

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
historic and prehistoric sites. (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; expanding the definition of “prehistoric site” to include sites of religious or cultural importance to an Indian tribe; authorizing the Office of Historic Preservation of the Department of Cultural Affairs to enter into certain agreements with a state agency or political subdivision concerning the preservation of historic or prehistoric sites; requiring a state agency or political subdivision to submit certain information to the Office before changing the use of or initiating a project on any portion of certain land; making it a crime to take certain actions which tend to injure or destroy historic or prehistoric sites on state land or to receive, traffic in or sell cultural property from state land without a valid permit; 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 the Office of Historic Preservation to enter into an
- 5 agreement with a state agency or political subdivision concerning land that the state



agency or political subdivision is going to acquire from an agency of the Federal Government. The agreement must ensure that the land will have protection of any historic or prehistoric sites that is at least equivalent to the protection it would have received if the land had remained under federal ownership. The agreement must also require the state agency or political subdivision to consult with the Office of Historic Preservation before changing the use of the land or initiating a project on the land and require the state agency or political subdivision to pay any costs associated with carrying out the agreement. The bill also requires a state agency or political subdivision to submit certain information to the Office of Historic Preservation for the purposes of the consultation before the state agency or political subdivision can change the use of the land or initiate a project on the land.

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

This bill makes it a crime for a person knowingly and willfully to engage in such conduct with respect to a historic or prehistoric site on state land. It also makes it a crime to receive, traffic in or sell cultural property appropriated from 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. The person is also liable for the payment of civil damages to the state agency or political subdivision which has jurisdiction over the state land. A person or entity who is following an agreement made with the Office of Historic Preservation or who is acting in accordance with 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 381.195 is hereby amended to read as follows:
381.195 As used in NRS 381.195 to 381.227, inclusive:

1. "Historic" means after the middle of the 18th century.

2. "Historic site" means a site, landmark or monument of historical significance pertaining to the history of the settlement of Nevada, or Indian campgrounds, shelters, petroglyphs, pictographs and burials.

3. "Museum Director" means the Museum Director of the Nevada State Museum.

4. "Prehistoric" means before the middle of the 18th century.

5. "Prehistoric site" means any archeological or paleontological site, ruin, deposit, fossilized footprints and other impressions, petroglyphs and pictographs, habitation caves, rock shelters, natural caves, ~~to~~ burial ground ~~to~~ or sites of religious or cultural importance to an Indian tribe.

Sec. 2. NRS 381.197 is hereby amended to read as follows:

381.197 ~~to~~ Except for action taken under an agreement with the Office of Historic Preservation of the Department pursuant to section 11 of this act, and except as otherwise provided in this section, a person shall not investigate, explore or excavate an



1 historic or prehistoric site on federal or state lands or remove any
2 object therefrom unless he is the holder of a valid and current permit
3 issued pursuant to the provisions of NRS 381.195 to 381.227,
4 inclusive. *Conduct that would otherwise constitute a violation of*
5 *this section is not a violation of this section if it is also a violation*
6 *of section 12 of this act.*

7 **Sec. 3.** NRS 381.227 is hereby amended to read as follows:

8 381.227 ~~[Except]~~ *Unless a greater penalty is provided by a*
9 *specific statute and except* as otherwise provided in NRS 381.225,
10 any person violating any of the provisions of NRS 381.195 to
11 381.227, inclusive, is guilty of a misdemeanor.

12 **Sec. 4.** Chapter 383 of NRS is hereby amended by adding
13 thereto the provisions set forth as sections 5 to 13, inclusive, of this
14 act.

15 **Sec. 5.** *As used in sections 5 to 13 inclusive, of this act,*
16 *unless the context otherwise requires, the words and terms defined*
17 *in sections 6 to 10, inclusive, of this act have the meanings*
18 *ascribed to them in those sections.*

19 **Sec. 6.** *"Historic site" has the meaning ascribed to it in*
20 *NRS 381.195.*

21 **Sec. 7.** *"Political subdivision" means a county, city,*
22 *irrigation district or any other local government as defined in*
23 *NRS 354.474.*

24 **Sec. 8.** *"Prehistoric site" has the meaning ascribed to it in*
25 *NRS 381.195.*

26 **Sec. 9.** *"State agency" means the State of Nevada or any*
27 *board, commission, department, division or other public agency of*
28 *this State.*

29 **Sec. 10.** *"State land" means land that is owned by or under*
30 *the control of a state agency or political subdivision.*

31 **Sec. 11.** 1. *Upon request by any state agency or political*
32 *subdivision, the Office may enter into an agreement with that state*
33 *agency or political subdivision regarding any land which the state*
34 *agency or political subdivision intends to acquire from an agency*
35 *of the Federal Government. The agency of the Federal*
36 *Government may be a party to the agreement.*

37 2. *An agreement made pursuant to subsection 1 must:*

38 (a) *Include provisions that are sufficient to ensure that the*
39 *land, when acquired, will receive protection for any historic or*
40 *prehistoric site at a level equivalent to the protection provided if*
41 *the land had remained under federal ownership;*

42 (b) *Require the state agency or political subdivision to submit a*
43 *proposal and consult with the Office before changing the use of*
44 *the land or initiating a project on any portion of the land; and*



1 (c) Require that any expenses associated with carrying out the
2 agreement are the responsibility of the state agency or political
3 subdivision.

4 3. If a state agency or political subdivision submits a proposal
5 to change the use of the land or initiate a project on any portion of
6 the land pursuant to paragraph (b) of subsection 2, the state
7 agency or political subdivision shall:

8 (a) Provide to the Office a written statement:

9 (1) Identifying any Indian tribes that may be concerned
10 with the religious or cultural importance of the site and other
11 interested persons for inclusion in the consultation required
12 pursuant to paragraph (b) of subsection 2;

13 (2) Identifying any historic or prehistoric sites in
14 accordance with the requirements of the Office for recording and
15 reporting for those sites;

16 (3) Evaluating any historic or prehistoric sites for inclusion
17 in the State Register of Historic Places, including any text
18 excavations or other research;

19 (4) Evaluating the effect of the change in use of the land or
20 the project on a historic or prehistoric site that is eligible for
21 inclusion in the State Register of Historic Places; and

22 (5) Evidencing the preparation and carrying out of
23 treatment plans that comply with the requirements of the Office
24 for those plans; and

25 (b) Any other information relating to the proposed change of
26 use required by the Office.

27 **Sec. 12. 1.** Except as otherwise provided in this section, a
28 person who knowingly and willfully removes, mutilates, defaces,
29 excavates, injures or destroys a historic or prehistoric site or
30 resource on state land or who receives, traffics in or sells cultural
31 property appropriated from state land without a valid permit,
32 unless a greater penalty is provided by a specific statute:

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

35 (b) For a second or subsequent offense, is guilty of a gross
36 misdemeanor and shall be punished by imprisonment in the
37 county jail for not more than 1 year or by a fine of not more than
38 \$3,000, or by both fine and imprisonment.

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

40 (a) In accordance with an agreement with the Office entered
41 into pursuant to section 11 of this act; or

42 (b) In accordance with the provisions of NRS 381.195 to
43 381.227, inclusive, by the holder of a permit issued pursuant to
44 those sections.



1 3. *In addition to any other penalty, a person who violates a*
2 *provision of this section is liable for civil damages to the state*
3 *agency or political subdivision which has jurisdiction over the*
4 *state land in an amount equal to the cost or, in the discretion of*
5 *the court, an amount equal to twice the cost of the restoration,*
6 *stabilization and interpretation of the site plus any court costs and*
7 *fees.*

8 **Sec. 13.** *The Office may adopt regulations to carry out the*
9 *provisions of sections 5 to 13, inclusive, of this act.*



