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House BILL NO. 607

INTRODUCED BY G RINDGE

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE ISSUANCE OF HISTORIC RIGHT-OF-WAY DEEDS BY THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION GRANTING NONEXCLUSIVE EASEMENTS FOR HISTORIC USES OF STATE LANDS FOR RIGHTS-OF-WAY; PROVIDING FOR THE CRITERIA FOR ISSUANCE OF THE DEEDS AND THE TERMS OF THE DEEDS; REQUIRING PAYMENT OF A FEE AND THE VALUE OF THE HISTORIC RIGHT-OF-WAY; PROVIDING A STATUTORY APPROPRIATION; AMENDING SECTION 17-7-502, MCA; AND PROVIDING A TERMINATION DATE."

WHEREAS, the Department of State Lands, as the predecessor of the Department of Natural Resources with respect to state land, encouraged the development of road rights-of-way across state land before 1972; and

WHEREAS, the Department of State Lands either did not charge for these rights-of-way or charged minimal fees for the rights-of-way before 1972; and

WHEREAS, many of the road rights-of-way granted by the Department of State Lands were granted without a written easement; and

WHEREAS, Article X, section 11(2), of the Montana Constitution requires that the fair market value, ascertained in the manner provided by law, must be charged for the disposition of an interest in state land; and

WHEREAS, the 55th Legislature intends that the Department of Natural Resources and Conservation honor the historical uses of state land for rights-of-way.

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

NEW SECTION. Section 1. Recognition of historic right-of-way -- criteria for right-of-way deed -- conditions -- fees. (1) A person or a county may apply to the department for a historic right-of-way deed by filing an application with the department by October 1, 2001, on a form prescribed by the department. An application must be accompanied by:

(a) an application fee of \$50;

- 1 (b) a notarized affidavit:
- 2 (i) demonstrating that the applicant or the applicant's predecessor in interest used the right-of-way
- 3 applied for before 1973;
- 4 (ii) describing the purpose for which the right-of-way was used before 1973; and
- 5 (iii) demonstrating that the historic right-of-way applied for is the right-of-way demonstrated in the
- 6 evidence provided in subsection (1)(c); and
- 7 (c) (i) aerial photographs taken by an agency of the United States demonstrating use of the
- 8 right-of-way applied for; or
- 9 (ii) other evidence of the use of the right-of-way applied for.
- 10 (2) The department shall review an application and other evidence submitted pursuant to
- 11 subsection (1) and shall issue a historic right-of-way deed in the name of the applicant if:
- 12 (a) the applicant pays the application fee provided in subsection (1)(a) and the fair market value of
- 13 the historic right-of-way as provided in subsection (4);
- 14 (b) the applicant has shown by substantial evidence the matters required in subsections (1)(b) and
- 15 (1)(c)(i) or (1)(c)(ii);
- 16 (c) the department has, if necessary, made a field inspection of the right-of-way applied for; and
- 17 (d) the deed is approved by the board.
- 18 (3) A historic right-of-way deed issued in the name of the applicant may be assigned by the
- 19 applicant to another person with the approval of the department. The department may not require a fee
- 20 for the approval of an assignment and may not withhold approval for any reason other than that the use
- 21 of the historic right-of-way is contrary to subsection (5).
- 22 (4) (a) At the time of issuing the historic right-of-way deed, the department shall collect from the
- 23 applicant the full market value of the acreage of the historic right-of-way based on the following
- 24 classifications of land:
- 25 (i) \$37.50 per acre for state land classified as grazing land;
- 26 (ii) \$275 per acre for state land classified as timber land;
- 27 (iii) \$100 per acre for state land classified as crop land; and
- 28 (iv) \$100 per acre for other land.
- 29 (b) Amounts collected pursuant to subsection (4)(a) must be deposited in the public school fund
- 30 provided for in 20-9-601.

1 (5) If application is made in accordance with this section, a historic right-of-way deed must be
2 issued by the department, subject to the approval of the board, on the following terms:

3 (a) the right-of-way is only for the purposes for which the road was used before 1973;

4 (b) the right-of-way is only for the minimum width necessary for the purposes of subsection (5)(a);

5 and

6 (c) the right-of-way is only for the physical condition of the road existing on the date the historic
7 right-of-way deed is issued by the department.

8 (6) Issuance of a historic right-of-way deed pursuant to this section is exempt from the
9 requirements of Title 75, chapter 1, parts 1 and 2, and Title 22, chapter 3, part 4.

10 (7) The survey requirements of 77-2-102 may be waived by the department for the issuance of
11 a historic right-of-way deed if the department determines there is sufficient information available to define
12 the boundaries of the right-of-way for the purposes of recording the easement.

13 (8) The department may attach conditions to a historic right-of-way deed necessary to ensure
14 compliance with law. However, the department may not require reversion of the right-of-way to the state.

15 (9) For the purposes of this section, "historic right-of-way deed" means a document issued by the
16 department granting to the applicant a nonexclusive easement over state land.

17
18 **NEW SECTION. Section 2. State lands historic right-of-way account -- statutory appropriation.**

19 There is a state lands historic right-of-way account in the state special revenue fund. The application fee
20 collected by the department pursuant to [section 1(1)(a)] must be deposited in the account. Money in the
21 account is statutorily appropriated to the department, as provided in 17-7-502, for the expenses of the
22 department in administering [section 1]. Money in the account on the termination date of the account must
23 be deposited in the general fund.

24
25 **Section 3. Section 17-7-502, MCA, is amended to read:**

26 **"17-7-502. Statutory appropriations -- definition -- requisites for validity.** (1) A statutory
27 appropriation is an appropriation made by permanent law that authorizes spending by a state agency
28 without the need for a biennial legislative appropriation or budget amendment.

29 (2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply
30 with both of the following provisions:

1 (a) The law containing the statutory authority must be listed in subsection (3).

2 (b) The law or portion of the law making a statutory appropriation must specifically state that a
3 statutory appropriation is made as provided in this section.

4 (3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105;
5 2-18-812; 3-5-901; 5-13-403; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-23-706;
6 15-30-195; 15-31-702; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411;
7 16-11-308; 17-3-106; 17-3-212; 17-5-404; 17-5-424; 17-5-804; 17-6-101; 17-6-201; 17-7-304;
8 18-11-112; 19-2-502; 19-6-709; 19-9-1007; 19-17-301; 19-18-512; 19-18-513; 19-18-606; 19-19-205;
9 19-19-305; 19-19-506; 20-8-107; 20-8-111; 20-9-361; 20-26-1503; 23-5-136; 23-5-306; 23-5-409;
10 23-5-610; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 32-1-537; 37-43-204; 37-51-501; 39-71-503;
11 39-71-907; 39-71-2321; 39-71-2504; 44-12-206; 44-13-102; 50-4-623; 50-5-232; 50-40-206; 53-6-150;
12 53-6-703; 53-24-206; 60-2-220; 67-3-205; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 76-12-123;
13 section 2; 80-2-103; 80-2-222; 80-4-416; 81-5-111; 82-11-136; 82-11-161; 85-1-220; 85-20-402;
14 90-3-301; 90-4-215; 90-6-331; 90-7-220; 90-7-221; and 90-9-306.

15 (4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing,
16 paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued
17 pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of
18 Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as
19 determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the
20 bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec.
21 7, Ch. 567, L. 1991, the inclusion of 19-6-709 terminates upon death of last recipient eligible for
22 supplemental benefit; and pursuant to sec. 7(2), Ch. 29, L. 1995, the inclusion of 15-30-195 terminates
23 July 1, 2001.)"

24

25 NEW SECTION. Section 4. Codification instruction. [Sections 1 and 2] are intended to be codified
26 as an integral part of Title 77, chapter 1, part 1, and the provisions of Title 77, chapter 1, part 1, apply to
27 [sections 1 and 2].

28

29 NEW SECTION. Section 5. Termination. [This act] terminates October 1, 2003.

30

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0607, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act providing for the issuance of historic right-of-way deeds by the Department of Natural Resources and Conservation granting nonexclusive easements for historic uses of state lands for rights-of-way; providing for the criteria for issuance of the deeds and the terms of the deeds; requiring payment of a fee and the value of the historic right-of-way; providing a statutory appropriation.

ASSUMPTIONS:

1. The Department of Natural Resources and Conservation (DNRC) will process 100 historic right-of-way applications annually (50 private, 50 county).
2. Limited field review will be necessary.
3. The average historic right-of-way application will require 4 hours of staff review at \$12.50/hr.
4. The average right-of-way acquisition charge will be \$125 per acre.
5. The area of the average right-of-way will be 3.63 acres (30 feet wide x 1 mile long).
6. The average cost of a historic right-of-way will be \$453 (\$125 x 3.63 acres).
7. The sale of historic rights-of-way to applicants will generate \$45,300 annually (100 rights-of-way x \$453/right-of-way) to the Public School Fund [and other appropriate trust accounts (see technical note)].

FISCAL IMPACT:

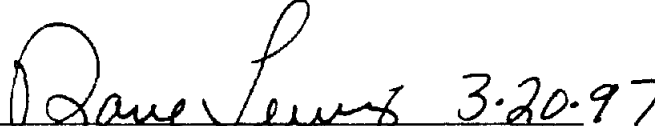
	<u>FY98</u>	<u>FY99</u>
	<u>Difference</u>	<u>Difference</u>
<u>Expenditures:</u>		
Operating Expenses	5,000	5,000
<u>Funding:</u>		
Right-of-Way Account (02)	5,000	5,000
<u>Revenues:</u>		
State Lands Historic		
Right-of-Way Account (02)	5,000	5,000
Public School Trust Accounts (09)	45,300	45,300
(see technical notes)		
<u>Net Impact:</u>		
Public School Trust Accounts	45,300	45,300

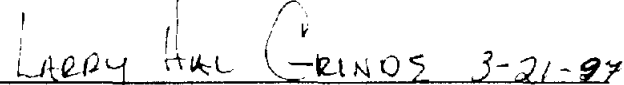
EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

Filing for historic right-of-way by counties is voluntary. If counties seek historic rights-of-way, the estimated costs will be:

1. \$50 application fee x 50 applications = \$2,500 (statewide)
2. \$453 easement cost x 50 applications = \$22,650 (statewide)

(Continued)


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


 LARRY HAL GRINDE, PRIMARY SPONSOR DATE

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

1. Perfection of easements will grant legal access to private landowners resulting in improved marketability of title.
2. County governments will perfect legal easement across state land at a reduced cost.
3. The DNRC ability to manage roads across state land will improve by the establishment of responsible parties for road use and maintenance.

TECHNICAL NOTES:

The DNRC administers land designated to 10 individual trusts. Revenues derived from the land must be deposited to the credit of the respective trusts. Therefore, Section 1(4)(b) should be amended to acknowledge the appropriate deposit of revenues to the respective trusts.

DEDICATION OF REVENUE:

- a) Are there persons or entities that benefit from this dedicated revenue that do not pay? (Please explain)

No. Individuals and counties that receive historic rights-of-way pay the cost of the state special revenue fee.

- b) What special information or other advantages exist as a result of using a state special revenue fund that could not be obtained if the revenue were allocated to the general fund?

The beneficiary of the right-of-way easement pays for the state service provided.

- c) Is the source of revenue relevant to current use of the funds and adequate to fund the program/activity that is intended? Yes No (if no, explain)

- d) Does the need for this state special revenue provision still exist? Yes No (Explain)

- e) Does the dedicated revenue affect the legislature's ability to scrutinize budgets, control expenditures, or establish priorities for state spending? (Please explain)

No.

- f) Does the dedicated revenue fulfill a continuing, legislatively recognized need? (Please explain)

If the legislation passes, yes.

- g) How does the dedicated revenue provision result in accounting/auditing efficiencies or inefficiencies in your agency? (Please explain. Also, if the program/activity were general funded, could you adequately account for the program/activity?)

The dedicated revenue provision relates the revenue from the activity to the expenditures for that activity - processing right-of-way applications. If the program were general funded, this relation would not be apparent.

APPROVED BY COM ON
NATURAL RESOURCES

1 HOUSE BILL NO. 607

2 INTRODUCED BY GRINDE

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE ISSUANCE OF HISTORIC RIGHT-OF-WAY
5 DEEDS BY THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION GRANTING
6 NONEXCLUSIVE EASEMENTS FOR HISTORIC USES OF STATE LANDS FOR RIGHTS-OF-WAY; PROVIDING
7 FOR THE CRITERIA FOR ISSUANCE OF THE DEEDS AND THE TERMS OF THE DEEDS; REQUIRING
8 PAYMENT OF A FEE AND THE VALUE OF THE HISTORIC RIGHT-OF-WAY; PROVIDING A STATUTORY
9 APPROPRIATION; AMENDING SECTION 17-7-502, MCA; AND PROVIDING A TERMINATION DATE."

10
11 WHEREAS, the Department of State Lands, as the predecessor of the Department of Natural
12 Resources with respect to state land, encouraged the development of road rights-of-way across state land
13 before 1972; and

14 WHEREAS, the Department of State Lands either did not charge for these rights-of-way or charged
15 minimal fees for the rights-of-way before 1972; and

16 WHEREAS, many of the road rights-of-way granted by the Department of State Lands were granted
17 without a written easement; and

18 WHEREAS, Article X, section 11(2), of the Montana Constitution requires that the fair market value,
19 ascertained in the manner provided by law, must be charged for the disposition of an interest in state land;
20 and

21 WHEREAS, the 55th Legislature intends that the Department of Natural Resources and Conservation
22 honor the historical uses of state land for rights-of-way.

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

25
26 **NEW SECTION. Section 1. Recognition of historic right-of-way -- criteria for right-of-way deed --**
27 **conditions -- fees.** (1) A person or a county may apply to the department for a historic right-of-way deed
28 by filing an application with the department by October 1, 2001, on a form prescribed by the department.
29 An application must be accompanied by:

30 (a) an application fee of \$50;

1 (c) a notarized affidavit:

2 (i) demonstrating that the applicant or the applicant's predecessor in interest used the right-of-way
3 applied for before 1973 AND THAT THE USE HAS CONTINUED TO THE PRESENT;

4 (ii) describing the purpose for which the right-of-way was used before 1973; and

5 (iii) demonstrating that the historic right-of-way applied for is the right-of-way demonstrated in the
6 evidence provided in subsection (1)(c); and

7 (c) (i) aerial photographs taken by an agency of the United States demonstrating use of the
8 right-of-way applied for; or

9 (ii) other evidence of the use of the right-of-way applied for.

10 (2) The department shall review an application and other evidence submitted pursuant to
11 subsection (1) and shall issue a historic right-of-way deed in the name of the applicant if:

12 (a) the applicant pays the application fee provided in subsection (1)(a) and the fair market value of
13 the historic right-of-way as provided in subsection (4);

14 (b) the applicant has shown by substantial evidence the matters required in subsections (1)(b) and
15 (1)(c)(i) or (1)(c)(ii);

16 (c) the department has, if necessary, made a field inspection of the right-of-way applied for; and

17 (d) the deed is approved by the board.

18 (3) A historic right-of-way deed issued in the name of the applicant may be assigned by the
19 applicant to another person with the approval of the department. The department may not require a fee
20 for the approval of an assignment and may not withhold approval for any reason other than that the use
21 of the historic right-of-way is contrary to subsection (5).

22 (4) (a) At the time of issuing the historic right-of-way deed, the department shall collect from the
23 applicant the full market value of the acreage of the historic right-of-way based on the following
24 classifications of land:

25 (i) \$37.50 per acre for state land classified as grazing land;

26 (ii) \$275 per acre for state land classified as timber land;

27 (iii) \$100 per acre for state land classified as crop land; and

28 (iv) \$100 per acre for other land.

29 (b) Amounts collected pursuant to subsection (4)(a) must be deposited in the ~~public school fund~~
30 ~~provided for in 20-9-604~~ APPROPRIATE TRUST FUND ESTABLISHED FOR RECEIPT OF INCOME FROM THE

1 LAND OVER WHICH A HISTORIC RIGHT-OF-WAY IS GRANTED.

2 (5) If application is made in accordance with this section, a historic right-of-way deed must be
3 issued by the department, subject to the approval of the board, on the following terms:

4 ~~(a) the right-of-way is only for the purposes for which the road was used before 1973;~~

5 ~~(b)(A) the right-of-way is only for the minimum width necessary for the purposes of subsection~~
6 ~~(5)(a), AS NEGOTIATED BY THE DEPARTMENT AND THE APPLICANT; and~~

7 ~~(b)(B) the right-of-way is only for the physical condition of the road existing on the date the historic~~
8 ~~right-of-way deed is issued by the department.~~

9 (6) Issuance of a historic right-of-way deed pursuant to this section is exempt from the
10 requirements of Title 75, chapter 1, parts 1 and 2, and Title 22, chapter 3, part 4.

11 (7) The survey requirements of 77-2-102 may be waived by the department for the issuance of
12 a historic right-of-way deed if the department determines there is sufficient information available to define
13 the boundaries of the right-of-way for the purposes of recording the easement.

14 (8) The department may attach conditions to a historic right-of-way deed necessary to ensure
15 compliance with law. However, the department may not require reversion of the right-of-way to the state.

16 (9) For the purposes of this section, "historic right-of-way deed" means a document issued by the
17 department granting to the applicant a nonexclusive easement over state land.

18
19 NEW SECTION. Section 2. State lands historic right-of-way account -- statutory appropriation.

20 There is a state lands historic right-of-way account in the state special revenue fund. The application fee
21 collected by the department pursuant to [section 1(1)(a)] must be deposited in the account. Money in the
22 account is statutorily appropriated to the department, as provided in 17-7-502, for the expenses of the
23 department in administering [section 1]. Money in the account on the termination date of the account must
24 be deposited in the general fund.

25
26 **Section 3. Section 17-7-502, MCA, is amended to read:**

27 **"17-7-502. Statutory appropriations -- definition -- requisites for validity.** (1) A statutory
28 appropriation is an appropriation made by permanent law that authorizes spending by a state agency
29 without the need for a biennial legislative appropriation or budget amendment.

30 (2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply

1 with both of the following provisions:

2 (a) The law containing the statutory authority must be listed in subsection (3).

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4 statutory appropriation is made as provided in this section.

5 (3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105;
6 2-18-812; 3-5-901; 5-13-403; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-23-706;
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22 7, Ch. 567, L. 1991, the inclusion of 19-6-709 terminates upon death of last recipient eligible for
23 supplemental benefit; and pursuant to sec. 7(2), Ch. 29, L. 1995, the inclusion of 15-30-195 terminates
24 July 1, 2001.)"

25

26 **NEW SECTION. Section 4. Codification instruction.** [Sections 1 and 2] are intended to be codified
27 as an integral part of Title 77, chapter 1, part 1, and the provisions of Title 77, chapter 1, part 1, apply to
28 [sections 1 and 2].

29

30 **NEW SECTION. Section 5. Termination.** [This act] terminates October 1, 2003.

-END-

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- 27 (iii) \$100 per acre for state land classified as crop land; and
- 28 (iv) \$100 per acre for other land.
- 29 (b) Amounts collected pursuant to subsection (4)(a) must be deposited in the ~~public school fund~~
- 30 ~~provided for in 20-9-601~~ APPROPRIATE TRUST FUND ESTABLISHED FOR RECEIPT OF INCOME FROM THE

1 LAND OVER WHICH A HISTORIC RIGHT-OF-WAY IS GRANTED.

2 (5) If application is made in accordance with this section, a historic right-of-way deed must be
3 issued by the department, subject to the approval of the board, on the following terms:

4 ~~(a) the right-of-way is only for the purposes for which the road was used before 1973;~~

5 ~~(b)(A) the right-of-way is only for the minimum width necessary for the purposes of subsection~~
6 ~~(b)(a), AS NEGOTIATED BY THE DEPARTMENT AND THE APPLICANT; and~~

7 ~~(b)(B) the right-of-way is only for the physical condition of the road existing on the date the historic~~
8 right-of-way deed is issued by the department.

9 (6) Issuance of a historic right-of-way deed pursuant to this section is exempt from the
10 requirements of Title 75, chapter 1, parts 1 and 2, and Title 22, chapter 3, part 4.

11 (7) The survey requirements of 77-2-102 may be waived by the department for the issuance of
12 a historic right-of-way deed if the department determines there is sufficient information available to define
13 the boundaries of the right-of-way for the purposes of recording the easement.

14 (8) The department may attach conditions to a historic right-of-way deed necessary to ensure
15 compliance with law. However, the department may not require reversion of the right-of-way to the state.

16 (9) For the purposes of this section, "historic right-of-way deed" means a document issued by the
17 department granting to the applicant a nonexclusive easement over state land.

18
19 NEW SECTION. Section 2. State lands historic right-of-way account -- statutory appropriation.

20 There is a state lands historic right-of-way account in the state special revenue fund. The application fee
21 collected by the department pursuant to [section 1(1)(a)] must be deposited in the account. Money in the
22 account is statutorily appropriated to the department, as provided in 17-7-502, for the expenses of the
23 department in administering [section 1]. Money in the account on the termination date of the account must
24 be deposited in the general fund.

25
26 **Section 3.** Section 17-7-502, MCA, is amended to read:

27 "**17-7-502. Statutory appropriations -- definition -- requisites for validity.** (1) A statutory
28 appropriation is an appropriation made by permanent law that authorizes spending by a state agency
29 without the need for a biennial legislative appropriation or budget amendment.

30 (2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply

1 with both of the following provisions:

2 (a) The law containing the statutory authority must be listed in subsection (3).

3 (b) The law or portion of the law making a statutory appropriation must specifically state that a
4 statutory appropriation is made as provided in this section.

5 (3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105;
6 2-18-812; 3-5-901; 5-13-403; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-23-706;
7 15-30-195; 15-31-702; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411;
8 16-11-308; 17-3-106; 17-3-212; 17-5-404; 17-5-424; 17-5-804; 17-6-101; 17-6-201; 17-7-304;
9 18-11-112; 19-2-502; 19-6-709; 19-9-1007; 19-17-301; 19-18-512; 19-18-513; 19-18-606; 19-19-205;
10 19-19-305; 19-19-506; 20-8-107; 20-8-111; 20-9-361; 20-26-1503; 23-5-136; 23-5-306; 23-5-409;
11 23-5-610; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 32-1-537; 37-43-204; 37-51-501; 39-71-503;
12 39-71-907; 39-71-2321; 39-71-2504; 44-12-206; 44-13-102; 50-4-623; 50-5-232; 50-40-206; 53-6-150;
13 53-6-703; 53-24-206; 60-2-220; 67-3-205; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 76-12-123;
14 section 2; 80-2-103; 80-2-222; 80-4-416; 81-5-111; 82-11-136; 82-11-161; 85-1-220; 85-20-402;
15 90-3-301; 90-4-215; 90-6-331; 90-7-220; 90-7-221; and 90-9-306.

16 (4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing,
17 paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued
18 pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of
19 Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as
20 determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the
21 bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec.
22 7, Ch. 567, L. 1991, the inclusion of 19-6-709 terminates upon death of last recipient eligible for
23 supplemental benefit; and pursuant to sec. 7(2), Ch. 29, L. 1995, the inclusion of 15-30-195 terminates
24 July 1, 2001.)"

25

26 **NEW SECTION. Section 4. Codification instruction.** [Sections 1 and 2] are intended to be codified
27 as an integral part of Title 77, chapter 1, part 1, and the provisions of Title 77, chapter 1, part 1, apply to
28 [sections 1 and 2].

29

30 **NEW SECTION. Section 5. Termination.** [This act] terminates October 1, 2003.

-END-

1 HOUSE BILL NO. 607
2 INTRODUCED BY GRINDE

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE ISSUANCE OF HISTORIC RIGHT-OF-WAY
5 DEEDS BY THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION GRANTING
6 NONEXCLUSIVE EASEMENTS FOR HISTORIC USES OF STATE LANDS FOR RIGHTS-OF-WAY; PROVIDING
7 FOR THE CRITERIA FOR ISSUANCE OF THE DEEDS AND THE TERMS OF THE DEEDS; REQUIRING
8 PAYMENT OF A FEE AND THE VALUE OF THE HISTORIC RIGHT-OF-WAY; PROVIDING A STATUTORY
9 APPROPRIATION; AMENDING SECTION 17-7-502, MCA; AND PROVIDING A TERMINATION DATE."

10
11 WHEREAS, the Department of State Lands, as the predecessor of the Department of Natural
12 Resources with respect to state land, encouraged the development of road rights-of-way across state land
13 before 1972; and

14 WHEREAS, the Department of State Lands either did not charge for these rights-of-way or charged
15 minimal fees for the rights-of-way before 1972; and

16 WHEREAS, many of the road rights-of-way granted by the Department of State Lands were granted
17 without a written easement; and

18 WHEREAS, Article X, section 11(2), of the Montana Constitution requires that the fair market value,
19 ascertained in the manner provided by law, must be charged for the disposition of an interest in state land;
20 and

21 WHEREAS, the 55th Legislature intends that the Department of Natural Resources and Conservation
22 honor the historical uses of state land for rights-of-way.

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

25
26 NEW SECTION. **Section 1. Recognition of historic right-of-way -- criteria for right-of-way deed --**
27 **conditions -- fees.** (1) A person or a county may apply to the department for a historic right-of-way deed
28 TO PROVIDE ACCESS TO THE APPLICANT'S PRIVATE PROPERTY OR TO PROVIDE CONTINUATION OF
29 A COUNTY ROAD by filing an application with the department by October 1, 2001, on a form prescribed
30 by the department. An application must be accompanied by:

- 1 (a) an application fee of \$50;
- 2 (b) a notarized affidavit:
- 3 (i) demonstrating that the applicant or the applicant's predecessor in interest used the right-of-way
- 4 applied for before 1973 AND THAT THE USE HAS CONTINUED TO THE PRESENT;
- 5 (ii) describing the purpose for which the right-of-way was used before 1973; and
- 6 (iii) demonstrating that the historic right-of-way applied for is the right-of-way demonstrated in the
- 7 evidence provided in subsection (1)(c); and
- 8 (c) (i) aerial photographs taken by an agency of the United States demonstrating use of the
- 9 right-of-way applied for; or
- 10 (ii) other evidence of the use of the right-of-way applied for.
- 11 (2) The department shall review an application and other evidence submitted pursuant to
- 12 subsection (1) and shall issue a historic right-of-way deed in the name of the applicant if:
- 13 (a) the applicant pays the application fee provided in subsection (1)(a) and the fair market value of
- 14 the historic right-of-way as provided in subsection (4);
- 15 (b) the applicant has shown by substantial evidence the matters required in subsections (1)(b) and
- 16 (1)(c)(i) or (1)(c)(ii);
- 17 (c) the department has, if necessary, made a field inspection of the right-of-way applied for; and
- 18 (d) the deed is approved by the board.
- 19 (3) A historic right-of-way deed issued in the name of the applicant MUST CONTAIN THE
- 20 DESCRIPTION OF THE PROPERTY OF THE APPLICANT TO WHICH IT IS APPURTENANT AS PROVIDED
- 21 IN THE APPLICATION, AND THE RIGHT-OF-WAY MUST THEREAFTER BE CONSIDERED APPURTENANT
- 22 TO THAT DOMINANT ESTATE. A DEED may be assigned by the applicant to ~~another person~~ THE
- 23 APPLICANT'S SUCCESSOR IN INTEREST with the approval of the department. The department may not
- 24 require a fee for the approval of an assignment and may not withhold approval for any reason other than
- 25 that the use of the historic right-of-way is contrary to subsection (5).
- 26 (4) (a) At the time of issuing the historic right-of-way deed, the department shall collect from the
- 27 applicant the full market value of the acreage of the historic right-of-way based on the following
- 28 classifications of land:
- 29 (i) \$37.50 per acre for state land classified as grazing land;
- 30 (ii) \$275 per acre for state land classified as timber land;

1 (iii) \$100 per acre for state land classified as crop land; and

2 (iv) \$100 per acre for other land.

3 (b) Amounts collected pursuant to subsection (4)(a) must be deposited in the ~~public school fund~~
 4 ~~provided for in 20-9-604~~ APPROPRIATE TRUST FUND ESTABLISHED FOR RECEIPT OF INCOME FROM THE
 5 LAND OVER WHICH A HISTORIC RIGHT-OF-WAY IS GRANTED.

6 (5) If application is made in accordance with this section, a historic right-of-way deed must be
 7 issued by the department, subject to the approval of the board, on the following terms:

8 ~~(a) the right-of-way is only for the purposes for which the road was used before 1973;~~

9 ~~(b)(A)~~ (b)(A) the right-of-way is only for the minimum width necessary ~~for the purposes of subsection~~
 10 ~~(5)(a)~~ AS NEGOTIATED BY THE DEPARTMENT AND THE APPLICANT; and

11 ~~(c)(B)~~ (c)(B) the right-of-way is only for the physical condition of the road existing on the date the historic
 12 right-of-way deed is issued by the department.

13 (6) Issuance of a historic right-of-way deed pursuant to this section is exempt from the
 14 requirements of Title 75, chapter 1, parts 1 and 2, and Title 22, chapter 3, part 4.

15 (7) The survey requirements of 77-2-102 may be waived by the department for the issuance of
 16 a historic right-of-way deed if the department determines there is sufficient information available to define
 17 the boundaries of the right-of-way for the purposes of recording the easement.

18 (8) The department may attach conditions to a historic right-of-way deed necessary to ensure
 19 compliance with ~~law~~ THIS CHAPTER. However, the department may not require reversion of the
 20 right-of-way to the state.

21 (9) For the purposes of this section, "historic right-of-way deed" means a document issued by the
 22 department granting to the applicant a nonexclusive easement over state land.

23

24 NEW SECTION. Section 2. State lands historic right-of-way account -- statutory appropriation.

25 There is a state lands historic right-of-way account in the state special revenue fund. The application fee
 26 collected by the department pursuant to [section 1(1)(a)] must be deposited in the account. Money in the
 27 account is statutorily appropriated to the department, as provided in 17-7-502, for the expenses of the
 28 department in administering [section 1]. Money in the account on the termination date of the account must
 29 be deposited in the general fund.

30

1 **Section 3.** Section 17-7-502, MCA, is amended to read:

2 **"17-7-502. Statutory appropriations -- definition -- requisites for validity.** (1) A statutory
3 appropriation is an appropriation made by permanent law that authorizes spending by a state agency
4 without the need for a biennial legislative appropriation or budget amendment.

5 (2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply
6 with both of the following provisions:

7 (a) The law containing the statutory authority must be listed in subsection (3).

8 (b) The law or portion of the law making a statutory appropriation must specifically state that a
9 statutory appropriation is made as provided in this section.

10 (3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105;
11 2-18-812; 3-5-901; 5-13-403; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-23-706;
12 15-30-195; 15-31-702; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411;
13 16-11-308; 17-3-106; 17-3-212; 17-5-404; 17-5-424; 17-5-804; 17-6-101; 17-6-201; 17-7-304;
14 18-11-112; 19-2-502; 19-6-709; 19-9-1007; 19-17-301; 19-18-512; 19-18-513; 19-18-606; 19-19-205;
15 19-19-305; 19-19-506; 20-8-107; 20-8-111; 20-9-361; 20-26-1503; 23-5-136; 23-5-306; 23-5-409;
16 23-5-610; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 32-1-537; 37-43-204; 37-51-501; 39-71-503;
17 39-71-907; 39-71-2321; 39-71-2504; 44-12-206; 44-13-102; 50-4-623; 50-5-232; 50-40-206; 53-6-150;
18 53-6-703; 53-24-206; 60-2-220; 67-3-205; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 76-12-123;
19 [section 2]; 80-2-103; 80-2-222; 80-4-416; 81-5-111; 82-11-136; 82-11-161; 85-1-220; 85-20-402;
20 90-3-301; 90-4-215; 90-6-331; 90-7-220; 90-7-221; and 90-9-306.

21 (4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing,
22 paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued
23 pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of
24 Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as
25 determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the
26 bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec.
27 7, Ch. 567, L. 1991, the inclusion of 19-6-709 terminates upon death of last recipient eligible for
28 supplemental benefit; and pursuant to sec. 7(2), Ch. 29, L. 1995, the inclusion of 15-30-195 terminates
29 July 1, 2001.)"

30

1 **NEW SECTION. Section 4. Codification instruction.** [Sections 1 and 2] are intended to be codified
2 as an integral part of Title 77, chapter 1, part 1, and the provisions of Title 77, chapter 1, part 1, apply to
3 [sections 1 and 2].

4

5 **NEW SECTION. Section 5. Termination.** [This act] terminates October 1, 2003.

6

-END-

HOUSE BILL NO. 607

INTRODUCED BY GRINDE

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE ISSUANCE OF HISTORIC RIGHT-OF-WAY DEEDS BY THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION GRANTING NONEXCLUSIVE EASEMENTS FOR HISTORIC USES OF STATE LANDS FOR RIGHTS-OF-WAY; PROVIDING FOR THE CRITERIA FOR ISSUANCE OF THE DEEDS AND THE TERMS OF THE DEEDS; REQUIRING PAYMENT OF A FEE AND THE VALUE OF THE HISTORIC RIGHT-OF-WAY; PROVIDING A STATUTORY APPROPRIATION; AMENDING SECTION 17-7-502, MCA; AND PROVIDING A TERMINATION DATE."

WHEREAS, the Department of State Lands, as the predecessor of the Department of Natural Resources with respect to state land, encouraged the development of road rights-of-way across state land before 1972; and

WHEREAS, the Department of State Lands either did not charge for these rights-of-way or charged minimal fees for the rights-of-way before 1972; and

WHEREAS, many of the road rights-of-way granted by the Department of State Lands were granted without a written easement; and

WHEREAS, Article X, section 11(2), of the Montana Constitution requires that the fair market value, ascertained in the manner provided by law, must be charged for the disposition of an interest in state land; and

WHEREAS, the 55th Legislature intends that the Department of Natural Resources and Conservation honor the historical uses of state land for rights-of-way.

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

NEW SECTION. Section 1. Recognition of historic right-of-way -- criteria for right-of-way deed -- conditions -- fees. (1) A person or a county may apply to the department for a historic right-of-way deed TO PROVIDE ACCESS TO THE APPLICANT'S PRIVATE PROPERTY OR TO PROVIDE CONTINUATION OF A COUNTY ROAD by filing an application with the department by October 1, 2001, on a form prescribed by the department. An application must be accompanied by:

1 (a) an application fee of \$50;

2 (b) a notarized affidavit:

3 (i) demonstrating that the applicant or the applicant's predecessor in interest used the right-of-way

4 applied for before 1973 AND THAT THE USE HAS CONTINUED TO THE PRESENT;

5 (ii) describing the purpose for which the right-of-way was used before 1973; and

6 (iii) demonstrating that the historic right-of-way applied for is the right-of-way demonstrated in the
7 evidence provided in subsection (1)(c); and

8 (c) (i) aerial photographs taken by an agency of the United States demonstrating use of the
9 right-of-way applied for; or

10 (ii) other evidence of the use of the right-of-way applied for.

11 (2) The department shall review an application and other evidence submitted pursuant to
12 subsection (1) and shall issue a historic right-of-way deed in the name of the applicant if:

13 (a) the applicant pays the application fee provided in subsection (1)(a) and the fair market value of
14 the historic right-of-way as provided in subsection (4);

15 (b) the applicant has shown by substantial evidence the matters required in subsections (1)(b) and
16 (1)(c)(i) or (1)(c)(ii);

17 (c) the department has, if necessary, made a field inspection of the right-of-way applied for; and

18 (d) the deed is approved by the board.

19 (3) A historic right-of-way deed issued in the name of the applicant MUST CONTAIN THE
20 DESCRIPTION OF THE PROPERTY OF THE APPLICANT TO WHICH IT IS APPURTENANT AS PROVIDED
21 IN THE APPLICATION, AND THE RIGHT-OF-WAY MUST THEREAFTER BE CONSIDERED APPURTENANT
22 TO THAT DOMINANT ESTATE. A DEED may be assigned by the applicant to ~~another person~~ THE
23 APPLICANT'S SUCCESSOR IN INTEREST with the approval of the department. The department may not
24 require a fee for the approval of an assignment and may not withhold approval for any reason other than
25 that the use of the historic right-of-way is contrary to subsection (5).

26 (4) (a) At the time of issuing the historic right-of-way deed, the department shall collect from the
27 applicant the full market value of the acreage of the historic right-of-way based on the following
28 classifications of land:

29 (i) \$37.50 per acre for state land classified as grazing land;

30 (ii) \$275 per acre for state land classified as timber land;

1 (iii) \$100 per acre for state land classified as crop land; and

2 (iv) \$100 per acre for other land.

3 (b) Amounts collected pursuant to subsection (4)(a) must be deposited in the ~~public school fund~~
 4 ~~provided for in 20-9-601~~ APPROPRIATE TRUST FUND ESTABLISHED FOR RECEIPT OF INCOME FROM THE
 5 LAND OVER WHICH A HISTORIC RIGHT-OF-WAY IS GRANTED.

6 (5) If application is made in accordance with this section, a historic right-of-way deed must be
 7 issued by the department, subject to the approval of the board, on the following terms:

8 ~~(a) the right-of-way is only for the purposes for which the road was used before 1973;~~

9 ~~(b)(A) the right-of-way is only for the minimum width necessary for the purposes of subsection~~
 10 ~~(5)(a),~~ AS NEGOTIATED BY THE DEPARTMENT AND THE APPLICANT; and

11 ~~(b)(B) the right-of-way is only for the physical condition of the road existing on the date the historic~~
 12 ~~right-of-way deed is issued by the department.~~

13 (6) Issuance of a historic right-of-way deed pursuant to this section is exempt from the
 14 requirements of Title 75, chapter 1, parts 1 and 2, and Title 22, chapter 3, part 4.

15 (7) The survey requirements of 77-2-102 may be waived by the department for the issuance of
 16 a historic right-of-way deed if the department determines there is sufficient information available to define
 17 the boundaries of the right-of-way for the purposes of recording the easement.

18 (8) The department may attach conditions to a historic right-of-way deed necessary to ensure
 19 compliance with ~~law~~ THIS CHAPTER. However, the department may not require reversion of the
 20 right-of-way to the state.

21 (9) For the purposes of this section, "historic right-of-way deed" means a document issued by the
 22 department granting to the applicant a nonexclusive easement over state land.

23

24 NEW SECTION. Section 2. State lands historic right-of-way account -- statutory appropriation.

25 There is a state lands historic right-of-way account in the state special revenue fund. The application fee
 26 collected by the department pursuant to [section 1(1)(a)] must be deposited in the account. Money in the
 27 account is statutorily appropriated to the department, as provided in 17-7-502, for the expenses of the
 28 department in administering [section 1]. Money in the account on the termination date of the account must
 29 be deposited in the general fund.

30

1 **Section 3.** Section 17-7-502, MCA, is amended to read:

2 **"17-7-502. Statutory appropriations -- definition -- requisites for validity.** (1) A statutory
3 appropriation is an appropriation made by permanent law that authorizes spending by a state agency
4 without the need for a biennial legislative appropriation or budget amendment.

5 (2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply
6 with both of the following provisions:

7 (a) The law containing the statutory authority must be listed in subsection (3).

8 (b) The law or portion of the law making a statutory appropriation must specifically state that a
9 statutory appropriation is made as provided in this section.

10 (3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105;
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12 15-30-195; 15-31-702; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411;
13 16-11-308; 17-3-106; 17-3-212; 17-5-404; 17-5-424; 17-5-804; 17-6-101; 17-6-201; 17-7-304;
14 18-11-112; 19-2-502; 19-6-709; 19-9-1007; 19-17-301; 19-18-512; 19-18-513; 19-18-606; 19-19-205;
15 19-19-305; 19-19-506; 20-8-107; 20-8-111; 20-9-361; 20-26-1503; 23-5-136; 23-5-306; 23-5-409;
16 23-5-610; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 32-1-537; 37-43-204; 37-51-501; 39-71-503;
17 39-71-907; 39-71-2321; 39-71-2504; 44-12-206; 44-13-102; 50-4-623; 50-5-232; 50-40-206; 53-6-150;
18 53-6-703; 53-24-206; 60-2-220; 67-3-205; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 76-12-123;
19 [section 2]; 80-2-103; 80-2-222; 80-4-416; 81-5-111; 82-11-136; 82-11-161; 85-1-220; 85-20-402;
20 90-3-301; 90-4-215; 90-6-331; 90-7-220; 90-7-221; and 90-9-306.

21 (4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing,
22 paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued
23 pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of
24 Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as
25 determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the
26 bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec.
27 7, Ch. 567, L. 1991, the inclusion of 19-6-709 terminates upon death of last recipient eligible for
28 supplemental benefit; and pursuant to sec. 7(2), Ch. 29, L. 1995, the inclusion of 15-30-195 terminates
29 July 1, 2001.)"

30

1 **NEW SECTION.** **Section 4. Codification instruction.** [Sections 1 and 2] are intended to be codified
2 as an integral part of Title 77, chapter 1, part 1, and the provisions of Title 77, chapter 1, part 1, apply to
3 [sections 1 and 2].

4

5 **NEW SECTION.** **Section 5. Termination.** [This act] terminates October 1, 2003.

6

-END-