

CHAPTER NO. 23

HOUSE BILL NO. 4

INTRODUCED BY MARKS

BY REQUEST OF THE CODE COMMISSIONER

IN THE HOUSE

January 4, 1979	Introduced and referred to Committee on Judiciary.
January 6, 1979	On motion, joint rule 6-6 suspended and sponsor's signature allowed to be added to prefiled bill.
January 12, 1979	Committee recommend bill do pass. Report adopted.
January 13, 1979	On motion rules suspended and bill placed on second reading this day. Second reading, do pass. On motion rules suspended and bill placed on third reading this day. Third reading, passed. Engrossed and transmitted to second house.

IN THE SENATE

January 15, 1979	Introduced and referred to Committee on Highways and Transportation.
January 29, 1979	Committee recommend bill be concurred in and placed on Consent Calendar. Report adopted.
February 1, 1979	Consent Calendar discussion.

February 2, 1979

Consent Calendar bill
concurrent in.

IN THE HOUSE

February 5, 1979

Returned from second house.
Concurrent in. Sent to
enrolling.

Reported correctly enrolled.

1 House BILL NO. 4

2 INTRODUCED BY _____

3 BY REQUEST OF THE CODE COMMISSIONER

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND
6 CLARIFY THE LAWS RELATING TO HIGHWAYS; AND REPEALING SECTION
7 32-1621, R.C.M. 1947."

8
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10 Section 1. Section 60-1-101, MCA, is amended to read:

11 "60-1-101. Legislative findings. The legislature
12 recognizes that safe and efficient highway transportation is
13 of important interest to all of the people of the state and
14 hereby ~~determines and~~ declares that:

15 (1) inadequate highways, roads, and streets obstruct
16 the free flow of traffic, increase costs of motor vehicle
17 operation, endanger the health and safety of the citizens of
18 the state, depreciate property values, and impede generally
19 the economic progress of the state;

20 (2) the problems of establishing and maintaining
21 adequate highways, roads, and streets, eliminating
22 congestion, reducing accident frequency, providing parking
23 facilities, and taking all necessary steps to insure safe
24 and convenient transportation are urgent;

25 (3) adequate and integrated systems of highways,

1 roads, and streets are essential to the general welfare of
2 the state ~~of Montana~~;

3 (4) providing adequate highway facilities is a proper
4 public use and purpose, and ~~that [this act]~~ this title is
5 necessary for the preservation of the public peace, health,
6 and safety, for the promotion of the general welfare, and as
7 a contribution to the national defense."

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

9 "60-1-103. General definitions. Subject to additional
10 definitions contained in this title which are applicable to
11 specific chapters or sections and unless the context
12 otherwise requires, terms are defined as follows:

13 (1) "~~abandonment~~ Abandonment"-- means cessation of use
14 of right-of-way (easement) or activity thereon with no
15 intention to reclaim or use again (sometimes called
16 vacation)†.

17 (2) "~~commission~~ Commission"-- means the highway
18 commission provided for in 2-15-2502†.

19 (3) "~~condemnation~~ Condemnation"-- means taking by
20 exercise of the right of eminent domain†.

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

1. railway grade crossings~~s~~;
2. (5) ~~"control of access"~~ means the condition
3. in which the right of owners or occupants of abutting land
4. or other persons to access, light, air, or view in
5. connection with a highway is fully or partially controlled
6. by public authority~~s~~;
7. (6) ~~"county, county road"~~ means any public highway
8. opened, established, constructed, maintained, abandoned, or
9. discontinued by a county in accordance with Title 7, chapter
10. 14~~s~~;
11. (7) ~~"department, Department"~~ means the department of
12. highways provided for in Title 2, chapter 15, part 25~~s~~;
13. (8) ~~"director, Director"~~ means the director of
14. highways, a position provided for in 2-15-2501~~s~~;
15. (9) ~~"easement, Easement"~~ means a right acquired by
16. public authority to use or control property for a designated
17. purpose~~s~~;
18. (10) ~~"eminent, Eminent domain"~~ means the right of the
19. state to take private property for public use~~s~~;
20. (11) ~~"federal-aid, Federal-aid highway"~~ means any
21. public highway which is a portion of any of the federal-aid
22. highway systems~~s~~;
23. (12) ~~"federal-aid, Federal-aid highway systems"~~ means
24. all of the systems named hereafter, and their urban
25. extensions~~s~~;

1. (13) ~~"Federal-aid, Federal-aid interstate system"~~
2. means that system of public highways selected by the
3. commission in cooperation with adjoining states, subject to
4. the approval of the secretary of commerce, as provided in
5. the ~~Federal Highway Act~~ as amended, Title 23, U.S.C.
6. (14) ~~"Federal-aid, Federal-aid primary system"~~ means
7. that system of connected public highways designated by the
8. commission, subject to the approval of the secretary of
9. commerce, as provided in the ~~Federal Highway Act~~ as
10. amended, Title 23, U.S.C.
11. (15) ~~"Federal-aid, Federal-aid secondary system"~~ means
12. that system of public highways not on in the federal-aid
13. primary or interstate systems selected by the commission in
14. cooperation with the boards of county commissioners, subject
15. to the approval of the secretary of commerce, as provided in
16. the ~~Federal Highway Act~~ as amended, Title 23, U.S.C.
17. (16) ~~"fee, Fee simple"~~ means an absolute estate or
18. ownership in property, including unlimited power of
19. alienation~~s~~;
20. (17) ~~"highway, Highway"~~ includes rights-of-way, or
21. other interests in land, embankments, retaining walls,
22. culverts, ditches, drainage structures, bridges,
23. railroad-highway crossings, tunnels, signs, guardrails, and
24. protective structures~~s~~;
25. (18) ~~"Highway, Highway", "Road", and "Street"~~ whether

1 they appear together or separately or are preceded by the
2 adjective "public", these are general terms denoting a
3 public way for purposes of vehicular travel--including and
4 include the entire area within the right-of-way.

5 (19) "highway Highway authority(ies)"-- means the
6 entity(ies) at any level of government authorized by law to
7 construct and maintain highways.

8 (20) "maintenance Maintenance"-- means the preservation
9 of the entire highway, including surface, shoulders,
10 roadsides, structures, and such traffic-control devices as
11 are necessary for its safe and efficient utilization.

12 (21) "public Public highways"-- means all streets,
13 roads, highways, bridges, and related structures which have
14 been or shall be:

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

18 (b) dedicated to public use;

19 (c) acquired by eminent domain;

20 (d) acquired by adverse user use by the public,
21 jurisdiction having been assumed by the state or any
22 political subdivision thereof.

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

1 (23) "state State highway"-- means any public highway
2 planned, laid out, altered, constructed, reconstructed,
3 improved, repaired, maintained, or abandoned by the
4 department.

5 (24) "tott---brige Bridge"-- means any bridge
6 constructed by the department, together with all
7 appurtenances, additions, alterations, improvements,
8 replacements, and the approaches thereto, lands used
9 therefor, and improvements thereon.

10 Section 3. Section 60-1-201, MCA, is amended to read:

11 "60-1-201. Classification -- highways and roads. (1)
12 Public highways of this state are ~~called~~ classified as
13 follows:

14 (a) federal-aid highways;

15 (b) state highways;

16 (c) county roads;

17 (d) city streets.

18 (2) All highways which are not designated, selected,
19 or established by the commission or constructed or
20 maintained by the department are county roads or city
21 streets.

22 (3) County roads are those opened, established,
23 constructed, maintained, changed, abandoned, or discontinued
24 by a county in accordance with Title 7, chapter 14.

25 (4) City streets are those public highways under the

1 jurisdiction of municipal officials."

2 Section 4. Section 60-2-106, MCA, is amended to read:

3 "60-2-106. Designation of highways not located
4 entirely within the state. The commission may designate
5 highways subject to improvement under the provisions of ~~the~~
6 ~~Federal Aid Road Act, approved July 11, 1916, the Federal~~
7 ~~Highway Act, approved November 9, 1921, and all amendments~~
8 ~~thereto Title 23, U.S.C.~~, even though those highways are not
9 located entirely and continuously within the boundaries of
10 the state. The designations shall meet the following
11 conditions:

12 (1) that the highway is on an approved federal-aid
13 route and eligible for improvement under ~~the Federal aid~~
14 ~~acts Title 23, U.S.C.~~;

15 (2) that the location of a portion of the route
16 outside the boundaries of the state is necessary because of
17 natural geographical or physical conditions which make the
18 construction of the highway within the state impossible or
19 impracticable;

20 (3) that the portion of the route located outside the
21 state does not connect with and is not a part of the state
22 highway system of the adjoining state."

23 Section 5. Section 60-2-112, MCA, is amended to read:

24 "60-2-112. Competitive bidding. (1) When the estimated
25 cost of any work exceeds \$1,000, the commission shall let

1 the contract by competitive bidding. Award shall be made
2 upon such notice and upon such terms as the commission may
3 prescribe by its rules; However, except when prohibited by
4 federal law, the commission ~~must~~ shall make awards and
5 contracts in accordance with 18-1-102 and 18-1-112.

6 (2) If the commission finds that the work may be done
7 in some more efficient manner, it need not let the contract
8 by competitive bidding.

9 (3) If, on highway construction work financed in whole
10 or in part by federal funds, the United States secretary of
11 transportation affirmatively finds that under the
12 circumstances relating to a particular project some method
13 other than competitive bidding is in the public interest,
14 the commission may enter into contracts with a board of
15 county commissioners. These contracts may authorize each
16 county to acquire rights-of-way for, survey, and construct
17 farm-to-market, secondary, or feeder roads within the county
18 by force account, unit price, or otherwise, as may be agreed
19 by the commission and the board.

20 (4) If, on any highway construction work financed in
21 whole or in part by federal funds, the commission finds that
22 enforcement of the provisions contained in 15-50-203 and
23 18-2-311, relating to public contractors working beyond
24 contract time will result in a reduction in the full
25 benefits of ~~the Federal Highway Act of 1921 and all~~

1 ~~amendments--thereto~~ Title 23, U.S.C., it may waive
2 enforcement of such provisions."

3 Section 6. Section 60-2-205, MCA, is amended to read:

4 "60-2-205. Powers of department with respect to
5 highways not located entirely within the state. The
6 department may expend funds for the construction,
7 reconstruction, engineering, administration, betterment, and
8 maintenance of highways designated under 60-2-106. It may do
9 all things necessary or required to carry out fully the
10 cooperation contemplated under ~~the federal-aid-acts~~ Title
11 23, U.S.C. with regard thereto."

12 Section 7. Section 60-3-101, MCA, is amended to read:

13 "60-3-101. Assent to ~~federal-aid-acts~~ federal law. (1)
14 The legislature, for and on behalf of the state of Montana,
15 assents to the provisions of ~~the Federal Aid Road Act~~
16 ~~approved July 17, 1916, and the Federal Highway Act, approved~~
17 ~~November 9, 1921, and all amendments thereto~~ Title 23,
18 U.S.C.

19 (2) The department may, for and on behalf of the
20 state, enter into all contracts and agreements with the
21 United States or any officer, department, or bureau thereof
22 relating to the construction, reconstruction, repair, and
23 maintenance of highways in the state.

24 (3) The department may make all rules necessary to
25 comply with the provisions of the ~~acts laws~~ assented to and

1 all other ~~acts laws~~ granting aid for public highways and to
2 obtain for the state the full benefits of such ~~acts laws~~.

3 (4) The department may do all other things necessary
4 or required to carry out fully the cooperation contemplated
5 by the acts of congress assented to."

6 Section 8. Section 60-3-103, MCA, is amended to read:

7 "60-3-103. Purposes for which federal funds to be
8 expended. The department may expend funds apportioned to the
9 state under ~~Public Law 89-205, Title III, Section 301(a),~~
10 ~~October 22, 1965, 79 Statute 1032, 23 U.S.C. 319~~ for the
11 following purposes:

12 (1) for landscape and roadside development within the
13 rights-of-way of federal-aid highways of this state;

14 (2) for acquisition of interests in and improvement of
15 strips of land necessary for the restoration, preservation,
16 and enhancement of scenic beauty adjacent to the highways;
17 and

18 (3) for acquisition and development of publicly owned
19 and controlled rest and recreation areas and sanitary and
20 other facilities within or adjacent to federal-aid highway
21 rights-of-way reasonably necessary to accommodate the
22 traveling public."

23 Section 9. Section 60-3-105, MCA, is amended to read:

24 "60-3-105. Expenditure of funds. The department shall
25 expend only nonmatching funds authorized under section 23

1 ~~U.S.C.A. 219(b) of the Federal Highway Beautification Act of~~
 2 ~~1965 as amended~~ in carrying out the authority granted by
 3 60-3-102 through 60-3-104."

4 Section 10. Section 60-3-201, MCA, is amended to read:
 5 "60-3-201. Distribution and use of proceeds of
 6 gasoline dealers' license tax. (1) All money received in
 7 payment of license taxes under the Distributor's Gasoline
 8 License Tax Act, except those amounts paid out of the
 9 department of revenue's suspense account for gasoline tax
 10 refund, shall be used and expended as provided in this
 11 section. So much of that money on hand at any time as may be
 12 needed to pay highway bonds and interest thereon when due
 13 and to accumulate and maintain a reserve therefor, as
 14 provided in laws and in resolutions of the state board of
 15 examiners authorizing such bonds, shall be deposited in the
 16 highway bond account in the sinking fund established by
 17 17-2-102. Subject to that provision, 9/10 of 1% of all money
 18 shall be deposited in the state park account and 3/10 of 1%
 19 of all money shall be deposited in a snowmobile account in
 20 the earmarked revenue fund. ~~All of the 1% remainder of the~~
 21 ~~money shall be used and expended~~ by the department of
 22 highways on the federal-aid highways in this state selected
 23 and designated under ~~the Federal Aid Act, approved July 11,~~
 24 ~~1916, and the Federal Highway Act, approved November 9,~~
 25 ~~1921, and all amendments thereto Title 23, U.S.C.A., and on~~

1 highways leading from each county seat in the state to the
 2 federal highway system of federal-aid roads where the county
 3 seat is not on the system and on the other roads which have
 4 been or may be authorized by the laws of Montana and for
 5 collection of the license taxes and the enforcement of the
 6 Montana highway code under Article VIII, section 6, of the
 7 constitution of this state.

8 (2) The department shall, in expending this money,
 9 carry forward construction from year to year, using the
 10 money expended through the matching up of federal-aid
 11 allotments to Montana upon the federal highway system in the
 12 various parts of the state in accordance with 60-3-204
 13 through 60-3-206. Nothing in this ~~act~~ title conflicts with
 14 ~~those federal-aid-highway-acts~~ Title 23, U.S.C.A. and the
 15 rules by which ~~they are~~ it is administered.

16 (3) The department may enter into cooperative
 17 agreements with the national park service and the federal
 18 highway administration for the purpose of maintaining
 19 national park approach roads in Montana.

20 (4) Money credited to the state park account in the
 21 earmarked revenue fund shall be used only for the creation,
 22 improvement, and maintenance of state parks where motor
 23 boating is allowed, except for the payment of refunds under
 24 15-70-221 through 15-70-226. The legislature hereby finds as
 25 ~~a fact~~ that of all the fuel sold in the state for

1 consumption in internal combustion engines, not less than
2 9/10 of 1% is used for propelling boats on waterways of this
3 state.

4 (5) Money credited to the snowmobile account may be
5 used only to develop and maintain facilities open to the
6 general public at no admission cost, and to promote
7 snowmobile safety. For the 2 years following July 1, 1977,
8 15% of the amount deposited in the snowmobile fund each year
9 shall be used to promote snowmobile safety. Thereafter, 10%
10 of the amount deposited in the snowmobile fund shall be used
11 to promote snowmobile safety. The legislature finds that of
12 all fuels sold in this state for consumption in internal
13 combustion engines, not less than 3/10 of 1% is used for
14 propelling snowmobiles on public lands of this state."

15 Section 11. Section 60-3-209, MCA, is amended to read:

16 "60-3-209. Apportionment of state funds to federal-aid
17 interstate highway system. (1) Each fiscal year the
18 department shall apportion available state construction
19 funds for the federal-aid interstate highway system among
20 the financial districts.

21 (2) The apportionment shall be based upon the ratio
22 between the estimated cost of constructing or reconstructing
23 the system in each district and the estimated cost of
24 constructing or reconstructing the entire system within the
25 state.

1 (3) The cost estimates to be used shall be those
2 developed by the department in accordance with the
3 ~~Federal-Aid-Highway-Act-of-1956-as-amended Title 23,~~
4 ~~U.S.C.~~"

5 Section 12. Section 60-3-212, MCA, is amended to read:

6 "60-3-212. Interim apportionment to match federal-aid
7 funds. During the interim between legislative sessions, the
8 department of highways is hereby delegated power and
9 authority to develop formulas to apportion state
10 construction funds in an equitable manner consistent with
11 the intent of ~~[this-act] this title~~ to match federal-aid
12 funds for highway systems or purposes not enumerated in
13 ~~[this-act] this title~~. Such apportionment formulas shall be
14 valid only until approved, modified, or rejected by the next
15 succeeding legislative session."

16 Section 13. Section 60-3-215, MCA, is amended to read:

17 "60-3-215. Replacement of bridges. (1) Whenever funds
18 are made available under the ~~Federal-Aid-Highway-Act Title~~
19 ~~23, U.S.C.~~ for the replacement of bridges, the department
20 may allocate from state construction ~~moneys money~~ such
21 ~~moneys money~~ as are ~~is~~ necessary to match the available
22 federal funds. Such allocation shall be made from available
23 state construction ~~moneys money~~ before the apportionments
24 provided for in 60-3-205, 60-3-206, and 60-3-211.

25 (2) Whenever such state construction ~~moneys money~~ are

1 is also allocated, the amount so allocated may not be deducted
2 from future apportionments to the financial district or
3 city."

4 Section 14. Section 60-3-221, MCA, is amended to read:
5 "60-3-221. Priority primary routes defined. For the
6 purposes of ~~this~~ section 60-3-221 through 60-3-225,
7 "priority primary routes" are defined as those high-traffic
8 sections of highways on the federal-aid primary system which
9 connect to the interstate system."

10 Section 15. Section 60-3-231, MCA, is amended to read:
11 "60-3-231. Economic growth center defined. For the
12 purposes of ~~this~~ section 60-3-231 through 60-3-234, an
13 "economic growth center" is defined as an area of population
14 of less than 100,000 which has been recommended for
15 designation as such by the governor of Montana and approved
16 by the secretary of transportation of the United States."

17 Section 16. Section 60-3-232, MCA, is amended to read:
18 "60-3-232. Department of highways to determine
19 centers. For the purposes of ~~this~~ section 60-3-231 through
20 60-3-234, the department of highways is authorized to
21 determine and delineate the area influenced by designated
22 economic growth centers. In so doing, it shall take into
23 account relevant geographic, economic, educational, and
24 recreational factors. The department is also authorized to
25 determine and delineate those portions of existing highways

1 which need to be upgraded to accommodate the existing and
2 future needs of the traveling public."

3 Section 17. Section 60-3-301, MCA, is amended to read:
4 "60-3-301. Short title. This part may be cited as the
5 "Montana Traffic Safety Footpath and Bicycle Trail Act of
6 1975."

7 Section 18. Section 60-3-303, MCA, is amended to read:
8 "60-3-303. Footpaths and bicycle trails to be
9 established -- funding. (1) Out of the funds received by the
10 highway commission or by any county or city from the state
11 highway commission earmarked revenue fund, reasonable
12 amounts shall be expended as necessary for the establishment
13 of footpaths and bicycle trails. Footpaths and bicycle
14 trails may be established and extended to the nearest city
15 or town or termination point of the highway or road wherever
16 a highway, road, or street is being constructed,
17 reconstructed, or relocated. In addition, footpaths and
18 bicycle trails shall be established along all streets under
19 state jurisdiction. Funds received from the earmarked
20 revenue fund may also be expended to maintain footpaths and
21 bicycle trails along other highways, roads, and streets and
22 in parks and recreation areas where the construction would
23 enhance traffic safety and convenience. Footpaths and
24 bicycle trails shall be constructed along all sections of
25 the national defense interstate highway system within a

1 reasonable time after the completion of that system.

2 (2) Footpaths and trails are not required to be
3 established under subsection (1) of this section:

4 (a) if the cost of establishing the paths and trails
5 would be excessively disproportionate to the need or
6 probable use; or

7 (b) where sparsity of population, other available
8 ways, or other factors indicate an absence of any need for
9 the paths and trails.

10 (3) The amount expended by the state highway
11 commission or by a city or county as ~~requested~~ required or
12 permitted by this section shall never in any one fiscal year
13 be less than 3/4 of 1% of the amount appropriated to the
14 department of highways from the earmarked revenue fund for
15 the construction program, maintenance program, and
16 preconstruction program."

17 Section 19. Section 60-4-105, MCA, is amended to read:

18 "60-4-105. Acquisition of whole parcel -- sale of
19 excess. (1) Whenever any interest in a part of a parcel of
20 land or other real property is to be acquired for highway
21 purposes leaving the remainder in a shape or condition as to
22 be of little market value or to give rise to claims or
23 litigation over severance or other damage, the department
24 may acquire the whole parcel. It may sell or exchange the
25 remainder for other property needed for highway purposes.

1 (2) Whenever a part of a parcel of land acquired for
2 highway purposes is in a shape or size as to come within
3 ~~[11-614] the Montana Subdivision and Platting Act~~, the
4 department shall prepare and file the required plat in the
5 office of the county clerk and recorder."

6 Section 20. Section 60-4-203, MCA, is amended to read:

7 "60-4-203. Conduct of sale. (1) The department shall
8 publish notice of the sale in a newspaper published in the
9 county in which the interest is located once a week for 2
10 successive weeks. Sale shall be held in the county wherein
11 the property is located unless the department finds it
12 impractical, in which case the sale ~~will~~ shall be held at
13 the office of the department-~~at-the-capitol~~.

14 (2) Before the sale of an interest having a value in
15 excess of \$100, the department shall have it appraised at a
16 price representing a fair market value. The appraised value
17 shall be stated in the published notice.

18 (3) A sale of an interest may not be made ~~of an~~
19 ~~interest~~ unless it has been appraised within 3 months prior
20 to the date of the sale. A sale may not be made for less
21 than 90% of the appraised value.

22 (4) Title to an interest may not pass from the state
23 until the purchaser has paid the full amount of the purchase
24 price into the state treasury to the credit of the
25 department."

1 Section 21. Section 60-4-205, MCA, is amended to read:

2 "60-4-205. Private sale if no bid or offer. (1) If,
3 after proper notice is published, the department receives
4 neither bid at public sale nor offer from the original owner
5 of ~~or~~ his successor in interest, it may at any time
6 thereafter sell the interest at private sale. At the sale,
7 the department may accept as the purchase price an amount of
8 money not less than 90% of the appraised value.

9 (2) Title to an interest may not pass from the state
10 until the purchaser has paid the full amount of the purchase
11 price into the state treasury to the credit of the
12 department."

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

14 "60-4-401. Relocation -- definitions. For the purposes
15 of the sections relating to relocation of utilities
16 facilities, terms are defined as follows:

17 (1) "Utility" includes publicly, privately, and
18 cooperatively owned utilities.

19 (2) "Cost of relocation" includes the entire amount
20 paid by the utility properly attributable to the relocation
21 after deducting any increase in the value of the new
22 facility and any salvage value derived from the old
23 facility.

24 (3) "Federal-aid systems" includes the federal-aid
25 primary system, the federal-aid secondary system, the

1 federal-aid interstate system, and urban extensions of all
2 of them.

3 (4) "Interstate system" includes any highway now
4 included or which shall ~~may~~ hereafter be included as a part
5 of the national system of interstate and defense highways
6 provided for in the ~~Federal-Aid Highway Act of 1956 and~~
7 ~~supplements or amendments Title 23, U.S.C.~~"

8 Section 23. Section 60-5-101, MCA, is amended to read:

9 "60-5-101. Policy. The legislature declares it to be
10 the policy of this state to facilitate the flow of traffic
11 and promote public safety by controlling access to:

12 (1) highways included by the federal highway
13 administration ~~roads~~ in the national system of interstate
14 highways;

15 (2) throughways and intersections with throughways;

16 (3) such other federal-aid and state highways as shall
17 be designated by the commission in accordance with the
18 requirements set forth in this chapter."

19 Section 24. Section 60-7-202, MCA, is amended to read:

20 "60-7-202. Exclusions. Section 60-7-201 does not apply
21 to the following:

22 (1) livestock on state highways ~~in~~ under the charge of
23 one or more herders;

24 (2) the parts of fenced highways adjacent to open
25 range where a highway device has not been installed to

1 exclude range livestock;

2 (3) the parts of a state highway or a part of the
3 federal-aid primary system which the department of highways
4 designates as being impracticable to exclude livestock.
5 These portions of the highway shall be marked by proper
6 signs in accordance with the department's manual and
7 specifications for a uniform system of traffic-control
8 devices."

9 Section 25. Repealer. Section 32-1621, R.C.M. 1947, is
10 repealed.

-End-

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LC0004

1979 Legislature
Code Commissioner Bill

House Bill No. 4

TO GENERALLY REVISE AND CLARIFY THE LAWS RELATING TO HIGHWAYS.

(This summary does not include discussion of routine form or grammatical changes.)

Section 1. 60-1-101. Amends "act" to "title". The "act" referred to is technically not exactly synonymous with the new highway "title", but as used in this subsection "title" would be accurate. The original "act" included some county road law which is being transferred to the Local Government title, but that is irrelevant to the meaning of this subsection.

Section 2. 60-1-103. The "Federal Highway Act, as amended" consists of several acts, codified in Title 23, U.S.C., denominated in this title as the "Federal-Aid Road Act" of 1916, the "Federal Highway Act" of 1921, the "Federal-Aid Highway Act" of 1956, of 1973, etc. In 1958 Congress recognized the conflict and confusion created by some 40 separate acts between 1916 and 1958 dealing with federal-aid roads, and in that year recodified all those acts in Title 23, U.S.C. (See 1958 U.S. Code Cong. and Adm. News p. 3942 et seq.) All federal-aid highway acts since that date have also been codified in that title, hence (except for specific appropriation bills) it would be accurate, and much less confusing, to simply refer to Title 23, U.S.C. rather than each individual act amending or adding to Title 23. The references in this section to "Federal Highway Act, as amended" are accordingly amended to "Title 23, U.S.C."

Deleted "toll" in subsection (24) since the term does not appear in the title, and "bridge" is in fact the word defined.

LC0004

Section 3. 60-1-201. Added "or" after "commission" in subsection (2) for clarification.

Section 4. 60-2-106. Same amendment as 2 above. Also amends "the federal-aid acts" in subsection (1) to "Title 23, U.S.C."

Section 5. 60-2-112. Same change as 2 above.

Section 6. 60-2-205. Changes "federal-aid acts" to "Title 23, U.S.C." for reasons stated in 2 above.

Section 7. 60-3-101. Same change as 2 above. Also changes "acts" to "laws" for reasons stated in 2 above.

Section 8. 60-3-103. Public law 89-285, sec. 301, referred to is codified at 23 U.S.C. 319 and the reference is amended accordingly. (See 1965 U.S. Code Cong. and Adm. News, p. 1028.)

Section 9. 60-3-105. Section 319(b) of the Federal Highway Beautification Act is 23 U.S.C. 319(b) and the reference is amended accordingly. See 8 above.

Section 10. 60-3-201. In subsection (1) same change as 2 above. In subsection (2) changed "act" to "title" for same reason as 1 above. Also changed "those federal-aid highway acts" to "Title 23, U.S.C." for same reason as 2 above, and "they are" to "it is" for grammatical reasons.

Section 11. 60-3-209. Same change as 2 above.

Section 12. 60-3-212. "This act", as used in this section, is chapter 402, Laws 1973, which includes only this section 60-3-212. The context indicates the intent of the application of "this act" was to the entire highway title, not just to 60-3-212, hence "this act" is changed to "this title".

Section 13. 60-3-215. Same change as 2 above.

Section 14. 60-3-221. Changed "this section" to "60-3-221 through 60-3-225" because the term defined is used throughout those sections, and the obvious intent was that the definition applies in all those sections.

Section 15. 60-3-231. Changed "this section" to "60-3-231 through 60-3-234" because term defined is used throughout those sections, and the obvious intent was that the definition applies in all those sections.

Section 16. 60-3-232. Changed "this section" to "60-3-231 through 60-3-234" because obvious intent is that the authority is for the purpose of all those sections.

Section 17. 60-3-301. The bicycle trail and foot path law is inappropriately named the "Montana Traffic Safety Act" and is thus confused with the "Traffic Safety Program" under 61-2-101 through 61-2-105. This amendment would change the name of this act to better reflect its content and to avoid confusion.

Section 18. 60-3-303. Changed "requested" to "required" to correct typographical error in original bill.

Section 19. 60-4-105. 11-614 (an R.C.M. 1947 section number) was repealed and replaced by the Montana Subdivision and Platting Act, chapter 500, Laws 1973.

Section 20. 60-4-203. Deleted "at the capitol" as unnecessary language and because "capitol" is misspelled. As used here it should be "capital".

Section 21. 60-4-205. Changed "of" to "or" to correct obvious typographical error in original bill.

Section 22. 60-4-401. Same change as 2 above.

Section 23. 60-5-101. Deleted "roads" for clarification.

Section 24. 60-7-202. Made grammatical change.

Section 25. Repeals 32-1621, R.C.M. 1947, which was declared unconstitutional by Sjostrum v. State Highway Commission, 124 Mont. 562, 228 P 2d 238.

Approved by Committee
on Judiciary

HOUSE BILL NO. 4

INTRODUCED BY MARKS

BY REQUEST OF THE CODE COMMISSIONER

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND CLARIFY THE LAWS RELATING TO HIGHWAYS; AND REPEALING SECTION 32-1621, R.C.M. 1947."

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

Section 1. Section 60-1-101, MCA, is amended to read:

"60-1-101. Legislative findings. The legislature recognizes that safe and efficient highway transportation is of important interest to all of the people of the state and hereby-determines-and declares that:

(1) inadequate highways, roads, and streets obstruct the free flow of traffic, increase costs of motor vehicle operation, endanger the health and safety of the citizens of the state, depreciate property values, and impede generally the economic progress of the state;

(2) the problems of establishing and maintaining adequate highways, roads, and streets, eliminating congestion, reducing accident frequency, providing parking facilities, and taking all necessary steps to insure safe and convenient transportation are urgent;

(3) adequate and integrated systems of highways,

roads, and streets are essential to the general welfare of the state-of-Montana;

(4) providing adequate highway facilities is a proper public use and purpose, and ~~that-[this-act]~~ this title is necessary for the preservation of the public peace, health, and safety, for the promotion of the general welfare, and as a contribution to the national defense."

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

"60-1-103. General definitions. Subject to additional definitions contained in this title which are applicable to specific chapters or sections and unless the context otherwise requires, terms are defined as follows:

(1) "abandonment ~~Abandonment~~"-- means cessation of use of right-of-way (easement) or activity thereon with no intention to reclaim or use again (sometimes called vacation)†;

(2) "commission ~~Commission~~"-- means the highway commission provided for in 2-15-2502†;

(3) "condemnation ~~Condemnation~~"-- means taking by exercise of the right of eminent domain†;

(4) "construction ~~Construction~~"-- means supervising, inspecting, actual building, and all expenses incidental to the construction or reconstruction of a highway, including locating, surveying, mapping, and costs of right-of-way or other interests in land and elimination of hazards at

On motion rules suspended,
yellow printing dispensed.

1 railway grade crossings†.

2 (5) "control ~~Control~~ of access"-- means the condition
3 in which the right of owners or occupants of abutting land
4 or other persons to access, light, air, or view in
5 connection with a highway is fully or partially controlled
6 by public authority†.

7 (6) "county ~~County~~ road"-- means any public highway
8 opened, established, constructed, maintained, abandoned, or
9 discontinued by a county in accordance with Title 7, chapter
10 14†.

11 (7) "department ~~Department~~"-- means the department of
12 highways provided for in Title 2, chapter 15, part 25†.

13 (8) "director ~~Director~~"-- means the director of
14 highways, a position provided for in 2-15-2501†.

15 (9) "easement ~~Easement~~"-- means a right acquired by
16 public authority to use or control property for a designated
17 purpose†.

18 (10) "eminent ~~Eminent~~ domain"-- means the right of the
19 state to take private property for public use†.

20 (11) "federal-aid ~~Federal-aid~~ highway"-- means any
21 public highway which is a portion of any of the federal-aid
22 highway systems†.

23 (12) "federal-aid ~~Federal-aid~~ highway systems"-- means
24 all of the systems named hereafter and their urban
25 extensions†.

1 (13) "federal-aid ~~Federal-aid~~ interstate system"--
2 means that system of public highways selected by the
3 commission in cooperation with adjoining states, subject to
4 the approval of the secretary of commerce, as provided in
5 the-Federal-Highway-Act-~~as-amended~~ Title 23, U.S.C.

6 (14) "federal-aid ~~Federal-aid~~ primary system"-- means
7 that system of connected public highways designated by the
8 commission, subject to the approval of the secretary of
9 commerce, as provided in the--Federal--Highway--Act--~~as~~
10 amended† Title 23, U.S.C.

11 (15) "federal-aid ~~Federal-aid~~ secondary system"-- means
12 that system of public highways not on in the federal-aid
13 primary or interstate systems selected by the commission in
14 cooperation with the boards of county commissioners, subject
15 to the approval of the secretary of commerce, as provided in
16 the-Federal-Highway-Act-~~as-amended~~ Title 23, U.S.C.

17 (16) "fee ~~Fee~~ simple"-- means an absolute estate or
18 ownership in property including unlimited power of
19 alienation†.

20 (17) "highway ~~Highway~~"-- includes rights-of-way or
21 other interests in land, embankments, retaining walls,
22 culverts, sluices, drainage structures, bridges,
23 railroad-highway crossings, tunnels, signs, guardrails, and
24 protective structures†.

25 (18) "highway ~~Highway~~", "road", and "street"†-- whether

1 they appear together or separately or are preceded by the
2 adjective "public", these are general terms denoting a
3 public way for purposes of vehicular travel--including and
4 include the entire area within the right-of-way.

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

8 (20) "maintenance Maintenance" means the preservation
9 of the entire highway, including surface, shoulders,
10 roadsides, structures, and such traffic-control devices as
11 are necessary for its safe and efficient utilization.

12 (21) "public Public highways" means all streets,
13 roads, highways, bridges, and related structures which have
14 been or shall be:

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

18 (b) dedicated to public use;

19 (c) acquired by eminent domain;

20 (d) acquired by adverse user use by the public,
21 jurisdiction having been assumed by the state or any
22 political subdivision thereof.

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

1 (23) "state State highway" means any public highway
2 planned, laid out, altered, constructed, reconstructed,
3 improved, repaired, maintained, or abandoned by the
4 department.

5 (24) "bridge Bridge" means any bridge
6 constructed by the department, together with all
7 appurtenances, additions, alterations, improvements,
8 replacements, and the approaches thereto, lands used
9 therefor, and improvements thereon.

10 Section 3. Section 60-1-201, MCA, is amended to read:

11 "60-1-201. Classification -- highways and roads. (1)
12 Public highways of this state are ~~classified~~ classified as
13 follows:

14 (a) federal-aid highways;

15 (b) state highways;

16 (c) county roads;

17 (d) city streets.

18 (2) All highways which are not designated, selected,
19 or established by the commission or constructed or
20 maintained by the department are county roads or city
21 streets.

22 (3) County roads are those opened, established,
23 constructed, maintained, changed, abandoned, or discontinued
24 by a county in accordance with Title 7, chapter 14.

25 (4) City streets are those public highways under the

1 jurisdiction of municipal officials."

2 Section 4. Section 60-2-106, MCA, is amended to read:

3 "60-2-106. Designation of highways not located
4 entirely within the state. The commission may designate
5 highways subject to improvement under the provisions of the
6 ~~Federal-Aid-Road-Act, approved July 11, 1916, the Federal~~
7 ~~Highway-Act, approved November 9, 1921, and all amendments~~
8 ~~thereto Title 23, U.S.C.~~, even though those highways are not
9 located entirely and continuously within the boundaries of
10 the state. The designations shall meet the following
11 conditions:

12 (1) that the highway is on an approved federal-aid
13 route and eligible for improvement under the ~~federal-aid~~
14 ~~acts Title 23, U.S.C.~~;

15 (2) that the location of a portion of the route
16 outside the boundaries of the state is necessary because of
17 natural geographical or physical conditions which make the
18 construction of the highway within the state impossible or
19 impracticable;

20 (3) that the portion of the route located outside the
21 state does not connect with and is not a part of the state
22 highway system of the adjoining state."

23 Section 5. Section 60-2-112, MCA, is amended to read:

24 "60-2-112. Competitive bidding. (1) When the estimated
25 cost of any work exceeds \$1,000, the commission shall let

1 the contract by competitive bidding. Award shall be made
2 upon such notice and upon such terms as the commission may
3 prescribe by its rules. However, except when prohibited by
4 federal law, the commission ~~must~~ shall make awards and
5 contracts in accordance with 18-1-102 and 18-1-112.

6 (2) If the commission finds that the work may be done
7 in some more efficient manner, it need not let the contract
8 by competitive bidding.

9 (3) If, on highway construction work financed in whole
10 or in part by federal funds, the United States secretary of
11 transportation affirmatively finds that under the
12 circumstances relating to a particular project some method
13 other than competitive bidding is in the public interest,
14 the commission may enter into contracts with a board of
15 county commissioners. These contracts may authorize each
16 county to acquire rights-of-way for, survey, and construct
17 farm-to-market, secondary, or feeder roads within the county
18 by force account, unit price, or otherwise, as may be agreed
19 by the commission and the board.

20 (4) If, on any highway construction work financed in
21 whole or in part by federal funds, the commission finds that
22 enforcement of the provisions contained in 15-50-203 and
23 18-2-311, relating to public contractors working beyond
24 contract time will result in a reduction in the full
25 benefits of the ~~Federal-Highway-Act of 1921 and all~~

1 amendments---thereto Title 23, U.S.C., it may waive
2 enforcement of such provisions."

3 Section 6. Section 60-2-205, MCA, is amended to read:

4 "60-2-205. Powers of department with respect to
5 highways not located entirely within the state. The
6 department may expend funds for the construction,
7 reconstruction, engineering, administration, betterment, and
8 maintenance of highways designated under 60-2-106. It may do
9 all things necessary or required to carry out fully the
10 cooperation contemplated under the federal-aid-acts Title
11 23, U.S.C. with regard thereto."

12 Section 7. Section 60-3-101, MCA, is amended to read:

13 "60-3-101. Assent to federal-aid-acts federal law. (1)
14 The legislature, for and on behalf of the state-of-Montana,
15 assents to the provisions of the--Federal-Aid--Road--Act
16 approved-July-17-1916--and-the-Federal-Highway-Act--approved
17 November--9--1921--and--all--amendments--thereto Title 23,
18 U.S.C.

19 (2) The department may, for and on behalf of the
20 state, enter into all contracts and agreements with the
21 United States or any officer, department, or bureau thereof
22 relating to the construction, reconstruction, repair, and
23 maintenance of highways in the state.

24 (3) The department may make all rules necessary to
25 comply with the provisions of the acts laws assented to and

1 all other acts laws granting aid for public highways and to
2 obtain for the state the full benefits of such acts laws.

3 (4) The department may do all other things necessary
4 or required to carry out fully the cooperation contemplated
5 by the acts of congress assented to."

6 Section 8. Section 60-3-103, MCA, is amended to read:

7 "60-3-103. Purposes for which federal funds to be
8 expended. The department may expend funds apportioned to the
9 state under Public--Law-89-265--Title-III--Section-301(a)
10 October-22--1965--79-Statute-1032 23 U.S.C. 319 for the
11 following purposes:

12 (1) for landscape and roadside development within the
13 rights-of-way of federal-aid highways of this state;

14 (2) for acquisition of interests in and improvement of
15 strips of land necessary for the restoration, preservation,
16 and enhancement of scenic beauty adjacent to the highways;
17 and

18 (3) for acquisition and development of publicly owned
19 and controlled rest and recreation areas and sanitary and
20 other facilities within or adjacent to federal-aid highway
21 rights-of-way reasonably necessary to accommodate the
22 traveling public."

23 Section 9. Section 60-3-105, MCA, is amended to read:

24 "60-3-105. Expenditure of funds. The department shall
25 expend only nonmatching funds authorized under section 23

1 ~~U.S.C. 319(b) of the Federal Highway Beautification Act of~~
 2 ~~1965, as amended,~~ in carrying out the authority granted by
 3 60-3-102 through 60-3-104."

4 Section 10. Section 60-3-201, MCA, is amended to read:
 5 "60-3-201. Distribution and use of proceeds of
 6 gasoline dealers' license tax. (1) All money received in
 7 payment of license taxes under the Distributor's Gasoline
 8 License Tax Act, except those amounts paid out of the
 9 department of revenue's suspense account for gasoline tax
 10 refund, shall be used and expended as provided in this
 11 section. So much of that money on hand at any time as may be
 12 needed to pay highway bonds and interest thereon when due
 13 and to accumulate and maintain a reserve therefor, as
 14 provided in laws and in resolutions of the state board of
 15 examiners authorizing such bonds, shall be deposited in the
 16 highway bond account in the sinking fund established by
 17 17-2-102. Subject to that provision, 9/10 of 1% of all money
 18 shall be deposited in the state park account and 3/10 of 1%
 19 of all money shall be deposited in a snowmobile account in
 20 the earmarked revenue fund. ~~At of the~~ The remainder of the
 21 money shall be used ~~and expended~~ by the department of
 22 highways on the federal-aid highways in this state selected
 23 and designated under ~~the Federal Aid Act approved July 11~~
 24 ~~1916 and the Federal Highway Act approved November 9~~
 25 ~~1921 and its amendments thereto~~ Title 23, U.S.C., and on

1 highways leading from each county seat in the state to the
 2 federal highway system of federal-aid roads where the county
 3 seat is not on the system and on the other roads which have
 4 been or may be authorized by the laws of Montana and for
 5 collection of the license taxes and the enforcement of the
 6 Montana highway code under Article VIII, section 6, of the
 7 constitution of this state.

8 (2) The department shall, in expending this money,
 9 carry forward construction from year to year, using the
 10 money expended through the matching up of federal-aid
 11 allotments to Montana upon the federal highway system in the
 12 various parts of the state in accordance with 60-3-204
 13 through 60-3-206. Nothing in this ~~act~~ title conflicts with
 14 ~~these federal-aid-highway-acts~~ Title 23, U.S.C. and the
 15 rules by which they are ~~it is~~ administered.

16 (3) The department may enter into cooperative
 17 agreements with the national park service and the federal
 18 highway administration for the purpose of maintaining
 19 national park approach roads in Montana.

20 (4) Money credited to the state park account in the
 21 earmarked revenue fund shall be used only for the creation,
 22 improvement, and maintenance of state parks where motor
 23 boating is allowed, except for the payment of refunds under
 24 15-70-221 through 15-70-226. The legislature hereby finds as
 25 a fact that of all the fuel sold in the state for

1 consumption in internal combustion engines, not less than
2 9/10 of 1% is used for propelling boats on waterways of this
3 state.

4 (5) Money credited to the snowmobile account may be
5 used only to develop and maintain facilities open to the
6 general public at no admission cost, and to promote
7 snowmobile safety. For the 2 years following July 1, 1977,
8 15% of the amount deposited in the snowmobile fund each year
9 shall be used to promote snowmobile safety. Thereafter, 10%
10 of the amount deposited in the snowmobile fund shall be used
11 to promote snowmobile safety. The legislature finds that of
12 all fuels sold in this state for consumption in internal
13 combustion engines, not less than 3/10 of 1% is used for
14 propelling snowmobiles on public lands of this state."

15 Section 11. Section 60-3-209, MCA, is amended to read:

16 "60-3-209. Apportionment of state funds to federal-aid
17 interstate highway system. (1) Each fiscal year the
18 department shall apportion available state construction
19 funds for the federal-aid interstate highway system among
20 the financial districts.

21 (2) The apportionment shall be based upon the ratio
22 between the estimated cost of constructing or reconstructing
23 the system in each district and the estimated cost of
24 constructing or reconstructing the entire system within the
25 state.

1 (3) The cost estimates to be used shall be those
2 developed by the department in accordance with the
3 Federal-Aid-Highway-Act-of-1956, as amended Title 23,
4 U.S.C."

5 Section 12. Section 60-3-212, MCA, is amended to read:

6 "60-3-212. Interim apportionment to match federal-aid
7 funds. During the interim between legislative sessions, the
8 department of highways is hereby delegated power and
9 authority to develop formulas to apportion state
10 construction funds in an equitable manner consistent with
11 the intent of ~~[this act]~~ this title to match federal-aid
12 funds for highway systems or purposes not enumerated in
13 ~~[this act]~~ this title. Such apportionment formulas shall be
14 valid only until approved, modified, or rejected by the next
15 succeeding legislative session."

16 Section 13. Section 60-3-215, MCA, is amended to read:

17 "60-3-215. Replacement of bridges. (1) Whenever funds
18 are made available under the ~~Federal-Aid-Highway-Act~~ Title
19 23, U.S.C. for the replacement of bridges, the department
20 may allocate from state construction moneys ~~money~~ such
21 moneys ~~money~~ as are ~~is~~ necessary to match the available
22 federal funds. Such allocation shall be made from available
23 state construction moneys ~~money~~ before the apportionments
24 provided for in 60-3-205, 60-3-206, and 60-3-211.

25 (2) Whenever such state construction moneys ~~money~~ are

1 is so allocated, the amount so allocated may not be deducted
2 from future apportionments to the financial district or
3 city."

4 Section 14. Section 60-3-221, MCA, is amended to read:
5 "60-3-221. Priority primary routes defined. For the
6 purposes of ~~this--section 60-3-221 through 60-3-225,~~
7 "priority primary routes" are defined as those high-traffic
8 sections of highways on the federal-aid primary system which
9 connect to the interstate system."

10 Section 15. Section 60-3-231, MCA, is amended to read:
11 "60-3-231. Economic growth center defined. For the
12 purposes of ~~this--section 60-3-231 through 60-3-234,~~ an
13 "economic growth center" is defined as an area of population
14 of less than 100,000 which has been recommended for
15 designation as such by the governor of Montana and approved
16 by the secretary of transportation of the United States."

17 Section 16. Section 60-3-232, MCA, is amended to read:
18 "60-3-232. Department of highways to determine
19 centers. For the purposes of ~~this-section 60-3-231 through~~
20 ~~60-3-234,~~ the department of highways is authorized to
21 determine and delineate the area influenced by designated
22 economic growth centers. In so doing, it shall take into
23 account relevant geographic, economic, educational, and
24 recreational factors. The department is also authorized to
25 determine and delineate those portions of existing highways

1 which need to be upgraded to accommodate the existing and
2 future needs of the traveling public."

3 Section 17. Section 60-3-301, MCA, is amended to read:
4 "60-3-301. Short title. This part may be cited as the
5 "Montana Traffic-Safety Footpath and Bicycle Trail Act of
6 1975".

7 Section 18. Section 60-3-303, MCA, is amended to read:
8 "60-3-303. Footpaths and bicycle trails to be
9 established -- funding. (1) Out of the funds received by the
10 highway commission or by any county or city from the state
11 highway commission earmarked revenue fund, reasonable
12 amounts shall be expended as necessary for the establishment
13 of footpaths and bicycle trails. Footpaths and bicycle
14 trails may be established and extended to the nearest city
15 or town or termination point of the highway or road wherever
16 a highway, road, or street is being constructed,
17 reconstructed, or relocated. In addition, footpaths and
18 bicycle trails shall be established along all streets under
19 state jurisdiction. Funds received from the earmarked
20 revenue fund may also be expended to maintain footpaths and
21 bicycle trails along other highways, roads, and streets and
22 in parks and recreation areas where the construction would
23 enhance traffic safety and convenience. Footpaths and
24 bicycle trails shall be constructed along all sections of
25 the national defense interstate highway system within a

1 reasonable time after the completion of that system.

2 (2) Footpaths and trails are not required to be
3 established under subsection (1) of this section:

4 (a) if the cost of establishing the paths and trails
5 would be excessively disproportionate to the need or
6 probable use; or

7 (b) where sparsity of population, other available
8 ways, or other factors indicate an absence of any need for
9 the paths and trails.

10 (3) The amount expended by the state highway
11 commission or by a city or county as requested ~~required~~ or
12 permitted by this section shall never in any one fiscal year
13 be less than 3/4 of 1% of the amount appropriated to the
14 department of highways from the earmarked revenue fund for
15 the construction program, maintenance program, and
16 preconstruction program."

17 Section 19. Section 60-4-105, MCA, is amended to read:

18 "60-4-105. Acquisition of whole parcel -- sale of
19 excess. (1) Whenever any interest in a part of a parcel of
20 land or other real property is to be acquired for highway
21 purposes leaving the remainder in a shape or condition as to
22 be of little market value or to give rise to claims or
23 litigation over severance or other damage, the department
24 may acquire the whole parcel. It may sell or exchange the
25 remainder for other property needed for highway purposes.

1 (2) Whenever a part of a parcel of land acquired for
2 highway purposes is in a shape or size as to come within
3 ~~[11-614]~~ the Montana Subdivision and Platting Act, the
4 department shall prepare and file the required plat in the
5 office of the county clerk and recorder."

6 Section 20. Section 60-4-203, MCA, is amended to read:

7 "60-4-203. Conduct of sale. (1) The department shall
8 publish notice of the sale in a newspaper published in the
9 county in which the interest is located once a week for 2
10 successive weeks. Sale shall be held in the county wherein
11 the property is located unless the department finds it
12 impractical, in which case the sale ~~will~~ shall be held at
13 the office of the department ~~at the capitol~~.

14 (2) Before the sale of an interest having a value in
15 excess of \$100, the department shall have it appraised at a
16 price representing a fair market value. The appraised value
17 shall be stated in the published notice.

18 (3) A sale ~~of an interest~~ may not be made ~~of an~~
19 interest unless it has been appraised within 3 months prior
20 to the date of the sale. A sale may not be made for less
21 than 90% of the appraised value.

22 (4) Title to an interest may not pass from the state
23 until the purchaser has paid the full amount of the purchase
24 price into the state treasury to the credit of the
25 department."

1 Section 21. Section 60-4-205, MCA, is amended to read:

2 "60-4-205. Private sale if no bid or offer. (1) If,
3 after proper notice is published, the department receives
4 neither bid at public sale nor offer from the original owner
5 of or his successor in interest, it may at any time
6 thereafter sell the interest at private sale. At the sale,
7 the department may accept as the purchase price an amount of
8 money not less than 90% of the appraised value.

9 (2) Title to an interest may not pass from the state
10 until the purchaser has paid the full amount of the purchase
11 price into the state treasury to the credit of the
12 department."

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

14 "60-4-401. Relocation -- definitions. For the purposes
15 of the sections relating to relocation of utilities
16 facilities, terms are defined as follows:

17 (1) "Utility" includes publicly, privately, and
18 cooperatively owned utilities.

19 (2) "Cost of relocation" includes the entire amount
20 paid by the utility properly attributable to the relocation
21 after deducting any increase in the value of the new
22 facility and any salvage value derived from the old
23 facility.

24 (3) "Federal-aid systems" includes the federal-aid
25 primary system, the federal-aid secondary system, the

1 federal-aid interstate system, and urban extensions of all
2 of them.

3 (4) "Interstate system" includes any highway now
4 included or which shall ~~may~~ hereafter be included as a part
5 of the national system of interstate and defense highways
6 provided for in the ~~Federal-Aid-Highway-Act-of-1956-and~~
7 ~~supplements-or-amendments~~ Title 23, U.S.C."

8 Section 23. Section 60-5-101, MCA, is amended to read:

9 "60-5-101. Policy. The legislature declares it to be
10 the policy of this state to facilitate the flow of traffic
11 and promote public safety by controlling access to:

12 (1) highways included by the federal highway
13 administration roads in the national system of interstate
14 highways;

15 (2) throughways and intersections with throughways;

16 (3) such other federal-aid and state highways as shall
17 be designated by the commission in accordance with the
18 requirements set forth in this chapter."

19 Section 24. Section 60-7-202, MCA, is amended to read:

20 "60-7-202. Exclusions. Section 60-7-201 does not apply
21 to the following:

22 (1) livestock on state highways ~~in~~ under the charge of
23 one or more herders;

24 (2) the parts of fenced highways adjacent to open
25 range where a highway device has not been installed to

1 exclude range livestock;

2 (3) the parts of a state highway or a part of the
 3 federal-aid primary system which the department of highways
 4 designates as being impracticable to exclude livestock.
 5 These portions of the highway shall be marked by proper
 6 signs in accordance with the department's manual and
 7 specifications for a uniform system of traffic-control
 8 devices."

9 Section 25. Repealer. Section 32-1621, R.C.M. 1947, is
 10 repealed.

-End-

1 HOUSE BILL NO. 4

2 INTRODUCED BY MARKS

3 BY REQUEST OF THE CODE COMMISSIONER

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND
6 CLARIFY THE LAWS RELATING TO HIGHWAYS; AND REPEALING SECTION
7 32-1621, R.C.M. 1947."

8
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10 Section 1. Section 60-1-101, MCA, is amended to read:

11 "60-1-101. Legislative findings. The legislature
12 recognizes that safe and efficient highway transportation is
13 of important interest to all of the people of the state and
14 hereby-determines-and declares that:

15 (1) inadequate highways, roads, and streets obstruct
16 the free flow of traffic, increase costs of motor vehicle
17 operation, endanger the health and safety of the citizens of
18 the state, depreciate property values, and impede generally
19 the economic progress of the state;

20 (2) the problems of establishing and maintaining
21 adequate highways, roads, and streets, eliminating
22 congestion, reducing accident frequency, providing parking
23 facilities, and taking all necessary steps to insure safe
24 and convenient transportation are urgent;

25 (3) adequate and integrated systems of highways,

1 roads, and streets are essential to the general welfare of
2 the state-of-Montana;

3 (4) providing adequate highway facilities is a proper
4 public use and purpose, and that-~~[this-act]~~ this title is
5 necessary for the preservation of the public peace, health,
6 and safety, for the promotion of the general welfare, and as
7 a contribution to the national defense."

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

9 "60-1-103. General definitions. Subject to additional
10 definitions contained in this title which are applicable to
11 specific chapters or sections and unless the context
12 otherwise requires, terms are defined as follows:

13 (1) "~~abandonment~~ Abandonment"-- ~~means~~ cessation of use
14 of right-of-way (easement) or activity thereon with no
15 intention to reclaim or use again (sometimes called
16 vacation)†_a

17 (2) "~~commission~~ Commission"-- ~~means~~ the highway
18 commission provided for in 2-15-2502†_a

19 (3) "~~condemnation~~ Condemnation"-- ~~means~~ taking by
20 exercise of the right of eminent domain†_a

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

1 railway grade crossings₁

2 (5) "control Control of access"-- means the condition
3 in which the right of owners or occupants of abutting land
4 or other persons to access, light, air, or view in
5 connection with a highway is fully or partially controlled
6 by public authority₁

7 (6) "county County road"-- means any public highway
8 opened, established, constructed, maintained, abandoned, or
9 discontinued by a county in accordance with Title 7, chapter
10 14₁

11 (7) "department Department"-- means the department of
12 highways provided for in Title 2, chapter 15, part 25₁

13 (8) "director Director"-- means the director of
14 highways, a position provided for in 2-15-2501₁

15 (9) "easement Easement"-- means a right acquired by
16 public authority to use or control property for a designated
17 purpose₁

18 (10) "eminent Eminent domain"-- means the right of the
19 state to take private property for public use₁

20 (11) "federat-aid Federal-aid highway"-- means any
21 public highway which is a portion of any of the federal-aid
22 highway systems₁

23 (12) "federat-aid Federal-aid highway systems"-- means
24 all of the systems named hereafter and their urban
25 extension₁

1 (13) "federat-aid Federal-aid interstate system"--
2 means that system of public highways selected by the
3 commission in cooperation with adjoining states, subject to
4 the approval of the secretary of commerce, as provided in
5 the-Federat-Highway-Act₁-es-amended₁ Title 23, U.S.C.

6 (14) "federat-aid Federal-aid primary system"-- means
7 that system of connected public highways designated by the
8 commission, subject to the approval of the secretary of
9 commerce, as provided in the--Federat--Highway--Act--es
10 amended₁ Title 23, U.S.C.

11 (15) "federat-aid Federal-aid secondary system"-- means
12 that system of public highways not on in the federal-aid
13 primary or interstate systems selected by the commission in
14 cooperation with the boards of county commissioners, subject
15 to the approval of the secretary of commerce, as provided in
16 the-Federat-Highway-Act₁-es-amended₁ Title 23, U.S.C.

17 (16) "fee Fee simple"-- means an absolute estate o
18 ownership in property including unlimited power of
19 alienation₁

20 (17) "highway Highway"-- includes rights-of-way or
21 other interests in land, embankments, retaining walls,
22 culverts, sluices, drainage structures, bridges,
23 railroad-highway crossings, tunnels, signs, guardrails, and
24 protective structures₁

25 (18) "highway Highway", "road", and "street"₁-- whether

1 they appear together or separately or are preceded by the
 2 adjective "public", these are general terms denoting a
 3 public way for purposes of vehicular travel--including and
 4 include the entire area within the right-of-way.

5 (19) "highway Highway authority(ies)"-- means the
 6 entity(ies) at any level of government authorized by law to
 7 construct and maintain highways.

8 (20) "maintenance Maintenance"-- means the preservation
 9 of the entire highway, including surface, shoulders,
 10 roadsides, structures, and such traffic-control devices as
 11 are necessary for its safe and efficient utilization.

12 (21) "public Public highways"-- means all streets,
 13 roads, highways, bridges, and related structures which have
 14 been or shall be:

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

18 (b) dedicated to public use;

19 (c) acquired by eminent domain;

20 (d) acquired by adverse user use by the public,
 21 jurisdiction having been assumed by the state or any
 22 political subdivision thereof.

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

1 (23) "state State highway"-- means any public highway
 2 planned, laid out, altered, constructed, reconstructed,
 3 improved, repaired, maintained, or abandoned by the
 4 department.

5 (24) "toll---bridge Bridge"-- means any bridge
 6 constructed by the department, together with all
 7 appurtenances, additions, alterations, improvements,
 8 replacements, and the approaches thereto, lands used
 9 therefor, and improvements thereon."

10 Section 3. Section 60-1-201, MCA, is amended to read:

11 "60-1-201. Classification -- highways and roads. (1)
 12 Public highways of this state are ~~classified~~ classified as
 13 follows:

14 (a) federal-aid highways;

15 (b) state highways;

16 (c) county roads;

17 (d) city streets.

18 (2) All highways which are not designated, selected,
 19 or established by the commission or constructed or
 20 maintained by the department are county roads or city
 21 streets.

22 (3) County roads are those opened, established,
 23 constructed, maintained, changed, abandoned, or discontinued
 24 by a county in accordance with Title 7, chapter 14.

25 (4) City streets are those public highways under the

1 jurisdiction of municipal officials."

2 Section 4. Section 60-2-106, MCA, is amended to read:

3 "60-2-106. Designation of highways not located
4 entirely within the state. The commission may designate
5 highways subject to improvement under the provisions of the
6 ~~Federal-Aid-Road-Act--approved-July-11-1916--the-Federal~~
7 ~~Highway-Act--approved-November-9-1921--and--all--amendments~~
8 ~~thereto Title 23, U.S.C.~~, even though those highways are not
9 located entirely and continuously within the boundaries of
10 the state. The designations shall meet the following
11 conditions:

12 (1) that the highway is on an approved federal-aid
13 route and eligible for improvement under the--~~federal-aid~~
14 ~~acts Title 23, U.S.C.~~;

15 (2) that the location of a portion of the route
16 outside the boundaries of the state is necessary because of
17 natural geographical or physical conditions which make the
18 construction of the highway within the state impossible or
19 impracticable;

20 (3) that the portion of the route located outside the
21 state does not connect with and is not a part of the state
22 highway system of the adjoining state."

23 Section 5. Section 60-2-112, MCA, is amended to read:

24 "60-2-112. Competitive bidding. (1) When the estimated
25 cost of any work exceeds \$1,000, the commission shall let

1 the contract by competitive bidding. Award shall be made
2 upon such notice and upon such terms as the commission may
3 prescribe by its rules. However, except when prohibited by
4 federal law, the commission ~~must~~ shall make awards and
5 contracts in accordance with 18-1-102 and 18-1-112.

6 (2) If the commission finds that the work may be done
7 in some more efficient manner, it need not let the contract
8 by competitive bidding.

9 (3) If, on highway construction work financed in whole
10 or in part by federal funds, the United States secretary of
11 transportation affirmatively finds that under the
12 circumstances relating to a particular project some method
13 other than competitive bidding is in the public interest,
14 the commission may enter into contracts with a board of
15 county commissioners. These contracts may authorize each
16 county to acquire rights-of-way for, survey, and construct
17 farm-to-market, secondary, or feeder roads within the count
18 by force account, unit price, or otherwise, as may be agreed
19 by the commission and the board.

20 (4) If, on any highway construction work financed in
21 whole or in part by federal funds, the commission finds that
22 enforcement of the provisions contained in 15-50-203 and
23 18-2-311, relating to public contractors working beyond
24 contract time will result in a reduction in the full
25 benefits of the--~~Federal--Highway--Act--of--1921--and--all~~

1 amendments---thereto Title 23, U.S.C., it may waive
2 enforcement of such provisions."

3 Section 6. Section 60-2-205, MCA, is amended to read:

4 "60-2-205. Powers of department with respect to
5 highways not located entirely within the state. The
6 department may expend funds for the construction,
7 reconstruction, engineering, administration, betterment, and
8 maintenance of highways designated under 60-2-106. It may do
9 all things necessary or required to carry out fully the
10 cooperation contemplated under ~~the federal-aid acts~~ Title
11 23, U.S.C. with regard thereto."

12 Section 7. Section 60-3-101, MCA, is amended to read:

13 "60-3-101. Assent to ~~federal-aid acts~~ federal law. (1)
14 The legislature, for and on behalf of the state of Montana,
15 assents to the provisions of ~~the--Federal-Aid--Road--Act,~~
16 ~~approved July 14, 1916, and the Federal Highway Act,~~
17 ~~approved November 9, 1921, and all amendments--thereto~~ Title 23,
18 U.S.C.

19 (2) The department may, for and on behalf of the
20 state, enter into all contracts and agreements with the
21 United States or any officer, department, or bureau thereof
22 relating to the construction, reconstruction, repair, and
23 maintenance of highways in the state.

24 (3) The department may make all rules necessary to
25 comply with the provisions of the acts laws assented to and

1 all other acts laws granting aid for public highways and to
2 obtain for the state the full benefits of such acts laws.

3 (4) The department may do all other things necessary
4 or required to carry out fully the cooperation contemplated
5 by the acts of congress assented to."

6 Section 8. Section 60-3-103, MCA, is amended to read:

7 "60-3-103. Purposes for which federal funds to be
8 expended. The department may expend funds apportioned to the
9 state under ~~Public Law 89-285, Title III, Section 301(e),~~
10 ~~October 22, 1965, 79 Statute 1032,~~ 23 U.S.C. 319 for the
11 following purposes:

12 (1) for landscape and roadside development within the
13 rights-of-way of federal-aid highways of this state;

14 (2) for acquisition of interests in and improvement of
15 strips of land necessary for the restoration, preservation,
16 and enhancement of scenic beauty adjacent to the highways;
17 and

18 (3) for acquisition and development of publicly owned
19 and controlled rest and recreation areas and sanitary and
20 other facilities within or adjacent to federal-aid highway
21 rights-of-way reasonably necessary to accommodate the
22 traveling public."

23 Section 9. Section 60-3-105, MCA, is amended to read:

24 "60-3-105. Expenditure of funds. The department shall
25 expend only nonmatching funds authorized under section 23

1 ~~U.S.C. 319(b) of the Federal Highway Beautification Act of~~
 2 ~~1965 as amended~~ in carrying out the authority granted by
 3 60-3-102 through 60-3-104."

4 Section 10. Section 60-3-201, MCA, is amended to read:
 5 "60-3-201. Distribution and use of proceeds of
 6 gasoline dealers' license tax. (1) All money received in
 7 payment of license taxes under the Distributor's Gasoline
 8 License Tax Act, except those amounts paid out of the
 9 department of revenue's suspense account for gasoline tax
 10 refund, shall be used and expended as provided in this
 11 section. So much of that money on hand at any time as may be
 12 needed to pay highway bonds and interest thereon when due
 13 and to accumulate and maintain a reserve therefor, as
 14 provided in laws and in resolutions of the state board of
 15 examiners authorizing such bonds, shall be deposited in the
 16 highway bond account in the sinking fund established by
 17 17-2-102. Subject to that provision, 9/10 of 1% of all money
 18 shall be deposited in the state park account and 3/10 of 1%
 19 of all money shall be deposited in a snowmobile account in
 20 the earmarked revenue fund. ~~All of the~~ ~~The~~ remainder of the
 21 money shall be used ~~and~~ expended by the department of
 22 highways on the federal-aid highways in this state selected
 23 and designated under the ~~Federal Aid Act~~ approved duty ~~in~~
 24 ~~1916 and the Federal Highway Act~~ approved ~~November 9~~
 25 ~~1921 and all amendments thereto~~ Title 23, U.S.C., and on

1 highways leading from each county seat in the state to the
 2 federal highway system of federal-aid roads where the county
 3 seat is not on the system and on the other roads which have
 4 been or may be authorized by the laws of Montana and for
 5 collection of the license taxes and the enforcement of the
 6 Montana highway code under Article VIII, section 6, of the
 7 constitution of this state.

8 (2) The department shall, in expending this money,
 9 carry forward construction from year to year, using the
 10 money expended through the matching up of federal-aid
 11 allotments to Montana upon the federal highway system in the
 12 various parts of the state in accordance with 60-3-204
 13 through 60-3-206. Nothing in this ~~act~~ ~~title~~ conflicts with
 14 ~~these federal-aid-highway-acts~~ Title 23, U.S.C. and the
 15 rules by which ~~they are~~ it is administered.

16 (3) The department may enter into cooperative
 17 agreements with the national park service and the federal
 18 highway administration for the purpose of maintaining
 19 national park approach roads in Montana.

20 (4) Money credited to the state park account in the
 21 earmarked revenue fund shall be used only for the creation,
 22 improvement, and maintenance of state parks where motor
 23 boating is allowed, except for the payment of refunds under
 24 15-70-221 through 15-70-226. The legislature hereby finds as
 25 e-fact that of all the fuel sold in the state for

1 consumption in internal combustion engines, not less than
 2 9/10 of 1% is used for propelling boats on waterways of this
 3 state.

4 (5) Money credited to the snowmobile account may be
 5 used only to develop and maintain facilities open to the
 6 general public at no admission cost, and to promote
 7 snowmobile safety. For the 2 years following July 1, 1977,
 8 15% of the amount deposited in the snowmobile fund each year
 9 shall be used to promote snowmobile safety. Thereafter, 10%
 10 of the amount deposited in the snowmobile fund shall be used
 11 to promote snowmobile safety. The legislature finds that of
 12 all fuels sold in this state for consumption in internal
 13 combustion engines, not less than 3/10 of 1% is used for
 14 propelling snowmobiles on public lands of this state."

15 Section 11. Section 60-3-209, MCA, is amended to read:

16 "60-3-209. Apportionment of state funds to federal-aid
 17 interstate highway system. (1) Each fiscal year the
 18 department shall apportion available state construction
 19 funds for the federal-aid interstate highway system among
 20 the financial districts.

21 (2) The apportionment shall be based upon the ratio
 22 between the estimated cost of constructing or reconstructing
 23 the system in each district and the estimated cost of
 24 constructing or reconstructing the entire system within the
 25 state.

1 (3) The cost estimates to be used shall be those
 2 developed by the department in accordance with the
 3 Federal-Aid-Highway-Act-of-1956-as-amended Title 23,
 4 U.S.C."

5 Section 12. Section 60-3-212, MCA, is amended to read:

6 "60-3-212. Interim apportionment to match federal-aid
 7 funds. During the interim between legislative sessions, the
 8 department of highways is hereby delegated power and
 9 authority to develop formulas to apportion state
 10 construction funds in an equitable manner consistent with
 11 the intent of ~~[this act]~~ this title to match federal-aid
 12 funds for highway systems or purposes not enumerated in
 13 ~~[this act]~~ this title. Such apportionment formulas shall be
 14 valid only until approved, modified, or rejected by the next
 15 succeeding legislative session."

16 Section 13. Section 60-3-215, MCA, is amended to read:

17 "60-3-215. Replacement of bridges. (1) Whenever funds
 18 are made available under the Federal-Aid-Highway-Act Title
 19 23, U.S.C. for the replacement of bridges, the department
 20 may allocate from state construction moneys ~~money~~ such
 21 moneys ~~money~~ as are ~~is~~ necessary to match the available
 22 federal funds. Such allocation shall be made from available
 23 state construction moneys ~~money~~ before the apportionments
 24 provided for in 60-3-205, 60-3-206, and 60-3-211.

25 (2) Whenever such state construction moneys ~~money~~ are

1 ~~is~~ so allocated, the amount so allocated may not be deducted
2 from future apportionments to the financial district or
3 city."

4 Section 14. Section 60-3-221, MCA, is amended to read:
5 "60-3-221. Priority primary routes defined. For the
6 purposes of ~~this section 60-3-221 through 60-3-225,~~
7 "priority primary routes" are defined as those high-traffic
8 sections of highways on the federal-aid primary system which
9 connect to the interstate system."

10 Section 15. Section 60-3-231, MCA, is amended to read:
11 "60-3-231. Economic growth center defined. For the
12 purposes of ~~this section 60-3-231 through 60-3-234,~~ an
13 "economic growth center" is defined as an area of population
14 of less than 100,000 which has been recommended for
15 designation as such by the governor of Montana and approved
16 by the secretary of transportation of the United States."

17 Section 16. Section 60-3-232, MCA, is amended to read:
18 "60-3-232. Department of highways to determine
19 centers. For the purposes of ~~this section 60-3-231 through~~
20 ~~60-3-234,~~ the department of highways is authorized to
21 determine and delineate the area influenced by designated
22 economic growth centers. In so doing, it shall take into
23 account relevant geographic, economic, educational, and
24 recreational factors. The department is also authorized to
25 determine and delineate those portions of existing highways

1 which need to be upgraded to accommodate the existing and
2 future needs of the traveling public."

3 Section 17. Section 60-3-301, MCA, is amended to read:
4 "60-3-301. Short title. This part may be cited as the
5 "Montana Traffic-Safety Footpath and Bicycle Trail Act of
6 1975"."

7 Section 18. Section 60-3-303, MCA, is amended to read:
8 "60-3-303. Footpaths and bicycle trails to be
9 established -- funding. (1) Out of the funds received by the
10 highway commission or by any county or city from the state
11 highway commission earmarked revenue fund, reasonable
12 amounts shall be expended as necessary for the establishment
13 of footpaths and bicycle trails. Footpaths and bicycle
14 trails may be established and extended to the nearest city
15 or town or termination point of the highway or road wherever
16 a highway, road, or street is being constructed,
17 reconstructed, or relocated. In addition, footpaths and
18 bicycle trails shall be established along all streets under
19 state jurisdiction. Funds received from the earmarked
20 revenue fund may also be expended to maintain footpaths and
21 bicycle trails along other highways, roads, and streets and
22 in parks and recreation areas where the construction would
23 enhance traffic safety and convenience. Footpaths and
24 bicycle trails shall be constructed along all sections of
25 the national defense interstate highway system within a

1 reasonable time after the completion of that system.

2 (2) Footpaths and trails are not required to be
3 established under subsection (1) of this section:

4 (a) if the cost of establishing the paths and trails
5 would be excessively disproportionate to the need or
6 probable use; or

7 (b) where sparsity of population, other available
8 ways, or other factors indicate an absence of any need for
9 the paths and trails.

10 (3) The amount expended by the state highway
11 commission or by a city or county as requested ~~required~~ or
12 permitted by this section shall never in any one fiscal year
13 be less than 3/4 of 1% of the amount appropriated to the
14 department of highways from the earmarked revenue fund for
15 the construction program, maintenance program, and
16 preconstruction program."

17 Section 19. Section 60-4-105, MCA, is amended to read:

18 "60-4-105. Acquisition of whole parcel -- sale of
19 excess. (1) Whenever any interest in a part of a parcel of
20 land or other real property is to be acquired for highway
21 purposes leaving the remainder in a shape or condition as to
22 be of little market value or to give rise to claims or
23 litigation over severance or other damage, the department
24 may acquire the whole parcel. It may sell or exchange the
25 remainder for other property needed for highway purposes.

1 (2) Whenever a part of a parcel of land acquired for
2 highway purposes is in a shape or size as to come within
3 ~~[11-614] the Montana Subdivision and Platting Act~~, the
4 department shall prepare and file the required plat in the
5 office of the county clerk and recorder."

6 Section 20. Section 60-4-203, MCA, is amended to read:

7 "60-4-203. Conduct of sale. (1) The department shall
8 publish notice of the sale in a newspaper published in the
9 county in which the interest is located once a week for 2
10 successive weeks. Sale shall be held in the county wherein
11 the property is located unless the department finds it
12 impractical, in which case the sale ~~will~~ shall be held at
13 the office of the department ~~at the capital~~.

14 (2) Before the sale of an interest having a value in
15 excess of \$100, the department shall have it appraised at a
16 price representing a fair market value. The appraised value
17 shall be stated in the published notice.

18 (3) A sale ~~of an interest~~ may not be made ~~of an~~
19 interest unless it has been appraised within 3 months prior
20 to the date of the sale. A sale may not be made for less
21 than 90% of the appraised value.

22 (4) Title to an interest may not pass from the state
23 until the purchaser has paid the full amount of the purchase
24 price into the state treasury to the credit of the
25 department."

1 Section 21. Section 60-4-205, MCA, is amended to read:

2 "60-4-205. Private sale if no bid or offer. (1) If,
3 after proper notice is published, the department receives
4 neither bid at public sale nor offer from the original owner
5 of or his successor in interest, it may at any time
6 thereafter sell the interest at private sale. At the sale,
7 the department may accept as the purchase price an amount of
8 money not less than 90% of the appraised value.

9 (2) Title to an interest may not pass from the state
10 until the purchaser has paid the full amount of the purchase
11 price into the state treasury to the credit of the
12 department."

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

14 "60-4-401. Relocation -- definitions. For the purposes
15 of the sections relating to relocation of utilities
16 facilities, terms are defined as follows:

17 (1) "Utility" includes publicly, privately, and
18 cooperatively owned utilities.

19 (2) "Cost of relocation" includes the entire amount
20 paid by the utility properly attributable to the relocation
21 after deducting any increase in the value of the new
22 facility and any salvage value derived from the old
23 facility.

24 (3) "Federal-aid systems" includes the federal-aid
25 primary system, the federal-aid secondary system, the

1 federal-aid interstate system, and urban extensions of all
2 of them.

3 (4) "Interstate system" includes any highway now
4 included or which ~~shall~~ may hereafter be included as a part
5 of the national system of interstate and defense highways
6 provided for in the ~~Federal-Aid-Highway-Act-of-1956-and~~
7 ~~supplements-or-amendments~~ Title 23, U.S.C."

8 Section 23. Section 60-5-101, MCA, is amended to read:

9 "60-5-101. Policy. The legislature declares it to be
10 the policy of this state to facilitate the flow of traffic
11 and promote public safety by controlling access to:

12 (1) highways included by the federal highway
13 administration ~~roads~~ in the national system of interstate
14 highways;

15 (2) throughways and intersections with throughways;

16 (3) such other federal-aid and state highways as shall
17 be designated by the commission in accordance with the
18 requirements set forth in this chapter."

19 Section 24. Section 60-7-202, MCA, is amended to read:

20 "60-7-202. Exclusions. Section 60-7-201 does not apply
21 to the following:

22 (1) livestock on state highways ~~in~~ under the charge of
23 one or more herders;

24 (2) the parts of fenced highways adjacent to open
25 range where a highway device has not been installed to

1 exclude range livestock;

2 (3) the parts of a state highway ~~or~~ a part of the
3 federal-aid primary system which the department of highways
4 designates as being impracticable to exclude livestock.
5 These portions of the highway shall be marked by proper
6 signs in accordance with the department's manual and
7 specifications for a uniform system of traffic-control
8 devices.*

9 Section 25. Repealer. Section 32-1621, R.C.M. 1947, is
10 repealed.

-End-