

SENATE BILL NO. 104

INTRODUCED BY

Don Hargrave

BY REQUEST OF THE DEPARTMENT OF TRANSPORTATION

A BILL FOR AN ACT ENTITLED: "AN ACT CHANGING THE NAME OF THE HIGHWAY COMMISSION TO THE TRANSPORTATION COMMISSION; CLARIFYING CERTAIN RESPONSIBILITIES AND AUTHORITY OF THE COMMISSION AND THE DEPARTMENT OF TRANSPORTATION RELATED TO RAIL AND TRANSIT PROGRAMS AND TO INTERMODAL TRANSPORTATION; CLARIFYING THE RESPONSIBILITIES AND AUTHORITY OF THE COMMISSION AND THE DEPARTMENT RELATED TO THE ALLOCATION AND ADMINISTRATION OF CERTAIN APPROPRIATED FUNDS; AMENDING SECTIONS 2-15-2502, 60-1-103, 60-2-110, 60-2-129, AND 60-3-219, MCA; AND PROVIDING AN EFFECTIVE DATE."

STATEMENT OF INTENT

A statement of intent is required for this bill because the department of transportation is required in 60-2-110 to adopt rules to administer statutory provisions that require the transportation commission to establish priorities and select and designate segments for construction and reconstruction on the national highway system, the primary highway system, the secondary highway system, the urban highway system, and state highways; to establish and determine priorities and projects for rail and transit programs; and, to the extent possible, coordinate intermodal transportation within the state. The legislature contemplates that rules promulgated under 60-2-110 address, at a minimum, the criteria and procedures to be followed in establishing priorities and selecting projects.

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

Section 1. Section 2-15-2502, MCA, is amended to read:

"2-15-2502. **Highway Transportation commission.** (1) ~~The highway commission consists~~ There is a transportation commission composed of five members. One member must be a resident of and appointed from each of these districts, each composed of the counties named:

- (a) District 1. Lincoln, Flathead, Sanders, Lake, Mineral, Missoula, Ravalli, Granite, Powell;
- (b) District 2. Deer Lodge, Silver Bow, Beaverhead, Madison, Gallatin, Meagher, Broadwater,

1 Jefferson, Park;

2 (c) District 3. Glacier, Toole, Liberty, Hill, Blaine, Pondera, Teton, Chouteau, Cascade, Lewis and
3 Clark;

4 (d) District 4. Carter, Powder River, Fallon, Custer, Rosebud, Garfield, Phillips, Valley, McCone,
5 Prairie, Dawson, Wibaux, Richland, Roosevelt, Daniels, Sheridan;

6 (e) District 5. Golden Valley, Stillwater, Carbon, Big Horn, Yellowstone, Musselshell, Judith Basin,
7 Fergus, Petroleum, Treasure, Wheatland, Sweet Grass.

8 (2) Two members may not be residents of the same district at the time of appointment or during
9 their respective terms of office.

10 (3) Not more than three members may at the time of appointment or during their respective terms
11 be members of the same political party.

12 (4) An elective state official or state officer, during the term of office to which elected or
13 appointed, or a state employee may not be a member of the commission.

14 (5) A resolution, motion, or other decision of the commission may not be adopted or passed
15 without the favorable vote of at least three members.

16 (6) The commission is allocated to the department of transportation for administrative purposes
17 only as prescribed in 2-15-121.

18 (7) The commission is designated as a quasi-judicial board for purposes of 2-15-124; however, the
19 provision of 2-15-124(1) that at least one member of a quasi-judicial board be an attorney does not apply
20 to the commission.

21 (8) The commission may adopt rules necessary for its government.

22 (9) The ~~administrator of the highway division~~ director of transportation or the director's designee
23 shall act as liaison between the ~~highway~~ commission and the department of ~~transportation~~.
24

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

26 **"60-1-103. General definitions.** Subject to additional definitions contained in this title ~~which~~ that
27 are applicable to specific chapters or sections and unless the context otherwise requires, terms are defined
28 as follows:

29 (1) "Abandonment" means cessation of use of right-of-way ~~or an {easement}~~ or cessation of
30 activity ~~thereon~~ on the right-of-way or easement with no intention to reclaim or use again, ~~†~~ Abandonment

1 ~~is sometimes called vacation~~).

2 (2) "Bridge" means any bridge constructed by the department, together with all appurtenances,
3 additions, alterations, improvements, and replacements; and the approaches ~~thereto~~ to the bridge, lands
4 used ~~therefor~~ in connection with the bridge, and improvements ~~thereon~~ incidental or integral to the bridge.

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

6 (4) "Condemnation" means taking by exercise of the right of eminent domain.

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

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

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

15 (8) "Department" means the department of transportation provided for in Title 2, chapter 15, part
16 25.

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

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

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

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

23 (13) "Federal-aid highway systems" means all of the systems named ~~hereafter~~ as part of the
24 systems and their urban extensions.

25 (14) "Federal-aid interstate system" means that system of public highways selected by the
26 commission in cooperation with adjoining states, subject to the approval of the secretary of commerce, as
27 provided in Title 23, U.S.C.

28 (15) "Federal-aid primary system" means that system of connected public highways designated by
29 the commission, subject to the approval of the secretary of commerce, as provided in Title 23, U.S.C.

30 (16) "Federal-aid secondary system" means that system of public highways not in the federal-aid

1 primary or interstate systems selected by the commission in cooperation with the boards of county
2 commissioners, subject to the approval of the secretary of commerce, as provided in Title 23, U.S.C.

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

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

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

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

13 (21) "Maintenance" means the preservation of the entire highway, including surface, shoulders,
14 roadsides, structures, and ~~such~~ traffic-control devices ~~as~~ that are necessary for ~~its~~ the safe and efficient
15 ~~utilization~~ use of the highway.

16 (22) "Public highways" means all streets, roads, highways, bridges, and related structures ~~which~~
17 ~~have been or shall be~~:

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

20 (b) dedicated to public use;

21 (c) acquired by eminent domain; or

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

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

26 (24) "State highway" means any public highway planned, laid out, altered, constructed,
27 reconstructed, improved, repaired, maintained, or abandoned by the department."

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29 **Section 3.** Section 60-2-110, MCA, is amended to read:

30 **"60-2-110. Setting priorities and selecting projects.** (1) The commission shall establish priorities

1 and select and designate segments for construction and reconstruction on the national highway system,
2 the primary highway system, the secondary highway system, the urban highway system, and state
3 highways.

4 (2) The commission shall consult with the board of county commissioners of the county in which
5 a highway is located when establishing priorities and when selecting and designating segments on the
6 secondary highway system for construction and reconstruction.

7 (3) The commission shall consult with the appropriate local government authorities when
8 establishing priorities and selecting and designating segments on the urban highway system for construction
9 and reconstruction.

10 (4) The commission shall use information gathered or discovered by and documents prepared by
11 the department, and department officials and employees shall provide assistance and advice.

12 (5) The commission shall establish and determine priorities and projects for rail and transit programs
13 and, to the extent possible, coordinate intermodal transportation within the state.

14 (6) In carrying out the requirements of this section, the department shall:

15 (a) make recommendations to the commission; and

16 (b) establish, by rule, the requirements and procedures for administering this section."

17

18 **Section 4.** Section 60-2-129, MCA, is amended to read:

19 **"60-2-129. Allocation of funds. (1)** The commission may allocate federal-aid highway funds for
20 projects or programs in which all or a portion of the work is on highways that are not located on the
21 highway systems defined in 60-2-125. The allocations must be made without regard to the financial district
22 in which the project or program is located.

23 (2) Within the programs under its jurisdiction, the commission shall allocate all federal transit
24 administration funds, freight assistance funds, or any funds or grants available by legislative appropriation
25 for the study, design, construction, repair, or improvement of rail or transit intermodal transportation
26 systems.

27 (3) The commission may authorize the transfer of funds between qualified programs, including
28 highway and transit programs.

29 (4) The commission may delegate the functions and responsibilities under this section to the
30 department."

1 **Section 5.** Section 60-3-219, MCA, is amended to read:

2 **"60-3-219. Allocation of funds -- apportionment.** The federal-aid highway funds allocated to the
3 primary highway system for construction purposes must be apportioned among the five financial districts,
4 corresponding to and congruent with the ~~highway~~ transportation commission districts established in
5 2-15-2502."

6

7 NEW SECTION. **Section 6. Codification instruction.** (1) The code commissioner is instructed to
8 change any reference to the highway commission to the transportation commission in legislation enacted
9 by the 54th legislature.

10 (2) The code commissioner is instructed to change to the transportation commission each reference
11 to the highway commission in the Montana Code Annotated.

12

13 NEW SECTION. **Section 7. Effective date.** [This act] is effective July 1, 1995.

14

-END-

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2 INTRODUCED BY HARGROVE

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7 THE COMMISSION AND THE DEPARTMENT OF TRANSPORTATION RELATED TO RAIL AND TRANSIT
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10 ADMINISTRATION OF CERTAIN APPROPRIATED FUNDS; AMENDING SECTIONS 2-15-2502, 60-1-103,
11 60-2-110, 60-2-129, AND 60-3-219, MCA; AND PROVIDING AN EFFECTIVE DATE."

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17 highway system, the primary highway system, the secondary highway system, the urban highway system,
18 and state highways; to establish and determine priorities and projects for rail and transit programs; and,
19 to the extent possible, coordinate intermodal transportation within the state. The legislature contemplates
20 that rules promulgated under 60-2-110 address, at a minimum, the criteria and procedures to be followed
21 in establishing priorities and selecting projects.

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26 **"2-15-2502. Highway Transportation commission.** (1) ~~The highway commission consists~~ There is
27 a transportation commission composed of five members. One member must be a resident of and appointed
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1 Jefferson, Park;

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7 Fergus, Petroleum, Treasure, Wheatland, Sweet Grass.

8 (2) Two members may not be residents of the same district at the time of appointment or during
9 their respective terms of office.

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12 (4) An elective state official or state officer, during the term of office to which elected or
13 appointed, or a state employee may not be a member of the commission.

14 (5) A resolution, motion, or other decision of the commission may not be adopted or passed
15 without the favorable vote of at least three members.

16 (6) The commission is allocated to the department of transportation for administrative purposes
17 only as prescribed in 2-15-121.

18 (7) The commission is designated as a quasi-judicial board for purposes of 2-15-124; however, the
19 provision of 2-15-124(1) that at least one member of a quasi-judicial board be an attorney does not apply
20 to the commission.

21 (8) The commission may adopt rules necessary for its government.

22 (9) The ~~administrator of the highway division~~ director of transportation or the director's designee
23 shall act as liaison between the ~~highway~~ commission and the department of ~~transportation~~.
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26 **"60-1-103. General definitions.** Subject to additional definitions contained in this title ~~which~~ that
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1 ~~is~~ sometimes called vacation}.

2 (2) "Bridge" means any bridge constructed by the department, together with all appurtenances,
3 additions, alterations, improvements, and replacements, and the approaches ~~thereto~~ to the bridge, lands
4 used ~~therefor~~ in connection with the bridge, and improvements ~~thereon~~ incidental or integral to the bridge.

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

6 (4) "Condemnation" means taking by exercise of the right of eminent domain.

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

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

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

15 (8) "Department" means the department of transportation provided for in Title 2, chapter 15, part
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19 designated purpose.

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23 (13) "Federal-aid highway systems" means all of the systems named ~~hereafter~~ as part of the
24 systems and their urban extensions.

25 (14) "Federal-aid interstate system" means that system of public highways selected by the
26 commission in cooperation with adjoining states, subject to the approval of the secretary of commerce, as
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9 preceded by the adjective "public", are general terms denoting a public way for purposes of vehicular travel
10 and include the entire area within the right-of-way.

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

13 (21) "Maintenance" means the preservation of the entire highway, including surface, shoulders,
14 roadsides, structures, and ~~such~~ traffic-control devices as that are necessary for ~~its~~ the safe and efficient
15 ~~utilization~~ use of the highway.

16 (22) "Public highways" means all streets, roads, highways, bridges, and related structures ~~which~~
17 ~~have been or shall be:~~

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

20 (b) dedicated to public use;

21 (c) acquired by eminent domain; or

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

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

26 (24) "State highway" means any public highway planned, laid out, altered, constructed,
27 reconstructed, improved, repaired, maintained, or abandoned by the department."

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29 **Section 3.** Section 60-2-110, MCA, is amended to read:

30 **"60-2-110. Setting priorities and selecting projects.** (1) The commission shall establish priorities

1 and select and designate segments for construction and reconstruction on the national highway system,
2 the primary highway system, the secondary highway system, the urban highway system, and state
3 highways.

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5 a highway is located when establishing priorities and when selecting and designating segments on the
6 secondary highway system for construction and reconstruction.

7 (3) The commission shall consult with the appropriate local government authorities when
8 establishing priorities and selecting and designating segments on the urban highway system for construction
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10 (4) The commission shall use information gathered or discovered by and documents prepared by
11 the department, and department officials and employees shall provide assistance and advice.

12 (5) The commission shall establish and determine priorities and projects for rail and transit programs
13 and, to the extent possible, coordinate intermodal transportation within the state.

14 (6) In carrying out the requirements of this section, the department shall:

15 (a) make recommendations to the commission; and

16 (b) establish, by rule, the requirements and procedures for administering this section; AND

17 (c) TAKE ALL REASONABLE STEPS TO ENSURE THE INTEGRITY AND VIABILITY OF
18 AGRICULTURAL AND RURAL TRANSPORTATION AND RELATED NEEDS."

19

20 **Section 4.** Section 60-2-129, MCA, is amended to read:

21 **"60-2-129. Allocation of funds.** (1) The commission may allocate federal-aid highway funds for
22 projects or programs in which all or a portion of the work is on highways that are not located on the
23 highway systems defined in 60-2-125. The allocations must be made without regard to the financial district
24 in which the project or program is located.

25 (2) Within the programs under its jurisdiction, the commission shall allocate all federal transit
26 administration funds, freight assistance funds, or any funds or grants available by legislative appropriation
27 for the study, design, construction, repair, or improvement of rail or transit intermodal transportation
28 systems.

29 (3) The commission may authorize the transfer of FEDERAL funds between qualified programs,
30 including highway and transit programs.

1 (4) The commission may delegate the functions and responsibilities under this section to the
2 department."

3

4 **Section 5.** Section 60-3-219, MCA, is amended to read:

5 **"60-3-219. Allocation of funds -- apportionment.** The federal-aid highway funds allocated to the
6 primary highway system for construction purposes must be apportioned among the five financial districts,
7 corresponding to and congruent with the ~~highway~~ transportation commission districts established in
8 2-15-2502."

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10 **NEW SECTION. Section 6. Codification instruction.** (1) The code commissioner is instructed to
11 change any reference to the highway commission to the transportation commission in legislation enacted
12 by the 54th legislature.

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16 **NEW SECTION. Section 7. Effective date.** [This act] is effective July 1, 1995.

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19 to the extent possible, coordinate intermodal transportation within the state. The legislature contemplates
20 that rules promulgated under 60-2-110 address, at a minimum, the criteria and procedures to be followed
21 in establishing priorities and selecting projects.

22
23 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

THERE ARE NO CHANGES IN THIS BILL
AND WILL NOT BE REPRINTED. PLEASE
REFER TO YELLOW COPY FOR COMPLETE TEXT.

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19 provision of 2-15-124(1) that at least one member of a quasi-judicial board be an attorney does not apply
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30 activity ~~thereon on the right-of-way or easement~~ with no intention to reclaim or use again, or ~~Abandonment~~

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9 right-of-way or other interests in land and elimination of hazards at railway grade crossings.

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

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

15 (8) "Department" means the department of transportation provided for in Title 2, chapter 15, part
16 25.

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

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

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

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

23 (13) "Federal-aid highway systems" means all of the systems named ~~hereafter~~ as part of the
24 systems and their urban extensions.

25 (14) "Federal-aid interstate system" means that system of public highways selected by the
26 commission in cooperation with adjoining states, subject to the approval of the secretary of commerce, as
27 provided in Title 23, U.S.C.

28 (15) "Federal-aid primary system" means that system of connected public highways designated by
29 the commission, subject to the approval of the secretary of commerce, as provided in Title 23, U.S.C.

30 (16) "Federal-aid secondary system" means that system of public highways not in the federal-aid

1 primary or interstate systems selected by the commission in cooperation with the boards of county
2 commissioners, subject to the approval of the secretary of commerce, as provided in Title 23, U.S.C.

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

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

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

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

13 (21) "Maintenance" means the preservation of the entire highway, including surface, shoulders,
14 roadsides, structures, and ~~such~~ traffic-control devices as that are necessary for ~~its~~ the safe and efficient
15 ~~utilization~~ use of the highway.

16 (22) "Public highways" means all streets, roads, highways, bridges, and related structures ~~which~~
17 ~~have been or shall be~~:

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

20 (b) dedicated to public use;

21 (c) acquired by eminent domain; or

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

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

26 (24) "State highway" means any public highway planned, laid out, altered, constructed,
27 reconstructed, improved, repaired, maintained, or abandoned by the department."

28
29 **Section 3.** Section 60-2-110, MCA, is amended to read:

30 **"60-2-110. Setting priorities and selecting projects.** (1) The commission shall establish priorities

1 and select and designate segments for construction and reconstruction on the national highway system,
2 the primary highway system, the secondary highway system, the urban highway system, and state
3 highways.

4 (2) The commission shall consult with the board of county commissioners of the county in which
5 a highway is located when establishing priorities and when selecting and designating segments on the
6 secondary highway system for construction and reconstruction.

7 (3) The commission shall consult with the appropriate local government authorities when
8 establishing priorities and selecting and designating segments on the urban highway system for construction
9 and reconstruction.

10 (4) The commission shall use information gathered or discovered by and documents prepared by
11 the department, and department officials and employees shall provide assistance and advice.

12 (5) The commission shall establish and determine priorities and projects for rail and transit programs
13 and, to the extent possible, coordinate intermodal transportation within the state.

14 (6) In carrying out the requirements of this section, the department shall:

15 (a) make recommendations to the commission; and

16 (b) establish, by rule, the requirements and procedures for administering this section; AND

17 (C) TAKE ALL REASONABLE STEPS TO ENSURE THE INTEGRITY AND VIABILITY OF
18 AGRICULTURAL AND RURAL TRANSPORTATION AND RELATED NEEDS."

19

20 **Section 4.** Section 60-2-129, MCA, is amended to read:

21 **"60-2-129. Allocation of funds.** (1) The commission may allocate federal-aid highway funds for
22 projects or programs in which all or a portion of the work is on highways that are not located on the
23 highway systems defined in 60-2-125. The allocations must be made without regard to the financial district
24 in which the project or program is located.

25 (2) Within the programs under its jurisdiction, the commission shall allocate all federal transit
26 administration funds, freight assistance funds, or any funds or grants available by legislative appropriation
27 for the study, design, construction, repair, or improvement of rail or transit intermodal transportation
28 systems.

29 (3) The commission may authorize the transfer of FEDERAL funds between qualified programs,
30 including highway and transit programs.

1 (4) The commission may delegate the functions and responsibilities under this section to the
2 department."

3

4 **Section 5.** Section 60-3-219, MCA, is amended to read:

5 **"60-3-219. Allocation of funds -- apportionment.** The federal-aid highway funds allocated to the
6 primary highway system for construction purposes must be apportioned among the five financial districts,
7 corresponding to and congruent with the ~~highway~~ transportation commission districts established in
8 2-15-2502."

9

10 **NEW SECTION. Section 6. Codification instruction.** (1) The code commissioner is instructed to
11 change any reference to the highway commission to the transportation commission in legislation enacted
12 by the 54th legislature.

13 (2) The code commissioner is instructed to change to the transportation commission each reference
14 to the highway commission in the Montana Code Annotated.

15

16 **NEW SECTION. Section 7. Effective date.** [This act] is effective July 1, 1995.

17

-END-