

HOUSE BILL NO. 938

INTRODUCED BY J. KASSMIER, S. FITZPATRICK, J. SMALL

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING ENCROACHMENT PERMIT LAW; ALLOWING BOARDS OF COUNTY COMMISSIONERS TO ISSUE ENCROACHMENT PERMITS UNDER CERTAIN CONDITIONS; PROVIDING AN APPROPRIATION; AMENDING SECTIONS 7-14-2103, 7-14-2134, AND 7-14-2135, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

Section 1. Section 7-14-2103, MCA, is amended to read:

"7-14-2103. Duties of county commissioners concerning county roads. (1) A board of county commissioners has general supervision over the county roads within the county.

(2) A board may survey, view, lay out, record, open, work, and maintain county roads that are established in accordance with this chapter. Guideposts must be erected.

(3) A board may discontinue or abandon county roads when freeholders properly petition for discontinuance or abandonment.

(4) A board of county commissioners may determine the level and scope of maintenance on a county road under its jurisdiction, and a local entity or the state may not withhold funds based on the board's maintenance determinations.

(5) A board of county commissioners may issue encroachment permits on request pursuant to 7-14-2134(5)."

Section 2. 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) of this section, if any highway is encroached upon by fence, building, or otherwise, the road supervisor or county surveyor of the district must give notice, orally or in writing, requiring the encroachment to be removed from the highway.

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

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

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

9 (5) An encroachment may be permitted by the board of county commissioners. A permit issued
10 under this subsection (5) must be issued by the board of county commissioners after evaluating the written
11 request in a public meeting. Encroachment permits issued by the board of county commissioners may be
12 revoked by giving, at a minimum, 30 days' notice to the permittee in the event the encroachment interferes with
13 the public use or maintenance of the road. In the event of an emergency, an encroachment may be removed
14 with no notice to the permittee."

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16 **Section 3.** Section 7-14-2135, MCA, is amended to read:

17 **"7-14-2135. Notice to remove encroachment.** (1) ~~Notice~~ Except as provided in 7-14-2134(5), notice
18 to remove the encroachment immediately, specifying the breadth of the highway and the place and extent of
19 the encroachment, must be given to the occupant or owner of the land or the person owning or causing the
20 encroachment.

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

22 (a) by leaving it at the occupant's or owner's place of residence if the person resides in the county;

23 or

24 (b) by posting it on the encroachment if the person does not reside in the county."

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26 NEW SECTION. Section 4. Appropriation. There is appropriated \$1,000 from the general fund to
27 the department of transportation for the biennium beginning July 1, 2023, to implement [sections 1 through 3].

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