

1 HOUSE BILL NO. 198  
2 INTRODUCED BY J. DOOLING, N. DURAM, B. MITCHELL, M. BERTOGLIO, G. FRAZER  
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4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR MUNICIPAL AUTHORITY TO ENACT CERTAIN  
5 ORDINANCES REGARDING HIGHWAY ENCROACHMENTS; DEFINING "IMPERMANENT  
6 ENCROACHMENT"; 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:

9  
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 in  
13 accordance with state and federal laws governing the placement of impermanent encroachments on sidewalks  
14 of a commission-designated highway system or state highway right-of-way without the necessity of permitting  
15 by the department of transportation for individual encroachments as described in 60-6-101.  
16 (b) This provision is limited to sidewalks as defined in 61-8-102.  
17 (2) (a) This provision specifically excludes all commission-designated highway systems and state  
18 highway rights-of-way outside of incorporated municipality boundaries.  
19 (b) A sidewalk encroachment requiring or resulting in a permanent attachment to or a modification  
20 of a commission-designated highway system or state highway right-of-way must abide by the requirements of  
21 60-6-101 through 60-6-105.  
22 (3) (a) An incorporated municipality that has not enacted an ordinance regulating the placement of  
23 an impermanent encroachment on a sidewalk shall default to the permitting process as described in 60-6-101  
24 until it enacts a regulating ordinance.  
25 (b) After enacting a regulating ordinance:  
26 (i) the municipality shall indemnify the state, including costs and fees, for all claims for damages  
27 caused by the municipality's enactment of an ordinance, approval of the impermanent encroachment on a

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68th Legislature

Drafter: Joe Carroll, 406-444-3804

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1 sidewalk, and placement of the impermanent encroachment on a sidewalk; and

2 (ii) sections 60-6-101 through 60-6-105 do not apply to the impermanent encroachment on a  
3 sidewalk except as provided by this section.

4 (4) The department of transportation shall communicate identified violations of state or federal law,  
5 including the Americans with Disabilities Act of 1990, 42 U.S.C. 12101, et seq., as amended, to the  
6 incorporated municipalities for enforcement within their boundaries. This communication must include  
7 references to the state or federal law that was violated. If an incorporated municipality has not acted to address  
8 the violation within 7 days, the department of transportation is authorized to proceed with removal of the  
9 violation as described in 60-6-101 through 60-6-105.

10 (5) "Impermanent encroachment" means:

11 (a) an object that is not permanently affixed to the sidewalk of a commission-designated highway  
12 system or state highway right-of-way or that does not require the modification of the sidewalk of a commission-  
13 designated highway system or state highway right-of-way; or

14 (b) an occupied encroachment above grade level.

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

17 **"60-6-101. Highway encroachments -- permit -- immediate removal.** (1) If a commission-  
18 designated highway system or state highway is encroached on by an obstruction, device, or object placed  
19 within the right-of-way limits, including a fence, building, structure, sign, marker, mailbox, newspaper delivery  
20 box, or driveway approach, or is obstructed by physical occupancy of the right-of-way by a person, persons, or  
21 group of persons, the department of transportation:

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

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

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