SENATE BILL NO. 42

INTRODUCED BY S. HINEBAUCH

BY REQUEST OF THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING APPLICATIONS FOR EASEMENTS ON STATE TRUST LANDS; MODIFYING APPLICATION REQUIREMENTS FOR EXISTING FACILITIES; EXEMPTING THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FROM ENVIRONMENTAL REVIEW AND HISTORIC PRESERVATION REVIEW FOR CERTAIN EXISTING EASEMENT PURPOSES; AMENDING SECTIONS 77-2-101, 77-2-102, 77-2-103, AND 77-2-107, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 77-2-101, MCA, is amended to read:

"**77-2-101. Easements for specific uses.** (1) Upon proper application as provided in ~~77-2-102~~ 77-2-102(1) through (5), the board may grant easements on state lands for the following purposes:

(a) schoolhouse sites and grounds;

(b) public parks;

(c) community buildings;

(d) cemeteries;

(e) conservation purposes:

(i) to the department of fish, wildlife, and parks for parcels that are surrounded by or adjacent to land owned by the department of fish, wildlife, and parks as of January 1, 2001;

(ii) to a nonprofit corporation for parcels that are surrounded by or adjacent to land owned by that same nonprofit corporation as of January 1, 2001; and

(iii) to a nonprofit corporation for the Owen Sowerwine natural area located within section 16, township 28 north, range 21 west, in Flathead County; and

(f) for other public uses.

(2) The board may grant easements on state lands for the following purposes:

(a) right-of-way across or upon any portion of state lands for any public highway or street, any ~~ditch~~ CANAL, DITCH, FLUME, AQUEDUCT, PIPE, reservoir, railroad, private road, ~~or telegraph or~~ telephone line, WATER CONVEYANCE FOR IRRIGATION PURPOSES, or any other public use as defined in 70-30-102;

(b) any private building or private sewage system that encroaches on state lands; ~~or~~

(c) pursuant to 77-1-1112 or 77-1-1115, the use of the bed of a navigable river ~~pursuant to 77-1-1112 or 77-1-1115~~; or

(d) pursuant to 77-2-102(6), EXISTING private access roads, county roads, and utility facilities ~~constructed on state lands prior to October 1, 1997~~."

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

"**77-2-102. Application for easement -- survey exemptions.** (1) Application for an easement on state land must be made to the department. Except as provided in subsections (3) through (5), 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 must be accompanied by two exact copies of the official plat of the proposed highway, street, or other easement, verified by the affidavit of the engineer or surveyor who prepared the application. These plats 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 considered necessary by the department, these plats must show all these facts for smaller subdivisions as the circumstances may render desirable for the state.

(3) The application must include the affidavit of a licensed engineer or professional surveyor stating that the methodology used is known to be accurate to within 5 meters. The survey must be tied to an established section corner or 1/4 corner monument. The department may request greater accuracy if the department determines that the information is needed to adequately describe the easement.

(4) If the purpose of the right-of-way applied for is the transmission or distribution of electrical energy or the construction and operation of pipelines or telephone, telegraph, or radio systems, the plats and

measurements need not be given. 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 that refers to an established monument within a filed corner recordation form, certificate of survey, or subdivision plat. The accuracy requirements of subsection (3) must be met. The entire right-of-way may be applied for in one application with only one plat of the entire right-of-way required. An archaeological survey is not required if, in the opinion of the department, heritage property would not be impacted.

(5) (a) If the purpose of the right-of-way applied for is a regional water authority provided for in Title 75, chapter 6, part 3, the plats and measurements need not be given. 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.

(b) The application provided for in subsection (5)(a) must be accompanied by electronic global positioning system data in the Montana coordinate system, the easement location depicted on a topographical map to a scale of 1:24,000, easement coordinates, and the quantity of land taken in each quarter-quarter section.

(6) (a) The department may waive survey requirements for rights-of-way or easements provided for in 77-2-101(2)(d) when there is sufficient information to define the boundaries of the right-of-way or easement to record the right-of-way or easement.

(b) An application for a private access road to private property must include:

(i) a description of appurtenant private lands historically accessed by the access road;

(ii) aerial photographs or images by an agency of the United States government ~~dated prior to October 1, 1997,~~ that depict the access road; and

(iii) easement location depicted on a topographical map to a scale of 1:24,000.

(c) An application for an existing county road must include:

(i) documentation establishing the road pursuant to Title 7, chapter 14, part 26;

(ii) aerial photographs or images by an agency of the United States government ~~dated prior to October 1, 1997,~~ that depict the county road; and

(iii) easement location depicted on a topographical map to a scale of 1:24,000.

(d) An application for an existing public utility infrastructure must include:

(i) evidence of installation ~~prior to October 1, 1997,~~ through submission of plant staking sheets,

photographic evidence of dated infrastructure tags, or similar evidence; and

(ii) easement location depicted on a topographical map to a scale of 1:24,000."

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

"**77-2-103. Processing of application.** (1) Upon the filing of an application and plats, the department shall, whenever it considers it necessary, examine the proposed right-of-way and report its findings to the board. The board shall consider the application and report and take any action it considers proper, including the fixing of compensation and damages to be paid to the state. The compensation must be the full market value of the estate or interest disposed of through the granting of the right-of-way easement, and the damages must be the actual damages resulting to the remaining land as nearly as they can be ascertained. If the right-of-way is granted according to the plat, the plat is the official plat of the right-of-way and must be retained in the office of the department.

(2) If the state land over or through which a right-of-way is applied for is under certificate of purchase or sales contract, the purchaser or the purchaser's assignee must be made a party to the proceedings and the purchaser's or assignee's consent in writing to the laying out and establishment of the proposed highway, street, or other easement and to the amount of compensation and damages to be paid must be filed with the board before the right-of-way is granted. The board is the judge of how much compensation and damages must be paid to the state and applied on the certificate of purchase or sales contract and of how much, if any, must be paid to the purchaser, as the circumstances in each individual case warrant. This subsection applies to all grants of rights-of-way on state lands.

(3) If the purpose of the right-of-way applied for is a regional water authority provided for in Title 75, chapter 6, part 3, the provisions of 77-2-351 related to public entities apply.

(4) A right-of-way easement issued pursuant to 77-2-102(6) is exempt from the requirements of Title 22, chapter 3, part 4, and Title 75, chapter 1, parts 1 and 2.

(5) Damages for a lessee's improvements, crops, or leasehold interests are not allowed for right-of-way easement applications made pursuant to 77-2-102(6)."

Section 4. Section 77-2-107, MCA, is amended to read:

"**77-2-107. Involvement of lessee when land subject to prior lease.** (1) ~~Whenever~~ Except as provided in 77-2-103(5), whenever any kind of right-of-way easement has been granted under this part and the state land in which it is granted is under lease, the party receiving the grant shall give timely notice to the lessee and shall make just settlement with the lessee for any damages resulting to the lessee's improvements, crops, or leasehold interests.

(2) After the settlement is made, the lessee shall open or move any fences that may obstruct the right-of-way over the lands under lease and otherwise cooperate in the opening of the right-of-way. Proof must be filed with the board that the settlement has been made before the deed to the easement is issued.

(3) (a) If the lessee and the party receiving the right-of-way easement are unable to agree on the value of the damages resulting from the easement, the value of the damages must be ascertained and fixed by three arbitrators, one of whom must be appointed by the lessee, one by the party receiving the easement, and the third by the two appointed arbitrators.

(b) If a party refuses to appoint an arbitrator within 15 days of being requested to do so by the director of the department, the director may appoint an arbitrator for that party. An arbitrator appointed by the director has the same duties and powers as if appointed by one of the parties.

(c) The arbitrators may fix reasonable compensation for their services. The compensation must be paid in equal shares by the owner of the easement and the lessee.

(d) The value of the damages as ascertained and fixed by the arbitrators is binding on both parties; however, if either party is dissatisfied with the valuation, the party may, within 10 days, appeal from their decision to the department. The department shall examine the easements, and, except as provided in subsection (3)(e), its decision on the appeal is final. The department shall collect the actual cost of the reexamination from the owner of the easement and the lessee in the proportion that, in its judgment, justice may demand.

(e) If either party is dissatisfied with the valuation fixed by the department, the party may within 30 days after receipt of the department's decision petition the district court in the county in which the majority of the state land is located for judicial review of the decision."

NEW SECTION. **Section 5. Effective date.** [This act] is effective on passage and approval.

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