

ASSEMBLY BILL NO. 396—ASSEMBLYMEN BOBZIEN; BENITEZ-
THOMPSON, DALY, MARTIN, OHRENSCHALL, OSCARSON
AND SPRINKLE

MARCH 18, 2013

JOINT SPONSORS: SENATORS SMITH AND JONES

Referred to Committee on Natural Resources,
Agriculture, and Mining

SUMMARY—Revises provisions relating to the waters of this
State. (BDR 48-763)

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 water; providing persons with access to certain
waters in this State for certain activities that use water;
and providing other matters properly relating thereto.

Legislative Counsel's Digest:

1 The Nevada Supreme Court expressly adopted the public trust doctrine in
2 *Lawrence v. Clark County*, 127 Nev. Adv. Op. 32, 254 P.3d 606 (2011). Under this
3 doctrine, generally, a state holds the banks and beds of navigable waterways in trust
4 for the public and subject to restraints on alienability. Under existing law, the water
5 of all sources of water supply within the boundaries of the State of Nevada is
6 declared to belong to the public. (NRS 533.025) The use of water for recreational
7 purposes is also recognized under existing law as a beneficial use of water. (NRS
8 533.030) In addition, Nevada has a recreational use statute in existing law which,
9 with certain exceptions, limits the liability of an owner, lessee or occupant of a
10 premises to persons who enter or use the land for recreational activities, including,
11 without limitation, fishing and water sports. (NRS 41.510)

12 Subject to certain specified restrictions, this bill authorizes persons to use water
13 that is navigable or capable of being navigated by oar, paddle or motorized
14 watercraft year round at or below the ordinary high-water mark for any otherwise
15 lawful activity that uses water, including boating, fishing, swimming and wading.
16 This bill authorizes the owner of the bed of such water to place a fence or similar
17 barrier across the water for legally authorized purposes, but requires the owner in



18 such circumstances to authorize the placement of a ladder, gate or other device that
19 allows portage around or over the fence or barrier.

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

1 **Section 1.** Chapter 533 of NRS is hereby amended by adding
2 thereto the provisions set forth as sections 2 to 5, inclusive, of this
3 act.

4 **Sec. 2.** *The Legislature hereby finds and declares:*

5 1. *The Nevada Supreme Court expressly adopted the public*
6 *trust doctrine in Lawrence v. Clark County, 127 Nev. Adv. Op. 32,*
7 *254 P.3d 606 (2011). Under the public trust doctrine, generally, a*
8 *state holds the banks and beds of navigable waterways in trust for*
9 *the public and subject to restraints on alienability.*

10 2. *In addition to other sources of Nevada law that manifest*
11 *the public trust doctrine, the Lawrence Court cited NRS 533.025*
12 *as “effectively statutorily codify[ing] the principles behind the*
13 *public trust doctrine in Nevada” by recognizing that the water in*
14 *Nevada belongs to the public not the State. Lawrence, 254 P.3d*
15 *at 613.*

16 3. *The Lawrence Court also recognized the application of the*
17 *public trust doctrine to recreational resources. Lawrence, 254 P.3d*
18 *at 616.*

19 4. *NRS 533.030 explicitly recognizes recreation as a*
20 *beneficial use of water.*

21 **Sec. 3.** *As used in this section and sections 4 and 5 of this*
22 *act, unless the context otherwise requires, “public access water”:*

23 1. *Means water described in subsection 1 of NRS 533.025*
24 *which is:*

25 (a) *Flowing or collecting on the surface within a natural or*
26 *realigned channel or in a natural lake, pond or reservoir on a*
27 *natural or realigned channel; and*

28 (b) *Navigable or is capable of being navigated by oar, paddle*
29 *or a watercraft propelled by a motor.*

30 2. *Does not include an irrigation ditch, flume or canal*
31 *located on private property.*

32 **Sec. 4.** 1. *Public access water is open to use year round at*
33 *or below the ordinary high-water mark for any otherwise lawful*
34 *activity that uses water, including, without limitation, boating,*
35 *fishing, swimming and wading.*

36 2. *A person using public access water is subject to any other*
37 *restriction lawfully placed on the use of the water by a*
38 *governmental entity with authority to restrict the use of the water.*



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1 3. *When leaving a public access water, a person shall remove*
2 *any refuse or tangible personal property that the person brought to*
3 *the public access water.*

4 4. *The provisions of this section do not:*

5 (a) *Except as otherwise provided in this paragraph, authorize a*
6 *person to enter upon, cross or use private property where the*
7 *person has been warned by the owner or occupant of the property*
8 *not to trespass in the manner prescribed in NRS 207.200, or where*
9 *signs are displayed forbidding such entry, crossing or use without*
10 *permission obtained from the owner or occupant of the private*
11 *property other than at or below the ordinary high-water mark of a*
12 *public access water. If a natural or artificial obstruction interferes*
13 *with the use of a public access water, a person may, along with his*
14 *or her vessel, portage around the obstruction in a manner that is*
15 *reasonably direct and closest to the water to reenter the water*
16 *immediately above or below the obstruction at the nearest point*
17 *where it is safe to do so.*

18 (b) *Limit or enlarge any right granted by express easement.*

19 5. *As used in this section, "vessel" has the meaning ascribed*
20 *to it in NRS 501.096.*

21 **Sec. 5.** 1. *The owner of the bed of a public access water*
22 *may place a fence or similar barrier across the public access water*
23 *for agricultural, livestock or other purposes authorized by law.*
24 *Such a fence or barrier must:*

25 (a) *Comply with any applicable federal, state or local law,*
26 *ordinance or regulation; and*

27 (b) *Be constructed in a manner that does not create an*
28 *unreasonably dangerous condition to persons lawfully using the*
29 *public access water.*

30 2. *If an owner has placed or places a fence or similar barrier*
31 *pursuant to subsection 1, the owner shall authorize the placement*
32 *of a ladder, gate or other device that allows portage around or*
33 *over the fence or barrier.*

34 **Sec. 6.** NRS 533.025 is hereby amended to read as follows:

35 533.025 1. The water of all sources of water supply within
36 the boundaries of the State whether above or beneath the surface of
37 the ground, belongs to the public.

38 2. *The right of the public to use public water is governed by*
39 *sections 2 to 5, inclusive, of this act.*

40 **Sec. 7.** NRS 503.240 is hereby amended to read as follows:

41 503.240 1. ~~HH~~ *Except as otherwise provided in sections 2 to*
42 *5, inclusive, of this act, it is unlawful for any person to hunt, fish in*
43 *nonnavigable waters or trap upon land which is private property*
44 *where the person has been warned by the owner or occupant of the*
45 *property not to trespass in the manner prescribed in NRS 207.200,*



- 1 or where signs are displayed forbidding hunting, trapping or fishing
- 2 without permission obtained from the owner or occupant of the
- 3 private property.
- 4 2. Any person using that private property for hunting, fishing
- 5 or trapping shall comply with the provisions of NRS 207.220.

