



AN ACT GENERALLY REVISING THE LAWS RELATING TO OCCUPANCY OF AND ENCROACHMENT ON TRANSPORTATION COMMISSION-DESIGNATED HIGHWAY SYSTEM OR STATE HIGHWAY RIGHTS-OF-WAY; ALLOWING FOR ENCROACHMENT PERMITS; REVISING THE ENCROACHMENT REMOVAL PROCEDURE; ALLOWING FOR THE IMMEDIATE REMOVAL OF DANGEROUS ENCROACHMENTS; PROVIDING RULEMAKING AUTHORITY; AND AMENDING SECTIONS 60-4-402, 60-6-101, 60-6-102, 60-6-103, 60-6-104, AND 60-6-105, MCA.

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

Section 1. Section 60-4-402, MCA, is amended to read:

"60-4-402. Occupancy and relocation of utility facilities -- rules. (1) The department shall adopt reasonable rules governing right-of-way occupancy by a utility and, for the following:

(a) installation, construction, maintenance, repair, or system upgrade of all utilities on commission-designated highway systems or state highways;

(b) except as provided in 60-4-403(2) and (3), for the reimbursement to a utility for the costs of installation, construction, maintenance, repair, renewal, or relocation of facilities; and

(c) issuance of an occupancy permit or, in the case of a facility not within the scope of Title 60, chapter 4, part 4, an encroachment permit.

(2) The rules must provide for right-of-way occupancy and relocation of publicly owned water and sewer facilities. The rules must ensure that the nonhighway use of the right-of-way does not affect the department's ability to maintain and operate the highway in a safe manner.

(3) The permitting provisions of this section do not apply to existing utility facilities or existing facilities not within the scope of Title 60, chapter 4, part 4, lawfully occupying the highway right-of-way on [the effective date of this act]."

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

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

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

(b) (i) for all other encroachments, may issue an encroachment permit pursuant to subsection (2); or
(ii) may give notice in writing to the person erecting or maintaining such the encroachment requiring the same to that it be removed.

(2) (a) A highway right-of-way encroachment may not be constructed, maintained, or occupied on a commission-designated highway system or state highway without a permit. An application for a permit must be made to the department on a form provided by the department. The department shall require reasonable information to be furnished, including site plan drawings or specifications for an object encroachment.

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

~~(2)(3)~~ (a) The department shall adopt rules pertaining to the accommodation of mailboxes and newspaper delivery boxes on public highway rights-of-way. The rules must ensure that the location and construction of mailboxes and newspaper delivery boxes conform to the rules and regulations of the U.S. postal service.

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

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

~~(3)(4)~~ If the an encroachment obstructs and or prevents the use of the highway for vehicles, the department may immediately remove the same encroachment without the notice required by 60-6-102.

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

Section 3. Section 60-6-102, MCA, is amended to read:

"60-6-102. Notice of encroachment. (1) Notice to remove ~~the~~ an unpermitted encroachment, specifying the width of the highway right-of-way and the place and extent of the encroachment, must be given to the person erecting or maintaining ~~such~~ the encroachment.

(2) Notice must be given in the following manner:

(a) in writing by certified mail sent to the person's business or personal address or by personal service;
or

(b) if ~~such~~ the person's address cannot be found, by posting it on the encroachment."

Section 4. Section 60-6-103, MCA, is amended to read:

"60-6-103. Encroachment not permanently affixed -- Time time limit for removal -- penalty. (1) If ~~the~~ an unpermitted encroachment is not permanently affixed to the land, ~~such encroachment shall be~~ and is not removed from the right-of-way by the person who erected or maintains the encroachment within 2 days after receipt of the notice provided for in 60-6-102. ~~If such an encroachment remains on the right-of-way after this period of time,~~ the department may begin action under 60-6-104 for its removal at the expense of the person who causes, owns, or controls the encroachment shall be liable for the cost of such removal it. The department may recover the expense of removal and costs in an action brought for that purpose.

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

Section 5. Section 60-6-104, MCA, is amended to read:

"60-6-104. Denial of Unpermitted encroachment -- department action. If ~~the~~ an encroachment permit provided for in 60-6-101 has not been granted and the person erecting or maintaining the encroachment fails to remove it after receiving notice pursuant to 60-6-102, the department shall commence appropriate legal action to have ~~said~~ the encroachment removed. If the department recovers a judgment, it shall have its costs. If the encroachment is not removed within 5 days after entry of judgment, the department may remove it at the expense of the person who causes, owns, or controls it."

Section 6. Section 60-6-105, MCA, is amended to read:

"60-6-105. ~~Removal at owner's expense when not denied~~ Encroachment affixed to the land -- time limit for removal -- penalty -- immediate removal. (1) If an unpermitted encroachment affixed to the land is not ~~denied and is not removed~~ by the person who erected or maintains the encroachment within 5 days after ~~receipt of the receiving notice as provided for in 60-6-102,~~ the department may begin action under 60-6-104 to remove it at the expense of the person who causes, owns, or controls it. The department may recover the expense of removal and costs in an action brought for that purpose.

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

- END -

I hereby certify that the within bill,
SB 0076, originated in the Senate.

President of the Senate

Signed this _____ day
of _____, 2019.

Secretary of the Senate

Speaker of the House

Signed this _____ day
of _____, 2019.

SENATE BILL NO. 76
INTRODUCED BY B. HOVEN
BY REQUEST OF THE DEPARTMENT OF TRANSPORTATION

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