

Amendment No. 409

Senate Amendment to Senate Bill No. 324	(BDR 35-23)
Proposed by: Senate Committee on Transportation	
Amends: Summary: No Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes	

Adoption of this amendment will ADD a 2/3s majority vote requirement for final passage of S.B. 324 (§ 15).

ASSEMBLY ACTION			Initial and Date	SENATE ACTION			Initial and Date		
Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____	Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____
Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____
Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) variations of green bold underlining is language proposed to be added 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 proposed to be retained in this amendment.

DHR/MSM



Date: 4/14/2015

S.B. No. 324—Revises provisions concerning the Department of Transportation.
(BDR 35-23)



SENATE BILL NO. 324—SENATOR MANENDO (BY REQUEST)

MARCH 16, 2015

Referred to Committee on Transportation

SUMMARY—Revises provisions concerning the Department of Transportation.
(BDR 35-23)

FISCAL NOTE: Effect on Local Government: Increases or Newly Provides for
Term of Imprisonment in County or City Jail or Detention
Facility.
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 the Department of Transportation; authorizing the Director of the Department to ~~adopt regulations to enforce compliance with the conditions of certain environmental permits;~~ **issue an encroachment permit for certain discharges onto a state highway or right-of-way;** providing civil ~~and criminal~~ penalties ~~for~~ **for an unpermitted discharge onto a state highway or right-of-way or for a violation of an encroachment permit issued by the Director;** and providing other matters properly relating thereto.

Legislative Counsel's Digest:

~~[This bill authorizes the Director of the Department of Transportation to adopt regulations to enforce compliance with the conditions of an environmental permit issued to the Department by any state or federal agency or any plan or program adopted by the Department as a condition of such a permit. In addition, this bill provides that a person violating such a regulation is guilty of a gross misdemeanor.] Existing law requires a person to obtain from the Director of the Department of Transportation a permit before disturbing or digging up, or performing certain similar acts with respect to, a state highway or right-of-way. (NRS 408.423) Section 4 of this bill prohibits a person from discharging onto a state highway or right-of-way any substance other than storm water that results or could result in the pollution of the waters of this State unless: (1) the Director has issued to the person a valid encroachment permit for the discharge; (2) the discharge is allowed pursuant to a National Pollutant Discharge Elimination System permit; or (3) the discharge is the result of fire-fighting operations. In addition, section 4 requires that a person who discharges a substance onto a state highway or right-of-way without such a permit, or in violation of the terms of the permit, must abate, remove or remediate the discharge. If the person fails to abate, remove or remediate the discharge, the Director may abate, remove or remediate the discharge and charge the person for the costs associated with the abatement, removal or remediation.]~~

Sections 5-10 of this bill provide certain enforcement powers to the Director relating to section 4 and authorize the Director to: (1) enter upon any premises to investigate the source of a discharge; (2) issue orders for compliance to enforce the provisions of section 4; (3) seek injunctive relief in a court of competent jurisdiction to prevent the

continuanance or occurrence of any act which violates or may violate the provisions of section 4; (4) impose a civil penalty of up to \$25,000 per day for violations of the provisions of section 4; and (5) conduct an independent investigation of any act which violates or may violate the provisions of section 4.

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

Section 1. ~~[Chapter 408 of NRS is hereby amended by adding thereto a new section to read as follows:~~

~~1. The Director, in consultation with the Board, may adopt regulations to enforce compliance with the conditions of any environmental permit issued to the Department by any state or federal agency, or any plan or program adopted by the Department pursuant thereto, including, without limitation, a discharge permit issued pursuant to NRS 445A.475 or a stormwater management program adopted in accordance with the requirements of such a discharge permit.~~

~~2. Regulations adopted pursuant to subsection 1 may include, without limitation, provisions:~~

~~(a) Granting authority to employees of the Department to issue notices of violations, citations and orders to stop work that are related to a violation of the conditions of an environmental permit issued pursuant to NRS 533.463 or 533.504 to the Department, or the provisions of any program or plan of the Department adopted pursuant thereto;~~

~~(b) Establishing processes and procedures for the adjudication of any citation issued in accordance with provisions described in paragraph (a), including, without limitation, administrative hearings and appeals processes; and~~

~~(c) Establishing a schedule of civil penalties for various violations of the conditions of an environmental permit issued to the Department, or the provisions of any program or plan of the Department adopted pursuant thereto.~~

~~3. In addition to any civil penalties imposed pursuant to provisions described in paragraph (c) of subsection 2, the Director may require any person violating the conditions of an environmental permit issued pursuant to NRS 533.463 or 533.504 to the Department, or the provisions of any program or plan of the Department adopted pursuant thereto, to pay any costs associated with the remediation of the violation. If any such costs of remediation are not paid within a reasonable amount of time, the Director may commence a civil action in any court of competent jurisdiction for the recovery of such costs.~~

~~4. A person who violates any regulation adopted pursuant to subsection 1 is guilty of a gross misdemeanor for which the Director may request that the Attorney General institute a criminal prosecution by indictment or information.~~

~~5. The remedies specified in subsections 3 and 4 and any provisions described in paragraph (c) of subsection 2 are cumulative, and the institution of any proceeding or action seeking any one of the remedies or sanctions does not bar any simultaneous or subsequent action or proceeding seeking any other of the remedies or sanctions.] (Deleted by amendment.)~~

Sec. 2. NRS 405.205 is hereby amended to read as follows:

405.205 A rural electric cooperative which has been formed pursuant to NRS 81.410 to 81.540, inclusive, may erect or bury, and thereafter maintain or operate, power lines, and may permit the maintenance and operation of telephone lines in connection therewith, along public highways, roads, streets and alleys within the area which it holds a certificate of public convenience and necessity to serve. In

exercising this right, the cooperative shall not obstruct the natural and proper use of the highway, road, street or alley, and is subject to the requirements of NRS 408.423, and section 4 of this act.

Sec. 3. Chapter 408 of NRS is hereby amended by adding thereto the provisions set forth as sections 3.5 to 10, inclusive, of this act.

Sec. 3.5. "Discharge" has the meaning ascribed to it in NRS 445A.345.

Sec. 4. 1. No person shall discharge or cause to be discharged upon a state highway or right-of-way any substance that is not composed entirely of storm water and that results or could result in the pollution of the waters of this State, other than a discharge allowed pursuant to a National Pollutant Discharge Elimination System permit or waters used for fire-fighting operations, without a valid encroachment permit issued by the Director pursuant to NRS 408.423, and then only in accordance with the conditions and regulations prescribed by the Director.

2. A person who violates the provisions of subsection 1 shall abate, remove or remediate the discharge in a timely manner.

3. If a person who violates the provisions of subsection 1 fails to abate, remove or remediate the discharge in a timely manner, the Director may abate, remove or remediate the discharge. The abatement, removal or remediation of a discharge pursuant to this subsection gives the Department a right of action to recover:

(a) Any expenses associated with the abatement, removal or remediation;

(b) Attorney's fees, costs and expenses related to the abatement, removal or remediation; and

(c) An amount not to exceed \$750 for each day, commencing on the 6th day after the initial discharge, that the person failed to abate, remove or remediate the discharge.

4. The remedies provided in subsection 3 are cumulative and do not abrogate and are in addition to any other rights, remedies and penalties that may exist at law or in equity, including, without limitation, pursuant to sections 4 to 10, inclusive, of this act.

5. To enforce the provisions of this section, the Director may cooperate and coordinate with the Division of Environmental Protection of the State Department of Conservation and Natural Resources and the Office of the Attorney General.

6. As used in this section, "pollution" has the meaning ascribed to it in NRS 445A.405.

Sec. 5. To enforce the provisions of section 4 of this act or any permit or order of the Director related thereto, the Director or a designee of the Director may, upon presenting proper credentials:

1. Enter upon any premises upon which any act in violation of section 4 of this act takes place to inspect, investigate, collect data or otherwise document the violation;

2. At reasonable times, have access to and copy any records required to be maintained in association with any permit issued for the purposes of section 4 of this act or with any abatement, removal or remediation of a discharge that violates the provisions of section 4 of this act;

3. Inspect any equipment or method for the monitoring or observation of a discharge; and

4. Have access to and sample any discharge onto the state highway or right-of-way which results directly or indirectly from activities of an owner or operator of a premises where the discharge originates.

1 Sec. 6. 1. Except as otherwise provided in section 10 of this act, if the
2 Director finds that any person is engaged or is about to engage in any act or
3 practice which violates any permit issued by the Director for the purposes of
4 section 4 of this act, the Director may:

5 (a) Issue an order for compliance pursuant to section 7 of this act; or

6 (b) Commence a civil action pursuant to sections 8 and 9 of this act.

7 2. The remedies provided in subsection 1 are cumulative and do not
8 abrogate and are in addition to any other rights, remedies and penalties that may
9 exist at law or in equity, including, without limitation, pursuant to sections 4 to
10 10, inclusive, of this act.

11 Sec. 7. 1. Except as otherwise provided in section 10 of this act, if the
12 Director finds that any person is engaged in or is about to engage in any act or
13 practice which constitutes or will constitute a violation of any permit or order
14 issued by the Director to enforce the provisions of section 4 of this act, the
15 Director or a designee of the Director may issue an order for compliance which:

16 (a) Specifies the provisions of section 4 of this act, or any permit or order
17 issued by the Director, alleged to be violated or about to be violated;

18 (b) Indicates the facts alleged which constitute the alleged violation;

19 (c) Prescribes the necessary corrective action to be taken and a reasonable
20 period for completion of that corrective action; and

21 (d) Is served upon the person at his or her place of business or, if that place
22 of business is unknown, served upon the person through the post office or at his
23 or her last known address of record.

24 2. Any order for compliance issued pursuant to subsection 1 is final and is
25 not subject to review unless the person against whom the order is issued, within
26 30 days after the date on which the order is served, requests by written petition a
27 hearing before the Director.

28 Sec. 8. 1. Except as otherwise provided in section 10 of this act, the
29 Director may seek injunctive relief in a court of competent jurisdiction to prevent
30 the continuance or occurrence of any act or practice which violates any provision
31 of section 4 of this act, or any permit or order issued pursuant thereto.

32 2. On a showing by the Director or a designee of the Director that a person
33 is engaged or is about to engage in any act or practice which violates or will
34 violate any rule, regulation or standard or a permit or order issued for the
35 purposes of section 4 of this act, the court may issue, without bond, any
36 prohibitory or mandatory injunctions that the facts may warrant, including,
37 without limitation, a temporary restraining order issued ex parte, or, after notice
38 and an opportunity for a hearing, a preliminary injunction or permanent
39 injunction.

40 3. Failure to establish lack of an adequate remedy at law or irreparable
41 harm is not a ground for denying a request for a temporary restraining order or
42 injunction pursuant to subsection 2.

43 4. A court may require the posting of a sufficient performance bond or
44 other security interest to ensure compliance with the court order within the period
45 prescribed.

46 5. An injunction issued pursuant to this section does not abrogate and is in
47 addition to any other remedies and penalties that may exist at law or in equity,
48 including, without limitation, pursuant to sections 4 to 10, inclusive, of this act.

49 Sec. 9. Except as otherwise provided in sections 4 to 10, inclusive, of this
50 act, any person who violates or aids or abets in the violation of any provision of
51 section 4 of this act, or of any permit or order issued pursuant thereto, shall pay a
52 civil penalty of not more than \$25,000 for each day of the violation. A civil
53 penalty imposed pursuant to this section is cumulative and does not abrogate and

1 is in addition to any other remedies and penalties that may exist at law or in
2 equity, including, without limitation, pursuant to sections 4 to 10, inclusive, of
3 this act.

4 Sec. 10. 1. Except as otherwise provided in subsection 2, before
5 determining whether to issue an order for compliance, commence a civil action
6 or seek injunctive relief pursuant to sections 4 to 10, inclusive, of this act, the
7 Director or the designee of the Director shall, if practicable, conduct an
8 independent investigation of the alleged act or practice for which the Director is
9 making the determination.

10 2. The Director is not required to conduct an independent investigation
11 pursuant to subsection 1 if:

12 (a) The determination of the Director to take any action specified in that
13 subsection is based on information that is provided to the Director by the holder
14 of a permit issued for the purposes of section 4 of this act; or

15 (b) The alleged act or practice:

16 (1) Occurs on land that is managed or controlled by the United States
17 Department of Defense or Department of Energy; or

18 (2) Creates an imminent and substantial danger to the public health or
19 the environment.

20 Sec. 10.5. NRS 408.020 is hereby amended to read as follows:

21 408.020 As used in this chapter, unless the context otherwise requires, the
22 words and terms defined in NRS 408.033 to 408.095, inclusive, ~~unless the context~~
23 ~~otherwise requires,~~ and section 3.5 of this act have the meanings ascribed to them
24 in those sections.

25 Sec. 11. NRS 408.050 is hereby amended to read as follows:

26 408.050 "Encroachment" means any tower, pole, pole line, wire, pipe,
27 pipeline, fence, billboard, approach road, driveway, stand or building, crop or
28 crops, flora, discharge of any kind or character or any structure which is placed in,
29 upon, under or over any portion of highway rights-of-way.

30 Sec. 12. NRS 408.172 is hereby amended to read as follows:

31 408.172 1. Subject to the approval of the Board, the Attorney General shall,
32 immediately upon request by the Board, appoint an attorney at law as the Chief
33 Counsel of the Department, and such assistant attorneys as are necessary. Attorneys
34 so appointed are deputy attorneys general.

35 2. The Chief Counsel shall act as the attorney and legal adviser of the
36 Department in all actions, proceedings, hearings and all matters relating to the
37 Department and to the powers and duties of its officers.

38 3. Under the direction of or in the absence of the Chief Counsel, the assistant
39 attorneys may perform any duty required or permitted by law to be performed by
40 the Chief Counsel.

41 4. The Chief Counsel and assistant attorneys are in the unclassified service of
42 the State.

43 5. All contracts, instruments and documents executed by the Department must
44 be first approved and endorsed as to legality and form by the Chief Counsel.

45 6. The Chief Counsel shall act as the attorney and legal advisor of the
46 Department in all actions, proceedings, hearings and enforcement actions related
47 to the provisions of sections 4 to 10, inclusive, of this act.

48 Sec. 13. NRS 408.175 is hereby amended to read as follows:

49 408.175 1. The Director shall:

50 (a) Appoint one Deputy Director who in the absence, inability or failure of the
51 Director has full authority to perform any duty required or permitted by law to be
52 performed by the Director.

(b) Appoint one Deputy Director for southern Nevada whose principal office must be located in an urban area in southern Nevada.

(c) Appoint one Deputy Director with full authority to perform any duty required or permitted by law to be performed by the Director to implement, manage, oversee and enforce any environmental program of the Department.

(d) Employ such engineers, engineering and technical assistants, clerks and other personnel as in the Director's judgment may be necessary to the proper conduct of the Department and to carry out the provisions of this chapter.

2. Except as otherwise provided in NRS 284.143, the Deputy Directors shall devote their entire time and attention to the business of the office and shall not pursue any other business or occupation or hold any other office of profit.

3. The Director may delegate such authority as may be necessary for the Deputy Director appointed pursuant to paragraph (b) of subsection 1 to carry out his or her duties.

Sec. 14. NRS 408.210 is hereby amended to read as follows:

408.210 1. Except as otherwise provided in NRS 484D.655, the Director of the Department of Transportation may restrict the use of, or close, any highway whenever the Director considers the closing or restriction of use necessary:

(a) For the protection of the public.

(b) For the protection of such highway from damage during storms or during construction, reconstruction, improvement or maintenance operations thereon.

(c) To promote economic development or tourism in the best interest of the State or upon the written request of the Executive Director of the Office of Economic Development or the Director of the Department of Tourism and Cultural Affairs.

2. The Director of the Department of Transportation may:

(a) Divide or separate any highway into separate roadways, wherever there is particular danger to the traveling public of collisions between vehicles proceeding in opposite directions or from vehicular turning movements or cross-traffic, by constructing curbs, central dividing sections or other physical dividing lines, or by signs, marks or other devices in or on the highway appropriate to designate the dividing line.

(b) Lay out and construct frontage roads on and along any highway or freeway and divide and separate any such frontage road from the main highway or freeway by means of curbs, physical barriers or by other appropriate devices.

3. ~~That~~ Except as otherwise provided in sections 4 to 10, inclusive, of this act, the Director may remove from the highways any unlicensed encroachment which is not removed, or the removal of which is not commenced and thereafter diligently prosecuted, within 5 days after personal service of notice and demand upon the owner of the encroachment or the owner's agent. In lieu of personal service upon that person or agent, service of the notice may also be made by registered or certified mail and by posting, for a period of 5 days, a copy of the notice on the encroachment described in the notice. Removal by the Department of the encroachment on the failure of the owner to comply with the notice and demand gives the Department a right of action to recover the expense of the removal, cost and expenses of suit, and in addition thereto the sum of \$100 for each day the encroachment remains beyond 5 days after the service of the notice and demand.

4. If the Director determines that the interests of the Department are not compromised by a proposed or existing encroachment, the Director may issue a license to the owner or the owner's agent permitting an encroachment on the highway. Such a license is revocable and must provide for relocation or removal of the encroachment in the following manner. Upon notice from the Director to the owner of the encroachment or the owner's agent, the owner or agent may propose a

time within which he or she will relocate or remove the encroachment as required. If the Director and the owner or the owner's agent agree upon such a time, the Director shall not himself or herself remove the encroachment unless the owner or the owner's agent has failed to do so within the time agreed. If the Director and the owner or the owner's agent do not agree upon such a time, the Director may remove the encroachment at any time later than 30 days after the service of the original notice upon the owner or the owner's agent. Service of notice may be made in the manner provided by subsection 3. Removal of the encroachment by the Director gives the Department the right of action provided by subsection 3, but the penalty must be computed from the expiration of the agreed period or 30-day period, as the case may be.

Sec. 15. NRS 408.423 is hereby amended to read as follows:

408.423 1. No state highway or right-of-way may be disturbed, dug up, crossed, encroached upon, discharged upon or otherwise used for the laying or re-laying of pipelines, ditches, flumes, sewers, poles, wires, approach roads, driveways, railways or for any other purpose, without the written permit of the Director, and then only in accordance with the conditions and regulations prescribed by the Director. All such work must be done under the supervision and to the satisfaction of the Director. All costs of replacing the highway in as good condition as previous to its being disturbed must be paid by the persons to whom or on whose behalf such permit was given or by the person by whom the work was done.

2. In case of immediate necessity therefor, a city or town may dig up a state highway without a permit from the Director, but in such cases the Director must be first notified and the highway must be replaced forthwith in as good condition as before at the expense of such city or town.

3. The Department shall charge each applicant a reasonable fee for all administrative costs incurred by the Department in acting upon an application for a permit, including costs for the preparation and inspection of a proposed encroachment.

~~{Sec. 2.}~~ **Sec. 16.** This act becomes effective on July 1, 2015.