

## 1 HOUSE BILL NO. 562

2 INTRODUCED BY J. DOOLING

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4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING HIGHWAY ENCROACHMENT LAWS;  
5 PROVIDING FOR MUNICIPAL AUTHORITY TO ENACT CERTAIN ORDINANCES REGARDING  
6 ENCROACHMENTS; AND AMENDING SECTIONS 60-6-101, 60-6-103, AND 60-6-104, MCA."

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

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10 **NEW SECTION. Section 1. Limitation of authority within incorporated municipalities --**11 **exclusion outside incorporated municipalities -- inclusion due to lack of local ordinances.** (1) (a)

12 Municipalities incorporated under Title 7, chapter 2, part 41, have the authority to enact ordinances governing  
13 the placement of impermanent encroachments on a commission-designated highway system or state highway  
14 right-of-way without the necessity of permitting by the department of transportation for individual  
15 encroachments as described in 60-6-101.

16 (b) This provision includes those portions of the right-of-way not necessary for vehicular travel,  
17 including but not limited to sidewalks and shoulders.

18 (2) (a) This provision specifically excludes all commission-designated highway systems and state  
19 highways outside of incorporated municipality boundaries.

20 (b) Impermanent encroachments are defined as an object that is not permanently affixed to a  
21 commission-designated highway system or state highway right-of-way or requiring the modification of a  
22 commission-designated highway system or state highway right-of-way.

23 (c) An encroachment requiring or resulting in a permanent attachment to, or a modification of, a  
24 commission-designated highway system or state highway right-of-way must abide by the requirements of 60-6-  
25 101 through 60-6-105.

26 (3) (a) Incorporated municipalities that have not enacted ordinances regulating the placement of  
27 impermanent encroachments shall default to the permitting process as defined in 60-6-101 until they enact  
28 regulating ordinances.

1 (b) On enacting regulating ordinances, 60-6-101 through 60-6-105 no longer apply to the  
2 encroachments except as provided by this section.

3 (4) (a) For the purposes of this section, the department of transportation shall only have authority to  
4 enforce the Americans with Disabilities Act of 1990 as amended as described in subsection (4)(b).

5 (b) The department of transportation shall communicate identified violations of the Americans with  
6 Disabilities Act of 1990 as amended to the incorporated municipalities for enforcement within their boundaries.  
7 If an incorporated municipality has not acted to address the violation within 7 days, the department of  
8 transportation shall have authority to proceed with removal as described in 60-6-101 through 60-6-105.

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10 **Section 2.** Section 60-6-101, MCA, is amended to read:

11 **"60-6-101. Highway encroachments -- permit -- immediate removal.** (1) If a commission-  
12 designated highway system or state highway is encroached on by an obstruction, device, or object placed  
13 within the right-of-way limits, including a fence, building, structure, sign, marker, mailbox, newspaper delivery  
14 box, or driveway approach, or is obstructed by physical occupancy of the right-of-way by a person, persons, or  
15 group of persons, the department of transportation:

16 (a) for a mailbox or newspaper delivery box, may issue an encroachment permit pursuant to  
17 subsection (3); and

18 (b) (i) for all other encroachments, may issue an encroachment permit pursuant to subsection (2); or

19 (ii) may give notice in writing to the person erecting or maintaining the encroachment requiring that it  
20 be removed.

21 (2) (a) ~~Except as provided in [section 1],~~ a highway right-of-way encroachment may not be  
22 constructed, maintained, or occupied on a commission-designated highway system or state highway without a  
23 permit. An application for a permit must be made to the department on a form provided by the department. The  
24 department shall require reasonable information to be furnished, including site plan drawings or specifications  
25 for an object encroachment.

26 (b) The department shall adopt rules pertaining to the issuance of encroachment permits and the  
27 removal of encroachments.

28 (3) (a) The department shall adopt rules pertaining to the accommodation of mailboxes and

1 newspaper delivery boxes on public highway rights-of-way. The rules must ensure that the location and  
2 construction of mailboxes and newspaper delivery boxes conform to the rules and regulations of the U.S. postal  
3 service.

4 (b) The department may issue an encroachment permit for a completed permit application for a  
5 mailbox or newspaper delivery box.

6 (c) The department may not charge a fee for an encroachment permit for a mailbox or newspaper  
7 delivery box.

8 (4) If an encroachment obstructs or prevents the use of the highway for vehicles, the department may  
9 immediately remove the encroachment without the notice required by 60-6-102.

10 (5) Utility facilities lawfully occupying a highway right-of-way on October 1, 2019, or under an  
11 occupancy or encroachment permit issued by the department pursuant to 60-4-402(1)(c) are not  
12 encroachments within the meaning of this part."

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14 **Section 3.** Section 60-6-103, MCA, is amended to read:

15 **"60-6-103. Encroachment not permanently affixed -- time limit for removal -- penalty.** (1) ~~¶~~  
16 Except as provided in [section 1], if an unpermitted encroachment is not permanently affixed to the land and is  
17 not removed from the right-of-way by the person who erected or maintains the encroachment within 2 days  
18 after receipt of the notice provided for in 60-6-102, the department may begin action under 60-6-104 for its  
19 removal at the expense of the person who causes, owns, or controls it. The department may recover the  
20 expense of removal and costs in an action brought for that purpose.

21 (2) If an encroachment presents an imminent danger to the public, the department may immediately  
22 remove the encroachment without the notice required by 60-6-102."

23

24 **Section 4.** Section 60-6-104, MCA, is amended to read:

25 **"60-6-104. Unpermitted encroachment -- department action.** ~~¶~~ Except as provided in [section 1], if  
26 an encroachment permit provided for in 60-6-101 has not been granted and the person erecting or maintaining  
27 the encroachment fails to remove it after receiving notice pursuant to 60-6-102, the department shall  
28 commence appropriate legal action to have the encroachment removed. If the department recovers a judgment,

1 it shall have its costs. If the encroachment is not removed within 5 days after entry of judgment, the department  
2 may remove it at the expense of the person who causes, owns, or controls it."

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4 NEW SECTION. Section 5. Codification instruction. [Section 1] is intended to be codified as an  
5 integral part of Title 60, chapter 6, part 1, and the provisions of Title 60, chapter 6, part 1, apply to [section 1].

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