

SENATE BILL NO. 81—COMMITTEE ON
HUMAN RESOURCES AND EDUCATION

(ON BEHALF OF THE LEGISLATIVE COMMITTEE ON PUBLIC LANDS)

FEBRUARY 17, 2005

Referred to Committee on Human Resources and Education

SUMMARY—Makes various changes concerning protection of certain significant historical resources. (BDR 33-428)

FISCAL NOTE: Effect on Local Government: Increases or Newly Provides for Term of Imprisonment in County or City Jail or Detention Facility.
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 historic preservation; requiring the Office of Historic Preservation of the Department of Cultural Affairs to survey state land in certain circumstances to determine the presence of significant historical resources and make recommendations concerning any such resources that are discovered; making it a crime to take certain actions which tend to injure or destroy a significant historical resource; providing a penalty; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

- 1 Under existing law, the Office of Historic Preservation of the Department of
- 2 Cultural Affairs protects prehistoric and historic sites, including Indian burial sites.
- 3 (Chapters 381 and 383 of NRS)
- 4 This bill authorizes a state agency that awards a contract for a public works
- 5 project that is located on state land to submit the plans for the project to the Office
- 6 of Historic Preservation. If such plans are submitted, this bill authorizes the Office
- 7 of Historic Preservation to conduct a survey of the state land upon which the
- 8 project is proposed to be located to identify any historic or prehistoric sites or
- 9 artifacts that have historical, scientific or cultural value, referred to as "significant
- 10 historical resources." If a significant historical resource is discovered during the
- 11 survey, the Office of Historic Preservation is required to make recommendations to



the state agency concerning the preservation, recording or excavation of the significant historical resource. If the Office of Historic Preservation makes recommendations, the state agency is required to comply with the recommendations if practicable. If the state agency does not comply with the recommendations, the state agency must notify the Office of Historic Preservation and take any alternative action that is reasonable to protect or record the existence of the significant historical resource.

Existing law makes it a crime to willfully remove, mutilate, deface, injure or destroy the cairn or grave of a native Indian. (NRS 383.180)

This bill makes it a crime to engage in such conduct with respect to any significant historical resource on state land. A person who engages in such conduct is guilty of a misdemeanor for a first offense, punishable by a fine of \$500, and is guilty of a gross misdemeanor for a second or subsequent offense, punishable by imprisonment for up to a year, or a fine of not more than \$3,000, or by both a fine and imprisonment. A person or entity following a recommendation made by the Office of Historic Preservation or who is acting pursuant to a permit is not subject to these criminal penalties.

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

Section 1. NRS 381.197 is hereby amended to read as follows:
381.197 ~~No~~ *Except for a survey conducted under the direction of the Office of Historic Preservation of the Department pursuant to section 10 of this act, no* person shall investigate, explore or excavate an historic or prehistoric site on federal or state lands or remove any object therefrom unless he is the holder of a valid and current permit issued pursuant to the provisions of NRS 381.195 to 381.227, inclusive.

Sec. 2. Chapter 383 of NRS is hereby amended by adding thereto the provisions set forth as sections 3 to 12, inclusive, of this act.

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

Sec. 4. *“Indian burial site” has the meaning ascribed to it in NRS 383.150.*

Sec. 5. *“Public work” means any new construction or reconstruction project that is financed in whole or in part from public money and for which a state agency awards a contract, including, without limitation:*

- 1. A public building;*
- 2. A jail or prison;*
- 3. A public highway or road; and*
- 4. A state park.*



1 **Sec. 6.** *“Significant historical resource” means any*
2 *historical site or artifact, prehistoric site or artifact,*
3 *paleontological resource or any other resource that the Office*
4 *determines is historically, scientifically or culturally important for*
5 *the State of Nevada.*

6 **Sec. 7.** *“State agency” means the State of Nevada or any*
7 *board, commission, department, division or other public agency of*
8 *this State, including, without limitation, the State Public Works*
9 *Board.*

10 **Sec. 8.** *“State land” means land that is owned by or under*
11 *the control of a state agency.*

12 **Sec. 9.** *Before a state agency authorizes the commencement*
13 *of construction on a public work that is located on state land, the*
14 *state agency that awarded the contract for the public work may*
15 *submit the plans for the public work to the Office. The plans must*
16 *be sufficient to indicate:*

- 17 1. *The nature of the project;*
- 18 2. *The location of the project; and*
- 19 3. *Any proposed excavation that may be conducted relating to*
20 *the project.*

21 **Sec. 10.** 1. *If a state agency submits plans for a proposed*
22 *public work, the state agency shall make available to the Office the*
23 *state land upon which the public work is proposed to be located.*

24 2. *The Office may conduct a survey of the state land to*
25 *determine whether there are any significant historical resources*
26 *located on the land. The Office may use a professional*
27 *archeologist to conduct the survey.*

28 3. *The Office shall report to the state agency whether any*
29 *significant historical resources are discovered on the land. If the*
30 *Office finds that a significant historical resource is located on the*
31 *state land, the Office shall make recommendations to the state*
32 *agency concerning the preservation, recording or excavation of*
33 *the significant historical resource. The Office may consult with*
34 *the state agency in determining the appropriate recommendations.*

35 4. *When practicable, the Office shall recommend that a*
36 *significant historical resource be preserved in place or left in an*
37 *undisturbed condition. If such a recommendation is not*
38 *practicable, the Office shall make such other recommendations as*
39 *necessary to protect or record the significant historical resource,*
40 *which may include, without limitation, recommending that the*
41 *state agency excavate or photograph the significant historical*
42 *resource, cap the land with a layer of soil or use the land as a park*
43 *or other open space to preserve the significant historical resource.*



1 5. If the Office discovers an Indian burial site on the state
2 land, the Office shall comply with the provisions of NRS 383.150
3 to 383.190, inclusive.

4 6. The Office shall conduct the survey and make any
5 recommendations pursuant to this section as expeditiously as
6 possible.

7 **Sec. 11.** 1. If the Office makes recommendations to a state
8 agency concerning a significant historical resource pursuant to
9 section 10 of this act, the state agency shall, to the greatest extent
10 practicable, comply with the recommendations unless the state
11 agency determines that the cost of compliance exceeds the value of
12 the significant historical resource.

13 2. If it is not practicable for the state agency to comply with a
14 recommendation, the state agency shall notify the Office that it
15 does not intend to comply with the recommendation and shall
16 consult with the Office to develop a reasonable alternative action
17 to protect or record the existence of the significant historical
18 resource.

19 **Sec. 12.** 1. Except as otherwise provided in this section, a
20 person who willfully removes, mutilates, defaces, injures or
21 destroys a significant historical resource on state land:

22 (a) For a first offense, is guilty of a misdemeanor and shall be
23 punished by a fine of \$500.

24 (b) For a second or subsequent offense, is guilty of a gross
25 misdemeanor and shall be punished by imprisonment in the
26 county jail for not more than 1 year or by a fine of not more than
27 \$3,000, or by both fine and imprisonment.

28 2. This section does not apply to any action taken:

29 (a) By or under the supervision of a state agency pursuant to a
30 recommendation made by the Office pursuant to section 10 of this
31 act; or

32 (b) In accordance with the provisions of NRS 381.195 to
33 381.227, inclusive, by the holder of a permit issued pursuant to
34 those sections.

35 **Sec. 13.** NRS 383.081 is hereby amended to read as follows:

36 383.081 1. The Administrator shall prepare and maintain a
37 comprehensive statewide historic preservation plan. The plan must
38 contain:

39 (a) An evaluation of the needs for preservation of historic sites;

40 (b) A program for carrying out the plan; and

41 (c) Other information which the Administrator determines to be
42 necessary.

43 2. The plan must:

44 (a) Take into account relevant federal resources and programs;

45 ~~and~~



(b) Be correlated insofar as practicable with other state, regional and local plans ~~H~~ ; and

(c) Be consistent with the provisions of sections 3 to 12, inclusive, of this act.

3. The Administrator, subject to approval by the Director, may represent and act for the State in dealing with the Federal Government or any of its agencies, instrumentalities or officers for the purposes of receiving financial assistance for planning, acquisition or development of historic preservation projects pursuant to the provisions of federal law.

4. The Administrator, subject to approval by the Director, may administer and disburse to other state agencies, political subdivisions, eleemosynary organizations, nonprofit organizations and private persons and enterprises money paid by the Federal Government to the State of Nevada as financial assistance for planning, acquisition or development of historic preservation projects, and the Administrator shall, on behalf of the State, keep such records as the Federal Government prescribes and as will facilitate an effective audit, including records which fully disclose:

(a) The amount and the disposition by the State of the proceeds of that assistance;

(b) The total cost of the project or undertaking in connection with such assistance as given or used; and

(c) The amount and nature of that portion of the cost of the project or undertaking supplied by other sources.

5. Authorized representatives of the Federal Government have access for the purpose of audit and examination to any books, documents, papers and records of the State that are pertinent to financial assistance received by the State pursuant to federal law for planning, acquisition or development of historic preservation projects.

Sec. 14. NRS 341.145 is hereby amended to read as follows:

341.145 The Board:

1. Has final authority to approve the architecture of all buildings, plans, designs, types of construction, major repairs and designs of landscaping.

2. Shall determine whether any rebates are available from a public utility for installing devices in any state building which are designed to decrease the use of energy in the building. If such a rebate is available, the Board shall apply for the rebate.

3. Shall solicit bids for and let all contracts for new construction or major repairs.

4. May negotiate with the lowest responsible and responsive bidder on any contract to obtain a revised bid if:



1 (a) The bid is less than the appropriation made by the
2 Legislature for that building project; and

3 (b) The bid does not exceed the relevant budget item for that
4 building project as established by the Board by more than 10
5 percent.

6 5. May reject any or all bids.

7 6. After the contract is let, shall supervise and inspect
8 construction and major repairs. The cost of supervision and
9 inspection must be financed from the capital construction program
10 approved by the Legislature.

11 7. Shall obtain approval from the Interim Finance Committee
12 when the Legislature is not in regular or special session, or from the
13 Legislature by concurrent resolution when the Legislature is in
14 regular or special session, for any change in the scope of the design
15 or construction of a project as that project was authorized by the
16 Legislature. The Board shall adopt by regulation criteria for
17 determining whether a change in the scope of the design or
18 construction of a project requires such approval.

19 8. May authorize change orders, before or during construction:

20 (a) In any amount, where the change represents a reduction in
21 the total awarded contract price.

22 (b) Except as otherwise provided in paragraph (c), not to exceed
23 in the aggregate 10 percent of the total awarded contract price,
24 where the change represents an increase in that price.

25 (c) In any amount, where the total awarded contract price is less
26 than \$10,000 and the change represents an increase not exceeding
27 the amount of the total awarded contract price.

28 9. Shall specify in any contract with a design professional the
29 period within which the design professional must prepare and
30 submit to the Board a change order that has been authorized by the
31 design professional. As used in this subsection, "design
32 professional" means a person with a professional license or
33 certificate issued pursuant to chapter 623, 623A or 625 of NRS.

34 10. Has final authority to accept each building or structure, or
35 any portion thereof, on property of the State or held in trust for any
36 division of the State Government as completed or to require
37 necessary alterations to conform to the contract or to codes adopted
38 by the Board, and to file the notice of completion and certificate of
39 occupancy for the building or structure.

40 ***11. May submit the plans for a public work to the Office of***
41 ***Historic Preservation pursuant to sections 3 to 12, inclusive, of***
42 ***this act.***



