

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 issue an encroachment permit for certain discharges onto a state highway or right-of-way; providing civil penalties 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:**

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



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jurisdiction to prevent the continuance 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**.

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

**Section 1.** (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 **H 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;*



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

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

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

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

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

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

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

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

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

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

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

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

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

43 2. The remedies provided in subsection 1 are cumulative and  
44 do not abrogate and are in addition to any other rights, remedies



1 *and penalties that may exist at law or in equity, including, without*  
2 *limitation, pursuant to sections 4 to 10, inclusive, of this act.*

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

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

12 (b) *Indicates the facts alleged which constitute the alleged*  
13 *violation;*

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

16 (d) *Is served upon the person at his or her place of business or,*  
17 *if that place of business is unknown, served upon the person*  
18 *through the post office or at his or her last known address of*  
19 *record.*

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

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

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

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

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



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

5     **Sec. 9.** *Except as otherwise provided in sections 4 to 10,*  
6 *inclusive, of this act, any person who violates or aids or abets in*  
7 *the violation of any provision of section 4 of this act, or of any*  
8 *permit or order issued pursuant thereto, shall pay a civil penalty of*  
9 *not more than \$25,000 for each day of the violation. A civil*  
10 *penalty imposed pursuant to this section is cumulative and does*  
11 *not abrogate and is in addition to any other remedies and penalties*  
12 *that may exist at law or in equity, including, without limitation,*  
13 *pursuant to sections 4 to 10, inclusive, of this act.*

14     **Sec. 10. 1.** *Except as otherwise provided in subsection 2,*  
15 *before determining whether to issue an order for compliance,*  
16 *commence a civil action or seek injunctive relief pursuant to*  
17 *sections 4 to 10, inclusive, of this act, the Director or the designee*  
18 *of the Director shall, if practicable, conduct an independent*  
19 *investigation of the alleged act or practice for which the Director*  
20 *is making the determination.*

21     2. *The Director is not required to conduct an independent*  
22 *investigation pursuant to subsection 1 if:*

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

27     (b) *The alleged act or practice:*

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

30     (2) *Creates an imminent and substantial danger to the*  
31 *public health or the environment.*

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

33     408.020 As used in this chapter, *unless the context otherwise*  
34 *requires,* the words and terms defined in NRS 408.033 to 408.095,  
35 inclusive, ~~unless the context otherwise requires,~~ *and section 3.5 of*  
36 *this act* have the meanings ascribed to them in those sections.

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

38     408.050 "Encroachment" means any tower, pole, pole line,  
39 wire, pipe, pipeline, fence, billboard, approach road, driveway, stand  
40 or building, crop or crops, flora, *discharge of any kind or character*  
41 or any structure which is placed in, upon, under or over any portion  
42 of highway rights-of-way.

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

44     408.172 1. Subject to the approval of the Board, the Attorney  
45 General shall, immediately upon request by the Board, appoint an



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1 attorney at law as the Chief Counsel of the Department, and such  
2 assistant attorneys as are necessary. Attorneys so appointed are  
3 deputy attorneys general.

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

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

11 4. The Chief Counsel and assistant attorneys are in the  
12 unclassified service of the State.

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

16 6. *The Chief Counsel shall act as the attorney and legal*  
17 *advisor of the Department in all actions, proceedings, hearings*  
18 *and enforcement actions related to the provisions of sections 4 to*  
19 *10, inclusive, of this act.*

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

21 408.175 1. The Director shall:

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

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

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

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

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

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

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

44 408.210 1. Except as otherwise provided in NRS 484D.655,  
45 the Director of the Department of Transportation may restrict the



1 use of, or close, any highway whenever the Director considers the  
2 closing or restriction of use necessary:

3 (a) For the protection of the public.

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

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

11 2. The Director of the Department of Transportation may:

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

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

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

38 4. If the Director determines that the interests of the  
39 Department are not compromised by a proposed or existing  
40 encroachment, the Director may issue a license to the owner or the  
41 owner's agent permitting an encroachment on the highway. Such a  
42 license is revocable and must provide for relocation or removal of  
43 the encroachment in the following manner. Upon notice from the  
44 Director to the owner of the encroachment or the owner's agent, the  
45 owner or agent may propose a time within which he or she will





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

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

15 408.423 1. No state highway or right-of-way may be  
16 disturbed, dug up, crossed, encroached upon , *discharged upon* or  
17 otherwise used for the laying or re-laying of pipelines, ditches,  
18 flumes, sewers, poles, wires, approach roads, driveways, railways or  
19 for any other purpose, without the written permit of the Director,  
20 and then only in accordance with the conditions and regulations  
21 prescribed by the Director. All such work must be done under the  
22 supervision and to the satisfaction of the Director. All costs of  
23 replacing the highway in as good condition as previous to its being  
24 disturbed must be paid by the persons to whom or on whose behalf  
25 such permit was given or by the person by whom the work was  
26 done.

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

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

36 **Sec. 16.** This act becomes effective on July 1, 2015.

