

1 **** BILL NO. ****
2 INTRODUCED BY ****
3 BY REQUEST OF THE ****
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING TITLE 60 FOR CLARITY AND
6 CONSISTENCY; UNIFYING SUBSTANTIVELY SIMILAR DEFINITIONS OF "ABANDONMENT";
7 REORGANIZING DEFINITIONS FOR CONFORMITY WITH THE BILL DRAFTING MANUAL; REORGANIZING
8 TITLE 60, CHAPTER 4, PART 2; PROVIDING A DEFINITION FOR "RIGHT-OF-WAY ABANDONMENT";
9 AMENDING SECTIONS 7-14-2101, 7-14-2601, 22-3-1101, 60-1-103, 60-2-107, 60-2-112, 60-2-115, 60-2-134,
10 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-
11 215, 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;
12 REPEALING SECTIONS 60-4-208 AND 60-11-112, MCA."
13

14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
15

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

17 **"7-14-2101. General powers of county relating to roads and bridges -- definitions.** (1) The board
18 of county commissioners, under the limitations and restrictions that are prescribed by law, may:

19 (a)(i) lay out, maintain, control, and manage county roads and bridges within the county;

20 (ii) subject to 15-10-420, levy taxes for the laying out, maintenance, control, and management of the
21 county roads and bridges within the county as provided by law;

22 (b) (i) in the exercise of sound discretion, jointly with other counties, lay out, maintain, control, manage,
23 and improve county roads and bridges in adjacent counties, wholly or in part as agreed on between the boards
24 of the counties concerned;

25 (ii) subject to 15-10-420, levy taxes for the laying out, maintenance, control, management, and
26 improvement of county roads and bridges in adjacent counties or shared jointly with other counties, as agreed
27 on between the boards of the counties concerned and as provided by law;

28 (c)(i) enter into agreements for adjusted annual contributions over not more than 6 years toward the

1 cost of joint highway or bridge construction projects entered into in cooperation with other counties, the state, or
2 the United States;

3 (ii) subject to 15-10-420, place a joint project in the budget and levy taxes for a joint project as provided
4 by law.

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

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

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

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

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

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

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

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

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

25 (b) "County road" means:

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

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

1 commissioners;

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

4 (iv) a road that has been gained by the county in an exchange with the state as provided in ~~60-4-~~
5 204[section 16]; or

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

8

9 **Section 2.** Section 7-14-2601, MCA, is amended to read:

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

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

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

16 (a) "abandonment" ~~or and~~ "vacation" ~~means cessation of the use of a right of way or easement or of~~
17 ~~activity on a right of way or easement with no intention to reclaim or use it again~~ have the meaning provided in
18 60-1-103;

19 (b) "board" means the board of county commissioners."
20

21 **Section 3.** Section 22-3-1101, MCA, is amended to read:

22 **"22-3-1101. Tower Rock -- historic site.** (1) A 136-acre site that encompasses Tower Rock, a
23 geologic structure listed in the national register of historic places on March 18, 2002, may not be sold or
24 transferred to a nonstate entity and must remain intact as the property of the state of Montana to recognize the
25 national and local historic significance of the Lewis and Clark expedition, whose members named the rock
26 formation, according to notations in the July 16 and 17, 1805, journals of Meriwether Lewis.

27 (2)	The department of transportation may transfer the land to another state agency, and the
28 provisions of 60-4-201 through 60-4-203 and [section 16] do not apply. In any transfer of the site, the

1 department of transportation may retain access rights where the site abuts interstate 15."

2

3 **Section 4.** Section 60-1-103, MCA, is amended to read:

4 **"60-1-103. General definitions.** Subject to additional definitions contained in this title that are
5 applicable to specific chapters or sections and unless the context otherwise requires, in this title, the following
6 definitions apply:

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

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

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

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

- 16 (a) national highway system;
- 17 (b) primary highway system;
- 18 (c) secondary highway system; and
- 19 (d) urban highway system.

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

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

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

28 (8) "County road" means any public highway opened, established, constructed, maintained,

1 abandoned, or discontinued by a county in accordance with Title 7, chapter 14.

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

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

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

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

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

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

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

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

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

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

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

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

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

28 (22) "Primary highway system" means those highways that have been functionally classified, in

1 accordance with federal requirements, as either principal or minor arterials and designated by the commission
2 as being on the primary highway system.

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

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

6 (b) dedicated to public use;

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

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

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

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

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

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

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

25

26 **Section 5.** Section 60-2-107, MCA, is amended to read:

27 **"60-2-107. Abandonment of highways -- discontinuance of maintenance -- exchange of**
28 **roadways -- public notice required.** (1) ~~Except as provided in 60-4-213 through 60-4-218, the~~The commission

1 may abandon highways on the commission-designated highway systems and state highways pursuant to 60-4-
2 209.

3 (2) ~~Except as provided in 60-4-213 through 60-4-218, before~~Before abandoning or discontinuing
4 maintenance on a highway, the commission shall hold a public hearing in the county or counties affected by the
5 abandonment. The commission may elect to offer to transfer the liability for and the maintenance of a highway
6 to another agency or agencies that may in turn elect to take responsibility for the highway. The commission
7 shall notify the board of county commissioners in writing of its intent to abandon a highway and hold a public
8 hearing. The commission shall publish for 3 consecutive weeks in local newspapers within the county the notice
9 of abandonment and public hearing.

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

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

17 (5) The commission may not abandon a highway, road, or right-of-way used to access private land if
18 the access benefits two or more landowners unless all the landowners agree to the abandonment."
19

20 **Section 6.** Section 60-2-112, MCA, is amended to read:

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

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

28 (3) The commission may enter into contracts with units of local government for the construction of

1 projects without competitive bidding if it finds that the work can be accomplished at lower total costs, including
2 total costs of labor, materials, supplies, equipment usage, engineering, supervision, clerical and accounting
3 services, administrative costs, and reasonable estimates of other costs attributable to the project.

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

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

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

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

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

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

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

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

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

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

3

4 **Section 7.** Section 60-2-115, MCA, is amended to read:

5 **"60-2-115. Contract let by commission -- time for final payment of contract price -- interest --**
6 **definitions.** (1) Subject to subsections (2) through (4), the department shall comply with the 30-day time period
7 for payment of contracts as provided in 18-2-306 for all contracts let by the commission in accordance with this
8 part.

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

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

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

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

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

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

- 25 (i) notify the contractor of any remaining deficiencies; and
- 26 (ii) grant final acceptance, subject to any remedy provided under the provisions of Title 28, chapter 2.

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

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

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

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

7
8 **Section 8.** Section 60-2-134, MCA, is amended to read:

9 **"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-
10 120, 60-2-137, and this section, the following definitions apply:

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

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

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

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

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

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

28 (6) "Request for qualifications" means a part of the design-build or alternative project delivery criteria

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

6

7 **Section 9.** Section 60-2-220, MCA, is amended to read:

8 **"60-2-220. Cultural heritage areas -- signs -- location and design -- funding.** (1) Cultural heritage
 9 areas are established:

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

11 (b) encompassing Miles City.

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

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

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

21 ~~(5) As used in this section, "department" means the department of transportation provided for in 2-15-~~
 22 ~~2504."~~

23

24 **Section 10.** Section 60-2-240, MCA, is amended to read:

25 **"60-2-240. Use of postconsumer recycled materials in highway construction projects --**
 26 **definition.** (1) The department shall use postconsumer recycled material in federal and state highway
 27 construction projects, including but not limited to use as:

28 (a) roadway fill material;

- 1 (b) roadway aggregates;
- 2 (c) bedding material;
- 3 (d) foundation material; and
- 4 (e) filter material.

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

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

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

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

13

14 **Section 11.**~~Section 9.~~ Section 60-3-206, MCA, is amended to read:

15 **"60-3-206. Apportionment of funds to secondary highway system -- definitions.** (1) Each fiscal
16 year the department shall apportion at least 65% of the federal-aid highway funds allocated for the secondary
17 highway system among the districts for capital construction needs. The remainder of the funds must be used by
18 the department for secondary highway system pavement preservation. The proportion that each district
19 receives is computed on the following basis:

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

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

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

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

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

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

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

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

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

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

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

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

25

26 **Section 12.** Section 60-3-211, MCA, is amended to read:

27 **"60-3-211. Apportionment of state funds to urban highway system.** (1) Each fiscal year, the
28 department shall apportion the federal-aid highway funds allocated for the urban highway system to the urban

1 areas in the state as delineated and reported in the latest federal census with populations of 5,000 or more in
2 the ratio of urban population in each urban area to the total urban population in all urban areas in the state.

3 (2) ~~For the purpose of~~As used in this section, "urban population" is defined as population within the
4 urban area, as reported in the latest federal census, with a population of 5,000 or more and that population
5 within the adjusted and federal highway administration-approved fringe areas based on the latest federal
6 census.

7 (3) To the extent necessary to permit orderly programming and construction of projects, obligations in
8 any urban area may exceed the amount apportioned to that urban area. The amount of any excess obligations
9 must be deducted from future apportionments to that urban area."
10

11 **Section 13.** Section 60-4-201, MCA, is amended to read:

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

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

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

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

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

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

25 (b) "unnecessary highway property" means ~~The department may determine that~~ an interest in real
26 property, however acquired by it, ~~the department that the department has determined~~ is no longer necessary to
27 the laying out, altering, construction, improvement, or maintenance of a highway. ~~Except as provided in 60-4-~~
28 ~~213 through 60-4-218, the department may then exchange the interest, either as entire or partial consideration,~~

1 ~~for any other interest in real property needed for highway purposes. The department may establish the manner~~
2 ~~and terms and conditions for the exchange.~~

3 ~~(2) Except as provided in 60-4-213 through 60-4-218, prior to making the exchange, the department~~
4 ~~shall notify all landowners whose property is adjacent to the land proposed for exchange. If any of the~~
5 ~~landowners are interested in buying the land proposed for exchange, the landowners shall notify the~~
6 ~~department of their interest by registered letter within 30 days of the receipt of the notice of exchange from the~~
7 ~~department. Upon receipt of a notice of interest, the department shall offer the land proposed for exchange for~~
8 ~~sale as provided in 60-4-202 and 60-4-203.~~

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

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

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

15

16 **Section 14.** Section 60-4-202, MCA, is amended to read:

17 **"60-4-202. Sale of interest in real property.** (1) The department may sell ~~an interest in real property~~
18 ~~if the department determines that the property is not necessary to the laying out, altering, construction,~~
19 ~~improvement, or maintenance of a highwayunnecessary highway property.~~ Except as provided in ~~60-4-213~~
20 ~~through 60-4-218 and~~ subsection (2) of this section, if the interest is reasonably of a value in excess of \$10,000,
21 sale must be made to the highest bidder at public auction. The sale of an interest at auction must be conducted
22 as provided in 60-4-203.

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

- 25 (i) a federal, state, tribal, or local government;
- 26 (ii) an agency of government;
- 27 (iii) a school district; or
- 28 (iv) a unit of the Montana university system.

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

2 (3) ~~Except as provided in 60-4-213 through 60-4-218, before~~Before the department sells ~~an interest in~~
3 ~~real property~~unnecessary highway property as provided in subsection (2), the department shall notify all
4 landowners whose property is adjacent to the land proposed for sale. If any of the landowners are interested in
5 buying the land proposed for sale, the landowners shall notify the department of their interest by registered
6 letter within 30 days of the receipt of the notice of sale from the department. Upon receipt of a notice of interest,
7 the department shall offer the land for sale as provided in 60-4-203 and this section."

8

9 **Section 15.** Section 60-4-203, MCA, is amended to read:

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

15 (2) The notice of sale must contain:

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

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

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

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

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

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

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

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

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

4 (5) ~~Except as provided in 60-4-213 through 60-4-218, title~~ Title to an interest may not pass from the
5 state until the purchaser has paid the full amount of the purchase price into the state treasury to the credit of the
6 department."

7
8 **NEW SECTION. Section 16. Exchange of unnecessary highway property.** (1) The department
9 may exchange unnecessary highway property, either as entire or partial consideration, for any other interest in
10 real property needed for highway purposes. The department may establish the manner and terms and
11 conditions for the exchange.

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

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

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

23
24 **Section 17.** Section 60-4-209, MCA, is amended to read:

25 **"60-4-209. Abandoned highway property -- title vests in contiguous owner.** (1) ~~Except as~~
26 ~~provided in 60-4-213 through 60-4-218, upon~~ Upon abandonment by the state in the manner provided in 60-2-
27 107 and subsection (2) of an interest in real property acquired for the purpose of establishment of a highway,
28 the owner of contiguous real property or the owner's successor in interest is vested with the abandoned interest

1 to the extent provided in subsection (3).

2 (2) For the purposes of this section:

3 (a) a fee simple interest may be abandoned only by the proper order of the commission; and

4 (b) an interest of less than fee simple may be abandoned in the manner provided in subsection (2)(a),
5 by operation of law, and by judgment of a court of competent jurisdiction.

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

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

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

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

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

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

27

28 **Section 18.** Section 60-4-213, MCA, is amended to read:

1 **"60-4-213. Purpose.** The purpose of 60-4-213 through 60-4-218 is to provide for the abandonment
 2 disposal of an interest in real property that the department has determined is not necessary to the laying out,
 3 altering, construction, improvement, or maintenance of a road or highway by right-of-way abandonment. ~~The~~
 4 ~~current abandonment statute, 60-4-209, does not provide for abandonment of only a portion of the right-of-way~~
 5 ~~or for abandonment of highway property where the contiguous property has been subdivided prior to~~
 6 ~~abandonment."~~

7
 8 **Section 19.** Section 60-4-214, MCA, is amended to read:

9 **"60-4-214. Definitions.** As used in 60-4-213 through 60-4-218, unless the context requires otherwise,
 10 the following definitions apply:

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

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

15 ~~(3)~~(2) "Contiguous property" means subdivided parcels along one side of the length of the remainder.

16 ~~(4)~~(3) "Remainder" means the area lying between the centerline and the new right-of-way line as
 17 determined by the department, in its sole discretion, as necessary for the reconstruction and maintenance of a
 18 road or highway.

19 ~~(5)~~(4) "Subject property" means that portion of highway right-of-way for which right-of-way
 20 abandonment is sought."

21
 22 **Section 20.** Section 60-4-215, MCA, is amended to read:

23 **"60-4-215. Application of other laws.** (1) The provisions of 60-2-107(1) through (3), ~~60-4-201, 60-4-~~
 24 ~~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
 25 through 60-4-218.

26 (2) The provisions of 60-2-107(4) and (5) apply to right-of-way abandonment under 60-4-213 through
 27 60-4-218 to the extent that reasonable access must remain after the right-of-way abandonment."
 28

1 **Section 21.** Section 60-4-216, MCA, is amended to read:

2 **"60-4-216. Procedure for right-of-way abandonment.** (1) Upon receipt of a petition, in writing, for
3 the right-of-way abandonment of the subject property from three or more owners of contiguous property, the
4 department shall prepare an exhibit, setting forth the boundaries of the subject property and identifying the
5 remainder.

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

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

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

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

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

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

18

19 **Section 22.** Section 60-4-217, MCA, is amended to read:

20 **"60-4-217. Criteria for right-of-way abandonment.** (1) Subject to subsection (2), the commission
21 shall enter an order ~~abandoning disposing of~~ the subject property by right-of-way abandonment upon finding
22 that:

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

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

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

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

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

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

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

4

5 **Section 23.** Section 60-4-218, MCA, is amended to read:

6 **"60-4-218. Title.** (1) The department is not responsible for apportioning the abandoned interest
7 among the owners of the contiguous property, and the provisions of 60-4-209(3) do not apply to this right-of-
8 way abandonment.

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

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

14

15 **Section 24.** Section 60-4-401, MCA, is amended to read:

16 **"60-4-401. Occupancy and relocation -- definitions.** ~~For the purposes of~~ As used in this part, unless
17 otherwise indicated, the following definitions apply:

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

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

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

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

28

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

2 **"60-4-601. Interstate right-of-way -- department role -- definitions.** (1) The department of
3 transportation may grant a right-of-way use agreement for the use of longitudinal right-of-way along interstate
4 highways in the state for eligible projects that:

- 5 (a) provide evidence that construction and completion will result in a significant investment, a
- 6 documented positive significant fiscal impact, or both, to the Montana economy within the first year of operation;
- 7 (b) are in the public interest; and
- 8 (c) are approved by the federal highway administration.

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

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

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

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

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

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

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

28 (5) Any relocation of facilities occupying the right-of-way is subject to 60-4-403. The department shall

1 work with applicants to minimize the potential for any future project impacts that may require the relocation of
2 facilities occupying the right-of-way.

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

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

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

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

11 (c) "Public interest", including the determination of clean energy and broadband infrastructure projects
12 that provide connectivity to Montana citizens, is determined by state policy and federal highway administration
13 guidance and regulation, including but not limited to 23 CFR 710.403."
14

15 **Section 26.** Section 60-5-102, MCA, is amended to read:

16 **"60-5-102. Definitions.** ~~When~~As used in this chapter, the following definitions apply:

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

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

24 (3) "Controlled-access highway" means those portions of an interstate highway, throughway, or
25 throughway intersection that the commission designates for through traffic or other commission-designated
26 highway system or state highway over, from, or to which owners or occupants of abutting land or other persons
27 have no easement of access or only a limited easement of access, light, air, or view. It also means those
28 portions of spurs to interstate highways that the commission designates as unsafe or impeded by unrestricted

1 access of traffic from intersecting streets or alleys or public or private roads or ways of passage.

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

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

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

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

11

12 **Section 27.** Section 60-6-106, MCA, is amended to read:

13 **"60-6-106. Limitation of authority within incorporated municipalities -- exclusion outside**
14 **incorporated municipalities -- inclusion due to lack of local ordinances -- "impermanent encroachment"**

15 **defined.** (1) (a) Municipalities incorporated under Title 7, chapter 2, part 41, have the authority to enact
16 ordinances in accordance with state and federal laws governing the placement of impermanent encroachments
17 on sidewalks of a commission-designated highway system or state highway right-of-way without the necessity
18 of permitting by the department of transportation for individual encroachments as described in 60-6-101.

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

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

22 (b) A sidewalk encroachment requiring or resulting in a permanent attachment to or a modification of a
23 commission-designated highway system or state highway right-of-way must abide by the requirements of 60-6-
24 101 through 60-6-105.

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

28 (b) After enacting a regulating ordinance:

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

4 (ii) 60-6-101 through 60-6-105 do not apply to the impermanent encroachment on a sidewalk except
5 as provided by this section.

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

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

13 (a) an object that is not permanently affixed to the sidewalk of a commission-designated highway
14 system or state highway right-of-way or that does not require the modification of the sidewalk of a commission-
15 designated highway system or state highway right-of-way; or

16 (b) an occupied encroachment above grade level."
17

18 **Section 28.** Section 60-11-111, MCA, is amended to read:

19 **"60-11-111. Identification and acquisition of railroad rights-of-way -- identification of railroad**

20 **lines for rehabilitation.** (1) Identification of those railroad lines proposed for abandonment in the state of
21 Montana that may have potential for local transportation service or future use as transportation corridors is
22 necessary to determine the feasibility of acquisition by the state and to allow the state to negotiate for
23 acquisition of those railroad lines or easements in the lines.

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

27 (3) The department of transportation:

28 (a) shall identify railroad rights-of-way in this state that may be abandoned and research the feasibility

1 of acquisition by the state of Montana of those rights-of-way that may be abandoned;

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

4 (c) may negotiate for and acquire easements in the rights-of-way or the railroad rights-of-way and
5 attendant facilities identified pursuant to subsection (3)(a) and:

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

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

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

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

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

18 (5) As used in this section:

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

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

23

24 NEW SECTION. Section 29. {standard} Repealer. The following sections of the Montana Code

25 Annotated are repealed:

26 60-4-208. Abandonment or vacation of commission-designated highway system or state highways.

27 60-11-112. Definitions.

28

