

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:

1 **Section 1** of this bill authorizes an entity that owns, operates or maintains a
2 ditch to perform any work necessary for the maintenance and operation of the ditch
3 and to recover the reasonable expense of that work from each person who, in
4 accordance with a contract or a decreed, certified or permitted right to appropriate
5 water, receives water through the ditch. If the work consists of a capital
6 improvement that alters the fundamental character of the ditch, **section 1** requires
7 the entity to provide notice of the work at least 30 days before incurring any
8 expenses for the work. **Section 1** also specifies that any work performed for the
9 maintenance and operation of the ditch includes, without limitation, labor and any
10 accounting, legal or other administrative service performed for that maintenance
11 and operation. **Section 2** of this bill provides for the imposition of a lien against any
12 property to which water is delivered through the ditch if a person who receives
13 water through the ditch fails to pay his proportionate share of the expense of
14 maintenance or operation. **Section 3** of this bill provides that each person or entity
15 constructing, operating or maintaining a ditch or flume has a right to the full flow
16 of water through the ditch or flume, regardless of whether the water is for use by
17 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}~~ maintenance and operation of ~~{such}~~ *the* ditch , ~~{or-ditches,}~~ or to construct suitable headgates or other devices at the point where water is diverted from the main ditch, ~~{such}~~ *the* owner or owners desiring the performance of ~~{such}~~ *the* work may, after giving 10 days' written notice to ~~{such}~~ *the* other owner or owners who have failed to perform ~~{such}~~ *the* proportionate share of the work necessary for the operation and maintenance of ~~{such}~~ *the* ditch , ~~{or-ditches,}~~ perform ~~{such}~~ *the* share of the work, and recover therefor from ~~{such}~~ *each* person ~~{or persons}~~ in default the reasonable expense of ~~{such}~~ *the* work. *In all cases where a ditch is owned, operated or maintained by an entity, the entity may perform any work necessary for the maintenance and operation of the ditch and recover from each person who, in accordance with a contract or a decree, certified or permitted right to appropriate water, receives water through the ditch his proportionate share of the reasonable expense of the work. Except during an emergency, the entity shall notify each of those persons at least 30 days before incurring any expenses to perform a capital improvement that alters the fundamental character of the ditch. If the entity is a supplier of water, any expenses incurred by the supplier of water for any work performed on an irrigation ditch pursuant to this section must be billed as part of the customer rates of the supplier of water for the delivery of water service through the ditch.*

2. As used in this section:

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

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

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

536.050 Upon the failure of any co-owner *or person who receives water through a ditch from an entity specified in NRS 536.040* to pay his proportionate share of such expense, as ~~{mentioned}~~ *specified* in ~~{NRS 536.040,}~~ *that section*, within 30 days after receiving a statement of the same as performed by his co-owner or co-owners ~~{-such}~~ *or by the entity owning, operating or maintaining the ditch, each* person or ~~{persons}~~ *entity* so



1 performing ~~{such}~~ *the* labor *or other work* may secure payment of
2 ~~{such}~~ *the* claim by filing an itemized and sworn statement thereof,
3 setting forth the date of the performance and the nature of the labor
4 *or other work* so performed, with the county clerk of the county
5 wherein the ditch is situated, and when so filed it ~~{shall constitute}~~
6 *constitutes* a valid lien against the interest of ~~{such}~~ *each* person ~~{or~~
7 ~~persons}~~ in default ~~{-which}~~ *and against any property to which*
8 *water is delivered through the ditch. The* lien may be established
9 and enforced in the same manner as provided by law for the
10 enforcement of mechanics' liens.

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

12 536.080 ~~{The}~~ *Each* person or ~~{persons}~~ *entity* constructing ,
13 *operating* or maintaining a ditch or flume under the provisions of
14 NRS 536.060 to 536.090, inclusive, ~~{shall have}~~ *has* the undisturbed
15 right and privilege of flowing water through the same, to the full
16 extent of its capacity, for mining, milling, manufacturing,
17 agricultural and other domestic purposes, *whether for use by the*
18 *person or entity or for delivery to others*, and to use the same at any
19 necessary and convenient point or points along the line thereof , ~~{-}~~
20 but nothing contained in NRS 536.060 to 536.090, inclusive, shall
21 be so construed as to interfere with any prior or existing claim or
22 right.

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

