

HOUSE BILL NO. 299

INTRODUCED BY E. TILLEMAN

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING PURPOSES FOR WHICH PUBLIC USE EASEMENTS MAY BE GRANTED ON STATE LAND; AMENDING SECTIONS 77-2-101, 77-2-102, AND 77-2-105, 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(1) through (5), the board may grant easements on state lands for the following purposes:

~~(1)~~ public uses described in 70-30-102;

~~(a)(2)~~ schoolhouse sites and grounds;

~~(b)(3)~~ public parks;

~~(4)~~ public trails;

~~(e)(5)~~ community buildings;

~~(d)(6)~~ cemeteries;

~~(e)(7)~~ conservation purposes:

~~(i)(a)~~ 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; and

~~(ii)(b)~~ 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)(8)~~ right-of-way across or ~~upon~~ on any portion of state lands for any public highway or street, or for

1 any canal, ditch, flume, aqueduct, pipe, reservoir, railroad, private road, telephone line, or water conveyance for
2 irrigation purposes, ~~or any other public use as defined in 70-30-102;~~
3 ~~(b)(9)~~ any private building or private sewage system that encroaches on state lands;
4 ~~(e)(10)~~ pursuant to 77-1-1112 or 77-1-1115, the use of the bed of a navigable river; or
5 ~~(d)(11)~~ pursuant to 77-2-102(6), private access roads, county roads, and utility facilities constructed on
6 state lands prior to October 1, 1997."
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8 **Section 2.** Section 77-2-102, MCA, is amended to read:

9 **"77-2-102. Application for easement -- survey exemptions.** (1) Application for an easement on
10 state land must be made to the department. Except as provided in subsections (3) through (5), the application
11 must describe the proposed right-of-way according to survey, show the necessity for the proposed highway or
12 street or other easement, and give any additional information that the department requires.

13 (2) This application must be accompanied by two exact copies of the official plat of the proposed
14 highway, street, or other easement, verified by the affidavit of the engineer or surveyor who prepared the
15 application. These plats must show the quantity of land taken by the proposed highway or street or other
16 easement for each 40-acre tract or government lot of state land over or through which it passes and also the
17 amount of land remaining in each portion of that 40-acre tract or government lot. When considered necessary
18 by the department, these plats must show all these facts for smaller subdivisions as the circumstances may
19 render desirable for the state.

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

24 (4) If the purpose of the right-of-way applied for is the transmission or distribution of electrical
25 energy or the construction and operation of pipelines or telephone, telegraph, or radio systems, the plats and
26 measurements need not be given. An exact geographical survey is not required, but the application must
27 include the description of the location of the center line of the right-of-way that refers to an established
28 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)~~ 77-2-101(11) 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."

1 **Section 3.** Section 77-2-105, MCA, is amended to read:

2 **"77-2-105. Termination of easements.** Whenever lands granted for any of the purposes mentioned
3 in ~~77-2-101(2)~~ 77-2-101(8) through (11) cease to be used for those purposes, the easement terminates upon
4 notice to that effect to the person to whom the grant was made, served at the person's last-known post-office
5 address."

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7 NEW SECTION. **Section 4. Effective date.** [This act] is effective on passage and approval.

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