

SENATE BILL NO. 229

INTRODUCED BY B. TUTVEDT, B. HAMLETT

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A BILL FOR AN ACT ENTITLED: "AN ACT EXTENDING THE DATE BY WHICH A PERSON OR COUNTY MAY APPLY TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR A HISTORIC RIGHT-OF-WAY DEED AND EXTENDING THE TERMINATION DATE; AMENDING SECTION 77-1-130, MCA; AMENDING SECTIONS 2, 3, 4, 5, 6, AND 7, CHAPTER 325, LAWS OF 2011; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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) 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~~ 2021, 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



1 historic right-of-way as provided in subsection (4);

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

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

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

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

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

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

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

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

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

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

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

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

28 (9) For the purposes of this section, "historic right-of-way deed" means a document issued by the
29 department granting to the applicant a nonexclusive easement over state land. (Terminates October 1,
30 ~~2025--secs. 2 through 7, Ch. 325, L. 2014 2031.~~)"

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SECTION 2. SECTION 2, CHAPTER 325, LAWS OF 2011, IS AMENDED TO READ:

"**Section 2.** Section 5, Chapter 461, Laws of 1997, is amended to read:

"**Section 5. Termination.** [This act] terminates October 1, ~~2003~~ 2025 2031."

SECTION 3. SECTION 3, CHAPTER 325, LAWS OF 2011, IS AMENDED TO READ:

"**Section 3.** Section 6, Chapter 270, Laws of 2001, is amended to read:

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

"**Section 5. Termination.** [This act] terminates October 1, ~~2003~~ 2011 2025 2031.""

SECTION 4. SECTION 4, CHAPTER 325, LAWS OF 2011, IS AMENDED TO READ:

"**Section 4.** Section 2, Chapter 57, Laws of 2005, is amended to read:

"**Section 2.** Section 5, Chapter 461, Laws of 1997, is amended to read:

"**Section 5. Termination.** [This act] terminates October 1, ~~2003~~ 2016 2025 2031.""

SECTION 5. SECTION 5, CHAPTER 325, LAWS OF 2011, IS AMENDED TO READ:

"**Section 5.** Section 3, Chapter 57, Laws of 2005, is amended to read:

"**Section 3.** Section 6, Chapter 270, Laws of 2001, is amended to read:

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

"**Section 5. Termination.** [This act] terminates October 1, ~~2003~~ 2011 2016 2025 2031.""

SECTION 6. SECTION 6, CHAPTER 325, LAWS OF 2011, IS AMENDED TO READ:

"**Section 6.** Section 4, Chapter 57, Laws of 2005, is amended to read:

"**Section 4.** Termination. [Section 1] terminates October 1, ~~2016~~ 2025 2031.""

SECTION 7. SECTION 7, CHAPTER 325, LAWS OF 2011, IS AMENDED TO READ:

"**Section 7. Termination.** [Section 1] terminates October 1, ~~2025~~ 2031."

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

- END -

