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HOUSE BILL NO. 486

INTRODUCED BY P. GREEN, M. MALONE, K. ZOLNIKOV, M. MARLER, D. LOGE, T. BROCKMAN, B.

PHALEN, M. ROMANO

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS GOVERNING HIGHWAY ENCROACHMENTS; ALLOWING AN INDIVIDUAL TO PETITION FOR THE REMOVAL OF AN ENCROACHMENT; INCREASING THE FINES FOR FAILURE TO REMOVE AN ENCROACHMENT; AND AMENDING SECTIONS 7-14-2134, 7-14-2136, AND 7-14-2137, MCA."

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

Section 1. Section 7-14-2134, MCA, is amended to read:

"7-14-2134. Removal of highway encroachment. (1) Except as clarified in 23-2-312 and 23-2-313 and except as provided in subsection (4)-(5) of this section, if any highway is encroached upon on by a gate, fence, building, or otherwise, the road supervisor or county surveyor of the district must shall give notice, orally or in writing, requiring the encroachment to be removed from the highway.

(2) If the encroachment obstructs and prevents the use of the highway for vehicles, the road supervisor or county surveyor shall immediately remove the encroachment.

(3) The board of county commissioners may at any time order the road supervisor or county surveyor to immediately remove any encroachment.

(4) An individual may petition the board in writing to have the encroachment removed from the-a highway that is currently in the county road inventory based on the most recent plat.

(4)(5) This section does not apply to a fence for livestock control or property management that is in a county road right-of-way and that is attached to or abuts a county road bridge edge, guardrail, or abutment if the fence and bridge appurtenances are not on the roadway, as defined in 61-1-101. Any fence described in this subsection must comply with 23-2-313."

Section 2. Section 7-14-2136, MCA, is amended to read:

Amendment - 1st Reading-white - Requested by: Tanner Smith - (H) Transportation

- 2023

68th Legislature 2023

Drafter: Sara Hess, (406) 444-4838

HB0486.001.003

1 **"7-14-2136. Penalty for failure to remove encroachment promptly.** (1) If the encroachment is not
 2 removed immediately or removal is not diligently conducted, the one who causes, owns, or controls the
 3 encroachment is ~~liable~~ subject to a penalty of \$40 not less than \$100 or more than \$500 for each day the same
 4 encroachment continues.

5 (2) Upon commencement of and during litigation, any fines established in subsection (1) must be
 6 suspended and the gate, fence, building, or otherwise that is the subject of the litigation may remain until a
 7 judgment is made by the court."

8

9 **Section 3.** Section 7-14-2137, MCA, is amended to read:

10 **"7-14-2137. Legal actions to remove encroachments or recover costs.** (1) (a) If the encroachment
 11 is denied, the road supervisor shall commence an action in the proper court to abate the encroachment as a
 12 nuisance.

13 (b) If the road supervisor recovers judgment, the supervisor may have the supervisor's costs and
 14 \$40 not less than \$100 or more than \$500 for each day the nuisance remains after notice.

15 (2) (a) If the encroachment is not denied and is not removed for 5 days after notice is complete,
 16 the road supervisor or county surveyor may remove it at the expense of the owner or occupant of the land or of
 17 the person owning or controlling the encroachment.

18 (b) The supervisor may recover the expense of removal, \$40 not less than \$100 or more than
 19 \$500 for each day the encroachment remains after notice, and costs in an action brought for that purpose."

20

- END -