

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 172

BY TRANSPORTATION AND DEFENSE COMMITTEE

AN ACT

RELATING TO ENCROACHMENTS UPON HIGHWAYS; AMENDING SECTION 40-2319, IDAHO CODE, TO REVISE PROVISIONS REGARDING FLOODING AND SPRINKLING ENCROACHMENTS UPON HIGHWAYS OR PUBLIC RIGHTS-OF-WAY.

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

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

40-2319. ENCROACHMENTS -- REMOVAL -- NOTICE -- PENALTY FOR FAILURE TO REMOVE -- REMOVAL BY COUNTY OR HIGHWAY DISTRICT -- ABATEMENT. (1) If any highway or public right-of-way under the jurisdiction of a county or highway district is encroached upon by gates, fences, buildings, flooding or sprinkling by irrigation water or otherwise, such encroachment is a public nuisance as defined by chapter 59, title 18, Idaho Code, and the appropriate county or highway district may require the encroachment to be removed. If the encroachment is of a nature as to effectually obstruct and prevent the use of an open highway for vehicles, the county or highway district shall immediately and without notice cause the encroachment to be removed at the expense of the party owning or controlling the encroachment or the land upon which the encroachment originates.

(2) Notice shall be given to the occupant or owner of the land, or person causing or owning the encroachment, or left at his place of residence if he resides in the highway jurisdiction. If not, it shall be posted on the encroachment, specifying the place and extent of the encroachment, and requiring him to remove or cease the encroachment within ten (10) days twenty-four (24) hours for flooding and sprinkling related encroachments or within five (5) days for nonflooding or nonsprinkling related encroachments.

(3) ~~If the a nonflooding or nonsprinkling related encroachment is not removed, or commenced to be removed,~~ prior to the expiration of ~~ten (10) five (5) days~~ from the service or posting the notice, the person who caused, owns or controls the encroachment shall forfeit up to one hundred fifty dollars (\$150) for each day the encroachment continues unremovable.

(4) If a flooding and sprinkling related encroachment does not cease within twenty-four (24) hours of service or posting of the notice, the person who caused, owns or controls the encroachment shall forfeit up to one hundred fifty dollars (\$150) for each day the encroachment continues.

(5) If the encroachment is denied, and the owner, occupant, or person controlling the encroachment, refuses either to remove it or to permit its removal, the county or highway district shall commence in the proper court an action to abate the encroachment as a nuisance. If the county or highway district recovers judgment, it may, in addition to having the encroachment abated, recover up to one hundred fifty dollars (\$150) for every day the nui-

1 sance remained after notice, as well as costs and attorney's fees incurred as
2 a result of the legal action and removal.

3 ~~(56)~~ If the encroachment is not denied, but is not removed within
4 five (5) days for a nonflooding or nonsprinkling related encroachment and
5 twenty-four (24) hours for a flooding and sprinkling related encroachment
6 after the notice is complete, the county or highway district may remove it or
7 take any other reasonably necessary actions to protect the highway or public
8 right-of-way at the expense of the owner, occupant, or person controlling
9 the encroachment, and the county or highway district may recover costs and
10 expenses, as well as the sum of up to one hundred fifty dollars (\$150) for
11 each day the encroachment remained after notice was complete.

12 (7) Any person, company or corporation whose property or irrigation
13 water encroaches upon a highway or public right-of-way shall be responsi-
14 ble for the cost to repair any damage to the highway or public right-of-way
15 caused by such encroachment.

16 ~~(68)~~ Nothing in this chapter shall be construed to limit, abrogate or
17 supersede the provisions of this title governing the power, authority or
18 jurisdiction of a county or highway district, including the authority to
19 regulate the use of highways or public rights-of-way for pedestrian and mo-
20 torist safety nor shall this chapter be construed to limit a highway district
21 or other political subdivision's powers pursuant to section 18-3908, Idaho
22 Code.