

1 INTRODUCED BY Husted Senate BILL NO. 221

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4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING COUNTY ROAD LAWS; ALLOWING  
5 COUNTY COMMISSIONERS TO CREATE A RURAL IMPROVEMENT DISTRICT FOR BUILDING,  
6 MAINTAINING, OR REPAIRING COUNTY ROADS; CLARIFYING THE DUTIES OF COUNTY COMMISSIONERS  
7 CONCERNING ABANDONMENT OF COUNTY ROADS; REVISING CERTAIN DEFINITIONS; DEFINING "CITY  
8 STREET", "COUNTY ROAD", "PRIVATE ROAD", "PUBLIC HIGHWAY", AND "PUBLIC ROAD"; ELIMINATING  
9 THE USE OF ROAD IMPROVEMENT DISTRICTS; AMENDING SECTIONS 7-12-2102, 7-14-2101, 7-14-2103,  
10 7-14-2112, 60-1-103, 60-1-201, 60-2-107, 61-1-201, 61-1-202, AND 61-1-205, MCA; AND REPEALING  
11 SECTIONS 7-14-2901, 7-14-2902, 7-14-2903, 7-14-2907, AND 7-14-2908, MCA."

12  
13 WHEREAS, this bill seeks to clarify the duties of County Commissioners and is not intended to make  
14 substantive changes with regard to the current status of county roads; and

15 WHEREAS, assumptions as to ownership or liabilities will remain unchanged, and no action will be  
16 required by County Commissioners with regard to county roads in existence prior to the adoption of this  
17 bill; and

18 WHEREAS, the enactment of this bill will require counties to adopt a resolution when accepting  
19 newly petitioned roads under Title 7, chapter 14, part 26, MCA; and

20 WHEREAS, current public roads that have never been legally adopted by a county may be accepted  
21 following public notice, a public hearing, and adoption of a resolution; and

22 WHEREAS, decisions to discontinue or abandon county roads for safety reasons will require public  
23 notice and a public hearing prior to the adoption of a resolution by a Board of County Commissioners to  
24 discontinue or abandon county roads; and

25 WHEREAS, the courts are often the only recourse to resolve questions as to the status, ownership,  
26 and liabilities associated with a road; and

27 WHEREAS, this bill may relieve the courts of this responsibility by clarifying and eliminating the  
28 questions.

29  
30 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

1           **Section 1.** Section 7-12-2102, MCA, is amended to read:

2           **"7-12-2102. Authorization to create rural improvement districts.** (1) Whenever the public interest  
3 or convenience may require, the board of county commissioners is ~~hereby~~ authorized ~~and empowered~~ to:

4           (a) order and create special improvement districts outside of the limits of incorporated towns and  
5 cities for the purpose of:

6           (i) building, constructing, or acquiring by purchase one or more of the improvements of the kind  
7 described in 7-12-4102, in or for the benefit of the special improvement district; or

8           (ii) providing for the construction, reconstruction, upgrade, repair, or maintenance of a proposed  
9 public road or a public road that does not meet the standards of 7-14-2111 or 7-14-2112; and

10           (b) assess the owners of parcels of land directly benefited by an improvement, a proposed public  
11 road, or a public road.

12           (2) For the purposes of this section, "land directly benefited" means land within the district that  
13 receives a direct benefit from the road for which a rural improvement district was created. A parcel of land  
14 is not directly benefited if the parcel is within the district solely because the road passes over the property  
15 to provide access to land directly benefited. A parcel of land within the district that is used solely for  
16 agricultural purposes is not considered land directly benefited.

17           ~~(2)~~(3) The board of county commissioners may order and create rural special improvement districts  
18 covering projects abutting the city limits and include properties inside the city ~~where~~ when the rural special  
19 improvement district abuts and benefits that property. Property owners within the proposed district  
20 boundaries inside the city may not be included in the rural special improvement district if 40% of those  
21 property owners protest the creation of the rural special improvement district. The property inside the city  
22 must be treated in a similar manner as to improvements, notices, and assessments as the property outside  
23 the city limits. A joint resolution of the city and county must be passed agreeing to the terms of the rural  
24 special improvement district prior to passing the resolution of intention or resolution creating the rural  
25 special improvement district. A copy of the resolution of intention and the resolution creating the rural  
26 special improvement district must be provided to the city clerk upon the passage of the respective  
27 resolutions."  
28

29           **Section 2.** Section 7-14-2101, MCA, is amended to read:

30           **"7-14-2101. General powers of county relating to roads and bridges.** (1) The board of county

1 commissioners, under ~~such~~ the limitations and restrictions ~~as that~~ are prescribed by law, may:

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

3 (ii) levy taxes ~~therefor~~ for county roads and bridges as provided by law;

4 (b) (i) in the exercise of sound discretion, jointly with other counties, lay out, maintain, control,  
5 manage, and improve county roads and bridges in adjacent counties, wholly or in ~~such~~ part as may be  
6 agreed upon between the boards of the counties concerned;

7 (ii) levy taxes ~~therefor~~ for county roads and bridges shared jointly with other counties as provided  
8 by law;

9 (c) (i) enter into agreements for adjusted annual contributions over not more than 6 years toward  
10 the cost of joint highway or bridge construction projects entered into in cooperation with other counties,  
11 the state, or the United States;

12 (ii) place ~~such~~ a joint project in the budget and levy taxes ~~therefor~~ for the joint project as provided  
13 by law.

14 (2) (a) ~~Unless the context requires otherwise, county road means any public highway opened,  
15 established, constructed, maintained, abandoned, or discontinued by a county in accordance with this  
16 chapter.~~

17 ~~(b)~~ Unless the context requires otherwise, ~~bridge~~ the term "bridge" includes rights-of-way or other  
18 interest in land, abutments, superstructures, piers, and approaches except dirt fills.

19 (b) The term "county road" has the same meaning as provided in 60-1-103."

20

21 **Section 3.** Section 7-14-2103, MCA, is amended to read:

22 **"7-14-2103. Duties of county commissioners concerning county roads.** (1) Each board of county  
23 commissioners has general supervision over the county roads within the county.

24 (2) Each board may survey, view, lay out, record, open, work, and maintain county roads ~~that are  
25 petitioned for by freeholders. Guideposts must be erected.~~

26 (3) Each board may discontinue or abandon county roads when freeholders properly petition for  
27 discontinuance or abandonment or when safety requires discontinuance or abandonment.

28 (4) An order to discontinue or abandon a county road is not valid unless preceded by public notice  
29 and a public hearing. Notice of the intent to discontinue or abandon must also be posted adjacent to the  
30 affected right-of-way."

1           **Section 4.** Section 7-14-2112, MCA, is amended to read:

2           **"7-14-2112. Width of roads.** (1) The width of all county roads, except bridges, alleys, or lanes,  
3 must be 60 feet unless a greater or smaller width is ordered by the board of county commissioners ~~on~~  
4 ~~petition of an interested person.~~

5           (2) The width of all private highways and byroads, except bridges, must be at least 20 feet.

6           (3) ~~Nothing in this~~ This section shall be construed as increasing or decreasing does not increase  
7 or decrease the width of either kind of highway or road established or used ~~as such~~ prior to December 31,  
8 1966."  
9

10          **Section 5.** Section 60-1-103, MCA, is amended to read:

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

14          (1) "Abandonment" means cessation of use of a right-of-way or an easement or cessation of  
15 activity on the right-of-way or easement with no intention to reclaim it or use it again. Abandonment is  
16 sometimes called vacation.

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

20          (3) "City street" means a public road under the jurisdiction of a city or municipality.

21          ~~(3)(4)~~ (4) "Commission" means the transportation commission provided for in 2-15-2502.

22          ~~(4)(5)~~ (5) "Condemnation" means taking by exercise of the right of eminent domain.

23          ~~(5)(6)~~ (6) "Construction" means supervising, inspecting, actual building, and all expenses incidental  
24 to the construction or reconstruction of a highway, including locating, surveying, mapping, and costs of  
25 right-of-way or other interests in land and elimination of hazards at railway grade crossings.

26          ~~(6)(7)~~ (7) "Control of access" means the condition in which the right of owners or occupants of  
27 abutting land or other persons to access, light, air, or view in connection with a highway is fully or partially  
28 controlled by public authority.

29          ~~(7)(8)~~ (8) "County road" means ~~any public highway opened, established, constructed, maintained,~~  
30 ~~abandoned, or discontinued by a county in accordance with Title 7, chapter 14~~ a public road:

- 1            (a) that was classified as a county road on [the effective date of this act]; or
- 2            (b) the jurisdiction of which, after [the effective date of this act], has been accepted by resolution
- 3 of the board of county commissioners and that is not classified as a federal-aid highway, a state highway,
- 4 or a city street.
- 5            ~~(8)~~(9) "Department" means the department of transportation provided for in Title 2, chapter 15,
- 6 part 25.
- 7            ~~(9)~~(10) "Director" means the director of transportation, ~~a position~~ provided for in 2-15-2501.
- 8            ~~(10)~~(11) "Easement" means a right acquired by public authority to use or control property for a
- 9 designated purpose.
- 10           ~~(11)~~(12) "Eminent domain" means the right of the state to take private property for public use.
- 11           ~~(12)~~(13) "Federal-aid highway" means a public highway that is a portion of any of the federal-aid
- 12 highway systems.
- 13           ~~(13)~~(14) "Federal-aid highway systems" means all of the systems named in subsections (15)
- 14 through (17) as part of the systems and their urban extensions.
- 15           ~~(14)~~(15) "Federal-aid interstate system" means that system of public highways selected by the
- 16 commission in cooperation with adjoining states, subject to the approval of the secretary of commerce, as
- 17 provided in Title 23, U.S.C.
- 18           ~~(15)~~(16) "Federal-aid primary system" means that system of connected public highways designated
- 19 by the commission, subject to the approval of the secretary of commerce, as provided in Title 23, U.S.C.
- 20           ~~(16)~~(17) "Federal-aid secondary system" means that system of public highways not in the
- 21 federal-aid primary or interstate systems selected by the commission in cooperation with the boards of
- 22 county commissioners, subject to the approval of the secretary of commerce, as provided in Title 23,
- 23 U.S.C.
- 24           ~~(17)~~(18) "Fee simple" means an absolute estate or ownership in property, including unlimited power
- 25 of alienation.
- 26           ~~(18)~~(19) "Highway" includes rights-of-way or other interests in land, embankments, retaining walls,
- 27 culverts, sluices, drainage structures, bridges, railroad-highway crossings, tunnels, signs, guardrails, and
- 28 protective structures.
- 29           ~~(19)~~(20) "Highway", "road", and "street", whether the terms appear together or separately or are
- 30 preceded by the adjective "public", are general terms denoting a public way for purposes of vehicular travel

1 and include;

2 (a) the entire area within the right-of-way; and

3 (b) the entire width between the boundary lines of a publicly maintained way when a part of the  
4 publicly maintained way is open to public use for the purpose of vehicular travel.

5 ~~(20)~~(21) "Highway authority" means the entity at any level of government authorized by law to  
6 construct and maintain highways.

7 ~~(24)~~(22) "Maintenance" means the preservation of the entire highway, including surface, shoulders,  
8 roadsides, structures, and traffic-control devices that are necessary for the safe and efficient use of the  
9 highway.

10 (23) "Private road" means a way or place in private ownership that is:

11 (a) used for vehicular travel by the owner and by those who have expressed or implied permission  
12 from the owner; and

13 (b) not used by other persons.

14 ~~(22)~~(24) "Public ~~highways~~ highway" means ~~all streets, roads, highways, bridges, and related~~  
15 ~~structures~~ a public road, including a highway as defined in subsections (19) and (20), that has been:

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

18 (b) dedicated to public use;

19 (c) acquired by eminent domain; or

20 (d) acquired by adverse use by the public, with jurisdiction having been assumed by the state or  
21 ~~any~~ a political subdivision of the state.

22 (25) "Public road" means a road, highway, bridge, avenue, city street, alley, easement,  
23 right-of-way, place, or way that is:

24 (a) adapted and fitted for public vehicular travel and that is not a private road;

25 (b) built and maintained with appropriated funds of the United States, the state, or a political  
26 subdivision of the state;

27 (c) dedicated to public use;

28 (d) acquired by eminent domain; or

29 (e) acquired by adverse use by the public, with jurisdiction having been assumed by the state or  
30 a political subdivision of the state.

1           ~~(23)~~(26) "Right-of-way" is a general term denoting land, property, or any interest in land or  
2 property, usually in a strip, acquired for or devoted to highway purposes.

3           ~~(24)~~(27) "State highway" means any public highway planned, laid out, altered, constructed,  
4 reconstructed, improved, repaired, or maintained, or by the department or with appropriated funds of the  
5 state. The term includes a public highway abandoned by the department."

6

7           **Section 6.** Section 60-1-201, MCA, is amended to read:

8           **"60-1-201. Classification -- highways and roads.** (1) Public ~~highways~~ roads of this state are  
9 classified as follows:

- 10           (a) federal-aid highways;  
11           (b) state highways;  
12           (c) county roads;  
13           (d) city streets.

14           (2) All highways ~~which~~ that are not designated, selected, or established by the commission or  
15 constructed or maintained by the department or with appropriated funds of the state are county roads or  
16 city streets.

17           (3) ~~County roads are those opened, established, constructed, maintained, changed, abandoned,~~  
18 ~~or discontinued by a county in accordance with Title 7, chapter 14~~ All public roads not under the  
19 jurisdiction of the United States, the state, or a municipality are under the jurisdiction of the county if:

- 20           (a) on [the effective date of this act], the road was a county road; or  
21           (b) after [the effective date of this act], jurisdiction has been accepted by resolution of the board  
22 of county commissioners.

23           ~~(4) City streets are those public highways under the jurisdiction of municipal officials."~~

24

25           **Section 7.** Section 60-2-107, MCA, is amended to read:

26           **"60-2-107. Abandonment of highways.** (1) The commission may abandon highways on the  
27 federal-aid systems and state highways.

28           (2) Prior to abandoning highways on the federal-aid systems and state highways, the commission  
29 shall publish notices three times in all local newspapers that serve the communities potentially affected by  
30 the abandonment. The notices must include:

1 (a) the exact location of the abandonment;

2 (b) when the abandonment will take effect; and

3 (c) an invitation for public comment.

4 (3) After the notices have been published, the commission shall hold a public hearing to address  
5 and respond to the public comment."

6  
7 **Section 8.** Section 61-1-201, MCA, is amended to read:

8 **"61-1-201. Highway.** ~~"Highway" means the entire width between the boundary lines of every~~  
9 ~~publicly maintained way when any part thereof is open to the use of the public for purposes of vehicular~~  
10 ~~travel, except that for the purpose of chapter 8 the term also includes ways which have been or shall be~~  
11 ~~dedicated to public use~~ has the same meaning as provided in 60-1-103."

12  
13 **Section 9.** Section 61-1-202, MCA, is amended to read:

14 **"61-1-202. Public highway.** ~~"Public highway" means "highway" as defined in 61-1-201~~ has the  
15 same meaning as provided in 60-1-103."

16  
17 **Section 10.** Section 61-1-205, MCA, is amended to read:

18 **"61-1-205. Private road or driveway.** ~~"Private road" or "driveway" means every way or place in~~  
19 ~~private ownership and used for vehicular travel by the owner and those having express or implied~~  
20 ~~permission from the owner, but not by other persons~~ a private road as defined in 60-1-103."

21  
22 **NEW SECTION. Section 11. Repealer.** Sections 7-14-2901, 7-14-2902, 7-14-2903, 7-14-2907,  
23 and 7-14-2908, MCA, are repealed.

24 -END-



STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0221, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

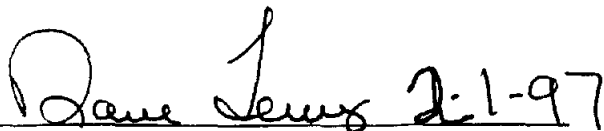
A bill for an act generally revising county road laws; allowing county commissioners to create a rural improvement district for building, maintaining, or repairing county roads; clarifying the duties of county commissioners concerning abandonment of county roads; revising certain definitions; defining "city street", "county road", "private road", "public highway", and "public road"; eliminating the use of road improvement districts.


ASSUMPTIONS:

1. The Montana Department of Transportation (MDT) is unable to determine its responsibility for signing and maintenance requirements imposed by the proposed legislation. MDT is not be able to estimate the potential increased cost.
2. Average installed cost per sign would be \$450 per sign.
3. The MDT is not able to estimate the number of signs to be installed.

FISCAL IMPACT:

Unable to determine.

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

  
JOHN HERTEL, PRIMARY SPONSOR      DATE  
Fiscal Note for SB0221, as introduced

**SB 221**