

ASSEMBLY BILL NO. 391—COMMITTEE ON CONSTITUTIONAL AMENDMENTS

MARCH 16, 2001

Referred to Committee on Natural Resources, Agriculture, and Mining

SUMMARY—Provides additional means to enforce Nevada's claim to public lands.  
(BDR 26-1455)

FISCAL NOTE: Effect on Local Government: Yes.  
Effect on the State: Yes.

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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 public lands; providing a civil remedy and a criminal penalty for certain acts; authorizing a board of county commissioners to adopt certain ordinances relating to public lands located within the county; authorizing a district attorney to initiate or defend an action relating to public lands under certain circumstances; and providing other matters properly relating thereto.

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

1 **Section 1.** Chapter 321 of NRS is hereby amended by adding thereto  
2 the provisions set forth as sections 2 and 3 of this act.

3 **Sec. 2.** *A person who performs an act with respect to the*  
4 *management or disposal of any of the public lands in this state, other*  
5 *than as an agent of this state, is guilty of a gross misdemeanor.*

6 **Sec. 3.** *A person aggrieved by a violation of section 2 of this act may*  
7 *commence a civil action against the violator to recover damages suffered*  
8 *as a proximate result of the violation and is entitled to recover \$20,000 or*  
9 *treble the amount of his actual damages, whichever is greater, plus his*  
10 *costs and reasonable attorney's fees in the action.*

11 **Sec. 4.** NRS 321.596 is hereby amended to read as follows:

12 321.596 The legislature finds that:

13 1. The State of Nevada has a strong moral claim upon the public land  
14 retained by the Federal Government within Nevada's borders because:

15 (a) On October 31, 1864, the Territory of Nevada was admitted to  
16 statehood on the condition that it forever disclaim all right and title to  
17 unappropriated public land within its boundaries;

18 (b) From 1850 to 1894, newly admitted states received 2 sections of  
19 each township for the benefit of common schools, which in Nevada  
20 amounted to 3.9 million acres;



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1 (c) In 1880 Nevada agreed to exchange its 3.9-million-acre school grant  
2 for 2 million acres of its own selection from public land in Nevada held by  
3 the Federal Government;

4 (d) At the time the exchange was deemed necessary because of an  
5 immediate need for public school revenues and because the majority of the  
6 original federal land grant for common schools remained unsurveyed and  
7 unsold;

8 (e) Unlike certain other states, such as New Mexico, Nevada received  
9 no land grants from the Federal Government when Nevada was a territory;

10 (f) Nevada received no land grants for insane asylums, schools of  
11 mines, schools for the blind and deaf and dumb, normal schools, miners'  
12 hospitals or a governor's residence as did states such as New Mexico; and

13 (g) Nevada thus received the least amount of land, 2,572,478 acres, and  
14 the smallest percentage of its total area, 3.9 percent, of the land grant states  
15 in the Far West admitted after 1864, while states of comparable location  
16 and soil, namely Arizona, New Mexico and Utah, received approximately  
17 11 percent of their total area in federal land grants.

18 2. The State of Nevada has a legal claim to the public land retained by  
19 the Federal Government within Nevada's borders because:

20 (a) In the case of the State of Alabama, a renunciation of any claim to  
21 unappropriated lands similar to that contained in the ordinance adopted by  
22 the Nevada constitutional convention was held by the Supreme Court of  
23 the United States to be "void and inoperative" because it denied to  
24 Alabama "an equal footing with the original states" in *Pollard v. Hagan*, 44  
25 U.S. (3 How.) 212 (1845);

26 (b) *In Coyle v. Smith*, 221 U.S. 559 (1911), the Supreme Court of the  
27 United States expressly affirmed the "equal footing" doctrine as  
28 enunciated in *Pollard v. Hagan*, 44 U.S. (3 How.) 212 (1845), holding  
29 that to ensure equality among the states, the legislature of the State of  
30 Oklahoma had the power to locate, change and appropriate money for its  
31 own seat of government and that the Congress of the United States could  
32 not, through the Enabling Act of June 16, 1906, ch. 3335, 34 Stat. 267,  
33 require the State of Oklahoma to erect its seat of government in a  
34 location designated by Congress;

35 (c) The State of Texas, when admitted to the Union in 1845, retained  
36 ownership of all unappropriated land within its borders, setting a further  
37 precedent which inured to the benefit of all states admitted later "on an  
38 equal footing"; and

39 ~~(c)~~ (d) The Northwest Ordinance of 1787, adopted into the  
40 Constitution of the United States by the reference of Article VI to prior  
41 engagements of the Confederation, first proclaimed the "equal footing"  
42 doctrine, and the Treaty of Guadalupe Hidalgo, by which the territory  
43 including Nevada was acquired from Mexico and which is "the supreme  
44 law of the land" by virtue of Article VI, affirms it expressly as to the new  
45 states to be organized therein.

46 3. The exercise of broader control by the State of Nevada over the  
47 public lands within its borders would be of great public benefit because:

48 (a) Federal holdings in the State of Nevada constitute 86.7 percent of  
49 the area of the state, and in Esmeralda, Lincoln, Mineral, Nye and White



1 Pine counties the Federal Government controls from 97 to 99 percent of the  
2 land;

3 (b) Federal jurisdiction over the public domain is shared among 17  
4 federal agencies or departments which adds to problems of proper  
5 management of land and disrupts the normal relationship between a state,  
6 its residents and its property;

7 (c) None of the ~~federal~~ *federally administered* lands in Nevada are  
8 taxable and Federal Government activities are extensive and create a tax  
9 burden for the private property owners of Nevada who must meet the needs  
10 of children of Federal Government employees, as well as provide other  
11 public services;

12 (d) Under general land laws only 2.1 percent of ~~federal~~ *federally*  
13 *administered* lands in Nevada have moved from federal control to private  
14 ownership;

15 (e) Federal administration of the retained public lands, which are vital to  
16 the livestock and mining industries of the state and essential to meet the  
17 recreational and other various uses of its citizens, has been of uneven  
18 quality and sometimes arbitrary and capricious; and

19 (f) Federal administration of the retained public lands has not been  
20 consistent with the public interest of the people of Nevada because the  
21 Federal Government has used those lands for armament and nuclear testing  
22 thereby rendering many parts of the land unusable and unsuited for other  
23 uses and endangering the public health and welfare.

24 4. The intent of the framers of the Constitution of the United States  
25 was to guarantee to each of the states sovereignty over all matters within its  
26 boundaries except for those powers specifically granted to the United  
27 States as agent of the states.

28 5. The attempted imposition upon the State of Nevada by the Congress  
29 of the United States of a requirement in the enabling act that Nevada  
30 "disclaim all right and title to the unappropriated public lands lying within  
31 said territory," as a condition precedent to acceptance of Nevada into the  
32 Union, was an act beyond the power of the Congress of the United States  
33 and is thus void.

34 6. The purported right of ownership and control of the public lands  
35 within the State of Nevada by the United States is without foundation and  
36 violates the clear intent of the Constitution of the United States.

37 7. The exercise of such dominion and control of the public lands  
38 within the State of Nevada by the United States works a severe, continuous  
39 and debilitating hardship upon the people of the State of Nevada.

40 *8. The State of Nevada, in enacting NRS 321.596 to 321.599,*  
41 *inclusive, and sections 2 and 3 of this act, is acting as a sovereign state to*  
42 *enforce within its borders the provisions of the Constitution of the United*  
43 *States. In so acting, it is subject only to the original jurisdiction of the*  
44 *Supreme Court of the United States.*

45 **Sec. 5.** NRS 321.5963 is hereby amended to read as follows:

46 321.5963 As used in NRS 321.596 to 321.599, inclusive, *and sections*  
47 *2 and 3 of this act*, unless the context otherwise requires:

48 1. "Division" means the division of state lands of the state department  
49 of conservation and natural resources.



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1 2. "Public lands" means all lands within the exterior boundaries of the  
2 State of Nevada , *including lands managed or controlled by the Bureau*  
3 *of Land Management or the United States Forest Service*, except lands:

- 4 (a) To which title is held by any private person or entity;  
5 (b) To which title is held by the State of Nevada, any of its local  
6 governments or the University and Community College System of Nevada;  
7 (c) Which are located within congressionally authorized national parks,  
8 monuments, national forests or wildlife refuges or which are lands acquired  
9 by purchase consented to by the legislature;  
10 (d) Which are *lawfully* controlled by the United States Department of  
11 Defense, Department of Energy or Bureau of Reclamation; or  
12 (e) Which are held in trust for Indian purposes or are Indian  
13 reservations.

14 **Sec. 6.** NRS 321.597 is hereby amended to read as follows:

15 321.597 1. The division shall hold the public lands of the state in  
16 trust for the benefit of the people of the state and shall manage them in an  
17 orderly and beneficial manner consistent with the public policy declared in  
18 NRS 321.5977.

19 2. ~~The~~ *Except as otherwise provided in subsection 4 of NRS*  
20 *321.5973, the* state land registrar may , with the approval of the board of  
21 review , adopt regulations necessary to manage the public lands in an  
22 orderly and beneficial manner and to carry out the provisions of NRS  
23 321.596 to 321.599, inclusive, and the public trust created in those  
24 sections.

25 3. Except as *otherwise* provided in this subsection, the state land  
26 registrar may contract for or employ such professional and clerical  
27 personnel as are needed to carry out his functions. Any contract for  
28 professional services must be approved by the state board of examiners and  
29 any money necessary to compensate those persons must be approved for  
30 expenditure by the legislature or the interim finance committee.

31 **Sec. 7.** NRS 321.5973 is hereby amended to read as follows:

32 321.5973 1. Subject to existing rights ~~and~~ *and privileges*, all public  
33 lands in Nevada and all minerals not previously appropriated are the  
34 property of the State of Nevada and subject to its jurisdiction and control.

35 2. Until equivalent measures are enacted by the State of Nevada, the  
36 rights and privileges of the people of the State of Nevada under the  
37 ~~National~~ Forest Reserve ~~Transfer Act (16 U.S.C. §§ 471 et seq.)~~ *Acts,*  
38 *16 U.S.C. §§ 471a et seq.,* the General Mining Laws , ~~the~~ 30 U.S.C. §§ 21  
39 et seq. ~~, the Homestead Act (43 U.S.C. §§ 161 et seq.)~~ , *the Stock-*  
40 *Raising Homestead Act, 43 U.S.C. §§ 299 and 301,* the Taylor Grazing  
41 Act , ~~the~~ 43 U.S.C. §§ 315 et seq. , ~~the~~ the Desert Land Act , ~~the~~ 43 U.S.C.  
42 §§ 321 et seq. , ~~the~~ the Carey Act , ~~the~~ 43 U.S.C. §§ 641 et seq. ~~and~~  
43 Public Rangelands Improvement Act ~~of 1978,~~ 43 U.S.C. §§ 1901 et seq.  
44 , ~~and~~ and all rights of way and easements for public utilities must be  
45 preserved under administration by the state.

46 3. Public lands in Nevada which have been administered by the United  
47 States under international treaties or interstate compacts must continue to  
48 be administered by the state in conformance with those treaties or  
49 compacts.



1     4. *The board of county commissioners of each county may adopt*  
2 *such ordinances as are necessary to carry out the provisions of NRS*  
3 *321.596 to 321.599, inclusive, concerning the public lands within the*  
4 *boundaries of the county.*

5     Sec. 8. NRS 321.599 is hereby amended to read as follows:

6     321.599 The attorney general may initiate *an action* or defend ~~{any}~~  
7 *an* action commenced in any court to carry out or enforce the provisions of  
8 NRS 321.596 to 321.599, inclusive, or seek ~~{any}~~ appropriate judicial relief  
9 to protect the interests of the state or the people of the state in the public  
10 lands. ~~{The right to enforce the provisions of NRS 321.596 to 321.599,~~  
11 ~~inclusive, vests exclusively in}~~ *If* the attorney general ~~{}~~ *refuses to initiate*  
12 *or defend such an action, the district attorney of the appropriate county*  
13 *may do so.*

14     Sec. 9. NRS 328.500 is hereby amended to read as follows:

15     328.500 1. The legislature finds that more than 87 percent of the land  
16 in the State of Nevada is held by the Federal Government, of which 69  
17 percent is public land, and the actions of federal agencies and  
18 instrumentalities involving the public lands and waters appurtenant to and  
19 public roads over those lands significantly affect the health, safety, welfare  
20 and happiness of the citizens of this state and may interfere with the  
21 traditional sovereign functions of the State of Nevada with respect to those  
22 lands, waters and roads and their uses.

23     2. Except as otherwise provided in subsection 3, the attorney general  
24 may:

25     (a) On his own initiative or at the request of the governor or any state  
26 agency, bring and maintain any action; or

27     (b) Intervene on behalf of or bring and maintain an action on the  
28 relation of, any person in any meritorious case,  
29 in any court or before any federal agency if any action or proposed action  
30 by a federal agency or instrumentality with respect to the public lands or  
31 waters appurtenant to or public roads over those lands impairs or tends to  
32 impair the sovereignty of the State of Nevada.

33     3. The attorney general may bring an action pursuant to this section if:

34     (a) The legislature has appropriated sufficient money for the operation  
35 of his office to permit him to bring and maintain the action until its  
36 conclusion; or

37     (b) He has obtained the permission:

38     (1) From the legislature, if it is in session, expressed by a concurrent  
39 resolution; or

40     (2) If the legislature is not in session, from the interim finance  
41 committee.

42     4. As used in this section, "public lands" means all lands within the  
43 exterior boundaries of the State of Nevada, *including lands managed or*  
44 *controlled by the Bureau of Land Management or the United States*  
45 *Forest Service*, except lands:

46     (a) To which title is held by any private person or entity;

47     (b) To which title is held by the State of Nevada, any of its local  
48 governments or the University and Community College System of Nevada;



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1 (c) Which are located within congressionally authorized national parks,  
2 monuments, national forests or wildlife refuges or which are lands acquired  
3 by purchase consented to by the legislature;

4 (d) Which are controlled by the United States Department of Defense,  
5 Department of Energy or Bureau of Reclamation; or

6 (e) Which are held in trust for Indian purposes or are Indian  
7 reservations.

8 **Sec. 10.** The provisions of section 2 of this act do not apply to  
9 offenses committed before the effective date of this act.

10 **Sec. 11.** This act becomes effective upon passage and approval.

