

SENATE BILL NO. 263—SENATORS CARE, TITUS AND AMODEI

MARCH 22, 2005

JOINT SPONSOR: ASSEMBLYWOMAN OHRENSCHALL

Referred to Committee on Natural Resources

SUMMARY—Adopts Uniform Environmental Covenants Act.
(BDR 40-359)

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 environmental covenants; adopting the Uniform Environmental Covenants Act; 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.** Title 40 of NRS is hereby amended by adding
2 thereto a new chapter to consist of the provisions set forth as
3 sections 2 to 23, inclusive, of this act.

4 **Sec. 2.** *This chapter may be cited as the Uniform*
5 *Environmental Covenants Act.*

6 **Sec. 3.** *As used in this chapter, unless the context otherwise*
7 *requires, the words and terms defined in sections 4 to 12,*
8 *inclusive, of this act have the meanings ascribed to them in those*
9 *sections.*

10 **Sec. 4.** *“Activity and use limitations” means restrictions or*
11 *obligations created under this chapter with respect to real*
12 *property.*

13 **Sec. 5.** *“Agency” means:*

14 1. *The State Department of Conservation and Natural*
15 *Resources;*



2. *The Division of Environmental Protection of the State Department of Conservation and Natural Resources; or*

3. *The United States Environmental Protection Agency.*

Sec. 6. *“Common-interest community” means a condominium, cooperative or other real property with respect to which a person, by virtue of the person’s ownership of a parcel of real property, is obligated to pay property taxes or insurance premiums, or for maintenance or improvement of other real property described in a recorded covenant that creates the common-interest community.*

Sec. 7. *“Environmental covenant” means a servitude arising under an environmental response project that imposes activity and use limitations.*

Sec. 8. *“Environmental response project” means a plan or work performed for environmental remediation of real property and conducted:*

1. *Under a federal or state program governing environmental remediation of real property;*

2. *Incident to closure of a solid or hazardous waste management unit, if the closure is conducted with approval of an agency; or*

3. *Under a state voluntary cleanup program authorized by the laws of this State.*

Sec. 9. *“Holder” means the grantee of an environmental covenant as specified in subsection 1 of section 13 of this act.*

Sec. 10. *“Person” means any natural person, corporation, business trust, estate, trust, partnership, limited-liability company, association, joint venture, public corporation, government, governmental subdivision, agency or instrumentality, or any other legal or commercial entity.*

Sec. 11. *“Record,” used as a noun, means information which is inscribed on a tangible medium or which is stored in an electronic or other medium and is retrievable in perceivable form.*

Sec. 12. *“State” means the State of Nevada.*

Sec. 13. 1. *Any person, including a person who owns an interest in the real property, the agency or a municipality or other unit of local government, may be a holder. An environmental covenant may identify more than one holder. The interest of a holder is an interest in real property.*

2. *A right of an agency under this chapter or under an environmental covenant, other than a right as a holder, is not an interest in real property.*

3. *An agency is bound by any obligation it assumes in an environmental covenant, but an agency does not assume obligations merely by signing an environmental covenant. Any*



1 other person who signs an environmental covenant is bound by
2 the obligations the person assumes in the covenant, but signing
3 the covenant does not change obligations, rights or protections
4 granted or imposed under law other than this chapter except as
5 otherwise provided in the covenant.

6 4. The following rules apply to interests in real property in
7 existence at the time an environmental covenant is created or
8 amended:

9 (a) An interest that has priority under any other law is not
10 affected by an environmental covenant unless the person who
11 owns the interest subordinates that interest to the covenant.

12 (b) This chapter does not require a person who owns a prior
13 interest to subordinate that interest to an environmental covenant
14 or to agree to be bound by the covenant.

15 (c) A subordination agreement may be contained in an
16 environmental covenant covering real property or in a separate
17 record. If the environmental covenant covers commonly owned
18 property in a common-interest community, the record may be
19 signed by any person authorized by the executive board of the
20 unit-owners' association.

21 (d) An agreement by a person to subordinate a prior interest
22 to an environmental covenant affects the priority of that person's
23 interest, but does not by itself impose any affirmative obligation on
24 the person with respect to the environmental covenant.

25 **Sec. 14. 1. An environmental covenant must:**

26 (a) State that the instrument is an environmental covenant
27 executed pursuant to this chapter;

28 (b) Contain a legally sufficient description of the real property
29 subject to the covenant;

30 (c) Describe the activity and use limitations on the real
31 property;

32 (d) Identify every holder;

33 (e) Be signed by the agency, every holder and, unless waived
34 by the agency, every owner of the fee simple of the real property
35 subject to the covenant; and

36 (f) Identify the name and location of any administrative record
37 for the environmental response project reflected in the
38 environmental covenant.

39 2. In addition to the information required by subsection 1, an
40 environmental covenant may contain other information,
41 restrictions and requirements agreed to by the persons who signed
42 it, including:

43 (a) Any requirements for notice following transfer of a
44 specified interest in, or concerning proposed changes in use of,
45 applications for building permits for, or proposals for any site



1 work affecting the contamination on, the property subject to the
2 covenant;

3 (b) Any requirements for periodic reporting describing
4 compliance with the covenant;

5 (c) Any rights of access to the property granted in connection
6 with implementation or enforcement of the covenant;

7 (d) A brief narrative description of the contamination and
8 remedy, including the contaminants of concern, pathways of
9 exposure, limits on exposure, and location and extent of the
10 contamination;

11 (e) Any limitation on amendment or termination of the
12 covenant in addition to those contained in sections 19 and 20 of
13 this act; and

14 (f) Any rights of the holder in addition to its right to enforce
15 the covenant pursuant to section 21 of this act.

16 3. In addition to other conditions for its approval of an
17 environmental covenant, the agency may require those persons
18 specified by the agency who have interests in the real property to
19 sign the covenant.

20 **Sec. 15. 1. An environmental covenant that complies with**
21 **this chapter runs with the land.**

22 2. An environmental covenant that is otherwise effective is
23 valid and enforceable even if:

24 (a) It is not appurtenant to an interest in real property;

25 (b) It can be or has been assigned to a person other than the
26 original holder;

27 (c) It is not of a character that has been recognized
28 traditionally at common law;

29 (d) It imposes a negative burden;

30 (e) It imposes an affirmative obligation on a person having an
31 interest in the real property or on the holder;

32 (f) The benefit or burden does not touch or concern real
33 property;

34 (g) There is no privity of estate or contract;

35 (h) The holder dies, ceases to exist, resigns or is replaced; or

36 (i) The owner of an interest subject to the environmental
37 covenant and the holder are the same person.

38 3. An instrument that creates restrictions or obligations with
39 respect to real property that would qualify as activity and use
40 limitations, except for the fact that the instrument was recorded
41 before October 1, 2005, is not invalid or unenforceable because of
42 any of the limitations on enforcement of interests described in
43 subsection 2 or because it was identified as an easement, servitude,
44 deed restriction or other interest. This chapter does not apply in
45 any other respect to such an instrument.



1 4. This chapter does not invalidate or render unenforceable
2 any interest, whether designated as an environmental covenant or
3 other interest, that is otherwise enforceable under the laws of this
4 State.

5 Sec. 16. This chapter does not authorize a use of real
6 property that is otherwise prohibited by zoning, by law other than
7 this chapter regulating use of real property or by a recorded
8 instrument that has priority over the environmental covenant. An
9 environmental covenant may prohibit or restrict uses of real
10 property which are authorized by zoning or by law other than this
11 chapter.

12 Sec. 17. 1. A copy of an environmental covenant must be
13 provided by the persons and in the manner required by the agency
14 to:

15 (a) Each person who signed the covenant;

16 (b) Each person holding a recorded interest in the real
17 property subject to the covenant;

18 (c) Each person in possession of the real property subject to
19 the covenant;

20 (d) Each municipality or other unit of local government in
21 which real property subject to the covenant is located and any
22 local planning commission whose territorial jurisdiction includes
23 or is immediately adjacent to the real property subject to the
24 covenant; and

25 (e) Any other person the agency requires.

26 2. The validity of a covenant is not affected by failure to
27 provide a copy of the covenant as required under this section.

28 Sec. 18. 1. An environmental covenant and any
29 amendment or termination of the covenant must be recorded in
30 every county in which any portion of the real property subject to
31 the covenant is located. For purposes of indexing, a holder must
32 be treated as a grantee.

33 2. Except as otherwise provided in subsection 3 of section 19
34 of this act, an environmental covenant is subject to the laws of this
35 State governing recording and priority of interests in real property.

36 Sec. 19. 1. An environmental covenant is perpetual unless
37 it is:

38 (a) By its terms limited to a specific duration or terminated by
39 the occurrence of a specific event;

40 (b) Terminated by consent pursuant to section 20 of this act;

41 (c) Terminated pursuant to subsection 2;

42 (d) Terminated by foreclosure of an interest that has priority
43 over the environmental covenant; or

44 (e) Terminated or modified in an eminent domain proceeding,
45 but only if:



(1) The agency that signed the covenant is a party to the proceeding;

(2) All persons identified in subsections 1 and 2 of section 20 of this act are given notice of the pendency of the proceeding; and

(3) The court determines, after hearing, that the termination or modification will not adversely affect human health or the environment.

2. If the agency that signed an environmental covenant has determined that the intended benefits of the covenant can no longer be realized, a court, under the doctrine of changed circumstances, in an action in which all persons identified in subsections 1 and 2 of section 20 of this act have been given notice, may terminate the covenant or reduce its burden on the real property subject to the covenant. The agency's determination or its failure to make a determination upon request is subject to judicial review pursuant to NRS 233B.130.

3. Except as otherwise provided in subsections 1 and 2, an environmental covenant may not be extinguished, limited or impaired through issuance of a tax deed, foreclosure of a tax lien or application of the doctrine of adverse possession, prescription, abandonment, waiver, lack of enforcement or acquiescence, or a similar doctrine.

4. An environmental covenant may not be extinguished, limited or impaired by application of any laws of this State relating to marketable title or dormant mineral interests.

Sec. 20. 1. An environmental covenant may be amended or terminated by consent only if the amendment or termination is signed by:

(a) The agency;

(b) Unless waived by the agency, the current owner of the fee simple of the real property subject to the covenant;

(c) Each person who originally signed the covenant, unless the person waived in a signed record the right to consent or a court finds that the person no longer exists or cannot be located or identified with the exercise of reasonable diligence; and

(d) Except as otherwise provided in paragraph (b) of subsection 4, the holder.

2. If an interest in real property is subject to an environmental covenant, the interest is not affected by an amendment of the covenant unless the current owner of the interest consents to the amendment or has waived in a signed record the right to consent to amendments.



1 3. Except for an assignment undertaken pursuant to a
2 governmental reorganization, the assignment of an environmental
3 covenant to a new holder is an amendment.

4 4. Except as otherwise provided in an environmental
5 covenant:

6 (a) A holder may not assign its interest without the consent of
7 the other parties; and

8 (b) A holder may be removed and replaced by agreement of the
9 other parties specified in subsection 1.

10 5. A court of competent jurisdiction may fill a vacancy in the
11 position of holder.

12 **Sec. 21.** 1. A civil action for injunctive or other equitable
13 relief for the violation of an environmental covenant may be
14 maintained by:

15 (a) A party to the covenant;

16 (b) The agency or, if it is not the agency, the State Department
17 of Conservation and Natural Resources or the Division of
18 Environmental Protection of that Department;

19 (c) Any person to whom the covenant expressly grants power
20 to enforce;

21 (d) A person whose interest in the real property or whose
22 collateral or liability may be affected by the alleged violation of the
23 covenant; or

24 (e) A municipality or other unit of local government in which
25 the real property subject to the covenant is located.

26 2. This chapter does not limit the regulatory authority of the
27 agency, or the State Environmental Commission, the State
28 Department of Conservation and Natural Resources or the
29 Division of Environmental Protection of that Department, under
30 law other than this chapter with respect to an environmental
31 response project.

32 3. A person is not responsible for or subject to liability for
33 environmental remediation solely because it has the right to
34 enforce an environmental covenant.

35 **Sec. 22.** In applying and construing this chapter,
36 consideration must be given to the need to promote uniformity of
37 the law with respect to its subject matter among states that enact it.

38 **Sec. 23.** This chapter modifies, limits or supersedes the
39 federal Electronic Signatures in Global and National Commerce
40 Act, 15 U.S.C. §§ 7001 et seq., but does not modify, limit or
41 supersede Section 101 of that Act, 15 U.S.C. § 7001(a), or
42 authorize electronic delivery of any of the notices described in
43 Section 103 of that Act, 15 U.S.C. § 7003(b).



