
SENATE BILL NO. 94—SENATOR SETTELMAYER

FEBRUARY 3, 2021

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to public highways, roads and ways. (BDR 15-440)

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: 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 property; making it a public nuisance for a person to engage in certain activities relating to certain public ways; providing that the posting of certain signs on private property does not constitute a public nuisance under certain circumstances; authorizing an owner of private property upon which certain highways, roads or ways are located to commence certain civil actions; authorizing an owner of private property upon which certain public roads or ways are located to erect and maintain a fence or gate across such a road or way under certain circumstances; setting forth certain requirements relating to such fences and gates; providing a penalty; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

1 Existing law makes it a public nuisance for a person, by force, threat,
2 intimidation or any other unlawful means, to prevent or obstruct the free passage or
3 transit over or through certain highways, roads, state lands or other public lands or
4 lands dedicated to public use or to knowingly misrepresent the status of or assert
5 any right to the exclusive use and occupancy of those highways, roads, state lands
6 or other public lands or lands dedicated to public use, if the person has no leasehold
7 interest in or claim or color of title to the highway, road, state land or other public
8 land or land dedicated to public use. (NRS 202.450) **Section 1** of this bill makes it a
9 public nuisance for a person to engage in such activities with respect to certain
10 additional public ways. **Section 1** also specifies that knowingly misrepresenting the
11 status of or asserting any right to the exclusive use and occupancy of such
12 highways, roads, ways or lands may be accomplished by any means, including



13 posting a "no trespassing" sign or other sign indicating that such a highway, road,
14 way or land is private property or communicating such an indication verbally.
15 However, **section 1** further provides that it is not a public nuisance for an owner of
16 private property upon which certain highways, roads or ways are located to post a
17 sign on his or her property indicating that the property is private property if, next to
18 such a sign, the owner also posts a sign indicating that members of public may
19 access the highway, road or way located on the property. **Sections 3-5** of this bill
20 make conforming changes to reflect the addition of the provisions of **section 1**.

21 **Section 2** of this bill authorizes an owner of private property upon which
22 certain highways, roads or ways are located who suffers damage or injury as a
23 result of another person's use of such a highway, road or way to bring a civil action
24 against the person for actual damages, and reasonable attorney's fees.

25 **Section 6** of this bill authorizes an owner of private property upon which
26 certain public roads, unpaved county roads or public ways are located to erect and
27 maintain a fence or gate across such a road or way if he or she submits a request to
28 and is approved by the governmental entity that has jurisdiction over the road or
29 way. **Section 6** authorizes a governmental entity to approve such a request if it
30 determines that the proposed fence or gate will not greatly inconvenience the
31 traveling public. **Section 6** also: (1) sets forth certain requirements for fences and
32 gates erected and maintained pursuant to **section 6**; and (2) requires that certain
33 signage be posted and maintained advising members of the public of certain
34 information relating to the public road or way. **Sections 1, 6 and 7** of this bill
35 provide that a fence or gate erected and maintained pursuant to **section 6** does not:
36 (1) constitute a public nuisance prohibited by existing law; or (2) violate certain
37 provisions of existing law making it a public offense to obstruct a road, street or
38 alley. (NRS 202.450, 405.230)

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

1 **Section 1.** NRS 202.450 is hereby amended to read as follows:
2 202.450 1. A public nuisance is a crime against the order and
3 economy of the State.

4 2. Every place:

5 (a) Wherein any gambling, bookmaking or pool selling is
6 conducted without a license as provided by law, or wherein any
7 swindling game or device, or bucket shop, or any agency therefor is
8 conducted, or any article, apparatus or device useful therefor is kept;

9 (b) Wherein any fighting between animals or birds is conducted;

10 (c) Wherein any dog races are conducted as a gaming activity;

11 (d) Wherein any intoxicating liquors are kept for unlawful use,
12 sale or distribution;

13 (e) Wherein a controlled substance, immediate precursor or
14 controlled substance analog is unlawfully sold, served, stored, kept,
15 manufactured, used or given away;

16 (f) That is regularly and continuously used by the members of a
17 criminal gang to engage in, or facilitate the commission of, crimes
18 by the criminal gang; or



1 (g) Where vagrants resort,

2 ↪ is a public nuisance.

3 3. Every act unlawfully done and every omission to perform a
4 duty, which act or omission:

5 (a) Annoys, injures or endangers the safety, health, comfort or
6 repose of any considerable number of persons;

7 (b) Offends public decency;

8 (c) Unlawfully interferes with, befouls, obstructs or tends to
9 obstruct, or renders dangerous for passage, a lake, navigable river,
10 bay, stream, canal, ditch, millrace or basin, or a public park, square,
11 street, alley, bridge, causeway or highway; or

12 (d) In any way renders a considerable number of persons
13 insecure in life or the use of property,

14 ↪ is a public nuisance.

15 4. A building or place which was used for the purpose of
16 unlawfully manufacturing a controlled substance, immediate
17 precursor or controlled substance analog is a public nuisance if the
18 building or place has not been deemed safe for habitation by the
19 board of health and:

20 (a) The owner of the building or place allows the building or
21 place to be used for any purpose before all materials or substances
22 involving the controlled substance, immediate precursor or
23 controlled substance analog have been removed from or remediated
24 on the building or place by an entity certified or licensed to do so; or

25 (b) The owner of the building or place fails to have all materials
26 or substances involving the controlled substance, immediate
27 precursor or controlled substance analog removed from or
28 remediated on the building or place by an entity certified or licensed
29 to do so within 180 days after the building or place is no longer used
30 for the purpose of unlawfully manufacturing a controlled substance,
31 immediate precursor or controlled substance analog.

32 5. ~~H4~~ *Except as otherwise provided in subsection 6 and*
33 *section 6 of this act, it* is a public nuisance for any person:

34 (a) By force, threat or intimidation, or by fencing or otherwise
35 enclosing, or by any other unlawful means, to prevent or obstruct
36 the free passage or transit over or through any:

37 (1) Highway designated as a United States highway;

38 (2) Highway designated as a state highway pursuant to
39 NRS 408.285;

40 (3) Main, general or minor county road designated pursuant
41 to NRS 403.170;

42 (4) Public road, as defined in subsection 2 of NRS 405.191;

43 (5) *Public way;*

44 (6) State land or other public land; or

45 ~~H6~~ (7) Land dedicated to public use; or



1 (b) To knowingly misrepresent the status of or assert any right
2 to the exclusive use and occupancy of such a highway, road, *way*,
3 state land or other public land or land dedicated to public use ~~§~~ *by*
4 *any means, including, without limitation, posting a “no*
5 *trespassing” sign or other sign indicating that such a highway,*
6 *road, way, state land or other public land or land dedicated to*
7 *public use is private property or communicating such an*
8 *indication verbally,*

9 ↪ if the person has no leasehold interest, claim or color of title,
10 made or asserted in good faith, in or to the highway, road, *way*, state
11 land or other public land or land dedicated to public use.

12 6. *It is not a public nuisance for an owner of private property*
13 *upon which a highway, road or public way described in*
14 *subparagraphs (1) to (5), inclusive, of paragraph (a) of subsection*
15 *5 is located to post on his or her property, in a manner that would*
16 *otherwise constitute a public nuisance pursuant to subsection 5, a*
17 *sign indicating that the property is private property if, next to such*
18 *a sign, the owner also posts a sign indicating that members of the*
19 *public may access the highway, road or way.*

20 7. Agricultural activity conducted on farmland consistent with
21 good agricultural practice and established before surrounding
22 nonagricultural activities is not a public nuisance unless it has a
23 substantial adverse effect on the public health or safety. It is
24 presumed that an agricultural activity which does not violate a
25 federal, state or local law, ordinance or regulation constitutes good
26 agricultural practice.

27 ~~§~~ 8. A shooting range is not a public nuisance with respect
28 to any noise attributable to the shooting range if the shooting range
29 is in compliance with the provisions of all applicable statutes,
30 ordinances and regulations concerning noise:

31 (a) As those provisions existed on October 1, 1997, for a
32 shooting range that begins operation on or before October 1, 1997;
33 or

34 (b) As those provisions exist on the date that the shooting range
35 begins operation, for a shooting range in operation after October 1,
36 1997.

37 ↪ A shooting range is not subject to any state or local law related to
38 the control of noise that is adopted or amended after the date set
39 forth in paragraph (a) or (b), as applicable, and does not constitute a
40 nuisance for failure to comply with any such law.

41 ~~§~~ 9. A request for emergency assistance by a tenant as
42 described in NRS 118A.515 and 118B.152 is not a public nuisance.

43 ~~§~~ 10. As used in this section:

44 (a) “Board of health” has the meaning ascribed to it in
45 NRS 439.4797.



1 (b) "Controlled substance analog" has the meaning ascribed to it
2 in NRS 453.043.

3 (c) "Criminal gang" has the meaning ascribed to it in
4 NRS 193.168.

5 (d) "Immediate precursor" has the meaning ascribed to it in
6 NRS 453.086.

7 (e) *"Public way" means any way, including, without*
8 *limitation, an easement for public access or a public right-of-way,*
9 *which is shown upon any plat, subdivision, addition, parcel map*
10 *or record of survey of any county, city, town or portion thereof*
11 *duly recorded or filed in the office of the county recorder, and*
12 *which is not specifically therein designated as a private road or a*
13 *nonpublic road, and any way which is described in a duly recorded*
14 *conveyance as a public road or is reserved thereby for public road*
15 *purposes or which is described by words of similar import. The*
16 *term does not include a utility easement or any highway or road*
17 *specified in subparagraphs (1) to (4), inclusive, of paragraph (a)*
18 *of subsection 5.*

19 (f) "Shooting range" has the meaning ascribed to it in
20 NRS 40.140.

21 ~~(f)~~ (g) "State land" has the meaning ascribed to it in
22 NRS 383.425.

23 **Sec. 2.** Chapter 40 of NRS is hereby amended by adding
24 thereto a new section to read as follows:

25 *If an owner of private property upon which a highway, road or*
26 *public way described in subparagraphs (1) to (5), inclusive, of*
27 *paragraph (a) of subsection 5 of NRS 202.450 suffers damage or*
28 *injury as a result of another person's use of the highway, road or*
29 *way, the owner may commence a civil action against the person to*
30 *recover the actual damages suffered by the owner and reasonable*
31 *attorney's fees.*

32 **Sec. 3.** NRS 244.363 is hereby amended to read as follows:

33 244.363 Except as otherwise provided in subsection 3 of NRS
34 40.140 and subsection ~~(7)~~ 8 of NRS 202.450, the boards of county
35 commissioners in their respective counties may, by ordinance
36 regularly enacted, regulate, control and prohibit, as a public
37 nuisance, excessive noise which is injurious to health or which
38 interferes unreasonably with the comfortable enjoyment of life or
39 property within the boundaries of the county.

40 **Sec. 4.** NRS 266.335 is hereby amended to read as follows:

41 266.335 The city council may:

42 1. Except as otherwise provided in subsections 3 and 4 of NRS
43 40.140 and subsections ~~(7 and)~~ 6, 8 and 9 of NRS 202.450,
44 determine by ordinance what shall be deemed nuisances.



1 2. Provide for the abatement, prevention and removal of the
2 nuisances at the expense of the person creating, causing or
3 committing the nuisances.

4 3. Provide that the expense of removal is a lien upon the
5 property upon which the nuisance is located. The lien must:

6 (a) Be perfected by recording with the county recorder a
7 statement by the city clerk of the amount of expenses due and
8 unpaid and describing the property subject to the lien.

9 (b) Be coequal with the latest lien thereon to secure the payment
10 of general taxes.

11 (c) Not be subject to extinguishment by the sale of any property
12 because of the nonpayment of general taxes.

13 (d) Be prior and superior to all liens, claims, encumbrances and
14 titles other than the liens of assessments and general taxes.

15 4. Provide any other penalty or punishment of persons
16 responsible for the nuisances.

17 **Sec. 5.** NRS 268.412 is hereby amended to read as follows:

18 268.412 Except as otherwise provided in subsection 3 of NRS
19 40.140 and subsection ~~7~~ 8 of NRS 202.450, the city council or
20 other governing body of a city may, by ordinance regularly enacted,
21 regulate, control and prohibit, as a public nuisance, excessive noise
22 which is injurious to health or which interferes unreasonably with
23 the comfortable enjoyment of life or property within the boundaries
24 of the city.

25 **Sec. 6.** Chapter 405 of NRS is hereby amended by adding
26 thereto a new section to read as follows:

27 *1. An owner of private property upon which a public road or*
28 *way is located may erect and maintain a fence or gate across the*
29 *public road or way if:*

30 *(a) The owner submits a request to the governmental entity*
31 *which has jurisdiction over the public road or way; and*

32 *(b) The governmental entity approves the request pursuant to*
33 *subsection 2.*

34 *2. A governmental entity may approve a request submitted by*
35 *an owner pursuant to subsection 1 if the governmental entity*
36 *determines that the proposed fence or gate will not greatly*
37 *inconvenience the traveling public. The governmental entity may*
38 *impose such conditions on the erection and maintenance of the*
39 *fence or gate as it determines necessary for the safety and*
40 *convenience of the traveling public.*

41 *3. If an owner erects and maintains a fence across a public*
42 *road or way pursuant to this section, the owner shall maintain a*
43 *gate at a location on the property through which members of the*
44 *public may access the public road or way.*



1 4. Any gate erected and maintained across a public road or
2 way pursuant to this section must be kept unlocked and in such
3 condition as to allow members of the public to access the road or
4 way without unnecessary delay.

5 5. A conspicuous sign must be posted and maintained upon
6 each gate described in subsections 3 and 4 which advises the
7 reader that:

8 (a) A public road or way is located on the property;

9 (b) Members of the public may access the public road or way;
10 and

11 (c) Members of the public who access the public road or way
12 through the gate must, if the gate was shut before passing through
13 it, shut the gate after such passage, and must otherwise leave the
14 property in the same condition as when they entered.

15 6. A fence or gate that is erected and maintained pursuant to
16 this section does not constitute:

17 (a) A public nuisance pursuant to NRS 202.450; or

18 (b) A violation of NRS 405.230.

19 7. As used in this section, "public road or way" means:

20 (a) A public road, as defined in subsection 2 of NRS 405.191;

21 (b) A public way, as defined in NRS 202.450; or

22 (c) A general or minor county road designated pursuant to
23 NRS 403.170 which is unpaved.

24 **Sec. 7.** NRS 405.230 is hereby amended to read as follows:

25 405.230 1. ~~[Any]~~ Except as otherwise provided in section 6
26 of this act, a person who, in any manner, obstructs any road, street
27 or alley, or in any manner damages it or prevents travel thereon, or
28 who obstructs, dams or diverts any stream or water so as to throw it,
29 or cause the flowage thereof, upon, across or along the pathway of
30 any road, highway, street or alley is guilty of a public offense, as
31 prescribed in NRS 193.155, proportionate to the extent of damage to
32 the section of the road, street, alley or highway damaged, and in no
33 event less than a misdemeanor.

34 2. The court before which the conviction is had shall order the
35 sheriff or any constable of the county to abate, as a nuisance, any
36 fence or other obstruction, to the free and convenient use and travel
37 of the road, street or alley, or any obstruction from the stream so as
38 to allow it to flow in its natural bed.

39 3. The department of public works or any other appropriate
40 county agency is authorized to remove from the highways any
41 unlicensed obstacle or encroachment which is not removed, or the
42 removal of which is not commenced and thereafter diligently
43 prosecuted, before the expiration of 5 days after personal service of
44 notice and demand upon the owner of the obstacle or encroachment
45 or the owner's agent. In lieu of personal service upon that person or



1 the person's agent, service of the notice may also be made by
2 registered or certified mail and by posting, for a period of 5 days, a
3 copy of the notice on the obstacle or encroachment described in the
4 notice. Removal by the department or other agency of the obstacle
5 or encroachment on the failure of the owner to comply with the
6 notice and demand gives the department or other agency a right of
7 action to recover the expense of the removal, investigative costs,
8 attorney's fees, cost and expenses of suit, and in addition thereto the
9 sum of \$250 for each day the obstacle or encroachment remains
10 after the expiration of 5 days from the service of the notice and
11 demand.

12 4. As used in this section, "obstacles or encroachments" mean
13 any objects, materials or facilities not owned by the county that are
14 placed within a right-of-way of the county for storage purposes or
15 decorative improvements for front lots that are not a part of a
16 highway facility. The term does not include vehicles parked in a
17 lawful manner within that right-of-way.

