

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 232

BY WAYS AND MEANS COMMITTEE

AN ACT

1 RELATING TO ENCROACHMENTS; AMENDING SECTION 40-2319, IDAHO CODE, TO REVISE
2 PROVISIONS RELATING TO THE IMMEDIATE REMOVAL OF CERTAIN ENCROACHMENTS
3 BY A COUNTY OR HIGHWAY DISTRICT AND TO PROVIDE THAT CERTAIN PROVISIONS
4 SHALL NOT BE CONSTRUED TO LIMIT, ABROGATE OR SUPERSEDE SPECIFIED LAW
5 GOVERNING THE POWER, AUTHORITY OR JURISDICTION OF A COUNTY OR HIGHWAY
6 DISTRICT.
7

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

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

11 40-2319. ENCROACHMENTS -- REMOVAL -- NOTICE -- PENALTY FOR FAILURE
12 TO REMOVE -- REMOVAL BY COUNTY OR HIGHWAY DISTRICT -- ABATEMENT. (1) If any
13 highway or public right-of-way under the jurisdiction of a county or highway
14 district is encroached upon by gates, fences, buildings, or otherwise, the
15 appropriate county or highway district may require the encroachment to be
16 removed. If the encroachment is of a nature as to effectually obstruct and
17 prevent the use of ~~the an open highway or public right-of-way~~ an open highway for vehicles,
18 the county or highway district shall immediately cause the encroachment to
19 be removed.

20 (2) Notice shall be given to the occupant or owner of the land, or per-
21 son causing or owning the encroachment, or left at his place of residence if
22 he resides in the highway jurisdiction. If not, it shall be posted on the en-
23 croachment, specifying the place and extent of the encroachment, and requir-
24 ing him to remove the encroachment within ten (10) days.

25 (3) If the encroachment is not removed, or commenced to be removed,
26 prior to the expiration of ten (10) days from the service or posting the no-
27 tice, the person who caused, owns or controls the encroachment shall forfeit
28 up to one hundred fifty dollars (\$150) for each day the encroachment contin-
29 ues unremoved.

30 (4) If the encroachment is denied, and the owner, occupant, or person
31 controlling the encroachment, refuses either to remove it or to permit its
32 removal, the county or highway district shall commence in the proper court
33 an action to abate the encroachment as a nuisance. If the county or high-
34 way district recovers judgment, it may, in addition to having the encroach-
35 ment abated, recover up to one hundred fifty dollars (\$150) for every day the
36 nuisance remained after notice, as well as costs of the legal action and re-
37 moval.

38 (5) If the encroachment is not denied, but is not removed within five
39 (5) days after the notice is complete, the county or highway district may
40 remove it at the expense of the owner, occupant, or person controlling the
41 encroachment, and the county or highway district may recover costs and ex-

1 penses, as well as the sum of up to one hundred fifty dollars (\$150) for each
2 day the encroachment remained after notice was complete.

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