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FIRST REPRINT

A.B. 461

ASSEMBLY BILL NO. 461—COMMITTEE ON WAYS AND MEANS

(ON BEHALF OF THE GOVERNOR)

MARCH 25, 2013

Referred to Committee on Ways and Means

SUMMARY—Enacts provisions governing the management of sagebrush ecosystems. (BDR 26-1194)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: Yes.

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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 management of land; authorizing the Division of State Lands of the State Department of Conservation and Natural Resources to establish and carry out programs to conserve certain sagebrush ecosystems; requiring the Division to coordinate the establishment of a program to improve certain sagebrush ecosystems; establishing the Account to Restore the Sagebrush Ecosystem in the State General Fund; establishing the Sagebrush Ecosystem Council within the Department; prescribing the duties of the Council; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law requires the Division of State Lands of the State Department of Conservation and Natural Resources to acquire and hold all lands and interests in land owned or required by the State, with certain exceptions. (NRS 321.001) **Section 2** of this bill authorizes the Division to establish and carry out programs to preserve, restore and enhance sagebrush ecosystems on public land in this State or on private land with the consent of the owner of the land. **Section 3** of this bill requires the Division to coordinate the establishment and carrying out of a program of projects to improve sagebrush ecosystems in this State. **Section 3** requires the Division, when carrying out the program, to: (1) oversee a program to mitigate damage to sagebrush ecosystems through a system that awards credits to persons and governmental entities for taking measures to protect, enhance or restore sagebrush ecosystems; (2) identify and prioritize projects to improve sagebrush ecosystems or the scientific knowledge thereof; (3) coordinate activities with federal agencies; (4) suggest measures to avoid, minimize and mitigate the impact



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of activities conducted in areas which include sage grouse habitats to persons conducting those activities who make a request; and (5) submit an annual progress report to the Sagebrush Ecosystem Council created in **section 6** of this bill. **Section 3** further authorizes the Division to enter into agreements, to acquire, hold, sell or lease land, to award grants and to adopt regulations to carry out the program.

Section 5 of this bill creates the Account to Restore the Sagebrush Ecosystem within the State General Fund. **Section 6** creates the Sagebrush Ecosystem Council within the Department. **Section 6** requires the Council to: (1) consider the best science available in its determinations regarding and conservation of the greater sage grouse and sagebrush ecosystems in this State; (2) formulate and carry out certain strategies and programs for the conservation of sage grouse and for managing land which holds sagebrush ecosystems; (3) coordinate discussion among and provide advice to certain persons and governmental entities concerning the management of sagebrush ecosystems; and (4) submit a biannual report concerning its activities to the Governor.

WHEREAS, Nevada is known as the Sagebrush State; and

WHEREAS, Restoration and maintenance of the sagebrush ecosystem is essential to wildlife, watersheds, biodiversity and productivity in this State; and

WHEREAS, The greater sage grouse is an important species of bird that inhabits much of the sagebrush habitat in Nevada; and

WHEREAS, The United States Fish and Wildlife Service has determined that the greater sage grouse faces challenges that warrant listing it as threatened or endangered pursuant to the Endangered Species Act of 1973, 16 U.S.C. §§ 1531 et seq., but that the need to list higher priority species precludes the listing of the greater sage grouse; and

WHEREAS, The United States District Court for the District of Idaho ruled on February 2, 2012, that the United States Fish and Wildlife Service is required to reevaluate the status of the greater sage grouse by September 30, 2015 (*W. Watersheds Project v. U.S. Fish & Wildlife Serv.*, 42 Env'tl. L. Rep. 20036 (D. Idaho 2012)); and

WHEREAS, The Secretary of the United States Department of the Interior has invited 11 states that may be impacted by the listing of the greater sage grouse as endangered or threatened, including Nevada, to develop state-specific regulatory mechanisms to conserve the species and make such a listing unnecessary; and

WHEREAS, The development and implementation of a state-specific strategy to conserve the greater sage grouse in Nevada is critical to demonstrate to the United States Fish and Wildlife Service that the species does not require protection pursuant to the Endangered Species Act; and

WHEREAS, The State of Nevada, under the leadership of Governor Kenny Guinn's Sage-Grouse Conservation Team,



1 developed the first edition of the *Greater Sage-Grouse*
2 *Conservation Plan for Nevada and Eastern California* in 2004; and

3 WHEREAS, On July 31, 2012, the Greater Sage-grouse Advisory
4 Committee, created by Executive Order 2012-09, presented further
5 recommendations for developing a state-specific strategy to
6 conserve the greater sage grouse; and

7 WHEREAS, The State of Nevada has authority to manage all
8 wildlife belonging to this State that is not listed pursuant to the
9 Endangered Species Act; and

10 WHEREAS, It is in the interest of this State to bring stakeholders
11 and relevant agency experts together on an ongoing basis to guide
12 the implementation of conservation measures sufficient to preclude
13 the need to list the greater sage grouse, the bi-state sage grouse and
14 other species that inhabit sagebrush ecosystems pursuant to the
15 Endangered Species Act and provide continual coordination on
16 matters related to the sagebrush ecosystem within this State; and

17 WHEREAS, The listing of the greater sage grouse or any other
18 species that inhabits sagebrush ecosystems pursuant to the
19 Endangered Species Act will have a significant adverse effect on the
20 customs, culture and economy of the State of Nevada; and

21 WHEREAS, Executive Order 2012-19 established the Sagebrush
22 Ecosystem Council to, among other duties, implement a
23 conservation strategy for the greater sage grouse and sagebrush
24 ecosystems and oversee the work of the Sagebrush Ecosystem
25 Technical Team; now, therefore,

26
27 THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
28 SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:
29

30 **Section 1.** Chapter 321 of NRS is hereby amended by adding
31 thereto the provisions set forth as sections 2 and 3 of this act.

32 **Sec. 2.** *Except as otherwise provided in section 3 of this act,*
33 *the Division may establish and carry out programs to preserve,*
34 *restore and enhance sagebrush ecosystems on public land in this*
35 *State, and on privately owned land in this State with the consent of*
36 *the owner of the land.*

37 **Sec. 3. 1.** *The Administrator of the Division shall*
38 *coordinate the establishment and carrying out of a program of*
39 *projects to improve sagebrush ecosystems in this State. The*
40 *Division shall cooperate, without limitation, with:*

41 *(a) The Department of Wildlife;*

42 *(b) The State Department of Agriculture; and*

43 *(c) The Division of Forestry of the State Department of*
44 *Conservation and Natural Resources.*



2. In carrying out the program described in subsection 1, the Division, on behalf of the Director of the State Department of Conservation and Natural Resources, shall:

(a) Oversee and administer a program to mitigate damage to sagebrush ecosystems through a system that awards credits to persons, federal and state agencies, local governments and nonprofit organizations who take measures to protect, enhance or restore sagebrush ecosystems established by the Sagebrush Ecosystem Council created by section 6 of this act;

(b) Identify and, if necessary, prioritize any projects concerning the enhancement of the landscape, the restoration of habitat, the reduction of any nonnative grasses and plants and the mitigation of damage to or the expansion of scientific knowledge of sagebrush ecosystems;

(c) Coordinate activities with federal agencies;

(d) If requested, consult with persons proposing to conduct activities in any area which includes any habitat of the greater sage grouse (Centrocercus urophasianus) to suggest measures to avoid, minimize or mitigate the effect of the activities on any sagebrush ecosystem;

(e) Solicit grants and private contributions for projects to improve sagebrush ecosystems; and

(f) On or before August 1 of each year, submit a report to the Sagebrush Ecosystem Council created by section 6 of this act. The report must include, without limitation:

(1) A description of each project conducted or planned to be conducted pursuant to the program described in subsection 1, including the cost, source of funding and, for projects that have been carried out, the results of the project;

(2) A description of any agreement between the Division and any person, federal or state agency, local government or nonprofit organization, including the purpose and provisions of the agreement;

(3) A list of all grants and private contributions solicited and all grants awarded to further the purposes of the program;

(4) A description of any significant activities conducted in any area which includes habitat of the greater sage grouse and all measures adopted to avoid, minimize or mitigate the effect of the activities on any sagebrush ecosystem; and

(5) Any other information specified by the Division or requested by the Council.

3. The Division may:

(a) Enter into any agreement with a person, federal or state agency, local government or nonprofit organization to further the preservation, restoration and enhancement of sagebrush



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1 *ecosystems on public land or on privately owned land with the*
2 *consent of the owner of the land;*

3 *(b) In accordance with subsection 3 of NRS 321.001, acquire*
4 *and hold land and any interest in land or water required to carry*
5 *out the program described in subsection 1;*

6 *(c) Sell or lease land and any interest in land or water that the*
7 *Division determines is no longer necessary to carry out the*
8 *program described in subsection 1;*

9 *(d) Within the limits of available money, award grants of*
10 *money to other state agencies, local governments and nonprofit*
11 *organizations to carry out the program described in subsection 1;*

12 *(e) Adopt any regulations to carry out the provisions of this*
13 *section; and*

14 *(f) Conduct any other activities specified by the Division to*
15 *carry out the program described in subsection 1.*

16 *4. The proceeds from the sale or lease of land or of any*
17 *interest in land or water pursuant to paragraph (c) of subsection 3*
18 *must be deposited in the Account to Restore the Sagebrush*
19 *Ecosystem created by section 5 of this act.*

20 **Sec. 4.** Chapter 232 of NRS is hereby amended by adding
21 thereto the provisions set forth as sections 5 and 6 of this act.

22 **Sec. 5. 1.** *The Account to Restore the Sagebrush Ecosystem*
23 *is hereby created in the State General Fund. The Director shall*
24 *administer the Account in a manner consistent with policies and*
25 *priorities established by the Sagebrush Ecosystem Council created*
26 *by section 6 of this act.*

27 *2. The Director may apply for and accept any gift, donation,*
28 *bequest, grant or other source of money. Any money so received*
29 *must be deposited in the Account.*

30 *3. The interest and income earned on the money in the*
31 *Account, after deducting any applicable charges, must be credited*
32 *to the Account. Money that remains in the Account at the end of a*
33 *fiscal year does not revert to the State General Fund, and the*
34 *balance in the Account must be carried forward to the next fiscal*
35 *year.*

36 *4. The money in the Account may only be used to establish*
37 *and carry out programs to preserve, restore and enhance*
38 *sagebrush ecosystems pursuant to sections 2 and 3 of this act and*
39 *is hereby authorized for expenditure as a continuing appropriation*
40 *for this purpose.*

41 *5. Claims against the Account must be paid as other claims*
42 *against the State are paid.*

43 **Sec. 6. 1.** *The Sagebrush Ecosystem Council is hereby*
44 *created in the Department. The Council consists of:*



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(a) The following nine voting members appointed by the Governor:

- (1) One member who represents agricultural interests;*
- (2) One member who represents the energy industry;*
- (3) One member who represents the general public;*
- (4) One member who represents conservation and environmental interests;*
- (5) One member who represents mining interests;*
- (6) One member who represents ranching interests;*
- (7) One member who represents local government;*
- (8) One member who acts as a liaison for Native American tribes; and*
- (9) One member of the Board of Wildlife Commissioners or his or her designee.*

(b) In addition to the members appointed pursuant to paragraph (a), the following nonvoting members:

- (1) The Director of the State Department of Conservation and Natural Resources;*
- (2) The Director of the Department of Wildlife;*
- (3) The Director of the State Department of Agriculture;*
- (4) The State Director of the Nevada State Office of the Bureau of Land Management;*
- (5) The State Supervisor of the Nevada State Office of the United States Fish and Wildlife Service;*
- (6) The Forest Supervisor for the Humboldt-Toiyabe National Forest; and*
- (7) Any other members appointed by the Governor as nonvoting members.*

2. The provisions of subsection 6 of NRS 232A.020 do not apply to the appointment by the Governor of the members of the Council.

3. After the initial terms, each member of the Council appointed pursuant to subparagraphs (1) to (8), inclusive, of paragraph (a) of subsection 1 and subparagraph (7) of paragraph (b) of subsection 1 serves a term of 4 years, commencing on July 1.

4. A vacancy in the membership of the Council must be filled in the same manner as the original appointment for the remainder of the unexpired term. A member may be reappointed.

5. While engaged in the business of the Council, each voting member is entitled to receive a salary of not more than \$80 per day, as established by the Council, and the per diem allowance and travel expenses provided for state officers and employees generally.

6. The Council may:



1 (a) Adopt regulations to govern the management and
2 operation of the Council;

3 (b) Establish subcommittees consisting of members of the
4 Council to assist the Council in the performance of its duties; and

5 (c) Consider and require the recovery of costs related to
6 activities prescribed by paragraph (d) of subsection 2 of section 3
7 of this act pursuant to NRS 701.600 to 701.640, inclusive, or any
8 other authorized method of recovering those costs.

9 7. The Council shall:

10 (a) Consider the best science available in its determinations
11 regarding and conservation of the greater sage grouse
12 (Centrocercus urophasianus) and sagebrush ecosystems in this
13 State;

14 (b) Establish and carry out strategies for:

15 (1) The conservation of the greater sage grouse and
16 sagebrush ecosystems in this State; and

17 (2) Managing land which includes those sagebrush
18 ecosystems, taking into consideration the importance of those
19 sagebrush ecosystems and the interests of the State;

20 (c) Establish and carry out a long-term system for carrying out
21 strategies to manage sagebrush ecosystems in this State using an
22 adaptive management framework and providing for input from
23 interested persons and governmental entities;

24 (d) Oversee any team within the Division of State Lands of the
25 Department which provides technical services concerning
26 sagebrush ecosystems;

27 (e) Establish a program to mitigate damage to sagebrush
28 ecosystems in this State by authorizing a system that awards
29 credits to persons, federal and state agencies, local governments
30 and nonprofit organizations to protect, enhance or restore
31 sagebrush ecosystems;

32 (f) Solicit suggestions and information and, if necessary,
33 prioritize projects concerning the enhancement of the landscape,
34 the restoration of habitat, the reduction of nonnative grasses and
35 plants and the mitigation of damage to or the expansion of
36 scientific knowledge of sagebrush ecosystems;

37 (g) If requested, provide advice for the resolution of any
38 conflict concerning the management of the greater sage grouse or
39 a sagebrush ecosystem in this State;

40 (h) Coordinate and facilitate discussion among persons,
41 federal and state agencies and local governments concerning the
42 maintenance of sagebrush ecosystems and the conservation of the
43 greater sage grouse;

44 (i) Provide information and advice to persons, federal and
45 state agencies and local governments concerning any strategy,



1 *system, program or project carried out pursuant to this section or*
2 *section 2 or 3 of this act; and*

3 *(j) Provide direction to state agencies concerning any strategy,*
4 *system, program or project carried out pursuant to this section or*
5 *section 2 or 3 of this act and resolve any conflict with any*
6 *direction given by another state board, commission or department*
7 *jointly with that board, commission or department, as applicable.*

8 *8. On or before June 30 and December 31 of each year, the*
9 *Council shall submit a written report to the Governor. The report*
10 *must include, without limitation:*

11 *(a) Information concerning the overall health and population*
12 *of the greater sage grouse within this State and in the United*
13 *States and the overall health of sagebrush ecosystems within this*
14 *State, including, without limitation, information concerning any*
15 *threats to the population of sage grouse and any sagebrush*
16 *ecosystems within this State;*

17 *(b) Information concerning all strategies, systems, programs*
18 *and projects carried out pursuant to this section and sections 2*
19 *and 3 of this act, including, without limitation, information*
20 *concerning the costs, sources of funding and results of those*
21 *strategies, systems, programs and projects; and*

22 *(c) Any other information specified by the Council.*

23 **Sec. 7.** NRS 232.010 is hereby amended to read as follows:

24 232.010 As used in NRS 232.010 to 232.150, inclusive ~~H~~ ,
25 *and sections 5 and 6 of this act:*

26 1. "Department" means the State Department of Conservation
27 and Natural Resources.

28 2. "Director" means the Director of the State Department of
29 Conservation and Natural Resources.

30 **Sec. 8.** NRS 232.020 is hereby amended to read as follows:

31 232.020 There is hereby created the State Department of
32 Conservation and Natural Resources, in which is vested the
33 administration of the provisions of NRS 232.010 to 232.150,
34 inclusive ~~H~~ , *and sections 5 and 6 of this act.*

35 **Sec. 9.** NRS 232.070 is hereby amended to read as follows:

36 232.070 1. As executive head of the Department, the Director
37 is responsible for the administration, through the divisions and other
38 units of the Department, of all provisions of law relating to the
39 functions of the Department, except functions assigned by law to the
40 State Environmental Commission , ~~for~~ the State Conservation
41 Commission ~~H~~ *or the Sagebrush Ecosystem Council.*

42 2. Except as otherwise provided in subsection 4, the Director
43 shall:

44 (a) Establish departmental goals, objectives and priorities.

45 (b) Approve divisional goals, objectives and priorities.



(c) Approve divisional and departmental budgets, legislative proposals, contracts, agreements and applications for federal assistance.

(d) Coordinate divisional programs within the Department and coordinate departmental and divisional programs with other departments and with other levels of government.

(e) Appoint the executive head of each division within the Department.

(f) Delegate to the executive heads of the divisions such authorities and responsibilities as the Director deems necessary for the efficient conduct of the business of the Department.

(g) Establish new administrative units or programs which may be necessary for the efficient operation of the Department, and alter departmental organization and reassign responsibilities as the Director deems appropriate.

(h) From time to time adopt, amend and rescind such regulations as the Director deems necessary for the administration of the Department.

(i) Consider input from members of the public, industries and representatives of organizations, associations, groups or other entities concerned with matters of conservation and natural resources on the following:

(1) Matters relating to the establishment and maintenance of an adequate policy of forest and watershed protection;

(2) Matters relating to the park and recreational policy of the State;

(3) The use of land within this State which is under the jurisdiction of the Federal Government;

(4) The effect of state and federal agencies' programs and regulations on the users of land under the jurisdiction of the Federal Government, and on the problems of those users of land; and

(5) The preservation, protection and use of this State's natural resources.

3. Except as otherwise provided in subsection 4, the Director may enter into cooperative agreements with any federal or state agency or political subdivision of the State, any public or private institution located in or outside the State of Nevada, or any other person, in connection with studies and investigations pertaining to any activities of the Department.

4. This section does not confer upon the Director any powers or duties which are delegated by law to the State Environmental Commission, ~~for~~ the State Conservation Commission ~~or the~~ *Sagebrush Ecosystem Council*, but the Director may foster cooperative agreements and coordinate programs and activities



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1 involving the powers and duties of the Commissions ~~H~~ *and the*
2 *Council.*

3 5. ~~HAH~~ *Except as otherwise provided in section 5 of this act,*
4 *all* gifts of money and other property which the Director is
5 authorized to accept must be accounted for in the Department of
6 Conservation and Natural Resources Gift Fund which is hereby
7 created as a trust fund.

8 **Sec. 10.** NRS 232.090 is hereby amended to read as follows:

9 232.090 1. The Department consists of the Director and the
10 following:

- 11 (a) The Division of Water Resources.
- 12 (b) The Division of State Lands.
- 13 (c) The Division of Forestry.
- 14 (d) The Division of State Parks.
- 15 (e) The Division of Environmental Protection.
- 16 (f) The Office of Historic Preservation.
- 17 (g) Such other divisions as the Director may from time to time
18 establish.

19 2. The State Environmental Commission, the State
20 Conservation Commission, the Conservation Districts Program, the
21 Nevada Natural Heritage Program , *the Sagebrush Ecosystem*
22 *Council* and the Board to Review Claims are within the Department.

23 **Sec. 11.** NRS 232.140 is hereby amended to read as follows:

24 232.140 1. ~~Money~~ *Except as otherwise provided in section*
25 *5 of this act, money* to carry out the provisions of NRS 232.010 to
26 232.150, inclusive, and *sections 5 and 6 of this act* to support the
27 Department and its various divisions and other units must be
28 provided by direct legislative appropriation from the State General
29 Fund.

30 2. All money so appropriated must be paid out on claims
31 approved by the Director in the same manner as other claims against
32 the State are paid.

33 **Sec. 12.** NRS 232A.020 is hereby amended to read as follows:

34 232A.020 1. Except as otherwise provided in this section, a
35 person appointed to a new term or to fill a vacancy on a board,
36 commission or similar body by the Governor must have, in
37 accordance with the provisions of NRS 281.050, actually, as
38 opposed to constructively, resided, for the 6 months immediately
39 preceding the date of the appointment:

- 40 (a) In this State; and
- 41 (b) If current residency in a particular county, district, ward,
42 subdistrict or any other unit is prescribed by the provisions of law
43 that govern the position, also in that county, district, ward,
44 subdistrict or other unit.



2. After the Governor's initial appointments of members to boards, commissions or similar bodies, all such members shall hold office for terms of 3 years or until their successors have been appointed and have qualified.

3. A vacancy on a board, commission or similar body occurs when a member dies, resigns, becomes ineligible to hold office or is absent from the State for a period of 6 consecutive months.

4. Any vacancy must be filled by the Governor for the remainder of the unexpired term.

5. A member appointed to a board, commission or similar body as a representative of the general public must be a person who:

(a) Has an interest in and a knowledge of the subject matter which is regulated by the board, commission or similar body; and

(b) Does not have a pecuniary interest in any matter which is within the jurisdiction of the board, commission or similar body.

6. ~~The~~ *Except as otherwise provided in section 6 of this act,* the Governor shall not appoint a person to a board, commission or similar body if the person is a member of any other board, commission or similar body.

7. The provisions of subsection 1 do not apply if:

(a) A requirement of law concerning another characteristic or status that a member must possess, including, without limitation, membership in another organization, would make it impossible to fulfill the provisions of subsection 1; or

(b) The membership of the particular board, commission or similar body includes residents of another state and the provisions of subsection 1 would conflict with a requirement that applies to all members of that body.

Sec. 13. As soon as practicable after the effective date of this act, the Governor shall appoint the members of the Sagebrush Ecosystem Council described in paragraph (a) of subsection 1 of section 6 of this act as follows:

1. Three members to terms that expire on July 1, 2015;

2. Three members to terms that expire on July 1, 2016; and

3. Three members to terms that expire on July 1, 2017.

Sec. 14. This act becomes effective upon passage and approval.

