

SENATE BILL NO. 195—COMMITTEE ON COMMERCE AND LABOR

FEBRUARY 16, 2001

Referred to Committee on Transportation

SUMMARY—Revises provisions governing issuance of certain permits to occupy or encroach upon state highways or rights of way. (BDR 35-932)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: Yes.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to public utilities; requiring the director of the department of transportation to adopt regulations governing the issuance to certain public utilities of a permit to disturb, dig up, cross, encroach upon or use a state highway or right of way for certain purposes; requiring the director to approve or deny an application for such a permit within a certain period; prohibiting the director from imposing certain conditions upon the issuance of the permit; requiring the planning division of the department of transportation to design certain plans in a manner that ensures the efficient maintenance and use of certain facilities located within the boundaries of a state highway or right of way; authorizing certain public utilities to repair or maintain a facility without obtaining a permit from the director under certain circumstances; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

- 1 **Section 1.** Chapter 408 of NRS is hereby amended by adding thereto
2 the provisions set forth as sections 2 to 5, inclusive, of this act.
3 **Sec. 2.** *As used in subsection 1 of NRS 408.100, subparagraph (2) of*
4 *paragraph (a) of subsection 1 of NRS 408.233, NRS 408.423 and section*
5 *5 of this act, unless the context otherwise requires, the words and terms*
6 *defined in sections 3 and 4 of this act have the meanings ascribed to*
7 *them in those sections.*
8 **Sec. 3.** *“Facility” means any property used by a public utility to*
9 *provide services to the customers of the public utility, including, without*
10 *limitation, any pole, wire, cable, conduit, instrument, appliance, fixture*
11 *or equipment.*
12 **Sec. 4.** *“Public utility” means:*
13 1. *A telephone company or any other business that provides*
14 *telecommunication or related services to the general public;*



1 2. A person who engages in the business of supplying electric
2 distribution or transmission service;

3 3. A person who owns, operates or controls a plant or equipment or
4 any portion of a plant or equipment within this state for the delivery or
5 furnishing of:

6 (a) Natural gas to other persons; or

7 (b) Water for business, manufacturing, agricultural or household use
8 or sewerage service for other persons; or

9 4. A community antenna television company as defined in NRS
10 711.030.

11 Sec. 5. 1. The director shall adopt regulations governing the
12 manner in which a public utility may submit an application for a permit
13 pursuant to the provisions of NRS 408.423.

14 2. If a public utility submits to the director an application specified in
15 subsection 1, the director shall, within 10 days after the public utility
16 submits the application:

17 (a) Publish or cause to be published a notice of the application in a
18 newspaper of general circulation in the county in which the state
19 highway or right of way is located or, if there is no such newspaper, in a
20 newspaper of general circulation in this state; and

21 (b) If the department maintains a website on the Internet, post the
22 notice on that website.

23 3. A notice published pursuant to the provisions of subsection 2 must
24 include the name of the public utility and a statement setting forth the
25 purpose for which the public utility submitted the application.

26 4. The director shall approve or deny the application within 20 days
27 after it is submitted to him. If the director denies the application, he shall
28 notify the applicant of that fact in writing. The written notice must
29 include the reasons for denying the application.

30 5. If the director fails to approve or deny the application within 60
31 days after it is submitted to him, the application shall be deemed
32 approved.

33 6. The director shall not impose a condition upon the issuance of a
34 permit specified in subsection 1 that:

35 (a) Requires the facility for which the permit is issued to be installed,
36 improved, repaired or maintained in a capacity specified by the director;

37 (b) Requires the public utility to dedicate, donate or otherwise provide
38 a facility for another person or any public agency of:

39 (1) The Federal Government; or

40 (2) This state or any political subdivision or local government of
41 this state;

42 (c) Requires the public utility to provide to the department proof of
43 title to or any interest in any real property other than real property
44 owned, leased or used by the public utility;

45 (d) Limits the use of the facility; or

46 (e) Limits the number of applications for a permit that the public
47 utility may submit to the director pursuant to the provisions of NRS
48 408.423.



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1 7. *A permit issued to a public utility pursuant to the provisions of*
2 *NRS 408.423:*

3 (a) *Confers upon the holder of the permit a license to occupy the state*
4 *highway or right of way to the extent of the interest of the state or the*
5 *department in the state highway or right of way; and*

6 (b) *Does not confer upon the holder of the permit any right or interest*
7 *in fee to the state highway or right of way.*

8 8. *If the director issues a permit to a public utility pursuant to the*
9 *provisions of NRS 408.423, the public utility shall indemnify the state*
10 *and the department from any claim of or damage incurred by a person*
11 *claiming ownership or any other estate in fee of the state highway or*
12 *right of way.*

13 **Sec. 6.** NRS 408.100 is hereby amended to read as follows:

14 408.100 Recognizing that safe and efficient highway transportation is
15 a matter of important interest to all the people of ~~the~~ *this* state, and that an
16 adequate highway system is a vital part of the national defense, the
17 legislature hereby determines and declares that:

18 1. An integrated system of state highways and roads *and the efficient*
19 *use of state highways and rights of way for public purposes, including*
20 *the construction and maintenance of a facility,* is essential to the general
21 welfare *and economic progress* of ~~the~~ *this* state.

22 2. Providing such a system of facilities, its efficient management,
23 maintenance and control is recognized as a problem and as the proper
24 prospective of highway legislation.

25 3. Inadequate highways and roads obstruct the free flow of traffic,
26 resulting in undue cost of motor vehicle operation, endangering the health
27 and safety of the citizens of ~~the~~ *this* state, depreciating property values,
28 and impeding general economic and social progress of ~~the~~ *this* state.

29 4. In designating the highways and roads of ~~the~~ *this* state as provided
30 in this chapter, the legislature places a high degree of trust in the hands of
31 those officials whose duty it is, within the limits of available funds, to plan,
32 develop, operate, maintain, control and protect the highways and roads of
33 this state, for present ~~as well as for~~ *and* future use.

34 5. To this end, it is the express intent of the legislature to make the
35 board ~~of directors of the department of transportation~~ *the* custodian of the
36 state highways and roads and to provide sufficiently broad authority to
37 enable the board to function adequately and efficiently in all areas of
38 appropriate jurisdiction, subject to the limitations of the constitution and
39 the legislative mandate proposed in this chapter.

40 6. The legislature intends:

41 (a) To declare, in general terms, the powers and duties of the board, ~~of~~
42 ~~directors,~~ leaving specific details to be determined by reasonable
43 regulations and declarations of policy which the board may ~~promulgate,~~
44 *adopt.*

45 (b) By general grant of authority to the board ~~of directors~~ to delegate
46 sufficient power and authority to enable the board to carry out the broad
47 objectives ~~contained~~ *set forth* in this chapter.

48 7. The problem of establishing and maintaining adequate highways
49 and roads, eliminating congestion, reducing accident frequency and taking



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1 all necessary steps to ensure safe and convenient transportation on ~~these~~
2 *those* public ways is no less urgent.

3 8. The legislature hereby finds, determines and declares that this
4 chapter is necessary for the preservation of the public safety, the promotion
5 of the general welfare, the improvement and development of facilities for
6 transportation in ~~the~~ *this* state, and other related purposes necessarily
7 included therein, and as a contribution to the system of national defense.

8 9. The words "construction," "maintenance" and "administration" used
9 in section 5 of Article 9 of the constitution of the State of Nevada are broad
10 enough to be construed to include and as contemplating the construction,
11 maintenance and administration of the state highways and roads as
12 established by this chapter and the landscaping, roadside improvements
13 and planning surveys of the state highways and roads.

14 **Sec. 7.** NRS 408.233 is hereby amended to read as follows:

15 408.233 1. The primary responsibilities of the planning division are
16 to:

17 (a) Develop and coordinate balanced transportation policy and planning
18 which are consistent with the social, economic and environmental goals of
19 ~~the~~ *this* state. The plan must be designed to ~~meet~~ :

20 (1) *Meet* the present and future needs of ~~the~~ *this* state and local
21 areas of ~~the~~ *this* state for adequate, safe and efficient transportation
22 facilities and services at a reasonable cost to the taxpayer ~~;~~ *and*

23 (2) *Ensure the efficient maintenance and use of facilities located*
24 *within the boundaries of state highways and rights of way.*

25 (b) Coordinate local plans for balanced transportation facilities and
26 services and assist in application for federal grants which must be
27 submitted through an appropriate or designated state agency. The facilities
28 and services may include, but are not limited to, highways, pathways and
29 special lanes for bicycles, railways, urban public transportation and
30 aviation. The authority and duties of the department ~~with respect~~ *relating*
31 to aviation are limited to areas outside the jurisdiction of any airport
32 authority.

33 2. The planning division, in cooperation with other state agencies and
34 with agencies of local government, shall:

35 (a) Establish planning techniques and processes for all modes of
36 transportation at an appropriate level, according to the requirements of
37 ~~the~~ *this* state and local areas of ~~the~~ *this* state.

38 (b) Prepare, revise when appropriate, provide supporting information
39 for and assist in carrying out the transportation plan by providing
40 assistance in the development of the department's capital program for all
41 modes of transportation.

42 (c) Test and evaluate the policies, plans, proposals, systems, programs
43 and projects of the department within the framework of the goals of the
44 department.

45 (d) Conduct research in planning techniques, travel needs,
46 transportation potential for ~~the~~ *this* state, investigating, testing and
47 demonstrating methods and equipment suitable for application to the
48 problems of transportation facing ~~the~~ *this* state.

49 3. The department shall not operate any railroad or airport.



1 **Sec. 8.** NRS 408.423 is hereby amended to read as follows:
2 408.423 1. ~~{No}~~ *Except as otherwise provided in this section, a* state
3 highway or right of way ~~{may}~~ *must not* be disturbed, dug up, crossed,
4 encroached upon or otherwise used for the laying or re-laying of pipelines,
5 ditches, flumes, sewers, poles, wires, approach roads, driveways, railways ,
6 *facilities* or for any other purpose, without the written permit of the
7 director . ~~{, and then only}~~ *Except as otherwise provided in section 5 of*
8 *this act, all such work must be conducted* in accordance with the
9 conditions and regulations prescribed by the director ~~{, All such work must~~
10 ~~be done}~~ *and* under the supervision and to the satisfaction of the director.
11 All costs of replacing the highway in as good condition as ~~{previous to its~~
12 ~~being}~~ *before it was* disturbed must be paid by the ~~{persons}~~ *person* to
13 whom or on whose behalf ~~{such}~~ *the* permit was given or by the person by
14 whom the work was ~~{done}~~.
15 ~~2. In case of}~~ *conducted.*
16 2. *If an* immediate necessity therefor ~~{}~~ *occurs*, a city or town may dig
17 up a state highway without a permit from the director, *or if an emergency*
18 *occurs that impairs the health and safety of the general public, a public*
19 *utility may repair or maintain a facility located within the boundaries of*
20 *a state highway or right of way without such a permit*, but in such cases
21 the director must be first notified and the highway *or right of way* must be
22 replaced forthwith in as good condition as before at the expense of ~~{such}~~
23 *the* city or town ~~{}~~ *or public utility.*
24 3. The department shall charge each applicant a ~~{reasonable}~~ fee for all
25 administrative costs incurred by the department in acting upon an
26 application for a permit, including *any* costs for the preparation and
27 inspection of a proposed encroachment. *The fee must not exceed the cost*
28 *incurred by the department for acting upon the application.*
29 **Sec. 9.** NRS 408.487 is hereby amended to read as follows:
30 408.487 1. In all cases of highways constructed, reconstructed or
31 improved under the provisions of this chapter which are located or
32 relocated over privately owned property the department may acquire, in the
33 name of the state, ~~{either}~~ in fee or in any lesser estate or interest, any real
34 property or interest therein and any personal property which it considers
35 necessary.
36 2. The property which may be acquired for those purposes includes,
37 but is not limited to, real property, interests therein, improvements located
38 thereon and personal property for any of the following purposes:
39 (a) For rights of way for ~~{both}~~ present and future needs for highways of
40 all types, including highways constructed within towns and cities.
41 (b) For exchanging the property or interests therein for other property or
42 interests therein required for highway purposes to avoid the payment of
43 excessive compensation or damages.
44 (c) For sites on which to relocate structures which are within the right of
45 way of a projected highway.
46 (d) For sites for storage, communications and maintenance and for
47 administrative, recreational and historical purposes and necessary
48 appurtenances in connection with those sites.



1 (e) For *the* extraction of material, including rock quarries, gravel pits,
2 sand or earth borrow pits, or other roadway material ~~to; also~~, *and* to obtain
3 water from any source for any purpose which may be necessary ~~for the~~
4 ~~construction and maintenance of~~ *to construct and maintain* the highways
5 and their appurtenances.

6 (f) For the culture and support of trees and other flora which will benefit
7 the highways in any way, including the increasing of the scenic beauty of
8 the highways.

9 (g) For drainage in connection with any highway.

10 (h) For the maintenance of an unobstructed view of any portion of a
11 highway ~~so as~~ to promote the safety of the traveling public.

12 (i) For the placement of directional signs and other signs, construction
13 of fences, curbs, barriers, and obstructions as may be necessary for the
14 safety and convenience of the traveling public.

15 (j) For constructing and maintaining highway cut and fill slopes.

16 (k) For public parks, playgrounds, recreational grounds and sites
17 adjoining highway or freeway rights of way, ~~to~~ acquisition of sites to
18 replace housing, ~~to~~ and acquisition and rehabilitation, relocation and
19 construction of housing to replace other housing acquired.

20 *3. For the purposes of subsection 2, the construction, improvement,*
21 *maintenance or repair of a facility by a public utility within the*
22 *boundaries of a highway or right of way that is located on property*
23 *acquired for a purpose set forth in that subsection shall be deemed to*
24 *serve a public purpose and to promote the health, safety and general*
25 *welfare of the residents of this state.*

26 **Sec. 10.** NRS 704.805 is hereby amended to read as follows:

27 704.805 1. Any public utility may bring a civil action for damages
28 against any person who willfully and knowingly obtains, attempts to obtain
29 or solicits, aids or abets another to obtain any service provided by the
30 public utility by:

31 (a) Opening, breaking into, tapping or connecting with any pipe, flume,
32 ditch, conduit, reservoir, wire, meter or other apparatus owned or used by
33 another person;

34 (b) Bypassing any meter or other instrument used to register the
35 quantity consumed or supplied; or

36 (c) Altering, disconnecting, removing, injuring or preventing the action
37 of any meter or other instrument used to register the quantity consumed or
38 supplied,

39 and recover a sum equal to treble the amount of the actual damages, plus
40 all reasonable costs and expenses incurred by the public utility because of
41 that conduct, including the cost of equipment, investigating the matter and
42 expert witnesses and attorney's fees.

43 2. There is a rebuttable presumption that the person responsible for
44 payment for the delivery of the service of a public utility to any premises
45 caused or had knowledge of any act specified in subsection 1 if he:

46 (a) Is the occupant of the premises; or

47 (b) Has any access to the system for delivery of the service to the
48 premises.



1 3. The presumption provided in subsection 2 only shifts the burden of
2 going forward with the evidence and does not shift the burden of proof to
3 the defendant.

4 4. A person who willfully or negligently injures or destroys the
5 property of a public utility which is used in the actual production,
6 distribution or delivery of the service provided by the public utility is liable
7 to the public utility for the cost of the repair or replacement of the property
8 injured or destroyed, including the direct and indirect costs attributable to
9 the repair or replacement but subtracting the value, if any, of salvage.

10 5. ~~Nothing in~~ *The provisions of* this section ~~abridges or alters~~ *do*
11 *not abridge or alter* any other right of action or remedy available to a
12 public utility before or after July 1, 1985.

13 6. As used in this section ~~the "direct"~~ :

14 (a) *"Direct"* and indirect costs attributable to repair or replacement"
15 include, but are not limited to, costs for:

- 16 ~~(a)~~ (1) Labor;
17 ~~(b)~~ (2) Materials;
18 ~~(c)~~ (3) Supervision of employees;
19 ~~(d)~~ (4) Supplies;
20 ~~(e)~~ (5) Tools;
21 ~~(f)~~ (6) Taxes;
22 ~~(g)~~ (7) Transportation;
23 ~~(h)~~ (8) General and administrative expenses;
24 ~~(i)~~ (9) Allocable benefits for employees;
25 ~~(j)~~ (10) Allowances for meals; and
26 ~~(k)~~ (11) Any other related expenses.

27 (b) *"Person" includes a government, governmental agency or political*
28 *subdivision of a government.*

29 **Sec. 11.** This act becomes effective upon passage and approval.

