

HOUSE BILL NO. 765

INTRODUCED BY MAEDJE, D. BROWN, HEINERT, HENDRICK, EVERETT, W. JONES

A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING THE DEPARTMENT OF TRANSPORTATION TO ISSUE PERMITS FOR THE REMOVAL OF ROCKS FROM WITHIN A HIGHWAY RIGHT-OF-WAY LOCATED ON FEDERAL LAND; AND CLARIFYING THAT ROCKS THAT HAVE FALLEN OR ARE DEPOSITED WITHIN THE RIGHT-OF-WAY OF A HIGHWAY MAINTAINED BY THE DEPARTMENT ARE THE PROPERTY OF THE DEPARTMENT; ~~AND LIMITING THE LIABILITY OF THE DEPARTMENT.~~"

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

NEW SECTION. Section 1. Rocks within right-of-way -- permits to remove -- limit on liability. (1)

For the purposes of this section, an "incidental encroachment permit" is a permit issued by the department to a person who applies to remove rocks from within a highway right-of-way when the department determines removal to be appropriate.

(2) A rock that falls or is deposited within the right-of-way of a highway that is under the jurisdiction of the department and maintained in whole or in part by the department is the property of the department.

(3) (a) The department shall establish a process to issue permits for the removal of rocks that fall within the highway right-of-way. The fee for a permit may not exceed ~~\$2~~ 50 CENTS. The permitting process must comply with the provisions of this section.

(b) (i) A person who applies for an incidental encroachment permit may be issued a permit on a form provided by the department.

(ii) The application must require the person to provide proof that the person has motor vehicle liability insurance that complies with the provisions of Title 61, chapter 6.

(iii) An incidental encroachment permit is valid for removal of rocks that are off of the roadway, as that term is defined in 61-1-206, and within the area specified in the permit.

(iv) The department shall prescribe the term for which the permit is valid and may impose any restrictions on the permit that the department considers necessary for the safety of the permittee and the traveling public.

(v) The department may, at its discretion, deny a request for a permit.

(4) This section is not intended to prohibit the removal of rocks, for the purpose of public safety, that

1 have fallen onto a roadway.

2 (5) The department is not responsible and may not be held liable for injuries or damages that result from
3 any acts or omissions by a permittee who is performing the activities authorized by an incidental encroachment
4 permit.

5 (6)(5) This section applies only to rights-of-way for roads that the department is required to maintain
6 that are located on federal land.

7
8 ~~NEW SECTION. Section 2. Two-thirds vote required.~~ Because [section 1(5)] limits governmental
9 liability, Article II, section 18, of the Montana constitution requires a vote of two-thirds of the members of each
10 house of the legislature for passage. If [this act] is not approved by at least two-thirds of the members of each
11 house of the legislature, then [section 1(5)] is void.

12
13 NEW SECTION. Section 2. Codification instruction. [Section 1] is intended to be codified as an
14 integral part of Title 60, chapter 2, part 2, and the provisions of Title 60, chapter 2, part 2, apply to [section 1].

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