

HOUSE BILL NO. 584

INTRODUCED BY J. O'NEIL

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4 A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING THE OWNER OF LAND ADJACENT TO A HIGHWAY
5 RIGHT-OF-WAY TO LEASE AN EASEMENT ON THE RIGHT-OF-WAY UNDER CERTAIN CONDITIONS;
6 ESTABLISHING REQUIREMENTS FOR RIGHT-OF-WAY LEASES; REQUIRING A RIGHT-OF-WAY
7 EASEMENT TO BE LEASED AT THE FAIR MARKET VALUE; REQUIRING LEASE REVENUE TO BE
8 DEPOSITED IN THE NONRESTRICTED HIGHWAY STATE SPECIAL REVENUE ACCOUNT; AND AMENDING
9 SECTIONS 60-4-202 AND 60-5-110, MCA."

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

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13 **Section 1.** Section 60-4-202, MCA, is amended to read:
14 **"60-4-202. Sale of interest in real property -- lease of right-of-way easement to landowner.** (1) The
15 department may sell an interest in real property if the department determines that the property is not necessary
16 to the laying out, altering, construction, improvement, or maintenance of a highway. Except as provided in
17 60-4-213 through 60-4-218 and subsection (2) of this section, if the interest is reasonably of a value in excess
18 of \$10,000, sale must be made to the highest bidder at public auction. The sale of an interest at auction must be
19 conducted as provided in 77-2-321.

20 (2) (a) The department may sell an interest in real property without a public auction directly to:

- 21 (i) a federal, state, tribal, or local government;
22 (ii) an agency of government;
23 (iii) a school district; or
24 (iv) a unit of the Montana university system.

25 (b) The department shall obtain fair market value for the property.

26 (3) Except as provided in 60-4-213 through 60-4-218, before the department sells an interest in real
27 property as provided in subsection (2), the department shall notify all landowners whose property is adjacent to
28 the land proposed for sale. If ~~any of the landowners are~~ a landowner is interested in buying the land proposed
29 for sale, the ~~landowners~~ landowner shall notify the department of ~~their~~ the landowner's interest by registered letter
30 within 30 days of the receipt of the notice of sale from the department. Upon receipt of a notice of interest, the

1 department shall offer the land for sale as provided in 60-4-203 and this section.

2 (4) A landowner whose property is adjacent to a state highway right-of-way may lease an easement on
 3 that right-of-way from the department. The department shall act in good faith to negotiate a lease with any
 4 landowner who seeks a lease under this section.

5 (5) A landowner who leases a right-of-way easement pursuant to subsection (4) may use the right-of-way
 6 for any legal purpose that:

7 (a) does not conflict with the actual or planned use of the right-of-way by the department during the lease
 8 period;

9 (b) will not impose any cost on the department during or after the expiration of the lease; and

10 (c) will not expose the department to any liability to which it would not otherwise be exposed.

11 (6) A right-of-way easement leaseholder who constructs anything on, under, or in the leased right-of-way
 12 easement shall comply with:

13 (a) all highway use and highway safety standards prescribed by the department and, if the highway is
 14 a federal-aid highway, with all use and safety standards prescribed by the U.S. department of transportation; and

15 (b) all zoning and land use laws, including but not limited to allowable uses, setback requirements, and
 16 height and other restrictions or requirements.

17 (7) A lease agreement under this section may be for any period of time not to exceed 5 years.

18 (8) The price of the lease must be the market value of similar leases as determined by the department.

19 All lease revenue received under this section must be deposited in the nonrestricted highway account in the state
 20 special revenue fund to be used for highway purposes."

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22 **Section 2.** Section 60-5-110, MCA, is amended to read:

23 **"60-5-110. Commercial enterprise or structure prohibited -- exceptions.** (1) Except as provided in
 24 60-4-202, 60-5-505, and subsections (2) and (3) of this section, a commercial enterprise or structure may not be
 25 operated on the publicly owned or leased right-of-way of a controlled-access highway or controlled-access facility.

26 (2) The department may, under the terms and conditions that it considers appropriate, install or allow
 27 others to install electronic communication equipment or electronic informational kiosks on the right-of-way of any
 28 state highway, including a controlled-access facility. The department may charge a fee for the use of the
 29 equipment or kiosk. The fees must be deposited in the nonrestricted highway account in the state special revenue
 30 account fund to be used for highway purposes.

