

(REPRINTED WITH ADOPTED AMENDMENTS)
FIRST REPRINT **A.B. 391**

ASSEMBLY BILL NO. 391—COMMITTEE ON CONSTITUTIONAL AMENDMENTS

MARCH 16, 2001

Referred to Committee on Natural Resources, Agriculture, and Mining

SUMMARY—Makes various changes to provisions governing public lands. (BDR 26-1455)

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

~

EXPLANATION – Matter in ***bolded italics*** is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to public lands; 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.** NRS 321.596 is hereby amended to read as follows:
2 321.596 The legislature finds that:
3 1. The State of Nevada has a strong moral claim upon the public land
4 retained by the Federal Government within Nevada's borders because:
5 (a) On October 31, 1864, the Territory of Nevada was admitted to
6 statehood on the condition that it forever disclaim all right and title to
7 unappropriated public land within its boundaries;
8 (b) From 1850 to 1894, newly admitted states received 2 sections of
9 each township for the benefit of common schools, which in Nevada
10 amounted to 3.9 million acres;
11 (c) In 1880 Nevada agreed to exchange its 3.9-million-acre school grant
12 for 2 million acres of its own selection from public land in Nevada held by
13 the Federal Government;
14 (d) At the time the exchange was deemed necessary because of an
15 immediate need for public school revenues and because the majority of the
16 original federal land grant for common schools remained unsurveyed and
17 unsold;
18 (e) Unlike certain other states, such as New Mexico, Nevada received
19 no land grants from the Federal Government when Nevada was a territory;
20 (f) Nevada received no land grants for insane asylums, schools of
21 mines, schools for the blind and deaf and dumb, normal schools, miners'
22 hospitals or a governor's residence as did states such as New Mexico; and



1 (g) Nevada thus received the least amount of land, 2,572,478 acres, and
2 the smallest percentage of its total area, 3.9 percent, of the land grant states
3 in the Far West admitted after 1864, while states of comparable location
4 and soil, namely Arizona, New Mexico and Utah, received approximately
5 11 percent of their total area in federal land grants.

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

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

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

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

27 ~~He)~~ (d) The Northwest Ordinance of 1787, adopted into the
28 Constitution of the United States by the reference of Article VI to prior
29 engagements of the Confederation, first proclaimed the "equal footing"
30 doctrine, and the Treaty of Guadalupe Hidalgo, by which the territory
31 including Nevada was acquired from Mexico and which is "the supreme
32 law of the land" by virtue of Article VI, affirms it expressly as to the new
33 states to be organized therein.

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

36 (a) Federal holdings in the State of Nevada constitute 86.7 percent of
37 the area of the state, and in Esmeralda, Lincoln, Mineral, Nye and White
38 Pine counties the Federal Government controls from 97 to 99 percent of the
39 land;

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

44 (c) None of the ~~Federal~~ *federally administered* lands in Nevada are
45 taxable and Federal Government activities are extensive and create a tax
46 burden for the private property owners of Nevada who must meet the needs
47 of children of Federal Government employees, as well as provide other
48 public services;



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

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

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

13 4. The intent of the framers of the Constitution of the United States
14 was to guarantee to each of the states sovereignty over all matters within its
15 boundaries except for those powers specifically granted to the United
16 States as agent of the states.

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

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

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

29 *8. The State of Nevada, in enacting NRS 321.596 to 321.599,*
30 *inclusive, is acting as a sovereign state to enforce within its borders the*
31 *provisions of the Constitution of the United States. In so acting, it is*
32 *subject only to the original jurisdiction of the Supreme Court of the*
33 *United States.*

34 **Sec. 2.** NRS 321.5963 is hereby amended to read as follows:

35 321.5963 As used in NRS 321.596 to 321.599, inclusive, unless the
36 context otherwise requires:

37 1. "Division" means the division of state lands of the state department
38 of conservation and natural resources.

39 2. "Public lands" means all lands within the exterior boundaries of the
40 State of Nevada , *including lands managed or controlled by the Bureau*
41 *of Land Management*, except lands:

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

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

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

48 (d) Which are *lawfully* controlled by the United States Department of
49 Defense, Department of Energy or Bureau of Reclamation; or



* A B 3 9 1 R 1 *

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

Sec. 3. NRS 321.597 is hereby amended to read as follows:

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

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

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

Sec. 4. NRS 321.5973 is hereby amended to read as follows:

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

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

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

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

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

321.599 The attorney general may initiate *an action* or defend ~~[(any)]~~ *an* action commenced in any court to carry out or enforce the provisions of NRS 321.596 to 321.599, inclusive, or seek ~~[(any)]~~ appropriate judicial relief to protect the interests of the state or the people of the state in the public lands. ~~[(The right to enforce the provisions of NRS 321.596 to 321.599, inclusive, vests exclusively in)]~~ *If* the attorney general ~~[()]~~ *refuses to initiate*



1 *or defend such an action, the district attorney of the county in which the*
2 *public lands are located may do so to protect the interests of the county*
3 *or the residents of the county in those public lands.*

4 **Sec. 6.** NRS 328.500 is hereby amended to read as follows:

5 328.500 1. The legislature finds that more than 87 percent of the land
6 in the State of Nevada is held by the Federal Government, of which 69
7 percent is public land, and the actions of federal agencies and
8 instrumentalities involving the public lands and waters appurtenant to and
9 public roads over those lands significantly affect the health, safety, welfare
10 and happiness of the citizens of this state and may interfere with the
11 traditional sovereign functions of the State of Nevada with respect to those
12 lands, waters and roads and their uses.

13 2. Except as otherwise provided in subsection 3, the attorney general
14 may:

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

17 (b) Intervene on behalf of or bring and maintain an action on the
18 relation of, any person in any meritorious case,
19 in any court or before any federal agency if any action or proposed action
20 by a federal agency or instrumentality with respect to the public lands or
21 waters appurtenant to or public roads over those lands impairs or tends to
22 impair the sovereignty of the State of Nevada.

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

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

27 (b) He has obtained the permission:

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

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

32 4. As used in this section, "public lands" means all lands within the
33 exterior boundaries of the State of Nevada, *including lands managed or*
34 *controlled by the Bureau of Land Management*, except lands:

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

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

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

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

43 (e) Which are held in trust for Indian purposes or are Indian
44 reservations.

45 **Sec. 7.** This act becomes effective upon passage and approval.

