

ASSEMBLY BILL NO. 289—ASSEMBLYMEN
MORTENSON AND CLABORN

MARCH 11, 2009

Referred to Committee on Natural Resources,
Agriculture, and Mining

SUMMARY—Provides protection for paleontological sites.
(BDR 35-1084)

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 paleontology; requiring the Division of State Parks of the State Department of Conservation and Natural Resources to administer certain paleontological sites; authorizing a public entity, in consultation with an Indian tribe, to enter into a cooperative agreement concerning a paleontological site under certain circumstances; providing other protections for paleontological sites; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

1 **Section 1** of this bill expands the duty of the Division of State Parks of the
2 State Department of Conservation and Natural Resources to administer, protect and
3 develop any state monument, historic landmark, historic building, historic site,
4 archaeological area or recreational area to include a duty to administer, protect and
5 develop any paleontological site. (NRS 407.130) **Section 2** of this bill expands the
6 definition of "easement for conservation" to include the preservation of
7 paleontological aspects of real property and the definition of "holder" to include a
8 charitable corporation, charitable association or charitable trust which has among
9 its powers or purposes to preserve the paleontological aspects of real property.
10 (NRS 111.410) **Sections 3 and 4** of this bill expand the authority of public entities
11 to enter into cooperative agreements to protect sites of archeological and historical
12 significance to include sites of paleontological significance. (NRS 277.057,
13 277.058) **Sections 5 and 6** of this bill expand the definition of "project of regional
14 significance" to require consideration of the potential effects on paleontological
15 sites. (NRS 278.02542, 278.026) **Section 7** of this bill requires the inclusion of
16 paleontological sites in the historical properties preservation plan of a master plan



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17 which a planning commission must prepare for the physical development of a city,
18 county or region. (NRS 278.160)

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

1 **Section 1.** NRS 407.130 is hereby amended to read as follows:
2 407.130 The Division shall administer, protect and develop any
3 state monument, historic landmark, historic building, historic site,
4 archeological area , *paleontological site* or recreational area
5 designated as provided in NRS 407.120 or listed in the State
6 Register of Historic Places which is situated on land administered
7 by the Division, and any money appropriated to the Division, or
8 derived by it from any source whatever, may be expended by it for
9 the care, protection, supervision, improvement or development of
10 any such state monument, historic landmark, historic building,
11 historic site, archeological area , *paleontological site* or recreational
12 area.

13 **Sec. 2.** NRS 111.410 is hereby amended to read as follows:
14 111.410 As used in NRS 111.390 to 111.440, inclusive, unless
15 the context otherwise requires:

16 1. "Easement for conservation" means a nonpossessory interest
17 of a holder in real property, which imposes limitations or affirmative
18 obligations and:

19 (a) Retains or protects natural, scenic or open-space values of
20 real property;

21 (b) Assures the availability of real property for agricultural,
22 forest, recreational or open-space use;

23 (c) Protects natural resources;

24 (d) Maintains or enhances the quality of air or water; or

25 (e) Preserves the historical, architectural, archeological ,
26 *paleontological* or cultural aspects of real property.

27 2. "Holder" means:

28 (a) A governmental body empowered to hold an interest in real
29 property; or

30 (b) A charitable corporation, charitable association or charitable
31 trust which has among its powers or purposes to:

32 (1) Retain or protect the natural, scenic or open-space values
33 of real property;

34 (2) Assure the availability of real property for agricultural,
35 forest, recreational or open-space use;

36 (3) Protect natural resources;

37 (4) Maintain or enhance the quality of air or water; or

38 (5) Preserve the historical, architectural, archeological ,
39 *paleontological* or cultural aspects of real property.



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3. "Right of enforcement by a third person" means a right provided in an easement for conservation to enforce any of the easement's terms granted to a governmental body, charitable corporation, charitable association or charitable trust who is not a holder of the easement although qualified to be one.

Sec. 3. NRS 277.057 is hereby amended to read as follows:

277.057 The Legislature hereby finds and declares that:

1. There are various unique and irreplaceable sites in this state of archeological, *paleontological* or historical significance.

2. Certain of these sites are in danger of degradation and destruction from the encroachment of urban development.

3. This state has a compelling interest in preserving, protecting, restoring and enhancing these sites.

4. The preservation, protection, restoration and enhancement of these sites is a matter of such significance that it must be carried out on a continual basis.

5. It is in the best interest of this state to ensure that certain public entities have continuing authority to enter into cooperative agreements for the preservation, protection, restoration and enhancement of such unique and irreplaceable sites in this state.

Sec. 4. NRS 277.058 is hereby amended to read as follows:

277.058 1. A public entity, in consultation with any Indian tribe that has local aboriginal ties to the geographical area in which a unique archeological, *paleontological* or historical site is located and in cooperation with the Office of Historic Preservation of the Department of Cultural Affairs, may enter into a cooperative agreement with the owner of any property that contains a unique archeological, *paleontological* or historical site in this state or with any other person, agency of the Federal Government or other public entity for the preservation, protection, restoration and enhancement of unique archeological, *paleontological* or historical sites in this state, including, without limitation, cooperative agreements to:

(a) Monitor compliance with and enforce any federal or state statutes or regulations for the protection of such sites.

(b) Ensure the sensitive treatment of such sites in a manner that provides for their long-term preservation and the consideration of the values of relevant cultures.

(c) Apply for and accept grants and donations for the preservation, protection, restoration and enhancement of such sites.

(d) Create and enforce:

(1) Legal restrictions on the use of real property; and

(2) Easements for conservation, as defined in NRS 111.410,

➔ for the protection of such sites.

2. As used in this section, "public entity" means any:



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(a) Agency of this state, including the Office of Historic Preservation of the Department of Cultural Affairs; and

(b) County, city or town in this state.

Sec. 5. NRS 278.02542 is hereby amended to read as follows:

278.02542 1. The regional planning coalition may:

(a) Coordinate sources of information.

(b) Recommend measures to increase the efficiency of governmental entities and services.

(c) Make recommendations regarding the disposal of federal land.

(d) Establish methods for resolving issues related to annexation, boundaries and other matters that arise between jurisdictions.

(e) At least every 5 years, review:

(1) Master plans, facilities plans and other similar plans, and amendments thereto, adopted by a governing body, regional agency, state agency or public utility that is located in whole or in part within the region; and

(2) The annual plan for capital improvements that is prepared by each local government in the region pursuant to NRS 278.0226.

(f) Develop and recommend, to the extent practicable, standardized classifications for land use for the region.

(g) Consider and take necessary action with respect to any issue that the regional planning coalition determines will have a significant impact on the region, including, without limitation, projects of regional significance.

(h) Review, consider and make recommendations regarding applications submitted to agencies of the Federal Government and applications for federal assistance for federally assisted programs or projects.

(i) Designate allowable future land uses for each part of the county, including, without limitation, the identification of each category of land use in which the construction and operation of a public school is permissible. The identification of a category of land use in which the construction and operation of a public school is permissible must be carried out in consultation with the county school district and include a determination of whether there is sufficient land in the proximity of a residential development to meet projected needs for public schools.

2. The regional planning coalition shall establish a definition for the term "project of regional significance." In establishing the definition, the regional planning coalition shall consider:

(a) Existing definitions of the term within the Nevada Revised Statutes; and

(b) That a project may have regional significance for several reasons, including, without limitation, the potential impact that the



1 project may have on historic, archaeological, *paleontological*,
2 cultural, scenic and natural resources, public facilities, including,
3 without limitation, schools, and public services within the region.

4 **Sec. 6.** NRS 278.026 is hereby amended to read as follows:

5 278.026 As used in NRS 278.026 to 278.029, inclusive, unless
6 the context otherwise requires:

7 1. "Affected entity" means a public utility, franchise holder,
8 local or regional agency, or any other entity having responsibility
9 for planning or providing public facilities relating to transportation,
10 solid waste, energy generation and transmission, conventions and
11 the promotion of tourism, air quality or public education. The term
12 does not include:

13 (a) A state agency; or

14 (b) A public utility which is subject to regulation by the Public
15 Utilities Commission of Nevada.

16 2. "Facilities plan" means a plan for the development of public
17 facilities which will have a regional impact or which will aid in
18 accomplishing regional goals relating to transportation, solid waste,
19 energy generation and transmission, conventions and the promotion
20 of tourism, air quality or public education. The term does not
21 include a plan for the development of a specific site or regulations
22 adopted by an affected entity to implement the comprehensive
23 regional plan.

24 3. "Governing board" means the governing board for regional
25 planning created pursuant to NRS 278.0264.

26 4. "Joint planning area" means an area that is the subject of
27 common study and planning by the governing body of a county and
28 one or more cities.

29 5. "Project of regional significance," with respect to a project
30 proposed by any person other than a public utility, means a project
31 which:

32 (a) Has been identified in the guidelines of the regional planning
33 commission as a project which will result in the loss or significant
34 degradation of a designated historic, archeological, *paleontological*,
35 cultural or scenic resource;

36 (b) Has been identified in the guidelines of the regional planning
37 commission as a project which will result in the creation of
38 significant new geothermal or mining operations;

39 (c) Has been identified in the guidelines of the regional planning
40 commission as a project which will have a significant effect on the
41 natural resources, public services, public facilities, including,
42 without limitation, schools, or the adopted regional form of the
43 region; or

44 (d) Will require a change in zoning, a special use permit, an
45 amendment to a master plan, a tentative map or other approval for



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the use of land which, if approved, will have an effect on the region of increasing:

- (1) Employment by not less than 938 employees;
- (2) Housing by not less than 625 units;
- (3) Hotel accommodations by not less than 625 rooms;
- (4) Sewage by not less than 187,500 gallons per day;
- (5) Water usage by not less than 625 acre feet per year; or
- (6) Traffic by not less than an average of 6,250 trips daily.

➔ The term does not include any project for which a request for an amendment to a master plan, a change in zoning, a tentative map or a special use permit has been approved by the local planning commission before June 17, 1989.

6. "Project of regional significance," with respect to a project proposed by a utility, includes:

- (a) An electric substation;
- (b) A transmission line that carries 60 kilovolts or more;
- (c) A facility that generates electricity greater than 5 megawatts;
- (d) Natural gas storage and peak shaving facilities; and
- (e) Gas regulator stations and mains that operate over 100

pounds per square inch.

7. "Sphere of influence" means an area into which a city plans to expand as designated in the comprehensive regional plan within the time designated in the comprehensive regional plan.

Sec. 7. NRS 278.160 is hereby amended to read as follows:

278.160 1. Except as otherwise provided in subsection 4 of NRS 278.150 and subsection 3 of NRS 278.170, the master plan, with the accompanying charts, drawings, diagrams, schedules and reports, may include such of the following subject matter or portions thereof as are appropriate to the city, county or region, and as may be made the basis for the physical development thereof:

(a) Community design. Standards and principles governing the subdivision of land and suggestive patterns for community design and development.

(b) Conservation plan. For the conservation, development and utilization of natural resources, including, without limitation, water and its hydraulic force, underground water, water supply, solar or wind energy, forests, soils, rivers and other waters, harbors, fisheries, wildlife, minerals and other natural resources. The plan must also cover the reclamation of land and waters, flood control, prevention and control of the pollution of streams and other waters, regulation of the use of land in stream channels and other areas required for the accomplishment of the conservation plan, prevention, control and correction of the erosion of soils through proper clearing, grading and landscaping, beaches and shores, and



1 protection of watersheds. The plan must also indicate the maximum
2 tolerable level of air pollution.

3 (c) Economic plan. Showing recommended schedules for the
4 allocation and expenditure of public money in order to provide for
5 the economical and timely execution of the various components of
6 the plan.

7 (d) Historical properties preservation plan. An inventory of
8 significant historical, archaeological , *paleontological* and
9 architectural properties as defined by a city, county or region, and a
10 statement of methods to encourage the preservation of those
11 properties.

12 (e) Housing plan. The housing plan must include, without
13 limitation:

14 (1) An inventory of housing conditions, needs and plans and
15 procedures for improving housing standards and for providing
16 adequate housing to individuals and families in the community,
17 regardless of income level.

18 (2) An inventory of existing affordable housing in the
19 community, including, without limitation, housing that is available
20 to rent or own, housing that is subsidized either directly or indirectly
21 by this State, an agency or political subdivision of this State, or the
22 Federal Government or an agency of the Federal Government, and
23 housing that is accessible to persons with disabilities.

24 (3) An analysis of projected growth and the demographic
25 characteristics of the community.

26 (4) A determination of the present and prospective need for
27 affordable housing in the community.

28 (5) An analysis of any impediments to the development of
29 affordable housing and the development of policies to mitigate those
30 impediments.

31 (6) An analysis of the characteristics of the land that is
32 suitable for residential development. The analysis must include,
33 without limitation:

34 (I) A determination of whether the existing infrastructure
35 is sufficient to sustain the current needs and projected growth of the
36 community; and

37 (II) An inventory of available parcels that are suitable for
38 residential development and any zoning, environmental and other
39 land-use planning restrictions that affect such parcels.

40 (7) An analysis of the needs and appropriate methods for the
41 construction of affordable housing or the conversion or
42 rehabilitation of existing housing to affordable housing.

43 (8) A plan for maintaining and developing affordable
44 housing to meet the housing needs of the community for a period of
45 at least 5 years.



(f) Land use plan. An inventory and classification of types of natural land and of existing land cover and uses, and comprehensive plans for the most desirable utilization of land. The land use plan:

(1) Must address, if applicable:

(I) Mixed-use development, transit-oriented development, master-planned communities and gaming enterprise districts; and

(II) The coordination and compatibility of land uses with any military installation in the city, county or region, taking into account the location, purpose and stated mission of the military installation.

(2) May include a provision concerning the acquisition and use of land that is under federal management within the city, county or region, including, without limitation, a plan or statement of policy prepared pursuant to NRS 321.7355.

(g) Population plan. An estimate of the total population which the natural resources of the city, county or region will support on a continuing basis without unreasonable impairment.

(h) Public buildings. Showing locations and arrangement of civic centers and all other public buildings, including the architecture thereof and the landscape treatment of the grounds thereof.

(i) Public services and facilities. Showing general plans for sewage, drainage and utilities, and rights-of-way, easements and facilities therefor, including, without limitation, any utility projects required to be reported pursuant to NRS 278.145.

(j) Recreation plan. Showing a comprehensive system of recreation areas, including, without limitation, natural reservations, parks, parkways, trails, reserved riverbank strips, beaches, playgrounds and other recreation areas, including, when practicable, the locations and proposed development thereof.

(k) Rural neighborhoods preservation plan. In any county whose population is 400,000 or more, showing general plans to preserve the character and density of rural neighborhoods.

(l) Safety plan. In any county whose population is 400,000 or more, identifying potential types of natural and man-made hazards, including, without limitation, hazards from floods, landslides or fires, or resulting from the manufacture, storage, transfer or use of bulk quantities of hazardous materials. The plan may set forth policies for avoiding or minimizing the risks from those hazards.

(m) School facilities plan. Showing the general locations of current and future school facilities based upon information furnished by the appropriate local school district.

(n) Seismic safety plan. Consisting of an identification and appraisal of seismic hazards such as susceptibility to surface ruptures from faulting, to ground shaking or to ground failures.



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1 (o) Solid waste disposal plan. Showing general plans for the
2 disposal of solid waste.

3 (p) Streets and highways plan. Showing the general locations
4 and widths of a comprehensive system of major traffic
5 thoroughfares and other traffic ways and of streets and the
6 recommended treatment thereof, building line setbacks, and a
7 system of naming or numbering streets and numbering houses, with
8 recommendations concerning proposed changes.

9 (q) Transit plan. Showing a proposed multimodal system of
10 transit lines, including mass transit, streetcar, motorcoach and
11 trolley coach lines, paths for bicycles and pedestrians, satellite
12 parking and related facilities.

13 (r) Transportation plan. Showing a comprehensive
14 transportation system, including, without limitation, locations of
15 rights-of-way, terminals, viaducts and grade separations. The plan
16 may also include port, harbor, aviation and related facilities.

17 2. The commission may prepare and adopt, as part of the
18 master plan, other and additional plans and reports dealing with such
19 other subjects as may in its judgment relate to the physical
20 development of the city, county or region, and nothing contained in
21 NRS 278.010 to 278.630, inclusive, prohibits the preparation and
22 adoption of any such subject as a part of the master plan.

