

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 171, As Amended

BY TRANSPORTATION AND DEFENSE COMMITTEE

AN ACT

1 RELATING TO HIGHWAYS; AMENDING SECTION 40-2319, IDAHO CODE, TO PROVIDE THAT  
2 THE COUNTY OR HIGHWAY DISTRICT HAS ACTUAL NOTICE OF AN ENCROACHMENT THAT  
3 IS UNSAFE FOR PEDESTRIANS OR MOTORISTS, TO REVISE TERMINOLOGY, TO PRO-  
4 VIDE THAT AN OWNER, OCCUPANT OR PERSON CONTROLLING AN ENCROACHMENT MUST  
5 FAIL TO RESPOND TO NOTICE TO REMOVE AN ENCROACHMENT, TO PROVIDE FOR THE  
6 STANDARD OF CARE FOR THE COUNTY OR HIGHWAY DISTRICT, TO PROVIDE THAT THE  
7 COUNTY OR HIGHWAY DISTRICT SHALL NOT BE LIABLE FOR ANY INJURY OR DAM-  
8 AGE CAUSED BY AN ENCROACHMENT OR FAILURE TO REMOVE AN UNAUTHORIZED EN-  
9 CROACHMENT UPON A HIGHWAY AND TO ESTABLISH PROVISIONS RELATING TO ANY  
10 DEFENSE THE COUNTY OR HIGHWAY DISTRICT MAY ASSERT IN A CIVIL ACTION.  
11

12 Be It Enacted by the Legislature of the State of Idaho:

13 SECTION 1. That Section 40-2319, Idaho Code, be, and the same is hereby  
14 amended to read as follows:

15 40-2319. ENCROACHMENTS -- REMOVAL -- NOTICE -- PENALTY FOR FAILURE  
16 TO REMOVE -- REMOVAL BY COUNTY OR HIGHWAY DISTRICT -- ABATEMENT. (1) If any  
17 highway or public right-of-way under the jurisdiction of a county or highway  
18 district is encroached upon by gates, fences, buildings, or otherwise, the  
19 appropriate county or highway district may require the encroachment to be  
20 removed.

21 (2) If the county or highway district has actual notice of an encroach-  
22 ment that is of a nature as to effectually obstruct and prevent the use of an  
23 open highway for vehicles or is unsafe for pedestrian or motorist use of an  
24 open highway, the county or highway district shall immediately cause the en-  
25 croachment to be removed without notice.

26 (23) If the county or highway district elects to remove an encroachment  
27 as provided for in subsection (1) of this section, nNotice shall be given to  
28 the occupant or owner of the land, or person causing or owning the encroach-  
29 ment, or left at his place of residence if he resides in the highway jurisdic-  
30 tion. If not, it shall be posted on the encroachment, specifying the place  
31 and extent of the encroachment, and requiring him to remove the encroachment  
32 within ten (10) days.

33 (3a) If the encroachment is not removed, or commenced to be removed,  
34 prior to the expiration of ten (10) days from the service or posting  
35 the notice, the person who caused, owns or controls the encroachment  
36 shall forfeit up to one hundred fifty dollars (\$150) for each day the  
37 encroachment continues unremoved-;

38 (4b) ~~If the encroachment is denied, and the owner, occupant, or person~~  
39 ~~controlling the encroachment, refuses either to remove it or to permit~~  
40 ~~its removal, the county or highway district shall commence in the proper~~  
41 ~~court an action to abate the encroachment as a nuisance. If the county~~  
42 ~~or highway district recovers judgment, it may, in addition to having the~~

1 encroachment abated, recover up to one hundred fifty dollars (\$150) for  
2 every day the ~~nuisance encroachment~~ remained after notice, as well as  
3 costs of the legal action and removal-; or

4 ~~(5c) If the encroachment is not denied, but is not removed~~ owner, oc-  
5 cupant or person controlling the encroachment fails to respond to the  
6 notice within five (5) days after the notice is complete, the county or  
7 highway district may remove it at the expense of the owner, occupant, or  
8 person controlling the encroachment, and the county or highway district  
9 may recover costs and expenses, as well as the sum of up to one hundred  
10 fifty dollars (\$150) for each day the encroachment remained after no-  
11 tice was complete.

12 (4) The duties referenced in the provisions of this section, whether  
13 statutory or common law, require reasonable care only and shall not be con-  
14 strued to impose strict liability or to otherwise enlarge the liability of  
15 the county or highway district. The county or highway district, while re-  
16 sponsible for their own acts or omissions, shall not be liable for any injury  
17 or damage caused by or arising from the encroachment or the failure to remove  
18 or abate the encroachment as provided for in subsection (1) of this section.  
19 The provision of this section shall not be construed to impair any defense  
20 that the county or highway district may assert in a civil action.

21 (5) Nothing in this chapter shall be construed to limit, abrogate or su-  
22 persede the provisions of this title governing the power, authority or ju-  
23 risdiction of a county or highway district, including the authority to regu-  
24 late the use of highways or public rights-of-way for pedestrian and motorist  
25 safety.