

SENATE BILL NO. 262

INTRODUCED BY E. MCCLAFFERTY

A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING THE RESTRICTION OF PUBLIC ACCESS ON CERTAIN ROADS OR RIGHTS-OF-WAY USED BY THE PUBLIC UNLESS CERTAIN REQUIREMENTS ARE MET."

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

NEW SECTION. Section 1. Documentation of private road required -- authority to install barrier.

(1) For the purposes of this section, "nondesignated road or right-of-way" means a road or right-of-way that has no proven legal status, that is used for normal vehicular travel by the public, and that appears to meet the conditions necessary to qualify for a prescriptive easement or other public road designation.

(2) A person may not install a fence, other barrier, or sign intended to prevent vehicular travel by the public on a nondesignated road or right-of-way unless the person:

(a) provides notice to the board of county commissioners or other local governing body having jurisdiction that the person intends to install the fence, barrier, or sign; and

(b) appears before the board of county commissioners or other local governing body having jurisdiction at a public hearing and provides documentation showing, to the satisfaction of the board or other governing body, that the road or right-of-way is private or that the elements for a prescriptive easement are not present.

(3) Upon receipt of the notice required in subsection (2)(a), the board of county commissioners or other local governing body having jurisdiction shall obtain an opinion on the status of the nondesignated road or right-of-way from the county attorney and shall obtain historical information and land records from the county surveyor, the county road supervisor, the clerk and recorder, and any other county officer or department that the board or other governing body considers to be appropriate. After the hearing held pursuant to subsection (2)(b) and after reviewing the information provided under subsection (2)(b) and this subsection, the board or other governing body shall:

(a) concur that the road or right-of-way is private and authorize the person to install the fence, barrier, or sign; or

(b) notify the person that the road or right-of-way may be used by the public by virtue of road or

1 right-of-way history and adverse public use and prohibit installation of the fence, barrier, or sign.

2 (4) If a board of county commissioners or other local governing body having jurisdiction determines that
3 the road or right-of-way may be used by the public, the board or other governing body may apply the provisions
4 of 7-14-2134 through 7-14-2138 to the road or right-of-way.

5 (5) If a board of county commissioners or other local governing body concurs that the road or
6 right-of-way is private, the expenses incurred by the person to provide the documentation required in subsection
7 (2)(b) must be reimbursed by the county or other governing body.

8 (6) For purposes of this section, a prescriptive easement is a right to use the property of another that is
9 acquired by open, exclusive, notorious, hostile, adverse, continuous, and uninterrupted use for a period of 5
10 years.

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12 NEW SECTION. **Section 2. Codification instruction.** [Section 1] is intended to be codified as an
13 integral part of Title 7, chapter 14, part 21, and the provisions of Title 7, chapter 14, part 21, apply to [section 1].

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