. Relocation -- costs. (1) Except as provided in subsections (2) and (3), ~~75%~~ 50% of all costs of relocation, dismantling, and removal must be paid by the department as a cost of federal-aid systems construction.

(2) The department shall pay for the entire cost of relocating a publicly owned water or sewer facility with 500 or fewer service connectors under the following conditions:

(a) the facility has had 500 or fewer subscribers during the entire year before the letting of the project contract; and

(b) the relocation is the result of state highway or federal-aid system construction.

(3) The department shall pay for 85% of all costs of relocating a publicly owned water or sewer facility with more than 500 but fewer than 1,000 service connectors, subject to the following conditions:

(a) the facility had more than 500 but fewer than 1,000 subscribers during the entire year before the letting of the project contract; and

(b) the relocation is the result of state highway or federal-aid highway system construction."

Section 5. Section 69-4-101, MCA, is amended to read:

"69-4-101. Use of public right-of-way for utility lines and facilities -- fee. (1) A telegraph, telephone, telecommunications, electric light, or electric power line energy corporation entity, cooperative association utility, or public body, or any other person owning or operating such a telegraph, telephone, telecommunications, or electric energy entity or cooperative association utility is hereby authorized to install its respective plants, and appliances, and fixtures necessary for service along and upon any of the public roads, streets, and highways in the state and to supply and distribute electricity for lighting, heating, power, and other purposes and to that end, to construct such telegraph, telephone, electric light, or electric power lines, from point to point, along and upon any of the public roads, streets, and highways in the state, by the erection of necessary fixtures, including posts, piers, and abutments necessary for the wires telegraph, telephone, telecommunications, or electric energy services.

(2) The same shall installations must be so constructed in a manner that does as not to incommode inconvenience or endanger the public in the use of said roads, streets, or highways, and nothing herein shall

(3) This part may not be so construed as to restrict the powers of city or town councils.

(4) An entity listed in subsection (1) locating any wire, cable, plant, appliance, fixture, or fiber optics necessary for service into or over a state-owned or state-controlled right-of-way shall pay the department that owns or has control of that right-of-way a fee for each linear foot as prescribed by the department or the entity that owns or controls the greater percentage of the right-of-way. The fee may not exceed \$1 for each linear foot.

(5) If a right-of-way is controlled or owned by more than one entity, only one fee may be imposed. The entities controlling or owning the right-of-way shall divide the fee proceeds equally."

NEW SECTION. Section 6. Codification instruction. (1) [Section 1] is intended to be codified as an integral part of Title 2, chapter 17, and the provisions of Title 2, chapter 17, apply to [section 1].

(2) [Section 2] is intended to be codified as an integral part of Title 7, chapter 13, and the provisions of Title 7, chapter 13, apply to [section 2].

(3) [Section 3] is intended to be codified as an integral part of Title 60, chapter 6, and the provisions of Title 60, chapter 6, apply to [section 3].

NEW SECTION. **Section 7. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

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

NEW SECTION. **Section 9. Applicability.** [This act] applies to installation that has not been commenced prior to [the effective date of this act].

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