

SENATE BILL NO. 94—SENATOR SETTELMAYER

FEBRUARY 3, 2021

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to property.
(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; providing that an unlocked gate which is erected and maintained across certain public roads in certain counties does not, in and of itself, constitute a public nuisance under certain circumstances; removing a provision making a place where vagrants resort a public nuisance; authorizing a board of county commissioners and board of county highway commissioners to take certain actions relating to the erection and maintenance of gates across certain public roads; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

1 Existing law creates in each county, except for a county whose population is
2 100,000 or more (currently Clark and Washoe Counties), a board of county
3 highway commissioners which has the exclusive control of all matters pertaining to
4 the construction, repair and maintenance of public highways, roads and bridges
5 within its county. (NRS 403.005, 403.010, 403.090) Existing law authorizes a
6 board of county highway commissioners to make certain rules and regulations.
7 (NRS 403.050) **Section 5.3** of this bill authorizes a board of county highway
8 commissioners to make rules and regulations to allow the erection and maintenance
9 of gates across certain public roads in the county. **Section 5.3:** (1) requires such
10 rules and regulations to specify that such a gate is to be kept unlocked; and (2)
11 authorizes such rules and regulations to set forth any specifications, standards and
12 requirements concerning such a gate as the board determines to be necessary.

13 **Section 5.6** of this bill authorizes the board of county commissioners in a
14 county whose population is 100,000 or more to adopt an ordinance or enter into a
15 written agreement with a person authorizing the person to erect and maintain a gate



16 across a public road in the county. **Section 5.6** requires any such ordinance or
17 agreement to contain provisions: (1) specifying that the gate is to be kept unlocked;
18 and (2) ensuring that public access to the public road is not restricted in any manner
19 and that the traveling public is able to travel on the public road without unnecessary
20 delay.

21 Existing law makes it a public nuisance for a person, by force, threat,
22 intimidation or any other unlawful means, to prevent or obstruct the free passage or
23 transit over or through certain highways, roads, state lands or other public lands or
24 lands dedicated to public use or to knowingly misrepresent the status of or assert
25 any right to the exclusive use and occupancy of any of those highways, roads, state
26 lands or other public lands or lands dedicated to public use if the person has no
27 leasehold interest in or claim or color of title to the highway, road, state land or
28 other public land or land dedicated to public use. (NRS 202.450) **Section 1** of this
29 bill provides that an unlocked gate which is erected and maintained across a public
30 road does not, in and of itself, constitute a public nuisance if the gate is erected and
31 maintained in accordance with the rules and regulations made pursuant to **section**
32 **5.3** or an ordinance adopted or written agreement entered into pursuant to **section**
33 **5.6**, as applicable. **Section 1** further provides that it is not a public nuisance for a
34 person to fence or enclose public land if the fencing or enclosure is authorized or
35 required by a federal agency having jurisdiction over the public land. **Section 1** also
36 removes a provision of existing law making a place where vagrants resort a public
37 nuisance.

38 **Sections 3-5** of this bill make conforming changes to reflect the addition of the
39 provision made by **section 1**.

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; *or*

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~~

19 ~~—(g) Where vagrants resort,]~~

20 → is a public nuisance.



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

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

5 (b) Offends public decency;

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

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

12 ↪ is a public nuisance.

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

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

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

30 5. **⚠ Except as otherwise provided in subsections 6 and 7, it**
31 is a public nuisance for any person:

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

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

36 (2) Highway designated as a state highway pursuant to
37 NRS 408.285;

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

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

41 (5) State land or other public land; or

42 (6) Land dedicated to public use; or

43 (b) To knowingly misrepresent the status of or assert any right
44 to the exclusive use and occupancy of such a highway, road, state
45 land or other public land or land dedicated to public use,



1 ↪ if the person has no leasehold interest, claim or color of title,
2 made or asserted in good faith, in or to the highway, road, state land
3 or other public land or land dedicated to public use.

4 6. *An unlocked gate which is erected and maintained across:*

5 (a) *A road described in subparagraph (3) or (4) of paragraph*
6 *(a) of subsection 5 located in a county whose population is less*
7 *than 100,000, does not, in and of itself, constitute a public*
8 *nuisance if the gate is erected and maintained in accordance with*
9 *the rules and regulations of the board of county highway*
10 *commissioners made pursuant to section 5.3 of this act.*

11 (b) *A road described in subparagraph (4) of paragraph (a) of*
12 *subsection 5 located in a county whose population is 100,000 or*
13 *more, does not, in and of itself, constitute a public nuisance if the*
14 *gate is erected and maintained pursuant to an ordinance adopted*
15 *or an agreement entered into by the board of county*
16 *commissioners pursuant to section 5.6 of this act.*

17 7. *It is not a public nuisance for a person to fence or*
18 *otherwise enclose any public land if such fencing or enclosure is*
19 *authorized or required by a federal agency having jurisdiction*
20 *over the public land.*

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

28 ~~7.~~ 9. A shooting range is not a public nuisance with respect
29 to any noise attributable to the shooting range if the shooting range
30 is in compliance with the provisions of all applicable statutes,
31 ordinances and regulations concerning noise:

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

35 (b) As those provisions exist on the date that the shooting range
36 begins operation, for a shooting range in operation after October 1,
37 1997.

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

42 ~~8.~~ 10. A request for emergency assistance by a tenant as
43 described in NRS 118A.515 and 118B.152 is not a public nuisance.

44 ~~9.~~ 11. As used in this section:



1 (a) "Board of health" has the meaning ascribed to it in
2 NRS 439.4797.

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

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

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

9 (e) "Shooting range" has the meaning ascribed to it in
10 NRS 40.140.

11 (f) "State land" has the meaning ascribed to it in
12 NRS 383.425.

13 **Sec. 2.** (Deleted by amendment.)

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

15 244.363 Except as otherwise provided in subsection 3 of NRS
16 40.140 and subsection ~~7~~ 9 of NRS 202.450, the boards of county
17 commissioners in their respective counties may, by ordinance
18 regularly enacted, regulate, control and prohibit, as a public
19 nuisance, excessive noise which is injurious to health or which
20 interferes unreasonably with the comfortable enjoyment of life or
21 property within the boundaries of the county.

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

23 266.335 The city council may:

24 1. Except as otherwise provided in subsections 3 and 4 of NRS
25 40.140 and subsections 6, 7, ~~and 8~~ 9 and 10 of NRS 202.450,
26 determine by ordinance what shall be deemed nuisances.

27 2. Provide for the abatement, prevention and removal of the
28 nuisances at the expense of the person creating, causing or
29 committing the nuisances.

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

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

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

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

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

41 4. Provide any other penalty or punishment of persons
42 responsible for the nuisances.

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

44 268.412 Except as otherwise provided in subsection 3 of NRS
45 40.140 and subsection ~~7~~ 9 of NRS 202.450, the city council or



1 other governing body of a city may, by ordinance regularly enacted,
2 regulate, control and prohibit, as a public nuisance, excessive noise
3 which is injurious to health or which interferes unreasonably with
4 the comfortable enjoyment of life or property within the boundaries
5 of the city.

6 **Sec. 5.3.** Chapter 403 of NRS is hereby amended by adding
7 thereto a new section to read as follows:

8 *1. The board of county highway commissioners may make*
9 *rules and regulations to allow a person to erect and maintain a*
10 *gate across a public road in the county. Such rules and*
11 *regulations:*

12 *(a) Must require such a gate to be kept unlocked; and*

13 *(b) May set forth any specifications, standards and*
14 *requirements concerning the erection and maintenance of such a*
15 *gate as the board of county highway commissioners determines to*
16 *be necessary.*

17 *2. As used in this section, "public road" means a:*

18 *(a) Main, general or minor county road designated pursuant to*
19 *NRS 403.170.*

20 *(b) Public road, as defined in subsection 2 of NRS 405.191.*

21 **Sec. 5.6.** Chapter 405 of NRS is hereby amended by adding
22 thereto a new section to read as follows:

23 *1. In a county whose population is 100,000 or more, the*
24 *board of county commissioners of the county may, by ordinance or*
25 *by written agreement with a person, authorize a person to erect*
26 *and maintain a gate across a public road. Any such ordinance or*
27 *agreement must contain provisions:*

28 *(a) That require such a gate to be kept unlocked; and*

29 *(b) To ensure that:*

30 *(1) Public access to the public road is not restricted in any*
31 *manner; and*

32 *(2) The traveling public is able to travel on the public road*
33 *without unnecessary delay.*

34 *2. As used in this section, "public road" has the meaning*
35 *ascribed to it in subsection 2 of NRS 405.191.*

36 **Sec. 6.** (Deleted by amendment.)

37 **Sec. 7.** (Deleted by amendment.)

