

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, within a right-of-way or into, onto or by way of a conveyance system; providing civil penalties for an unauthorized discharge onto a state highway, within a right-of-way or into, onto or by way of a conveyance system or for a violation of an encroachment permit issued by the Director; creating and setting forth the duties of the Advisory Committee on Transportational Storm Water Management; revising the qualifications of 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, within a right-of-way or into, onto or by way of a conveyance system unless: (1) the discharge is allowed by a valid National Pollutant Discharge Elimination System permit or a valid encroachment permit issued by the Director for the discharge; (2) the discharge is carried out in compliance with the terms of the applicable permit; and (3) the discharge is carried out in accordance with any applicable conditions, rules and regulations prescribed by the Director. In addition, **section 4** requires that if a person carries out such a discharge without adhering to the three preceding requirements, the person must, upon receipt of an order for compliance issued pursuant to **section 7** of this bill, abate, remove or remediate the



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discharge in a timely manner. If the person fails to abate, remove or remediate the discharge, the Director may exercise several powers of enforcement, as set forth in sections 5-10 of this bill.

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 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; (5) request that the Attorney General institute a criminal prosecution for a violation of the provisions of section 4; and (6) conduct an independent investigation of any act which violates or may violate the provisions of section 4. Section 10.3 of this bill creates and sets forth the functions and duties of the Advisory Committee on Transportation Storm Water Management, an advisory body which expires by limitation on June 30, 2021.

Section 11.5 of this bill removes the requirement that the Director be a licensed professional engineer in this State.

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 ~~and~~ *and section 4 of this act.*

Sec. 3. Chapter 408 of NRS is hereby amended by adding thereto the provisions set forth as sections 3.3 to 10.3, inclusive, of this act.

Sec. 3.3. *“Conveyance system” means any system of drainage along or involving the roads or highways of this State, or within the rights-of-way of the Department, and designed or used to collect, contain, store or provide for the flow of surface and storm water. The term includes, without limitation, gutters, curbs, ditches, pipes, culverts, channels, catch basins, vaults, man-made channels or storm drains that are owned, operated or controlled by the Department.*

Sec. 3.5. *“Discharge” means the release of any pollutant, as that term is defined in NRS 445A.400, onto any state highway,*



1 *within any right-of-way or into, onto or by way of any conveyance*
2 *system.*

3 **Sec. 4. 1.** *No person shall discharge or cause a discharge*
4 *upon a state highway, within a right-of-way or into, onto or by way*
5 *of a conveyance system unless:*

6 *(a) The discharge is allowed by a valid National Pollutant*
7 *Discharge Elimination System permit or a valid encroachment*
8 *permit issued by the Director pursuant to NRS 408.423;*

9 *(b) The person ensures that the discharge is carried out in*
10 *compliance with the terms of the applicable permit that allows the*
11 *discharge, as described in paragraph (a); and*

12 *(c) The person ensures that the discharge is carried out in*
13 *accordance with any applicable conditions, rules and regulations*
14 *prescribed by the Director.*

15 **2.** *If a person violates the provisions of subsection 1, the*
16 *person shall, upon receipt of an order for compliance issued*
17 *pursuant to section 7 of this act, abate, remove or remediate the*
18 *discharge in a timely manner.*

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

25 *(a) Any expenses associated with the abatement, removal or*
26 *remediation.*

27 *(b) Attorney's fees, costs and expenses related to the*
28 *abatement, removal or remediation.*

29 *(c) An administrative fee in an amount not to exceed \$750 for*
30 *each day of noncompliance with the provisions of subsection 1,*
31 *commencing on the 6th day after the person who failed to abate,*
32 *remove or remediate the discharge received an order for*
33 *compliance pursuant to section 7 of this act.*

34 *(d) A civil penalty pursuant to section 9 of this act.*

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

39 **5.** *All money obtained in accordance with this section,*
40 *including, without limitation, all fees and monetary penalties*
41 *imposed pursuant to this section, must be deposited in the State*
42 *Highway Fund.*

43 **6.** *To enforce the provisions of this section, the Director may*
44 *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.

Sec. 5. *To enforce the provisions of section 4 of this act or any rule, regulation, standard, permit or order of the Director related thereto, the Director or an authorized 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.

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

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

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

(c) Request that the Attorney General prosecute any person who violates any provision of sections 4 to 10, inclusive, of this act.

2. The remedies provided in subsection 1 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.

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



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

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

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

(d) Except as otherwise provided in this paragraph, is served upon the person at his or her place of business or, if that place of business is unknown, served upon the person through the post office or at his or her last known address of record. Alternatively, the order for compliance may be served upon the person by sending a copy of the order to the electronic mail address of the person, if the electronic mail address of the person is known.

2. Any order for compliance issued pursuant to subsection 1 is final and is not subject to review unless the person against whom the order is issued, within 10 days after the date on which the order is served, requests by written petition a hearing before the Director or an authorized designee of the Director.

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

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

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

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

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



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

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

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

(a) The determination of the Director to take any action specified in that subsection is based on information that is provided to the Director by a person authorized to act pursuant to a permit issued for the purposes of section 4 of this act or by a person who has carried out a discharge that is unauthorized, unlawful or otherwise impermissible pursuant to that section; or

(b) The alleged act or practice creates an imminent and substantial danger to the public health or the environment.

Sec. 10.3. 1. *The Advisory Committee on Transportation Storm Water Management is hereby created.*

2. *The Advisory Committee consists of five members appointed by the Director of the State Department of Conservation and Natural Resources as follows:*

(a) One member who represents the Associated General Contractors of America.

(b) One member who represents the State Department of Conservation and Natural Resources.

(c) One member who represents the Department of Transportation.

(d) One member who represents the Division of Environmental Protection of the State Department of Conservation and Natural Resources.

(e) One member who represents the public and who has expertise in a field that is relevant to the storm water program.



3. The Chair of the Advisory Committee must be the member of the Advisory Committee who is appointed to represent the Division of Environmental Protection of the State Department of Conservation and Natural Resources.

4. Each member of the Advisory Committee serves for a term of 3 years, beginning on July 1, and may be reappointed.

5. Each member of the Advisory Committee serves at the pleasure of the Director of the State Department of Conservation and Natural Resources.

6. A vacancy on the Advisory Committee must be filled in the same manner as the original appointment.

7. Members of the Advisory Committee serve without compensation and are not entitled to travel or per diem expenses.

8. The Advisory Committee shall meet at the call of the Chair as frequently as required to perform its duties.

9. The Advisory Committee shall work cooperatively with the Division of Environmental Protection of the State Department of Conservation and Natural Resources to:

(a) Ensure the sound implementation and functioning of the storm water program.

(b) Monitor the status and efficacy of the storm water program.

10. Not less frequently than once each calendar quarter, the Advisory Committee shall report to the Department of Transportation regarding matters to include, without limitation:

(a) The activities of the Advisory Committee; and

(b) The implementation and efficacy of the storm water program.

11. Not less frequently than once each calendar quarter, the Department of Transportation shall report to the Interim Finance Committee regarding matters to include, without limitation:

(a) The activities of the Advisory Committee; and

(b) The implementation and efficacy of the storm water program.

12. As used in this section:

(a) "Advisory Committee" means the Advisory Committee on Transportation Storm Water Management created by subsection 1.

(b) "Storm water program" means the program described in sections 4 to 10, inclusive, of this act.

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

408.020 As used in this chapter, *unless the context otherwise requires*, the words and terms defined in NRS 408.033 to 408.095, inclusive, ~~unless the context otherwise requires,~~ and sections 3.3



and 3.5 of this act have the meanings ascribed to them in those sections.

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

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

Sec. 11.5. NRS 408.163 is hereby amended to read as follows:

408.163 The Director:

1. Is in the unclassified service of the State.

2. ~~[Must be a licensed professional engineer in the State.~~

~~—3.]~~ Must have had at least 5 years of responsible administrative experience in public or business administration.

~~[4.]~~ 3. Must possess broad skills as a manager in areas related to the functions of the Department.

Sec. 12. (Deleted by amendment.)

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

408.175 1. The Director shall:

(a) Appoint one Deputy Director who in the absence, inability or failure of the Director has full authority to perform any duty required or permitted by law to be 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 allowed by law to be performed by the Director to implement, manage, oversee and enforce any environmental program of the Department. The Deputy Director described in this paragraph shall coordinate the implementation of sections 4 to 10, inclusive, of this act with the State Department of Conservation and Natural Resources.*

(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. 13.5. NRS 408.175 is hereby amended to read as follows:

408.175 1. The Director shall:



(a) Appoint one Deputy Director who in the absence, inability or failure of the Director has full authority to perform any duty required or permitted by law to be 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 allowed by law to be performed by the Director to implement, manage, oversee and enforce any environmental program of the Department. ~~{The Deputy Director described in this paragraph shall coordinate the implementation of sections 4 to 10, inclusive, of this act with the State Department of Conservation and Natural Resources.}~~

(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



1 by signs, marks or other devices in or on the highway appropriate to
2 designate the dividing line.

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

7 3. ~~[The]~~ *Except as otherwise provided in sections 4 to 10,*
8 *inclusive, of this act, the* Director may remove from the highways
9 any unlicensed encroachment which is not removed, or the removal
10 of which is not commenced and thereafter diligently prosecuted,
11 within 5 days after personal service of notice and demand upon the
12 owner of the encroachment or the owner's agent. In lieu of personal
13 service upon that person or agent, service of the notice may also be
14 made by registered or certified mail and by posting, for a period of 5
15 days, a copy of the notice on the encroachment described in
16 the notice. Removal by the Department of the encroachment on the
17 failure of the owner to comply with the notice and demand gives the
18 Department a right of action to recover the expense of the removal,
19 cost and expenses of suit, and in addition thereto the sum of ~~[\$100]~~
20 *\$750* for each day the encroachment remains beyond 5 days after the
21 service of the notice and demand.

22 4. If the Director determines that the interests of the
23 Department are not compromised by a proposed or existing
24 encroachment, the Director may issue a license to the owner or the
25 owner's agent permitting an encroachment on the highway. Such a
26 license is revocable and must provide for relocation or removal of
27 the encroachment in the following manner. Upon notice from the
28 Director to the owner of the encroachment or the owner's agent, the
29 owner or agent may propose a time within which he or she will
30 relocate or remove the encroachment as required. If the Director and
31 the owner or the owner's agent agree upon such a time, the Director
32 shall not himself or herself remove the encroachment unless the
33 owner or the owner's agent has failed to do so within the time
34 agreed. If the Director and the owner or the owner's agent do not
35 agree upon such a time, the Director may remove the encroachment
36 at any time later than 30 days after the service of the original notice
37 upon the owner or the owner's agent. Service of notice may be made
38 in the manner provided by subsection 3. Removal of the
39 encroachment by the Director gives the Department the right of
40 action provided by subsection 3, but the penalty must be computed
41 from the expiration of the agreed period or 30-day period, as the
42 case may be.

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

44 408.423 1. No state highway or right-of-way may be
45 disturbed, dug up, crossed, encroached upon , *discharged upon* or



1 otherwise used for the laying or re-laying of pipelines, ditches,
2 flumes, sewers, poles, wires, approach roads, driveways, railways or
3 for any other purpose, without the written permit of the Director,
4 and then only in accordance with the conditions and regulations
5 prescribed by the Director. All such work must be done under the
6 supervision and to the satisfaction of the Director. All costs of
7 replacing the highway in as good condition as previous to its being
8 disturbed must be paid by the persons to whom or on whose behalf
9 such permit was given or by the person by whom the work was
10 done.

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

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

20 **Sec. 15.5.** The provisions of subsection 1 of NRS 218D.380
21 do not apply to any provision of this act which adds or revises a
22 requirement to submit a report to the Legislature.

23 **Sec. 16.** 1. This section and sections 1 to 13, inclusive, 14,
24 15 and 15.5 of this act become effective upon passage and approval
25 for the purpose of adopting any regulations and performing any
26 other preparatory administrative tasks necessary to carry out the
27 provisions of this act, and on July 1, 2015, for all other purposes.

28 2. Section 13.5 of this act becomes effective on July 1, 2021.

29 3. Section 10.3 of this act expires by limitation on June 30,
30 2021.

