

## SENATE BILL NO. 76

INTRODUCED BY B. HOVEN

BY REQUEST OF THE DEPARTMENT OF TRANSPORTATION

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATING TO OCCUPANCY OF AND ENCROACHMENT ON TRANSPORTATION COMMISSION-DESIGNATED HIGHWAY SYSTEM OR STATE HIGHWAY RIGHTS-OF-WAY; ~~AUTHORIZING UTILITY ACCOMMODATION;~~ AUTHORIZING PERMIT FEES; 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, ~~renewal,~~ 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 ~~qualifying~~ utility for the costs of installation, construction, maintenance, repair, renewal, or relocation of facilities;

~~(c) issuance of appropriate utility accommodation or of an encroachment permit in accordance with 60-6-101;~~

~~(d) collection of accommodation or permit fees, which must be commensurate with the costs of administering utility accommodation; 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;

(D) COLLECTION OF A FEE COMMENSURATE WITH THE DEPARTMENT'S ACTUAL COST OF PROCESSING THE APPLICATION FOR A PERMIT ISSUED UNDER SUBSECTION (1)(C), NOT TO EXCEED \$300; AND

(e) deposit of ~~the~~ PERMIT fees into the highway nonrestricted account provided for in 15-70-125.

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

4           (3) THE PERMITTING PROVISIONS OF THIS SECTION DO NOT APPLY TO EXISTING UTILITY FACILITIES OR EXISTING  
5 FACILITIES NOT WITHIN THE SCOPE OF TITLE 60, CHAPTER 4, PART 4, LAWFULLY OCCUPYING THE HIGHWAY RIGHT-OF-WAY  
6 ON [THE EFFECTIVE DATE OF THIS ACT]."

7

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

9           **"60-6-101. Highway encroachments -- permit -- immediate removal.** (1) If any highway under the  
10 jurisdiction of the transportation commission a commission-designated highway system or state highway is  
11 encroached upon on by an obstruction, device, or object placed within the right-of-way limits, including a fence,  
12 building, structure, sign, marker, mailbox, newspaper delivery box, OR driveway approach, or utility, or is  
13 obstructed by physical occupancy of the right-of-way by a person, persons, or group of persons or other  
14 obstruction, the department of transportation may:

15           (A) FOR A MAILBOX OR NEWSPAPER DELIVERY BOX, MUST MAY ISSUE AN ENCROACHMENT PERMIT PURSUANT TO  
16 SUBSECTION (3); AND

17           ~~(a)~~(B) (I) FOR ALL OTHER ENCROACHMENTS, MAY issue an encroachment permit pursuant to subsection (2);  
18 or

19           ~~(b)~~(II) MAY give notice in writing to the person erecting or maintaining such the encroachment requiring  
20 the same to that it be removed.

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

25           (b) The EXCEPT AS PROVIDED IN SUBSECTION (3)(C), THE application must be accompanied by a  
26 nonrefundable permit fee. All fees must be commensurate with costs and must be paid into the highway  
27 nonrestricted account provided for in 15-70-125.

28           ~~(c) A permit must be obtained for each encroachment.~~

29           (C) THE DEPARTMENT SHALL ADOPT RULES PERTAINING TO THE ISSUANCE OF ENCROACHMENT PERMITS AND THE  
30 REMOVAL OF ENCROACHMENTS.

1           ~~(2)(3)~~ (A) The department shall adopt rules pertaining to the removal of encroachments and the issuance  
 2 of encroachment permits, including for the accommodation of mailboxes and newspaper delivery boxes on public  
 3 highway rights-of-way. The rules must ensure that the location and construction of mailboxes and newspaper  
 4 delivery boxes conform to the rules and regulations of the U.S. postal service.

5           ~~(B) THE DEPARTMENT SHALL~~ MAY ISSUE AN ENCROACHMENT PERMIT FOR A COMPLETED PERMIT APPLICATION  
 6 FOR A MAILBOX OR NEWSPAPER DELIVERY BOX.

7           ~~(C) THE DEPARTMENT MAY NOT CHARGE A FEE FOR AN ENCROACHMENT PERMIT FOR A MAILBOX OR NEWSPAPER~~  
 8 DELIVERY BOX.

9           ~~(3)(4)~~ If ~~the~~ an encroachment obstructs ~~and~~ or prevents the use of the highway for vehicles, the  
 10 department may immediately remove the ~~same~~ encroachment without the notice required by 60-6-102.

11           ~~(5) UTILITY FACILITIES LAWFULLY OCCUPYING A HIGHWAY RIGHT-OF-WAY ON [THE EFFECTIVE DATE OF THIS ACT],~~  
 12 OR UNDER AN OCCUPANCY OR ENCROACHMENT PERMIT ISSUED BY THE DEPARTMENT PURSUANT TO 60-4-402(1)(C), ARE  
 13 NOT ENCROACHMENTS WITHIN THE MEANING OF THIS PART."

14

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

16           **"60-6-102. Notice of encroachment.** (1) Notice to remove ~~the~~ an unpermitted encroachment, specifying  
 17 the width of the highway right-of-way and the place and extent of the encroachment, must be given to the person  
 18 erecting or maintaining ~~such~~ the encroachment.

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

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

21 or

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

23

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

25           **"60-6-103. Encroachment not permanently affixed -- Time time limit for removal -- penalty.** (1) If  
 26 ~~the~~ an unpermitted encroachment is not permanently affixed to the land, ~~such encroachment shall be~~ and is not  
 27 removed from the right-of-way by the person who erected or maintains the encroachment within 2 days after  
 28 receipt of the notice ~~provided for in 60-6-102.~~ provided for in 60-6-102. ~~If such an encroachment remains on the right-of-way after this~~  
 29 ~~period of time,~~ the department may begin action under 60-6-104 for its removal at the expense of the person who  
 30 causes, owns, or controls ~~the encroachment shall be liable for the cost of such removal it.~~ it. The department may

1 recover the expense of removal and costs in an action brought for that purpose.

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

4

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

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

12

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

14 **"60-6-105. ~~Removal at owner's expense when not denied~~ Encroachment affixed to the land -- time**  
15 **limit for removal -- penalty -- immediate removal.** (1) If an unpermitted encroachment affixed to the land is not  
16 ~~denied and is not removed by the person who erected or maintains the encroachment~~ within 5 days after receipt  
17 ~~of the~~ receiving notice as provided for in 60-6-102, the department may begin action under 60-6-104 to remove  
18 it at the expense of the person who causes, owns, or controls it. The department may recover the expense of  
19 removal and costs in an action brought for that purpose.

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

22 - END -