

HOUSE BILL NO. 426

INTRODUCED BY J. WINDY BOY

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING HIGHWAY MAINTENANCE LAWS; REQUIRING CERTAIN PUBLIC AGENCIES TO ENTER INTO OR ATTEMPT TO ENTER INTO AGREEMENTS WITH TRIBAL GOVERNMENTS FOR SNOW REMOVAL; PROVIDING REPORTING REQUIREMENTS; ALLOWING TRIBAL GOVERNMENTS TO RECEIVE CERTAIN FUNDS FOR HIGHWAY MAINTENANCE; AND AMENDING SECTIONS 15-70-101, 15-70-126, 15-70-130, AND 18-11-105, MCA."

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

NEW SECTION. Section 1. Required agreements for snow removal -- reporting requirements. (1)

(a) A public agency responsible for roads or highways wholly or partially within a reservation shall enter into or attempt to enter into an agreement with the tribal government located on the reservation regarding snow removal and other winter maintenance activities necessary for safe travel.

(b) Multiple public agencies may be parties to the same agreement.

(2) An agreement established pursuant to this section must:

(a) set snow removal and winter maintenance priorities for roads and highways that parties to the agreement are responsible for and that are wholly or partially within a reservation;

(b) set conditions and standards for snow removal and other winter maintenance needed to keep prioritized roads and highways open for safe travel;

(c) state whether the tribal government:

(i) is authorized to remove snow from roads or highways belonging to a public agency that is party to the agreement;

(ii) is authorized to perform winter maintenance on roads or highways belonging to a public agency that is party to the agreement; and

(iii) will be reimbursed for snow removal or performance of winter maintenance on public agency roads or highways.

(3) An agreement authorizing snow removal or performance of winter maintenance by a tribal government on public agency roads or highways or allowing reimbursement under subsection (2)(c) must set

1 conditions and standards for snow removal, winter maintenance, or reimbursement.

2 (4) An agreement entered into under this section to which the department of transportation is a party may
3 state whether the tribal government agrees to receive funds under 15-70-101.

4 (5) A public agency responsible for roads or highways wholly or partially within a reservation that has
5 not entered into an agreement under this section shall report annually to the state-tribal relations committee
6 established in 5-5-229 on the agency's efforts to enter into an agreement and shall describe the fiscal, legal, or
7 technical obstacles impeding entry of an agreement.

8 (6) As used in this section, the following definitions apply:

9 (a) "Snow removal" includes snowblowing, snow spreading, and snowplowing.

10 (b) "Winter maintenance" includes but is not limited to anti-icing, deicing, salting, and sanding.

11

12 **Section 2.** Section 15-70-101, MCA, is amended to read:

13 **"15-70-101. Disposition of funds.** (1) Those funds allocated to cities, towns, counties, and consolidated
14 city-county governments in this section and to tribal governments that agree to receive funds pursuant to [section
15 1] and this section must, in accordance with the provisions of 17-2-124, be paid by the department from the
16 highway restricted account provided for in 15-70-126 to the cities, towns, counties, and consolidated city-county
17 governments and to tribal governments that agree to receive funds.

18 (2) The amount of \$16,816,000 of the taxes collected under this chapter and deposited in the highway
19 restricted account in 15-70-126 is statutorily appropriated, as provided in 17-7-502, to the department of
20 transportation and must be distributed each fiscal year on a monthly basis to the counties, incorporated cities and
21 towns, and consolidated city-county governments in Montana and to the tribal governments that agree to receive
22 funds for construction, reconstruction, maintenance, and repair of rural roads and city or town streets and alleys,
23 as provided in subsections (2)(a) through (2)(c), as follows:

24 (a) The amount of \$150,000 must be designated for the purposes and functions of the Montana local
25 technical assistance transportation program in Bozeman.

26 (b) The amount of \$6,306,000 must be divided among the various counties and tribal governments that
27 agree to receive funds pursuant to [section 1] and this section in the following manner:

28 (i) for counties without tribal governments that agree to receive funds pursuant to [section 1] and this
29 section within county limits:

30 (A) 40% in the ratio that the rural road mileage in each county, exclusive of the national highway system

1 and the primary system, bears to the total rural road mileage in the state, exclusive of the national highway
2 system and the primary system;

3 ~~(#)(B)~~ 40% in the ratio that the rural population in each county outside incorporated cities and towns bears
4 to the total rural population in the state outside incorporated cities and towns;

5 ~~(##)(C)~~ 20% in the ratio that the land area of each county bears to the total land area of the state-;

6 (ii) for counties with tribal governments within the county limits that agree to receive funds pursuant to
7 [section 1]:

8 (A) 40% in the ratio that the rural road mileage in each county, exclusive of rural road mileage within
9 county limits and within a reservation with a tribal government receiving funds pursuant to [section 1] and this
10 section, and exclusive of the national highway system and the primary system, bears to the total road mileage
11 in the state, exclusive of the national highway system and the primary system;

12 (B) 40% in the ratio that the rural population in each county outside incorporated cities and towns and
13 exclusive of the rural population on a reservation with a tribal government receiving funds pursuant to [section
14 1] and this section bears to the total rural population in the state outside incorporated cities and towns;

15 (C) 20% in the ratio that the land area of each county exclusive of the land area within county limits of
16 a reservation with a tribal government that receives funds pursuant to [section 1] and this section bears to the
17 total land area of the state;

18 (iii) for tribal governments that agree to receive funds pursuant to [section 1] and this section:

19 (A) 40% in the ratio that the rural road mileage in each reservation receiving funds pursuant to [section
20 1] and this section, exclusive of the national highway system and the primary system, bears to the total rural road
21 mileage in the state, exclusive of the national highway system and the primary system;

22 (B) 40% in the ratio that the rural population in each reservation receiving funds pursuant to [section 1]
23 and this section outside incorporated cities and towns bears to the total rural population in the state outside
24 incorporated cities and towns;

25 (C) 20% in the ratio that the land area of the reservation receiving funds pursuant to [section 1] and this
26 section bears to the total land area of the state.

27 (c) The amount of \$10,360,000 must be divided among the incorporated cities and towns in the following
28 manner:

29 (i) 50% of the sum in the ratio that the population within the corporate limits of the city or town bears to
30 the total population within corporate limits of all the cities and towns in Montana;

1 (ii) 50% in the ratio that the city or town street and alley mileage, exclusive of the national highway system
2 and the primary system, within corporate limits bears to the total street and alley mileage, exclusive of the national
3 highway system and primary system, within the corporate limits of all cities and towns in Montana.

4 (3) (a) For the purpose of allocating the funds in subsections (2)(b) and (2)(c) to a consolidated
5 city-county government, each entity must be considered to have separate city and county boundaries. The city
6 limit boundaries are the last official city limit boundaries for the former city unless revised boundaries based on
7 the location of the urban area have been approved by the department of transportation and must be used to
8 determine city and county populations and road mileages in the following manner:

9 (i) Percentage factors must be calculated to determine separate populations for the city and rural county
10 by using the last official decennial federal census population figures that recognized an incorporated city and the
11 rural county. The factors must be based on the ratio of the city to the rural county population, considering the total
12 population in the county minus the population of any other incorporated city or town in the county.

13 (ii) The city and county populations must be calculated by multiplying the total county population, as
14 determined by the latest official decennial census or the latest interim year population estimates from the Montana
15 department of commerce as supplied by the United States bureau of the census, minus the population of any
16 other incorporated city or town in that county, by the factors established in subsection (3)(a)(i).

17 (b) The amount allocated by this method for the city and the county must be combined, and single
18 monthly payments must be made to the consolidated city-county government.

19 (4) All funds allocated by this section to counties, cities, towns, and consolidated city-county
20 governments must be used for the construction, reconstruction, maintenance, and repair of rural roads or city or
21 town streets and alleys or for the share that the city, town, county, or consolidated city-county government might
22 otherwise expend for proportionate matching of federal funds allocated for the construction of roads or streets
23 that are part of the primary or secondary highway system or urban extensions to those systems. The governing
24 body of a town or third-class city, as defined in 7-1-4111, may each year expend no more than 25% of the funds
25 allocated to that town or third-class city for the purchase of capital equipment and supplies to be used for the
26 maintenance and repair of town or third-class city streets and alleys. The governing body of a town or third-class
27 city may place all or a part of the 25% in a restricted asset account within the gas tax apportionment fund that is
28 carried forward until there is a need for the expenditure.

29 (5) All funds allocated by this section to counties, cities, towns, and consolidated city-county
30 governments must be disbursed to the lowest responsible bidder according to applicable bidding procedures

1 followed in all cases in which the contract for construction, reconstruction, maintenance, or repair is in excess
2 of the amounts provided in 7-5-2301 and 7-5-4302.

3 (6) For the purposes of this section in which distribution of funds is made on a basis related to population,
4 the population must be determined annually for counties and reservations with tribal governments that agree to
5 receive funds pursuant to [section 1] and this section and biennially for cities according to the latest official
6 decennial census or the latest interim year population estimates from the Montana department of commerce as
7 supplied by the United States bureau of the census.

8 (7) For the purposes of this section in which determination of mileage is necessary for distribution of
9 funds, it is the responsibility of the cities, towns, counties, and consolidated city-county governments and tribal
10 governments that agree to receive funds pursuant to [section 1] and this section to furnish to the department of
11 transportation a yearly certified statement indicating the total mileage within their respective areas applicable to
12 this chapter. All mileage submitted is subject to review and approval by the department of transportation.

13 (8) Except by a town or third-class city as provided in subsection (4), the funds authorized by this section
14 may not be used for the purchase of capital equipment.

15 (9) Funds authorized by this section must be used for construction and maintenance programs."
16

17 **Section 3.** Section 15-70-126, MCA, is amended to read:

18 **"15-70-126. Highway restricted account.** (1) There is a highway restricted account in the state special
19 revenue fund provided for in 17-2-102. All interest and income earned on the account must, in accordance with
20 the provisions of 17-2-124, be deposited to the credit of the account and any unexpended balance in the account
21 must remain in the account.

22 (2) Subject to subsection (4) and 15-70-403(2), all revenue sources provided for in Article VIII, section
23 6, of the Montana constitution must be deposited in the account, including but not limited to:

24 (a) all taxes collected under this chapter except as provided in 15-70-403(2)(b), (2)(c), (3)(b), and (3)(c);

25 (b) taxes collected for improperly imported fuel as provided in 15-70-419;

26 (c) fees collected for temporary special fuel permits as provided in 15-70-456; and

27 (d) GVW license fees as provided in 61-10-225 and 61-10-226.

28 (3) Except as provided in subsection (5), the money in the account is restricted and may be used only
29 for the purpose of providing funding:

30 (a) for statutory refunds and adjustments;

- 1 (b) for debt service on highway revenue bonds;
- 2 (c) to the department for distribution to local governments and certain tribal governments as provided
- 3 in 15-70-101;
- 4 (d) to the department for railroad grade crossing protection as provided in 15-70-102;
- 5 (e) until June 30, 2018, to the department of justice for expenses of the motor vehicle division;
- 6 (f) for gasoline tax allocations as provided in 60-3-201;
- 7 (g) to the department for administration of the motor carrier services functions;
- 8 (h) to the department for the highways in this state selected and designated by the transportation
- 9 commission provided for in 2-15-2502;
- 10 (i) to the department for the collection of fuel taxes;
- 11 (j) for driver education, which may not exceed \$10,000; and
- 12 (k) for tourist promotion, which may not exceed \$10,000.
- 13 (4) (a) The portion of money collected from all revenue sources provided for in Article VIII, section 6, of
- 14 the Montana constitution on hand at any time that is needed to pay highway bonds and interest on highway bonds
- 15 when due and to accumulate and maintain a reserve for payment of highway bonds and interest, as provided in
- 16 laws and in resolutions of the state board of examiners authorizing the bonds, must be deposited in the highway
- 17 bond account in the debt service fund established by 17-2-102.
- 18 (b) The department is authorized to maintain a suspense account for gasoline and special fuel tax
- 19 refunds and adjustments.
- 20 (5) The money in the account may be appropriated for purposes other than those listed in subsection
- 21 (3) by a three-fifths vote of the members of each house of the legislature."

22

23 **Section 4.** Section 15-70-130, MCA, is amended to read:

24 **"15-70-130. Local government road construction and maintenance match program.** (1) There is

25 a local government road construction and maintenance match program to provide funding to cities, towns,

26 counties, and consolidated city-county governments for construction, reconstruction, maintenance, and repair

27 of rural roads, city or town streets and alleys, and bridges as provided in this section.

28 (2) The department of transportation shall allocate funds provided for in 15-70-127(2)(b) collected

29 between January 1 and December 31 of the previous year. The first allocations must be made by March 1, 2018,

30 and allocations must be made each March 1 thereafter. The funds provided for in 15-70-127(2)(b) are statutorily

1 appropriated, as provided in 17-7-502, to the department and must be allocated to cities, towns, counties, and
2 consolidated city-county governments in the same proportion and using the same ratios provided for in
3 ~~15-70-101(2)(b)~~ 15-70-101(2)(b)(i), (2)(c), and (3), regardless of whether the county includes a tribal government
4 that agrees to receive funds pursuant to [section 1].

5 (3) A city, town, county, or consolidated city-county government that requests funds under this section
6 shall match each \$20 requested with \$1 of local government matching funds. The funds distributed in
7 15-70-101(2) may not be used as matching funds. The matching funds must be used along with the requested
8 funding for construction, reconstruction, maintenance, or repair of rural roads, city or town streets and alleys, or
9 bridges.

10 (4) A city, town, county, or consolidated city-county government may request a distribution of allocated
11 funds by submitting a request to the department of transportation between March 1 and November 1 of the year
12 the funds were allocated. The request must include:

13 (a) the amount of funding sought, which may not exceed the amount allocated for that year;

14 (b) a copy of an adopted resolution to request and accept the funding by the governing body of the city,
15 town, county, or consolidated city-county government. The resolution must identify the source of the matching
16 funds required under subsection (3).

17 (c) a description of the project or projects to be funded, which must be for construction, reconstruction,
18 maintenance, or repair of rural roads, city or town streets and alleys, or bridges, as a match for federal funds used
19 for the construction of roads and streets that are part of the national, primary, secondary, or urban highway
20 systems, or roads and streets that the city, town, county, or consolidated city-county government has the
21 responsibility to maintain.

22 (5) A city, town, county, or consolidated city-county government receiving funds under this section shall
23 award construction projects that exceed the thresholds provided for in 7-5-2301 and 7-5-4302 in a competitive
24 bid process.

25 (6) Except as provided in subsection (9), the department of transportation shall distribute the funds to
26 the city, town, county, or consolidated city-county government for any request for funds that meets the
27 requirements of subsection (4).

28 (7) Funds not distributed pursuant to this section must remain in the account provided for in 15-70-127
29 and be used for the local government road construction and maintenance match program in future years.

30 (8) A city, town, county, or consolidated city-county government that receives funding distributed under

1 this section may place all or a part of the funds and the corresponding matching funds in a restricted asset
2 account within the gas tax apportionment fund that is carried forward until there is a need for the expenditure. The
3 city, town, county, or consolidated city-county government shall obligate the funds by March 1, 5 years after the
4 year in which the funds were distributed or would have been distributed if not reserved pursuant to subsection
5 (9). Funds not obligated within the 5-year period must be returned to the department and deposited in the account
6 provided for in 15-70-127 and used as provided in 15-70-127(2)(b).

7 (9) The share of funds allocated to a city, town, county, or consolidated city-county government as
8 provided in subsection (2) may be reserved for the city, town, county, or consolidated city-county government for
9 up to 2 years if the city, town, county, or consolidated city-county government is unable to match the funds as
10 required by subsection (3). To reserve the funds, the city, town, county, or consolidated city-county government
11 shall adopt a resolution as provided in subsection (4)(b) and submit a request to reserve the funds by November
12 1 of the year after the year in which the department allocated the funds. If the city, town, county, or consolidated
13 city-county government does not request distribution of the funds by November 1 of the fiscal year 2 years after
14 the request to reserve the funds, the funds must be deposited in the account provided for in 15-70-127 and used
15 as provided in 15-70-127(2)(b).

16 (10) A city, town, county, or consolidated city-county government shall submit an annual report to the
17 department providing information on approved projects, changes to the list of projects funded, and final project
18 costs.

19 (11) Within 90 days of completion of a project, a city, town, county, or consolidated city-county
20 government shall notify the department of the intent to use the funds for additional projects within the time period
21 provided for in subsection (8) or to remit any unused funds to the department. The unused funds must be
22 deposited in the account provided for in 15-70-127 and used as provided in 15-70-127(2)(b)."

23

24 **Section 5.** Section 18-11-105, MCA, is amended to read:

25 **"18-11-105. Submission of agreement to attorney general.** (1) As a condition precedent to an
26 agreement made under this chapter becoming effective, it must have the approval of the attorney general of
27 Montana.

28 (2) (a) The attorney general shall approve an agreement submitted under this chapter unless the
29 attorney general finds that the agreement is not in proper form, does not meet the requirements set forth in this
30 chapter, or otherwise does not conform to the laws of Montana. If the attorney general disapproves an agreement,

1 the attorney general shall provide a detailed, written statement to the governing bodies of the public agency and
2 tribal government concerned, specifying the reasons for disapproval.

3 (b) If the attorney general disapproves an agreement entered into under [section 1], the attorney general
4 shall, in addition to the requirements of subsection (2)(a), report to the state-tribal relations committee established
5 in 5-5-229 specifying the reasons for disapproval.

6 (3) If the attorney general does not disapprove the agreement within 30 days after its submission, it must
7 be considered approved."

8
9 NEW SECTION. Section 6. Notification to tribal governments. The secretary of state shall send a
10 copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell
11 Chippewa tribe.

12
13 NEW SECTION. Section 7. Codification instruction. [Section 1] is intended to be codified as an
14 integral part of Title 18, chapter 11, part 1, and the provisions of Title 18, chapter 11, part 1, apply to [section 1].
15

16 NEW SECTION. Section 8. Severability. If a part of [this act] is invalid, all valid parts that are severable
17 from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part
18 remains in effect in all valid applications that are severable from the invalid applications.

19 - END -