

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:

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

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

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

9 (5) "Impermanent encroachment" means:

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

13 (B) AN OCCUPIED ENCROACHMENT ABOVE GRADE LEVEL.

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

16 **"60-6-101. Highway encroachments -- permit -- immediate removal.** (1) If a commission-
17 designated highway system or state highway is encroached on by an obstruction, device, or object placed
18 within the right-of-way limits, including a fence, building, structure, sign, marker, mailbox, newspaper delivery
19 box, or driveway approach, or is obstructed by physical occupancy of the right-of-way by a person, persons, or
20 group of persons, the department of transportation:

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

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

24 or

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

27 (2) (a) A Except as provided in [section 1], a highway right-of-way encroachment may not be
28 constructed, maintained, or occupied on a commission-designated highway system or state highway without a

1 permit. An application for a permit must be made to the department on a form provided by the department. The
2 department shall require reasonable information to be furnished, including site plan drawings or specifications
3 for an object encroachment.

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

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

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

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

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

16 (5) Utility facilities lawfully occupying a highway right-of-way on October 1, 2019, or under an
17 occupancy or encroachment permit issued by the department pursuant to 60-4-402(1)(c) are not
18 encroachments within the meaning of this part."
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20 **Section 3.** Section 60-6-103, MCA, is amended to read:

21 **"60-6-103. Encroachment not permanently affixed -- time limit for removal -- penalty.** (1) ~~h~~
22 Except as provided in [section 1], if an unpermitted encroachment is not permanently affixed to the land and is
23 not removed from the right-of-way by the person who erected or maintains the encroachment within 2 days
24 after receipt of the notice provided for in 60-6-102, the department may begin action under 60-6-104 for its
25 removal at the expense of the person who causes, owns, or controls it. The department may recover the
26 expense of removal and costs in an action brought for that purpose.

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

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

3 **"60-6-104. Unpermitted encroachment -- department action.** Except as provided in [section 1], if
4 an encroachment permit provided for in 60-6-101 has not been granted and the person erecting or maintaining
5 the encroachment fails to remove it after receiving notice pursuant to 60-6-102, the department shall
6 commence appropriate legal action to have the encroachment removed. If the department recovers a judgment,
7 it shall have its costs. If the encroachment is not removed within 5 days after entry of judgment, the department
8 may remove it at the expense of the person who causes, owns, or controls it."

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10 NEW SECTION. **Section 5. Codification instruction.** [Section 1] is intended to be codified as an
11 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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