

SENATE BILL NO. 173

INTRODUCED BY K. BOGNER

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A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO COUNTY ROAD ABANDONMENT; CLARIFYING THE PETITION PROCESS BY WHICH A COUNTY MAY ABANDON OR VACATE A COUNTY ROAD; UPDATING REFERENCES FROM "FREEHOLDER" TO "REAL PROPERTY OWNER"; AND AMENDING SECTIONS 7-14-2101, 7-14-2103, 7-14-2107, 7-14-2601, 7-14-2603, 7-14-2611, 7-14-2614, AND 7-14-2615, MCA."

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

**Section 1.** Section 7-14-2101, MCA, is amended to read:

**"7-14-2101. General powers of county relating to roads and bridges -- definitions.** (1) The board

of county commissioners, under the limitations and restrictions that are prescribed by law, may:

- (a) (i) lay out, maintain, control, and manage county roads and bridges within the county;
- (ii) subject to 15-10-420, levy taxes for the laying out, maintenance, control, and management of the county roads and bridges within the county as provided by law;
- (b) (i) in the exercise of sound discretion, jointly with other counties, lay out, maintain, control, manage, and improve county roads and bridges in adjacent counties, wholly or in part as agreed ~~upon~~ on between the boards of the counties concerned;
- (ii) subject to 15-10-420, levy taxes for the laying out, maintenance, control, management, and improvement of county roads and bridges in adjacent counties or shared jointly with other counties, as agreed ~~upon~~ on between the boards of the counties concerned and as provided by law;
- (c) (i) enter into agreements for adjusted annual contributions over not more than 6 years toward the cost of joint highway or bridge construction projects entered into in cooperation with other counties, the state, or the United States;
- (ii) subject to 15-10-420, place a joint project in the budget and levy taxes for a joint project as provided by law.

1           (2)     (a) Following a public hearing, a board of county commissioners may accept by resolution a  
2 road that has not previously been considered a county road but that has been laid out, constructed, and  
3 maintained with state department of transportation or county funds.

4           (b)     A survey is not required of an existing county road that is accepted by resolution by a board of  
5 county commissioners.

6           (c)     A road that is abandoned by the state may be designated as a county road upon the  
7 acceptance and approval by resolution of a board of county commissioners.

8           (d)     A road on a final subdivision plat that is dedicated to public use is not considered a county road  
9 until the board of county commissioners approves by resolution the adoption of the road as a county road as  
10 provided in subsection (4)(b)(ii).

11          (3)     The board of county commissioners may adopt regulations for unincorporated areas within a  
12 county governing:

13          (a)     the assignment of numerical physical addresses except for roads under the jurisdiction of a  
14 federal, state, or tribal entity if that entity objects to the assignment; and

15          (b)     the naming of roads except roads under the jurisdiction of a federal, state, or tribal entity unless  
16 that entity consents to the naming.

17          (4)     Unless the context requires otherwise, for the purposes of this chapter, the following definitions  
18 apply:

19          (a)     "Bridge" includes rights-of-way or other interest in land, abutments, superstructures, piers, and  
20 approaches except dirt fills.

21          (b)     "County road" means:

22           (i)     a road that is petitioned by ~~freeholders~~ real property owners, approved by resolution, and  
23 opened by a board of county commissioners in accordance with this title;

24           (ii)    a road that is dedicated for public use in the county and approved by resolution by a board of  
25 county commissioners;

26           (iii)   a road that has been acquired by eminent domain pursuant to Title 70, chapter 30, and  
27 accepted by resolution as a county road by a board of county commissioners;

28           (iv)    a road that has been gained by the county in an exchange with the state as provided in 60-4-

1 201; or

2 (v) a road that has been the subject of a request under 7-14-2622 and for which a legal route has  
3 been recognized by a district court as provided in 7-14-2622."

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5 **Section 2.** Section 7-14-2103, MCA, is amended to read:

6 **"7-14-2103. Duties of county commissioners concerning county roads.** (1) A board of county  
7 commissioners has general supervision over the county roads within the county.

8 (2) A board may survey, view, lay out, record, open, work, and maintain county roads that are  
9 established in accordance with this chapter. Guideposts must be erected.

10 (3) A board may discontinue or abandon county roads when ~~freeholders~~ real property owners  
11 properly petition for discontinuance or abandonment.

12 (4) A board of county commissioners may determine the level and scope of maintenance on a  
13 county road under its jurisdiction, and a local entity or the state may not withhold funds based on the board's  
14 maintenance determinations."

15

16 **Section 3.** Section 7-14-2107, MCA, is amended to read:

17 **"7-14-2107. Acquisition of right-of-way.** (1) ~~Each~~ A board of county commissioners shall contract,  
18 agree for, purchase, or otherwise lawfully acquire right-of-way for county roads over private property. It may  
19 institute proceedings under Title 70, chapter 30, ~~paying for such~~ and pay for the right-of-way from the county  
20 road fund.

21 (2) ~~Each~~ A board shall acquire rights-of-way for county roads and discontinue or abandon them  
22 only ~~upon~~ on proper petition ~~therefor~~ pursuant to Title 7, chapter 14, part 26.

23 (3) By taking or accepting interests in real property for county roads, the public acquires only the  
24 right-of-way and the incidents necessary to enjoying and maintaining it."

25

26 **Section 4.** Section 7-14-2601, MCA, is amended to read:

27 **"7-14-2601. Petition to establish, alter, or abandon a county road.** (1) Any 10, or a majority, of the  
28 ~~freeholders~~ real property owners of a road district that is taxable therein for road purposes may petition the

1 board in writing to open, establish, construct, change, abandon, or discontinue any county road in the district.

2 (2) When the road petitioned for is on the dividing line between two counties, the same procedure  
3 must be followed except that a copy of the petition must be presented to each board. The two boards shall act  
4 jointly.

5 (3) As used in this part, unless the context requires otherwise:

6 ~~(a) "board" means the board of county commissioners;~~

7 ~~(b)(a) "abandonment" or "vacation" means cessation of the use of a right-of-way (easement) or  
8 easement or of activity thereon on a right-of-way or easement with no intention to reclaim or use it again and is  
9 sometimes called "vacation";~~

10 (b) "board" means the board of county commissioners."

11

12 **Section 5.** Section 7-14-2603, MCA, is amended to read:

13 **"7-14-2603. Investigation of request concerning road -- decision.** (1) At its next regular or special  
14 meeting or in any case at a date within 30 days after filing of any petition, the board shall ~~cause an investigation~~  
15 ~~to be made of~~ investigate the feasibility, desirability, and cost of granting ~~the prayer of~~ the petition. The  
16 investigation ~~shall~~ must be sufficient to properly determine the merits or demerits of the petition.

17 (2) ~~No more than~~ Only one member of the board and the county surveyor, or the county road  
18 supervisor if a county surveyor is not elected or appointed, shall make the investigation.

19 (3) After considering the petition and the results of the investigation, the board shall make an entry  
20 of its decision on the minutes."

21

22 **Section 6.** Section 7-14-2611, MCA, is amended to read:

23 **"7-14-2611. Alteration of road to follow subdivision or section lines.** (1) A majority of the  
24 ~~freeholders or real property~~ owners residing on any county road or portion ~~thereof of a county road~~ may petition  
25 the board in writing to ~~se~~ change the road or portion ~~as~~ to run on subdivision or section lines.

26 (2) The board shall investigate in the same manner as provided in 7-14-2603. After investigation,  
27 the board may order the making of the change if it can be done without material damage, injury, or serious  
28 inconvenience to the public customarily using the road or portion.

1 (3) Those petitioning for the change shall bear ~~all or such portion as much~~ of the cost and expense  
2 of making ~~the petition~~ as the board ~~may order~~ orders."

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4 **Section 7.** Section 7-14-2614, MCA, is amended to read:

5 **"7-14-2614. Record of road opening or alteration to be maintained.** When a county road is  
6 opened or changed, the findings of the board, the plat field notes, and the report of ~~the a licensed~~ surveyor ~~shall~~  
7 must be recorded in the office of the county clerk in a book kept for that purpose."

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9 **Section 8.** Section 7-14-2615, MCA, is amended to read:

10 **"7-14-2615. Abandonment or vacation of county roads.** (1) All county roads once established must  
11 continue to be county roads until abandoned or vacated by:

- 12 (a) operation of law;
- 13 (b) judgment of a court of competent jurisdiction; or
- 14 (c) the order of the board on completion of the petition process under Title 7, chapter 14, part 26.

15 (2) An order to abandon a county road is not valid unless preceded by notice and public hearing.

16 (3) The board may not abandon a county road or right-of-way used to provide existing legal access  
17 to public land or waters, including access for public recreational use as defined in 23-2-301 and as permitted in  
18 23-2-302, unless another public road or right-of-way provides substantially the same access.

19 (4) The board may not abandon a county road or right-of-way used to access private land if the  
20 access benefits two or more landowners unless all of the landowners agree to the abandonment."

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