

Amendment No. 657

Assembly Amendment to Senate Bill No. 170 First Reprint (BDR 48-1059)

Proposed by: Assembly Committee on Natural Resources, Agriculture, and Mining**Amends:** Summary: No Title: No Preamble: No Joint Sponsorship: No Digest: Yes

ASSEMBLY ACTION				Initial and Date	SENATE ACTION				Initial and Date
Adopted	☐	Lost	☐	_____	Adopted	☐	Lost	☐	_____
Concurred In	☐	Not	☐	_____	Concurred In	☐	Not	☐	_____
Receded	☐	Not	☐	_____	Receded	☐	Not	☐	_____

EXPLANATION: Matter in (1) ***blue bold italics*** is new language in the original bill; (2) ***green bold italic underlining*** is new language proposed in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill that is proposed to be retained in this amendment; and (6) ***green bold dashed underlining*** is newly added transitory language.

JRS/TMC



Date: 5/14/2009

S.B. No. 170—Revises provisions governing payment for work performed for the operation and maintenance of ditches. (BDR 48-1059)



SENATE BILL NO. 170—SENATOR AMODEI

MARCH 4, 2009

Referred to Committee on Natural Resources

SUMMARY—Revises provisions governing payment for work performed for the operation and maintenance of ditches. (BDR 48-1059)

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

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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 conduits; authorizing an entity that owns, operates or maintains a ditch to recover from certain persons the reasonable expense of any work performed by the entity that is necessary for the operation and maintenance of the ditch; providing for the imposition of a lien against any property to which water is delivered through the ditch; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Section 1 of this bill authorizes an entity that owns, operates or maintains a ditch to perform any work necessary for the maintenance and operation of the ditch and to recover the reasonable expense of that work from each person who **, in accordance with a contract or a decreed, certified or permitted right to appropriate water,** receives water through the ditch. **If the work consists of a capital improvement that alters the fundamental character of the ditch, section 1 requires the entity to provide notice of the work at least 30 days before incurring any expenses for the work.** **Section 1** also specifies that any ~~such~~ work **performed for the maintenance and operation of the ditch** includes, without limitation, labor and any accounting, legal or other administrative service performed for ~~the~~ **that** maintenance and operation. ~~for the ditch.~~ **Section 2** of this bill provides for the imposition of a lien against any property to which water is delivered through the ditch if a person who receives water through the ditch fails to pay his proportionate share of the expense of maintenance or operation. **Section 3** of this bill provides that each person or entity constructing, operating or maintaining a ditch or flume has a right to the full flow of water through the ditch or flume, regardless of whether the water is for use by the person or entity or for delivery to others.

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

Section 1. NRS 536.040 is hereby amended to read as follows:
536.040 **1.** In all cases where ~~ditches are~~ **a ditch is** owned by two or more persons, and one or more of ~~such~~ **those** persons ~~shall fail~~ **fails** or ~~neglect~~ **neglects** to do a proportionate share of the work necessary for the ~~proper~~

1 maintenance and operation of ~~{such}~~ the ditch , ~~{for ditches,}~~ or to construct suitable
2 headgates or other devices at the point where water is diverted from the main ditch,
3 ~~{such}~~ the owner or owners desiring the performance of ~~{such}~~ the work may, after
4 giving 10 days' written notice to ~~{such}~~ the other owner or owners who have failed
5 to perform ~~{such}~~ the proportionate share of the work necessary for the operation
6 and maintenance of ~~{such}~~ the ditch , ~~{for ditches,}~~ perform ~~{such}~~ the share of the
7 work, and recover therefor from ~~{such}~~ each person ~~{for persons}~~ in default the
8 reasonable expense of ~~{such}~~ the work. *In all cases where a ditch is owned,*
9 *operated or maintained by an entity, the entity may perform any work necessary*
10 *for the maintenance and operation of the ditch and recover ~~{therefor}~~ from each*
11 *person ~~{receiving}~~ who, in accordance with a contract or a decreed, certified or*
12 *permitted right to appropriate water, receives water through the ditch his*
13 *proportionate share of the reasonable expense of the work. Except during an*
14 *emergency, the entity shall notify each of those persons at least 30 days before*
15 *incurring any expenses to perform a capital improvement that alters the*
16 *fundamental character of the ditch. If the entity is a supplier of water, any*
17 *expenses incurred by the supplier of water for any work performed on an*
18 *irrigation ditch pursuant to this section must be billed as part of the customer*
19 *rates of the supplier of water for the delivery of water service through the ditch.*

20 2. As used in this section ~~{, "work"}~~ :

21 (a) "Supplier of water" has the meaning ascribed to it in NRS 445A.845.

22 (b) "Work" includes, without limitation, labor and any accounting, legal or
23 other administrative service performed for the maintenance and operation of a
24 ditch specified in subsection 1.

25 Sec. 2. NRS 536.050 is hereby amended to read as follows:

26 536.050 Upon the failure of any co-owner ~~or person ~~{receiving}~~ who receives~~
27 *water through a ditch from an entity specified in NRS 536.040* to pay his
28 proportionate share of such expense, as ~~{mentioned}~~ *specified in ~~{NRS 536.040,}~~*
29 *that section,* within 30 days after receiving a statement of the same as performed by
30 his co-owner or co-owners ~~{, such}~~ *or by the entity owning, operating or*
31 *maintaining the ditch, each person or ~~{persons}~~ entity* so performing ~~{such}~~ the
32 labor *or other work* may secure payment of ~~{such}~~ the claim by filing an itemized
33 and sworn statement thereof, setting forth the date of the performance and the
34 nature of the labor *or other work* so performed, with the county clerk of the county
35 wherein the ditch is situated, and when so filed it ~~{shall constitute}~~ *constitutes* a
36 valid lien against the interest of ~~{such}~~ each person ~~{for persons}~~ in default ~~{, which}~~
37 *and against any property to which water is delivered through the ditch. The* lien
38 may be established and enforced in the same manner as provided by law for the
39 enforcement of mechanics' liens.

40 Sec. 3. NRS 536.080 is hereby amended to read as follows:

41 536.080 ~~{The}~~ Each person or ~~{persons}~~ entity constructing , *operating* or
42 maintaining a ditch or flume under the provisions of NRS 536.060 to 536.090,
43 inclusive, ~~{shall have}~~ *has* the undisturbed right and privilege of flowing water
44 through the same, to the full extent of its capacity, for mining, milling,
45 manufacturing, agricultural and other domestic purposes, *whether for use by the*
46 *person or entity or for delivery to others,* and to use the same at any necessary and
47 convenient point or points along the line thereof , ~~{,}~~ but nothing contained in NRS
48 536.060 to 536.090, inclusive, shall be so construed as to interfere with any prior or
49 existing claim or right.

50 Sec. 4. This act becomes effective on July 1, 2009.