

ASSEMBLY BILL NO. 396—ASSEMBLYMEN BOBZIEN; BENITEZ-THOMPSON, DALY, MARTIN, OHRENSCHALL, OSCARSON AND SPRINKLE

MARCH 18, 2013

JOINT SPONSORS: SENATORS SMITH AND JONES

Referred to Committee on Natural Resources,
Agriculture, and Mining

SUMMARY—Revises provisions relating to the waters of this State. (BDR 26-763)

FISCAL NOTE: Effect on Local Government: No.
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 water; providing persons with access to certain waters in this State for certain activities that use water; making an appropriation; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

1 The Nevada Supreme Court expressly adopted the public trust doctrine in
2 *Lawrence v. Clark County*, 127 Nev. Adv. Op. 32, 254 P.3d 606 (2011). Under this
3 doctrine, generally, a state holds the banks and beds of navigable waterways in trust
4 for the public and subject to restraints on alienability. Under existing law, the water
5 of all sources of water supply within the boundaries of the State of Nevada is
6 declared to belong to the public. (NRS 533.025) The use of water for recreational
7 purposes is also recognized under existing law as a beneficial use of water. (NRS
8 533.030) In addition, Nevada has a recreational use statute in existing law which,
9 with certain exceptions, limits the liability of an owner, lessee or occupant of a
10 premises to persons who enter or use the land for recreational activities, including,
11 without limitation, fishing and water sports. (NRS 41.510)

12 Subject to certain specified restrictions, this bill authorizes persons to use water
13 that is navigable or capable of being navigated by oar, paddle or motorized
14 watercraft year round at or below the ordinary high-water mark for any otherwise
15 lawful activity that uses water, including boating, fishing, swimming and wading.
16 This bill authorizes the owner of the bed of such water to place a fence or similar
17 barrier across the water for legally authorized purposes, but requires the owner in
18 such circumstances to: (1) authorize the placement of a ladder, gate or other device



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19 that allows portage around or over the fence or barrier; and (2) post a sign at a
20 certain location along the water indicating the existence of the fence or barrier.

1 WHEREAS, The Nevada Supreme Court has expressly adopted
2 the public trust doctrine in *Lawrence v. Clark County*, 127 Nev.
3 Adv. Op. 32, 254 P.3d 606 (2011); and

4 WHEREAS, Under the public trust doctrine, generally, a state
5 holds the banks and beds of navigable waterways in trust for the
6 public and subject to restraints on alienability; and

7 WHEREAS, In addition to other sources of Nevada law that
8 manifest the public trust doctrine, the *Lawrence* Court cited NRS
9 533.025 as “effectively statutorily codify[ing] the principles behind
10 the public trust doctrine in Nevada” by recognizing that the water in
11 Nevada belongs to the public not the State (*Lawrence*, 254 P.3d at
12 613); and

13 WHEREAS, The *Lawrence* Court also recognized the application
14 of the public trust doctrine to recreational resources (*Lawrence*, 254
15 P.3d at 616); and

16 WHEREAS, NRS 533.030 explicitly recognizes recreation as a
17 beneficial use of water; now, therefore,

18
19 THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
20 SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

21
22 **Section 1.** Chapter 322 of NRS is hereby amended by adding
23 thereto the provisions set forth as sections 3 to 5.6, inclusive, of this
24 act.

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

26 **Sec. 3.** *As used in sections 3 to 5.6, inclusive, of this act,*
27 *unless the context otherwise requires, “public access water”:*

28 *1. Means water described in subsection 1 of NRS 533.025*
29 *which is:*

30 *(a) Flowing or collecting on the surface within a natural or*
31 *realigned channel or in a natural lake, pond or reservoir on a*
32 *natural or realigned channel; and*

33 *(b) Navigable or is capable of being navigated by oar, paddle*
34 *or a watercraft propelled by a motor.*

35 *2. Does not include an irrigation ditch, flume or canal*
36 *located on private property.*

37 **Sec. 4. 1.** *Public access water is open to use year round at*
38 *or below the ordinary high-water mark for any otherwise lawful*
39 *activity that uses water, including, without limitation, boating,*
40 *fishing, swimming and wading.*



1 2. *A person using public access water is subject to any other*
2 *restriction lawfully placed on the use of the water by a*
3 *governmental entity with authority to restrict the use of the water.*

4 3. *When leaving a public access water, a person shall remove*
5 *any refuse or tangible personal property that the person brought to*
6 *the public access water.*

7 4. *The provisions of this section do not:*

8 (a) *Except as otherwise provided in this paragraph, authorize a*
9 *person to enter upon, cross or use private property where the*
10 *person has been warned by the owner or occupant of the property*
11 *not to trespass in the manner prescribed in NRS 207.200, or where*
12 *signs are displayed forbidding such entry, crossing or use without*
13 *permission obtained from the owner or occupant of the private*
14 *property other than at or below the ordinary high-water mark of a*
15 *public access water. If a natural or artificial obstruction interferes*
16 *with the use of a public access water, a person may, along with his*
17 *or her vessel, portage around the obstruction:*

18 (1) *At or below the ordinary high-water mark of the public*
19 *access water;*

20 (2) *Along a trail identified for portage by the owner or*
21 *occupant of the private property; or*

22 (3) *If the owner or occupant has not identified a trail for*
23 *portage, in a manner that is reasonably direct and closest to the*
24 *water to reenter the water immediately above or below the*
25 *obstruction at the nearest point where it is safe to do so.*

26 (b) *Limit or enlarge any right granted by express easement.*

27 5. *As used in this section, "vessel" has the meaning ascribed*
28 *to it in NRS 501.096.*

29 **Sec. 5. 1.** *The owner of the bed of a public access water*
30 *may place a fence or similar barrier across the public access water*
31 *for agricultural, livestock or other purposes authorized by law.*
32 *Such a fence or barrier must:*

33 (a) *Comply with any applicable federal, state or local law,*
34 *ordinance or regulation; and*

35 (b) *Be constructed in a manner that does not create an*
36 *unreasonably dangerous condition to persons lawfully using the*
37 *public access water.*

38 2. *If an owner has placed or places a fence or similar barrier*
39 *pursuant to subsection 1, the owner shall:*

40 (a) *Authorize the placement of a ladder, gate or other device*
41 *that allows portage around or over the fence or barrier; and*

42 (b) *Post a sign indicating the existence of the fence or barrier*
43 *which is clearly visible from the public access water and is posted*
44 *at a reasonable distance below and above the fence or barrier and*
45 *along the public access water.*



1 **Sec. 5.2. The State Land Registrar shall:**

2 1. *Determine the location of each known diversion work,*
3 *barrier and portage route located along all public access water in*
4 *this State; and*

5 2. *Prepare and periodically revise a map setting forth the*
6 *location of each of those diversion works, barriers and portage*
7 *routes.*

8 **Sec. 5.4. 1. If the boundary between the bed of a natural**
9 *lake in this State and the land that is adjacent to the bed of the*
10 *lake is established by a specific statute, the boundary established*
11 *by that statute shall be deemed to be the ordinary high-water mark*
12 *of the lake for the purposes of sections 3 to 5.6, inclusive, of this*
13 *act.*

14 2. *The provisions of sections 3 to 5.6, inclusive, of this act*
15 *and any recreational activity authorized pursuant to those*
16 *provisions do not affect any right to appropriate water for a*
17 *beneficial use or the title or ownership of any water, bed or bank*
18 *of any navigable or nonnavigable water or portage route in this*
19 *State.*

20 **Sec. 5.6. In addition to any other remedy or penalty, if a**
21 *person violates a provision of sections 3 to 5.6, inclusive, of this*
22 *act, any person aggrieved by the violation may bring a civil action*
23 *against the person for:*

24 1. *Actual damages;*

25 2. *Reasonable attorney's fees; and*

26 3. *Any other legal or equitable relief that the court deems*
27 *appropriate.*

28 **Sec. 5.8. NRS 41.510 is hereby amended to read as follows:**

29 41.510 1. Except as otherwise provided in subsection 3, an
30 owner of any estate or interest in any premises, or a lessee or an
31 occupant of any premises, owes no duty to keep the premises safe
32 for entry or use by others for participating in any recreational
33 activity, or to give warning of any hazardous condition, activity or
34 use of any structure on the premises to persons entering for those
35 purposes.

36 2. Except as otherwise provided in subsection 3, if an owner,
37 lessee or occupant of premises gives permission to another person to
38 participate in recreational activities upon those premises:

39 (a) The owner, lessee or occupant does not thereby extend any
40 assurance that the premises are safe for that purpose or assume
41 responsibility for or incur liability for any injury to person or
42 property caused by any act of persons to whom the permission is
43 granted.

44 (b) That person does not thereby acquire any property rights in
45 or rights of easement to the premises.



1 3. This section does not:

2 (a) Limit the liability which would otherwise exist for:

3 (1) Willful or malicious failure to guard, or to warn against, a
4 dangerous condition, use, structure or activity.

5 (2) Injury suffered in any case where permission to
6 participate in recreational activities was granted for a consideration
7 other than the consideration, if any, paid to the landowner by the
8 State or any subdivision thereof. For the purposes of this
9 subparagraph, the price paid for a game tag sold pursuant to NRS
10 502.145 by an owner, lessee or manager of the premises shall not be
11 deemed consideration given for permission to hunt on the premises.

12 (3) Injury caused by acts of persons to whom permission to
13 participate in recreational activities was granted, to other persons as
14 to whom the person granting permission, or the owner, lessee or
15 occupant of the premises, owed a duty to keep the premises safe or
16 to warn of danger.

17 (b) Create a duty of care or ground of liability for injury to
18 person or property.

19 4. As used in this section, "recreational activity" includes, but
20 is not limited to:

21 (a) Hunting, fishing or trapping;

22 (b) Camping, hiking or picnicking;

23 (c) Sightseeing or viewing or enjoying archaeological, scenic,
24 natural or scientific sites;

25 (d) Hang gliding or paragliding;

26 (e) Spelunking;

27 (f) Collecting rocks;

28 (g) Participation in winter sports, including cross-country skiing,
29 snowshoeing or riding a snowmobile, or water sports;

30 (h) Riding animals, riding in vehicles or riding a road or
31 mountain bicycle;

32 (i) Studying nature;

33 (j) Gleaning;

34 (k) Recreational gardening; ~~land~~

35 (l) *Portaging a vessel or any other crossing of private property*
36 *in accordance with the provisions of sections 3 to 5.6, inclusive, of*
37 *this act; and*

38 (m) Crossing over to public land or land dedicated for public
39 use.

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

41 **Sec. 7.** NRS 503.240 is hereby amended to read as follows:

42 503.240 1. ~~It~~ *Except as otherwise provided in sections 3 to*
43 *5.6, inclusive, of this act, it* is unlawful for any person to hunt, fish
44 in nonnavigable waters or trap upon land which is private property
45 where the person has been warned by the owner or occupant of the



1 property not to trespass in the manner prescribed in NRS 207.200,
2 or where signs are displayed forbidding hunting, trapping or fishing
3 without permission obtained from the owner or occupant of the
4 private property.

5 2. Any person using that private property for hunting, fishing
6 or trapping shall comply with the provisions of NRS 207.220.

7 **Sec. 8.** NRS 533.025 is hereby amended to read as follows:

8 533.025 **1.** The water of all sources of water supply within
9 the boundaries of the State whether above or beneath the surface of
10 the ground, belongs to the public.

11 **2. *The right of the public to use public water is governed by***
12 ***sections 3 to 5.6, inclusive, of this act.***

13 **Sec. 9.** 1. There is hereby appropriated from the State
14 General Fund to the State Land Registrar the sum of \$50,000 for use
15 by the State Land Registrar in carrying out the provisions of section
16 5.2 of this act.

17 2. Any remaining balance of the appropriation made by
18 subsection 1 must not be committed for expenditure after June 30,
19 2015, by the entity to which the appropriation is made or any entity
20 to which money from the appropriation is granted or otherwise
21 transferred in any manner, and any portion of the appropriated
22 money remaining must not be spent for any purpose after
23 September 18, 2015, by either the entity to which the money was
24 appropriated or the entity to which the money was subsequently
25 granted or transferred, and must be reverted to the State General
26 Fund on or before September 18, 2015.

