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SENATE BILL NO. 122

INTRODUCED BY

Teresa Kitzberger

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE PROCESS OF GRANTING RIGHT-OF-WAY EASEMENTS ON STATE LANDS; ELIMINATING THE REQUIREMENT THAT PLATS BE VERIFIED BY AFFIDAVIT OF A COUNTY SURVEYOR OR COUNTY OR CITY ENGINEER; MAKING OPTIONAL THE REQUIREMENT FOR AN ARCHEOLOGICAL SURVEY OF A RIGHT-OF-WAY; ELIMINATING THE DEED FOR RIGHT-OF-WAY; AND AMENDING SECTIONS 77-2-102 AND 77-2-103, MCA."

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

Section 1. Section 77-2-102, MCA, is amended to read:

"77-2-102. Application for easement. (1) Application for an easement on state land must be made to the department. ~~It shall~~ Except as provided in subsection (3), the application must describe the proposed right-of-way according to survey, show the necessity for the proposed highway or street or other easement, and give any additional information that the department requires.

(2) This application ~~shall~~ must be accompanied by two exact copies of the official plat of the proposed highway, street, or other easement, duly verified by the affidavit of the ~~county surveyor or county or city engineer or other engineer having who prepared the same endorsed thereon~~ application. These plats ~~shall~~ must show the quantity of land taken by the proposed highway or street or other easement for each 40-acre tract or government lot of state land over or through which it passes and also the amount of land remaining in each portion of that 40-acre tract or government lot. When ~~deemed~~ considered necessary by the department, these plats ~~shall~~ must show all these facts for ~~such~~ smaller subdivisions as the circumstances may render desirable for the state.

(3) ~~However, when~~ If the purpose of the right-of-way applied for is the transmission or distribution of electric energy or the construction and operation of pipelines or telephone, telegraph, or radio systems, the plats and measurements need not be given, ~~except~~ An exact geographical survey is not required, but the application must include the description of the location of the center line of the right-of-way, ~~and the~~ The entire right-of-way may be applied for in one application with only one plat of the entire right-of-way required. A cultural survey of the right-of-way is required, but an archeological survey is not required if in

1 the opinion of the county soil conservation service technician an archeological survey is unnecessary."

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3 **Section 2.** Section 77-2-103, MCA, is amended to read:

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 12 ~~shall issue right of way deeds for all such easements that it grants upon full payment being made.~~

13 (2) If the state land over or through which a right-of-way is applied for is under certificate of
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 20 individual case warrant. This subsection applies to all grants of rights-of-way on state lands."

21

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0122, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act revising the process of granting right-of-way easements on state lands; eliminating the requirement that plats be verified by affidavit of a county surveyor or county or city engineer; making optional the requirement for an archeological survey of a right-of-way; and eliminating the deed for right-of-way.

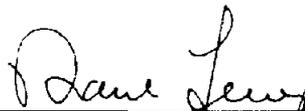
ASSUMPTIONS:

1. As required by the state Antiquities Act, the Department of State Lands contacts the Montana Historical Society prior to any project and the preservation reference service advises DSL of any historic or archaeological sites that may have been identified in the project area and whether a systematic cultural resource inventory may be recommended.
2. The DSL, using its own cultural resource staff, makes the determination or refers to the Board of Land Commissioners the decision of whether or not a resource inventory will be conducted. The cost of inventories are the responsibility of the development interest disturbing the land.
3. This bill would eliminate the need for a written description of land required for highway right-of-way or about 15 parcels each year.

FISCAL IMPACT: Small savings for the Department of Transportation.

TECHNICAL NOTES:

1. Article X, Section 4, of the Montana Constitution provides that the Board of Land Commissioners has authority to manage state lands. Delegation of the authority to require an archeological survey to a Soil Conservation Service technician may violate this constitutional provision, especially if the statement that the survey "is not required" is intended to be a limitation on the Board's authority.
2. Plats are often prepared by surveyors and the use of a surveyor should be an option to an applicant for easement. The language as proposed appears to limit the certification of a plat to engineers only. Therefore, 77-2-102(2), line 19 should include "or surveyor" after engineer to allow the option of a surveyor to prepare and certify a plat.
3. It is unclear what is the intent of the proposed language in 77-2-102(3), line 30 regarding cultural and archaeological survey requirements. Cultural and archaeological surveys are generally considered to be the same thing.

 1-20-95

DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

DARYL TOEWS, PRIMARY SPONSOR DATE

Fiscal Note for SB0122, as introduced

SB 122

1 SENATE BILL NO. 122

2 INTRODUCED BY TOEWS, KITZENBERG

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25 -END-



HOUSE STANDING COMMITTEE REPORT

March 7, 1995

Page 1 of 1

Mr. Speaker: We, the committee on Natural Resources report that Senate Bill 122 (third reading copy -- blue) be concurred in as amended.

Signed: _____

Dick Knox

Dick Knox, Chair

And, that such amendments read:

Carried by: Rep. Kitzenberg

1. Title, line 8.

Strike: "AND"

2. Title, line 9.

Following: "MCA"

Insert: "; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE"

3. Page 2.

Following: line 24

Insert: "NEW SECTION. Section 3. Effective date. [This act] is effective on passage and approval."

-END-

Committee Vote:
Yes 17, No 0.

SB122
HOUSE
531126SC.Hdh

SENATE BILL NO. 122

INTRODUCED BY TOEWS, KITZENBERG

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26 NEW SECTION. SECTION 3. EFFECTIVE DATE. [THIS ACT] IS EFFECTIVE ON PASSAGE AND
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28

-END-