

Amendment - 1st Reading-white - Requested by: Gordon Vance - (S) Highways and Transportation

- 2023

68th Legislature 2023

Drafter: Jameson Walker, 406-444-3722

SB0521.001.001

1 SENATE BILL NO. 521

2 INTRODUCED BY S. VANCE, J. ELLSWORTH

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO BROADBAND
5 DEPLOYMENT AND RIGHT-OF-WAY; REVISING LAWS RELATED TO BROADBAND DEPLOYMENT ON
6 STATE HIGHWAYS OR INTERSTATE RIGHTS-OF-WAY; ALLOWING APPLICANTS TO SEEK AN
7 EXCEPTION TO PAYING THE FAIR MARKET VALUE SUBJECT TO APPROVAL; DEFINING "FAIR MARKET
8 VALUE"; REVISING DEFINITIONS; PROVIDING A FEE; AMENDING SECTIONS 60-4-501 AND 60-4-601,
9 MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

10
11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12
13 **Section 1.** Section 60-4-501, MCA, is amended to read:

14 **"60-4-501. Broadband deployment.** (1) The department shall maintain a list of entities working on
15 broadband deployment in the state.

16 (2) When the department plans a state highway construction project or a project authorized under
17 60-4-601 involving construction methods suitable for installing broadband conduit in the state or interstate
18 highway right-of-way or conducive to accessing the utility right-of-way, the department shall notify entities
19 working on broadband deployment of the project to encourage collaborative broadband installation.

20 (3) The department may adopt administrative rules to implement this section.

21 (4) As used in this section, "entities working on broadband deployment" includes but is not limited
22 to local governments, nonprofit organizations, cable television companies, ~~and~~ telephone companies, and
23 broadband providers eligible for the installation of broadband infrastructure."

24
25 **Section 2.** Section 60-4-601, MCA, is amended to read:

26 **"60-4-601. Interstate right-of-way -- department role.** (1) The department of transportation may
27 grant a right-of-way use agreement for the use of longitudinal right-of-way along interstate highways in the state

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1 for eligible projects that:

2 (a) provide evidence that construction and completion will result in a significant investment, a
3 documented positive significant fiscal impact, or both, to the Montana economy within the first year of operation;

4 (b) are in the public interest; and

5 (c) are approved by the federal highway administration.

6 (2) To request a right-of-way use agreement in accordance with this section, the owner of an
7 eligible project must submit an application to the department that demonstrates compliance with subsection (1).
8 The applicant must pay an application fee of \$100. The department shall work with the applicant and the federal
9 highway administration throughout the review process and approve or deny the application within 90 days of
10 final approval by the federal highway administration.

11 (3) ~~(a) — The~~ Except as provided in subsections (3)(b) and (3)(c), the department and the applicant
12 shall agree to the payment of the fair market value of the portion of the right-of-way where the project will be
13 located prior to the right-of-way use agreement being granted.

14 (b) Applicants who seek an exception to paying the fair market value shall submit a request and
15 justification to the department. The department shall submit to the federal highway administration the fair
16 market value exception request for approval. If approved, the department may not charge the applicant for the
17 right-of-way use agreement.

18 (c) An applicant may propose to the department an alternative to payment of fair market value by
19 offering a comparable in-kind contribution.

20 (4) The department shall allow approved applicants for eligible projects to:

21 (a) enter into a right-of-way use agreement for a maximum 30-year term with the possibility of
22 renewal upon expiration of the original term; and

23 (b) use the right-of-way for the construction and maintenance of project facilities in a safe and
24 efficient manner as set forth in the right-of-way agreement.

25 (5) Any relocation of facilities occupying the right-of-way is subject to 60-4-403. The department
26 shall work with applicants to minimize the potential for any future project impacts that may require the relocation
27 of facilities occupying the right-of-way.

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1 (4)(6) The department may adopt rules necessary for the administration of this section, including
2 application fees to be paid by an applicant seeking a right-of-way use agreement and any rules necessary to
3 ensure the state is not prevented from receiving federal funds for highway purposes.

4 (5)(7) For the purposes of this section:

5 (a) "Eligible project" means a pipeline, or fiber optic or other communications-type cables, wireless
6 facility, and associated infrastructure, and dedicated power sources.

7 (b) "Fair market value" means \$100 a mile for each year, or \$3,000 a mile for a 30-year term right-
8 of-way use agreement. Applicants may choose to pay annually or in a lump sum for the full length of the term.

9 (b)(c) "Public interest", including the determination of clean energy and **broadband infrastructure**
10 **connectivity** projects that provide connectivity to Montana citizens, is determined by state policy and federal
11 highway administration guidance and regulation, including but not limited to 23 CFR 710.403. ~~Deployment of~~
12 ~~broadband infrastructure and clean energy and connectivity projects are in the public interest.~~

13

14 NEW SECTION. Section 3. Effective date. [This act] is effective on passage and approval.

15

- END -