

\*\*\*\* BILL NO. \*\*\*\*

INTRODUCED BY \*\*\*\*

BY REQUEST OF THE \*\*\*\*

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING TITLE 60 FOR CLARITY AND CONSISTENCY; UNIFYING SUBSTANTIVELY SIMILAR DEFINITIONS OF "ABANDONMENT"; REORGANIZING DEFINITIONS FOR CONFORMITY WITH THE BILL DRAFTING MANUAL; REORGANIZING TITLE 60, CHAPTER 4, PART 2; PROVIDING A DEFINITION FOR "RIGHT-OF-WAY ABANDONMENT"; AMENDING SECTIONS 7-14-2601, 60-1-103, 60-2-107, 60-2-112, 60-2-115, 60-2-134, 60-2-220, 60-2-240, 60-3-206, 60-3-211, 60-4-201, 60-4-202, 60-4-203, 60-4-209, 60-4-213, 60-4-214, 60-4-215, 60-4-216, 60-4-217, 60-4-218, 60-4-401, 60-4-601, 60-5-102, 60-6-106, AND 60-11-111, MCA; REPEALING SECTIONS 60-4-209, 60-4-213, AND 60-11-112, MCA."

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

**Section 1.** Section 7-14-2601, MCA, is amended to read:

**"7-14-2601. Petition to establish, alter, or abandon a county road.** (1) Any 10, or a majority, of the real property owners of a road district that is taxable for road purposes may petition the board in writing to open, establish, construct, change, abandon, or discontinue any county road in the district.

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

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

(a) "abandonment" ~~or and~~ "vacation" ~~means cessation of the use of a right of way or easement or of activity on a right of way or easement with no intention to reclaim or use it again~~ have the meaning provided in 60-1-103;

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

**Section 2.** Section 60-1-103, MCA, is amended to read:

1           **"60-1-103. General definitions.** Subject to additional definitions contained in this title that are  
2 applicable to specific chapters or sections and unless the context otherwise requires, in this title, the following  
3 definitions apply:

4           (1) "Abandonment" ~~means cessation of use of right-of-way or an easement or cessation of activity on~~  
5 ~~the right-of-way or easement with no intention to reclaim or use again. Abandonment is sometimes called~~  
6 ~~vacation or "vacation" means cessation of the use of a right-of-way or easement or of activity on a right-of-way~~  
7 ~~or easement with no intention to reclaim or use it again.~~

8           (2) "Bridge" means any bridge constructed by the department, together with all appurtenances,  
9 additions, alterations, improvements, and replacements and the approaches to the bridge, lands used in  
10 connection with the bridge, and improvements incidental or integral to the bridge.

11           (3) "Commission" means the transportation commission provided for in 2-15-2502.

12           (4) "Commission-designated highway systems" means the following as defined in this section:

13           (a) national highway system;

14           (b) primary highway system;

15           (c) secondary highway system; and

16           (d) urban highway system.

17           (5) "Condemnation" means taking by exercise of the right of eminent domain, as provided in Title 70,  
18 chapter 30, and chapter 4 of this title.

19           (6) "Construction" means supervising, inspecting, actual building, and all expenses incidental to the  
20 construction or reconstruction of a highway, including locating, surveying, mapping, and costs of right-of-way or  
21 other interests in land and elimination of hazards at railway grade crossings.

22           (7) "Control of access" means the condition in which the right of owners or occupants of abutting land  
23 or other persons to access, light, air, or view in connection with a highway is fully or partially controlled by public  
24 authority.

25           (8) "County road" means any public highway opened, established, constructed, maintained,  
26 abandoned, or discontinued by a county in accordance with Title 7, chapter 14.

27           (9) "Department" means the department of transportation provided for in Title 2, chapter 15, part 25.

28           (10) "Director" means the director of transportation, a position provided for in 2-15-2501.

(11) "Easement" means a right acquired by public authority to use or control property for a designated purpose.

(12) "Eminent domain" means the right of the state to take private property for public use.

(13) "Federal-aid highway funds" means those funds available for expenditure by the department pursuant to Title 23, U.S.C., or other federally available funds for highways.

(14) "Fee simple" means an absolute estate or ownership in property, including unlimited power of alienation.

(15) "Financial district" means a transportation commission district established in 2-15-2502.

(16) "Highway" includes rights-of-way or other interests in land, embankments, retaining walls, culverts, sluices, drainage structures, bridges, railroad-highway crossings, tunnels, signs, guardrails, and protective structures.

(17) "Highway", "road", and "street", whether the terms appear together or separately or are preceded by the adjective "public", are general terms denoting a public way for purposes of vehicular travel and include the entire area within the right-of-way.

(18) "Highway authority" means the entity at any level of government authorized by law to construct and maintain highways.

(19) "Interstate highway" means a highway that is part of the Dwight D. Eisenhower system of interstate and defense highways described in Title 23, U.S.C., and is a subcomponent of the national highway system.

(20) "Maintenance" means the preservation of the entire highway, including surface, shoulders, roadsides, structures, and traffic control devices that are necessary for the safe and efficient use of the highway.

(21) "National highway system" means that system of public highways designated by the commission and approved by the secretary of transportation, as provided in Title 23, U.S.C., including interstate highways.

(22) "Primary highway system" means those highways that have been functionally classified, in accordance with federal requirements, as either principal or minor arterials and designated by the commission as being on the primary highway system.

(23) "Public highways" means all streets, roads, highways, bridges, and related structures:

(a) built and maintained with appropriated funds of the United States or the state or any political subdivision of the state;

(b) dedicated to public use;

(c) acquired by eminent domain, as provided in Title 70, chapter 30, and chapter 4 of this title; or

(d) acquired by adverse use by the public, with jurisdiction having been assumed by the state or any political subdivision of the state.

(24) "Right-of-way" is a general term denoting land, property, or any interest in land or property, usually in a strip, acquired for or devoted to highway purposes.

(25) "Scenic-historic byway" means a public road or segment of a public road that has been designated as a scenic-historic byway by the commission, as provided in 60-2-601.

(26) "Secondary highway system" means those highways that are outside department-designated urban boundaries and that have been functionally classified, in accordance with federal requirements, as either minor arterials or major collectors and designated by the commission, in cooperation with the boards of county commissioners, as being on the secondary highway system.

(27) "State highways" means the highways throughout the state that are not located on a commission-designated highway system but that are on the state maintenance system.

(28) "Urban highway system" means the highways and streets that are in and near incorporated cities with populations of over 5,000 and within urban boundaries established by the department and that are functionally classified, in accordance with federal requirements, as either arterials or major collectors and designated by the commission, in cooperation with local government authorities, as being on the urban highway system."

**Section 3.** Section 60-2-107, MCA, is amended to read:

**"60-2-107. Abandonment of highways -- discontinuance of maintenance -- exchange of roadways -- public notice required.** (1) ~~Except as provided in 60-4-213 through 60-4-218, the~~The commission may abandon highways on the commission-designated highway systems and state highways pursuant to 60-4-209.

(2) ~~Except as provided in 60-4-213 through 60-4-218, before~~Before abandoning or discontinuing

1 maintenance on a highway, the commission shall hold a public hearing in the county or counties affected by the  
2 abandonment. The commission may elect to offer to transfer the liability for and the maintenance of a highway  
3 to another agency or agencies that may in turn elect to take responsibility for the highway. The commission  
4 shall notify the board of county commissioners in writing of its intent to abandon a highway and hold a public  
5 hearing. The commission shall publish for 3 consecutive weeks in local newspapers within the county the notice  
6 of abandonment and public hearing.

7 (3) ~~Except as provided in 60-4-213 through 60-4-218, the~~The commission may enter into an  
8 agreement with a unit of local government, on mutually beneficial terms, to exchange property interests or  
9 responsibilities, including maintenance, on any portion of a commission-designated highway system or state  
10 highway and on any portion of a county road or city street.

11 (4) The commission may not abandon a highway, road, or right-of-way used to provide existing legal  
12 access to public land or waters, including access for public recreational use as defined in 23-2-301 and as  
13 permitted in 23-2-302, unless another highway, road, or right-of-way provides substantially the same access.

14 (5) The commission may not abandon a highway, road, or right-of-way used to access private land if  
15 the access benefits two or more landowners unless all the landowners agree to the abandonment."  
16

17 **Section 4.** Section 60-2-112, MCA, is amended to read:

18 **"60-2-112. Competitive bidding -- reciprocity.** (1) Except as provided in subsections (2) through (6),  
19 if the estimated cost of any work exceeds \$50,000, the commission shall award the contract by competitive  
20 bidding to the lowest responsible and responsive bidder. The award must be made upon the notice and terms  
21 that the commission prescribes by its rules. However, except when prohibited by federal law, the commission  
22 shall make awards and contracts in accordance with 18-1-102.

23 (2) The commission may award a contract by means other than competitive bidding if it determines  
24 that special circumstances so require. The commission shall specify the special circumstances in writing.

25 (3) The commission may enter into contracts with units of local government for the construction of  
26 projects without competitive bidding if it finds that the work can be accomplished at lower total costs, including  
27 total costs of labor, materials, supplies, equipment usage, engineering, supervision, clerical and accounting  
28 services, administrative costs, and reasonable estimates of other costs attributable to the project.

(4) The commission may delegate to the department the authority to enter, without competitive bidding, agreed-upon price contracts for projects costing \$50,000 or less.

(5) The commission may award a design-build contract under the design-build contracting program if the provisions of 60-2-137 have been met. The commission may also award a contract using an alternative project delivery method under 60-2-120.

(6) The commission or the department may not enter into a contract for a state-funded highway project or a construction project with a bidder whose operations are not headquartered in the United States unless:

(a) the foreign country, or province or other political subdivision of that country, in which the bidder is headquartered affords companies based in the United States open, fair, and nondiscriminatory access to bidding on highway projects and construction projects located in the foreign country, or province or other political subdivision of that country; and

(b) the department has entered into a reciprocity agreement with or has exchanged letters of information with the foreign country, or province or other political subdivision of that country, that addresses:

(i) the equal and fair treatment of bids originating in the United States and in the foreign country, or province or other political subdivision of that country;

(ii) specific ownership requirements and tax policies in the United States and in the foreign country, or province or other political subdivision of that country, that may result in the unequal treatment of all bids received, regardless of their origin;

(iii) the means by which contractors from both the United States and the foreign country, or province or other political subdivision of that country, are notified of highway projects and construction projects available for bid; and

(iv) any other differences in public policy or procedure that may result in the unequal treatment of bids originating in the United States or in the foreign country, or province or other political subdivision of that country, for projects located in either the United States or the foreign country, or province or other political subdivision of that country.

(7) ~~For the purposes of~~ As used in subsection (6), "construction" has the meaning provided in 18-2-101."

**Section 5.** Section 60-2-115, MCA, is amended to read:

**"60-2-115. Contract let by commission -- time for final payment of contract price -- interest. (1)**

Subject to subsections (2) through (4), the department shall comply with the 30-day time period for payment of contracts as provided in 18-2-306 for all contracts let by the commission in accordance with this part.

(2) For the final payment on a contract, the department shall, within 30 days after a request by the contractor for final acceptance, perform an inspection of the project and notify the contractor of whether the department has granted or refused final acceptance.

(3) If the department notifies the contractor that the department has granted final acceptance, the department shall make the final payment of the contract price specified in the contract to the other party to the contract within 90 days after the notice.

(4) (a) If the department notifies the contractor that the department has refused final acceptance, the department shall include with the notice a list of all deficiencies that must be cured before the department will grant final acceptance.

(b) After the contractor has cured all of the deficiencies, the contractor shall request final acceptance by the department. Within 30 days after the contractor's request, the department shall perform an inspection of all of the cured deficiencies.

(c) If the department notifies the contractor of its final acceptance, the department shall make the final payment as provided in subsection (3).

(d) If the department notifies the contractor that the department has refused final acceptance, the department shall:

(i) notify the contractor of any remaining deficiencies; and

(ii) grant final acceptance, subject to any remedy provided under the provisions of Title 28, chapter 2.

(5) When the department grants final acceptance, the department shall immediately consider the contract complete and close the contract.

(6) ~~For the purposes of~~ As used in this section, the following definitions apply:

(a) "Final acceptance" means the department's acceptance of the construction, maintenance, or public works project upon certification by the architect, project engineer, or other representative of the department of final completion of the project.



(b) "Final completion" means that the project has been completed in accordance with the terms and conditions of the contract documents and all warranties have expired."

**Section 6.** Section 60-2-134, MCA, is amended to read:

**"60-2-134. Definitions.** ~~For the purposes of~~ As used in 18-8-204, 18-8-205, 60-2-111, 60-2-112, 60-2-120, 60-2-137, and this section, the following definitions apply:

(1) (a) "Alternative project delivery method" means a process approved by the commission and recognized by the U.S. department of transportation, federal highway administration, for federal participation under the United States Code and federal regulations.

(b) The term does not include a design-build contract awarded by the commission under 60-2-111(3).

(2) "Design-build contracting" means the process of entering into a single contract between the commission and a design-build contractor in which the design-build contractor agrees to design and build a highway, structure, or facility or any other items required in a request for proposals.

(3) "Design-build contractor" means an individual, partnership, corporation, joint venture, or other legally recognized entity that is appropriately licensed in Montana and that provides the necessary design and construction services, including contract administration.

(4) "Design-build or alternative project delivery criteria package" means the document provided by the department that contains the information necessary to guide a prospective design-build contractor in the preparation and submission of a proposal for a design-build or alternative project delivery project.

(5) "Request for proposals" means a part of the design-build or alternative project delivery criteria package that contains a detailed scope of work, including design concepts, technical requirements and specifications, the time allowed for design and construction, the department's estimated cost of the project, the deadline for submitting a proposal, the selection criteria, and a copy of the contract.

(6) "Request for qualifications" means a part of the design-build or alternative project delivery criteria package that contains the desired minimum qualifications of the design-build or alternative project delivery contractor, a scope of work statement, the project requirements, the amount of reimbursement that the commission has determined will be paid to prospective contractors who qualify for the short list but are not awarded a contract, if applicable, and the selection criteria that the department will use in compiling the short



1 list of prospective design-build contractors to consider."

2

3 **Section 7.** Section 60-2-220, MCA, is amended to read:

4 **"60-2-220. Cultural heritage areas -- signs -- location and design -- funding.** (1) Cultural heritage  
5 areas are established:

6 (a) encompassing Silver Bow County and Deer Lodge County;

7 (b) encompassing Miles City.

8 (2) Subject to the provisions of federal law, the department shall, as funds are available under  
9 subsection (4), erect and maintain at specified locations on the primary and interstate highways in the  
10 appropriate areas signs identifying those areas as cultural heritage areas.

11 (3) The consolidated governments of Butte-Silver Bow and Anaconda-Deer Lodge and the city of Miles  
12 City shall design the signs and designate the general locations for the signs. The department shall determine  
13 the exact location of each sign.

14 (4) The department may accept money from other state agencies, federal agencies, local  
15 governments, or private persons for the purposes of subsections (2) and (3) and may expend the money  
16 received for those purposes-

17 ~~(5) As used in this section, "department" means the department of transportation provided for in 2-15-~~  
18 ~~2504."~~

19

20 **Section 8.** Section 60-2-240, MCA, is amended to read:

21 **"60-2-240. Use of postconsumer recycled materials in highway construction projects.** (1) The  
22 department shall use postconsumer recycled material in federal and state highway construction projects,  
23 including but not limited to use as:

24 (a) roadway fill material;

25 (b) roadway aggregates;

26 (c) bedding material;

27 (d) foundation material; and

28 (e) filter material.

(2) The department shall take procedural steps to provide for the incorporation of postconsumer recycled material into a highway project to ensure that:

(a) road construction projects use postconsumer recycled material when the cost is less than or equal to the cost of other materials used for the same purpose; and

(b) engineering standards demonstrate the acceptable use of postconsumer recycled material for a project.

(3) ~~For the purposes of~~As used in this section, "postconsumer recycled material" means recycled glass processed into glass cullet, reclaimed asphalt and concrete, and recycled tires."

**Section 9.** Section 60-3-206, MCA, is amended to read:

**"60-3-206. Apportionment of funds to secondary highway system.** (1) Each fiscal year the department shall apportion at least 65% of the federal-aid highway funds allocated for the secondary highway system among the districts for capital construction needs. The remainder of the funds must be used by the department for secondary highway system pavement preservation. The proportion that each district receives is computed on the following basis:

- (a) 30% in the ratio of land area in each district to the total land area in the state;
- (b) 35% in the ratio of the rural population in each district to the total rural population in the state;
- (c) 30% in the ratio of the rural road mileage in each district to the total rural road mileage in the state;
- (d) 5% in the ratio of the rural bridge square footage in each district to the total rural bridge square footage in the state.

(2) To the extent necessary to permit orderly programming and construction of projects, obligations in a district may exceed the amount apportioned to that district if a majority of the boards of county commissioners of the counties in another district approve the donation of the extra amount. The amount of excess obligations must be deducted from future apportionments to that recipient district and returned to the donor district.

(3) ~~For the purposes of~~As used in this section, terms are defined as follows:

(a) "Capital construction" means a highway or bridge project undertaken to improve structural strength, increase capacity, or eliminate hazardous design features. A capital construction project may include paved or gravel road reconstruction and rehabilitation.

(b) "District" means the transportation commission districts identified in 2-15-2502.

(c) "Pavement preservation" means a project undertaken to extend the useful life of a paved road.

(d) "Rural bridge square footage" means the total square footage of all deck areas of structures 20 feet long or longer located on the roadways that are used to calculate rural road mileage as provided in subsection (3)(f).

(e) "Rural population" means the total population of all of the counties in a district as reported in the latest decennial federal census less the population in cities over 5,000 persons and their unincorporated fringe urban areas as determined by the department, using the latest decennial federal census.

(f) (i) "Rural road mileage" means all road mileage on roads functionally classified and approved by the transportation commission as major collectors or minor arterials, exclusive of road mileage on the primary highway system.

(ii) Road mileage within national parks or road mileage that lies within incorporated cities over 5,000 persons and their unincorporated fringe urban areas, whose population is determined by the department, using the latest decennial federal census, is not considered rural road mileage.

(iii) Rural road mileage reported by the road inventory of the department must be used in determining rural road mileage.

(4) For the purpose of determining secondary highway capital construction priorities within a district, each board of county commissioners in a district has one vote and the department has two votes. An existing paved secondary highway may not be converted to a graveled surface without the concurrence of the board of county commissioners in the county where the road is located."

**Section 10.** Section 60-3-211, MCA, is amended to read:

**"60-3-211. Apportionment of state funds to urban highway system.** (1) Each fiscal year, the department shall apportion the federal-aid highway funds allocated for the urban highway system to the urban areas in the state as delineated and reported in the latest federal census with populations of 5,000 or more in the ratio of urban population in each urban area to the total urban population in all urban areas in the state.

(2) ~~For the purpose of~~As used in this section, "urban population" is defined as population within the urban area, as reported in the latest federal census, with a population of 5,000 or more and that population

1 within the adjusted and federal highway administration-approved fringe areas based on the latest federal  
2 census.

3 (3) To the extent necessary to permit orderly programming and construction of projects, obligations in  
4 any urban area may exceed the amount apportioned to that urban area. The amount of any excess obligations  
5 must be deducted from future apportionments to that urban area."

6  
7 **Section 11.** Section 60-4-201, MCA, is amended to read:

8 **"60-4-201. ~~Exchange of interest in real~~ Abandonment by transportation commission --**  
9 **~~disposition of unnecessary highway property by department -- definitions.~~** (1) Every commission-  
10 designated highway system or state highway once established must continue until abandoned or vacated by  
11 operation of law or by judgment of a court of competent jurisdiction or by a proper order of the commission.  
12 Interests in real property acquired for the purpose of establishing a highway may be disposed of by  
13 abandonment pursuant to 60-4-209. A right-of-way may be disposed of by right-of-way abandonment as  
14 defined in subsection (4) and as provided for in 60-4-213 through 60-4-218.

15 (2) The department may dispose of unnecessary highway property by:

16 (a) sale, as provided in 60-4-202 through 60-4-207; and

17 (b) exchange, as provided in [section 5].

18 (3) As used in this part, the following definitions apply:

19 (a) "right-of-way abandonment" means cessation of use of right-of-way or activity on the right-of-way  
20 with no intention to reclaim or use the right-of-way again.

21 (b) "unnecessary highway property" means ~~The department may determine that~~ an interest in real  
22 property, however acquired by it, ~~the department that the department has determined~~ is no longer necessary to  
23 the laying out, altering, construction, improvement, or maintenance of a highway. ~~Except as provided in 60-4-~~  
24 ~~213 through 60-4-218, the department may then exchange the interest, either as entire or partial consideration,~~  
25 ~~for any other interest in real property needed for highway purposes. The department may establish the manner~~  
26 ~~and terms and conditions for the exchange.~~

27 ~~(2) Except as provided in 60-4-213 through 60-4-218, prior to making the exchange, the department~~  
28 ~~shall notify all landowners whose property is adjacent to the land proposed for exchange. If any of the~~

landowners are interested in buying the land proposed for exchange, the landowners shall notify the department of their interest by registered letter within 30 days of the receipt of the notice of exchange from the department. Upon receipt of a notice of interest, the department shall offer the land proposed for exchange for sale as provided in 60-4-202 and 60-4-203.

(3) The department may enter into an arrangement for exchange solely with a municipality or county for an interest in real property that is a public right-of-way used for transportation purposes. The department may transfer the interest to the municipality or county in exchange for the municipality or county assuming full interest and maintenance authority upon the following conditions:

(a) the real property must be maintained as a public right-of-way for transportation purposes; and

(b) no portion of the interest may be sold to or exchanged with private entities."

**Section 12.** Section 60-4-202, MCA, is amended to read:

**"60-4-202. Sale of interest in real property.** (1) The department may sell ~~an interest in real property~~ if the department determines that the property is not necessary to the laying out, altering, construction, improvement, or maintenance of a highway unnecessary highway property. Except as provided in ~~60-4-213 through 60-4-218~~ and subsection (2) of this section, if the interest is reasonably of a value in excess of \$10,000, sale must be made to the highest bidder at public auction. The sale of an interest at auction must be conducted as provided in 60-4-203.

(2) (a) The department may sell an interest in ~~real property~~ unnecessary highway property without a public auction directly to:

(i) a federal, state, tribal, or local government;

(ii) an agency of government;

(iii) a school district; or

(iv) a unit of the Montana university system.

(b) The department shall obtain fair market value for the property.

(3) ~~Except as provided in 60-4-213 through 60-4-218, before~~ Before the department sells ~~an interest in~~ real property unnecessary highway property as provided in subsection (2), the department shall notify all landowners whose property is adjacent to the land proposed for sale. If any of the landowners are interested in

1 buying the land proposed for sale, the landowners shall notify the department of their interest by registered  
2 letter within 30 days of the receipt of the notice of sale from the department. Upon receipt of a notice of interest,  
3 the department shall offer the land for sale as provided in 60-4-203 and this section."  
4

5 **Section 13.** Section 60-4-203, MCA, is amended to read:

6 **"60-4-203. Conduct of sale.** (1) ~~Except as provided in 60-4-213 through 60-4-218~~To sell  
7 unnecessary highway property pursuant to 60-4-202, the department shall publish notice of the sale once a  
8 week for 4 successive weeks in a newspaper published in the county in which the interest is located and on the  
9 department's website. The sale may be held in person in the county where the property is located or through an  
10 online auction.

11 (2) The notice of sale must contain:

12 (a) the day, date, and time of the beginning of the sale;

13 (b) a list of all the tracts to be offered for sale with the legal description, which includes the township  
14 and range, section number, and subdivision, or reference to the block and lot if surveyed;

15 (c) the number of acres in unplatted lands;

16 (d) the appraised value per acre and the appraised value of each lot;

17 (e) a quarter section listing of nonirrigable farm lands, with grazing lands listed in larger tracts not  
18 exceeding one section;

19 (f) a consecutive series of sales numbers for advertised tracts, if appropriate; and

20 (g) the terms and conditions of the sale and any additional information the department considers  
21 useful.

22 (3) ~~Except as provided in 60-4-213 through 60-4-218, before~~Before the sale of an interest having a  
23 value in excess of \$10,000, the department must have the interest appraised at a price representing a fair  
24 market value. The appraised value must be stated in the published notice.

25 (4) ~~Except as provided in 60-4-213 through 60-4-218, a~~A sale of an interest may not be made unless it  
26 has been appraised within 6 months prior to the date of the sale. A sale may not be made for less than 90% of  
27 the appraised value.

28 (5) ~~Except as provided in 60-4-213 through 60-4-218, title~~Title to an interest may not pass from the

state until the purchaser has paid the full amount of the purchase price into the state treasury to the credit of the department."

**NEW SECTION. Section 14. Exchange of unnecessary highway property.** (1) The department may exchange unnecessary highway property, either as entire or partial consideration, for any other interest in real property needed for highway purposes. The department may establish the manner and terms and conditions for the exchange.

(2) Prior to making the exchange, the department shall notify all landowners whose property is adjacent to the land proposed for exchange. If any of the landowners are interested in buying the land proposed for exchange, the landowners shall notify the department of their interest by registered letter within 30 days of the receipt of the notice of exchange from the department. Upon receipt of a notice of interest, the department shall offer the land proposed for exchange for sale as provided in 60-4-202 and 60-4-203.

(3) The department may enter into an arrangement for exchange solely with a municipality or county for an interest in real property that is a public right-of-way used for transportation purposes. The department may transfer the interest to the municipality or county in exchange for the municipality or county assuming full interest and maintenance authority upon the following conditions:

- (a) the real property must be maintained as a public right-of-way for transportation purposes; and
- (b) no portion of the interest may be sold to or exchanged with private entities.

**Section 15.** Section 60-4-209, MCA, is amended to read:

**"60-4-209. Abandoned highway property -- title vests in contiguous owner.** (1) ~~Except as provided in 60-4-213 through 60-4-218, upon~~ Upon abandonment by the state in the manner provided in 60-2-107 and subsection (2) of an interest in real property acquired for the purpose of establishment of a highway, the owner of contiguous real property or the owner's successor in interest is vested with the abandoned interest to the extent provided in subsection (3).

(2) For the purposes of this section:

- (a) a fee simple interest may be abandoned only by the proper order of the commission; and
- (b) an interest of less than fee simple may be abandoned in the manner provided in subsection (2)(a),



1 by operation of law, and by judgment of a court of competent jurisdiction.

2 (3) ~~Except as provided in 60-4-213 through 60-4-218, the~~The interest acquired by the contiguous  
3 property owner under subsection (1) is the abandoned interest or portion of the interest:

4 (a) if there are different contiguous property owners on each side of the abandoned interest, bounded  
5 on one side by the contiguous property and on the remaining two opposite sides by lines following the shortest  
6 distance from the extreme ends of the contiguous property abutting upon the abandoned interest to the center  
7 of the abandoned interest; and

8 (b) if the owners of the contiguous property on each side of the abandoned interest are the same,  
9 bounded on two opposite sides by the contiguous properties and on the two remaining opposite sides by lines  
10 following the shortest distance from the extreme ends of the contiguous property on one side of the abandoned  
11 interest to the extreme ends of the contiguous property on the other side of the abandoned interest.

12 (4) For the purpose of this section, an interest in property abandoned by a proper order of the  
13 commission includes an interest in property that the commission determines to be unnecessary to the laying  
14 out, altering, construction, improvement, or maintenance of a highway, whether or not the commission  
15 determines to sell the interest.

16 (5) ~~Except as provided in 60-4-213 through 60-4-218, the~~The interest acquired by a contiguous  
17 property owner under subsection (3) is conditioned upon the use of the property for agricultural or  
18 noncommercial purposes. If the property is used for commercial purposes or for purposes of future subdivision  
19 or other similar development, the property must revert to the state for sale pursuant to this part. This restriction  
20 applies to all subsequent holders of title to the property.

21 (6) This statute does not provide for abandonment of only a portion of the right-of-way or for  
22 abandonment of highway property where the contiguous property has been subdivided prior to abandonment."  
23

24 **Section 16.** Section 60-4-213, MCA, is amended to read:

25 **"60-4-213. Purpose.** The purpose of 60-4-213 through 60-4-218 is to provide for the ~~abandonment~~  
26 ~~disposal~~ of an interest in real property that the department has determined is not necessary to the laying out,  
27 altering, construction, improvement, or maintenance of a road or highway ~~by right-of-way abandonment. The~~  
28 ~~current abandonment statute, 60-4-209, does not provide for abandonment of only a portion of the right-of-way~~

1 ~~or for abandonment of highway property where the contiguous property has been subdivided prior to~~  
2 ~~abandonment.~~"

3  
4 **Section 17.** Section 60-4-214, MCA, is amended to read:

5 **"60-4-214. Definitions.** As used in 60-4-213 through 60-4-218, unless the context requires otherwise,  
6 the following definitions apply:

7 (1) "Abandoned interest" means the fee simple or lesser interest in the subject property after the right-  
8 of-way abandonment has been ordered by the commission.

9 ~~(2) "Abandonment" means cessation of use of right of way or activity on the right of way with no~~  
10 ~~intention to reclaim or use the right of way again.~~

11 ~~(3)~~(2) "Contiguous property" means subdivided parcels along one side of the length of the remainder.

12 ~~(4)~~(3) "Remainder" means the area lying between the centerline and the new right-of-way line as  
13 determined by the department, in its sole discretion, as necessary for the reconstruction and maintenance of a  
14 road or highway.

15 ~~(5)~~(4) "Subject property" means that portion of highway right-of-way for which right-of-way  
16 abandonment is sought."

17  
18 **Section 18.** Section 60-4-215, MCA, is amended to read:

19 **"60-4-215. Application of other laws.** (1) The provisions of 60-2-107(1) through (3), ~~60-4-201, 60-4-~~  
20 ~~202, 60-4-203, and 60-4-209(1) and (3) through (5)~~ do not apply to right-of-way abandonment under 60-4-213  
21 through 60-4-218.

22 (2) The provisions of 60-2-107(4) and (5) apply to right-of-way abandonment under 60-4-213 through  
23 60-4-218 to the extent that reasonable access must remain after the right-of-way abandonment."

24  
25 **Section 19.** Section 60-4-216, MCA, is amended to read:

26 **"60-4-216. Procedure for right-of-way abandonment.** (1) Upon receipt of a petition, in writing, for  
27 the right-of-way abandonment of the subject property from three or more owners of contiguous property, the  
28 department shall prepare an exhibit, setting forth the boundaries of the subject property and identifying the

1 remainder.

2 (2) The department shall prepare an order of right-of-way abandonment to propose to the commission.

3 (3) The proposed order must state that the subject property is subject to all easements and utilities  
4 apparent or of record.

5 (4) Before abandoning the subject property, the commission shall notify the board of county  
6 commissioners in writing of its intent to ~~abandon effect the right-of-way abandonment of~~ the subject property  
7 and shall hold a public hearing in the county or counties affected by the right-of-way abandonment.

8 (5) The commission shall publish the notice of proposed abandonment and public hearing for 3  
9 successive weeks in local newspapers within the county.

10 (6) The commission, in its sole discretion, may enter an order ~~abandoning disposing of~~ the subject  
11 property by right-of-way abandonment.

12 (7) The order with exhibits attached must be recorded by the department in the office of the clerk and  
13 recorder in the county or counties in which the subject property is located."

14

15 **Section 20.** Section 60-4-217, MCA, is amended to read:

16 **"60-4-217. Criteria for right-of-way abandonment.** (1) Subject to subsection (2), the commission  
17 shall enter an order ~~abandoning disposing of~~ the subject property by right-of-way abandonment upon finding  
18 that:

19 (a) the department has determined that the cost of disposing of the subject property by sale pursuant  
20 to 60-4-202 or exchange pursuant to 60-4-201 exceeds the fair market value of the subject property;

21 (b) a remainder exists to provide reasonable access; and

22 (c) at least one of the following applies:

23 (i) the disposal qualifies as an exception to 23 CFR 710.403(d);

24 (ii) reimbursement of federal funds is not required; or

25 (iii) the commission agrees to any required reimbursement of federal funds.

26 (2) An owner of contiguous property who does not object to the proposed receipt of title to the  
27 abandoned interest is considered to have consented to the receipt of title."

28

**Section 21.** Section 60-4-218, MCA, is amended to read:

**"60-4-218. Title.** (1) The department is not responsible for apportioning the abandoned interest among the owners of the contiguous property, and the provisions of 60-4-209(3) do not apply to this right-of-way abandonment.

(2) By ~~consummating effecting~~ the right-of-way abandonment, neither the department nor the commission gives the covenants set forth in 30-11-110 or warrants title.

(3) The interest acquired by each owner of contiguous property is the abandoned interest in the subject property between the extension of the boundaries of the contiguous property, extending on the same course and intersecting with the linear boundary of the remainder."

**Section 22.** Section 60-4-401, MCA, is amended to read:

**"60-4-401. Occupancy and relocation -- definitions.** ~~For the purposes of~~ As used in this part, unless otherwise indicated, the following definitions apply:

(1) (a) "Cost of relocation" means the amount paid by the utility for material, labor, and equipment properly attributable to the relocation after deducting any increase in the value of the new facility and any salvage value derived from the old facility.

(b) "Cost of relocation" does not mean engineering costs for designing, locating, staking, inspecting, or any other incidental costs of engineering.

(2) "Facility" means a utility's tracks, pipes, mains, conduits, cables, wires, towers, poles, and other equipment and appliances impacted by a project on a commission-designated highway system or state highway.

(3) "Utility" includes publicly, privately, and cooperatively owned utilities, including water and sewer facilities."

**Section 23.** Section 60-4-601, MCA, is amended to read:

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

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

3 (b) are in the public interest; and

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

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

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

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

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

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

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

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

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

27 (6) The department may adopt rules necessary for the administration of this section, including  
28 application fees to be paid by an applicant seeking a right-of-way use agreement and any rules necessary to

1 ensure the state is not prevented from receiving federal funds for highway purposes.

2 (7) ~~For the purposes of~~As used in this section:

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

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

7 (c) "Public interest", including the determination of clean energy and broadband infrastructure projects  
8 that provide connectivity to Montana citizens, is determined by state policy and federal highway administration  
9 guidance and regulation, including but not limited to 23 CFR 710.403."

10

11 **Section 24.** Section 60-5-102, MCA, is amended to read:

12 **"60-5-102. Definitions.** ~~When~~As used in this chapter, the following definitions apply:

13 (1) "Arterial highway" means a state highway designated by the commission as part of the  
14 noninterstate component of the national highway system, the primary highway system, and any highway so  
15 designated as a part of the secondary highway system that has been constructed and is being used primarily  
16 for through traffic on a continuous route.

17 (2) "Controlled-access facility" means and includes streets, alleys, public roads, private roads, and  
18 ways of passage intersecting a controlled-access highway and real property contiguous to the right-of-way of a  
19 controlled-access highway.

20 (3) "Controlled-access highway" means those portions of an interstate highway, throughway, or  
21 throughway intersection that the commission designates for through traffic or other commission-designated  
22 highway system or state highway over, from, or to which owners or occupants of abutting land or other persons  
23 have no easement of access or only a limited easement of access, light, air, or view. It also means those  
24 portions of spurs to interstate highways that the commission designates as unsafe or impeded by unrestricted  
25 access of traffic from intersecting streets or alleys or public or private roads or ways of passage.

26 (4) "Existing highway" means and includes highways, roads, and streets established, constructed, and  
27 in use on March 2, 1955. It does not include highways, roads, or streets established, constructed, and in use  
28 after that date or highways, roads, or streets or portions of highways, roads, or streets relocated after that date.

(5) "Highway authorities" or "authority" means the entities in state, county, and municipal governments that have authority to construct, repair, and maintain highways, roads, and streets.

(6) "Throughway" means a portion of an arterial highway constructed and used for carrying traffic partially or entirely around a town or city or a portion of a town or city.

(7) "Throughway intersection area" means an area within a radius of 300 feet from the point of intersection of the centerlines of a throughway and a public road, street, or highway."

**Section 25.** Section 60-6-106, MCA, is amended to read:

**"60-6-106. Limitation of authority within incorporated municipalities -- exclusion outside incorporated municipalities -- inclusion due to lack of local ordinances.** (1) (a) Municipalities incorporated under Title 7, chapter 2, part 41, have the authority to enact ordinances in accordance with state and federal laws governing the placement of impermanent encroachments on sidewalks of a commission-designated highway system or state highway right-of-way without the necessity of permitting by the department of transportation for individual encroachments as described in 60-6-101.

(b) This provision is limited to sidewalks as defined in 61-8-102.

(2) (a) This provision specifically excludes all commission-designated highway systems and state highway rights-of-way outside of incorporated municipality boundaries.

(b) A sidewalk encroachment requiring or resulting in a permanent attachment to or a modification of a commission-designated highway system or state highway right-of-way must abide by the requirements of 60-6-101 through 60-6-105.

(3) (a) An incorporated municipality that has not enacted an ordinance regulating the placement of an impermanent encroachment on a sidewalk shall default to the permitting process as described in 60-6-101 until it enacts a regulating ordinance.

(b) After enacting a regulating ordinance:

(i) the municipality shall indemnify the state, including costs and fees, for all claims for damages caused by the municipality's enactment of an ordinance, approval of the impermanent encroachment on a sidewalk, and placement of the impermanent encroachment on a sidewalk; and

(ii) 60-6-101 through 60-6-105 do not apply to the impermanent encroachment on a sidewalk except



1 as provided by this section.

2 (4) The department of transportation shall communicate identified violations of state or federal law,  
3 including the Americans with Disabilities Act of 1990, 42 U.S.C. 12101, et seq., as amended, to the  
4 incorporated municipalities for enforcement within their boundaries. This communication must include  
5 references to the state or federal law that was violated. If an incorporated municipality has not acted to address  
6 the violation within 7 days, the department of transportation is authorized to proceed with removal of the  
7 violation as described in 60-6-101 through 60-6-105.

8 (5) ~~"Impermanent encroachment"~~As used in this section, "impermanent encroachment" means:

- 9 (a) an object that is not permanently affixed to the sidewalk of a commission-designated highway  
10 system or state highway right-of-way or that does not require the modification of the sidewalk of a commission-  
11 designated highway system or state highway right-of-way; or  
12 (b) an occupied encroachment above grade level."

13

14 **Section 26.** Section 60-11-111, MCA, is amended to read:

15 **"60-11-111. Identification and acquisition of railroad rights-of-way -- identification of railroad**  
16 **lines for rehabilitation.** (1) Identification of those railroad lines proposed for abandonment in the state of  
17 Montana that may have potential for local transportation service or future use as transportation corridors is  
18 necessary to determine the feasibility of acquisition by the state and to allow the state to negotiate for  
19 acquisition of those railroad lines or easements in the lines.

20 (2) Identification of those railroad branch lines in the state that may have potential for local rail freight  
21 transportation service is necessary to determine the feasibility of providing loans or grants to the owner or  
22 operator of the railroad line as provided in 60-11-120.

23 (3) The department of transportation:

24 (a) shall identify railroad rights-of-way in this state that may be abandoned and research the feasibility  
25 of acquisition by the state of Montana of those rights-of-way that may be abandoned;

26 (b) shall identify, under the state rail planning program, railroad branch lines that should be preserved  
27 for continued operation;

28 (c) may negotiate for and acquire easements in the rights-of-way or the railroad rights-of-way and

1 attendant facilities identified pursuant to subsection (3)(a) and:

2 (i) hold all acquired lands in trust for transportation purposes; and

3 (ii) upon creation of an appropriate local authority, other than an agency of state government, shall  
4 transfer to the local authority all attendant facilities and all rights and responsibility to operate and maintain  
5 transportation services over the lands acquired in subsection (3)(c);

6 (d) shall cooperate with and assist persons representing recreational, transportation, and utility  
7 interests and other interested persons, including adjacent landowners, in acquiring ownership or easement of  
8 abandoned railbeds; and

9 (e) shall establish procedures, including the use of federal funds received for rail freight assistance  
10 programs under former 49 U.S.C. 1654, for providing loans and grants under 60-11-120.

11 (4) Abandoned rights-of-way acquired and held in trust pursuant to subsection (3)(c)(i) must be  
12 administered by the department of natural resources and conservation, as prescribed in Title 77, until the land  
13 is needed for transportation purposes.

14 (5) As used in this section:

15 (a) "Railbed" means the fee or lessor interest in the land 8.5 feet to either side of the centerline of the  
16 railroad track.

17 (2) "Recreational interest" means a local government or a not-for-profit corporation that has as its  
18 stated purpose the development, use, or maintenance of public recreational trails."

19  
20 **NEW SECTION. Section 27. {standard} Repealer.** The following sections of the Montana Code

21 Annotated are repealed:

22 60-11-112. Definitions.

23  
24 **NEW SECTION. Section 28. {standard} Repealer.** The following sections of the Montana Code

25 Annotated are repealed:

26 60-4-209. Abandoned highway property -- title vests in contiguous owner.

27 60-4-213. Purpose.

28

1        NEW SECTION. **Section 29. Directions to code commissioner.** [Section 15] is intended to be  
2        renumbered and codified as an integral part of Title 60, chapter 4, part 2.

3

4 NEW SECTION. Section 30. Codification instruction. [Section 14] is intended to be codified as an

5 integral part of Title 60, chapter 4, part 2, and the provisions of Title 60, chapter 4, part 2, apply to [section 14].

6 - END -