

SENATE BILL NO. 159—SENATORS JONES, KIHUEN, HUTCHISON,
SMITH, PARKS; DENIS, FORD, HAMMOND, MANENDO,
SEGERBLOM, SPEARMAN AND WOODHOUSE

FEBRUARY 18, 2013

JOINT SPONSORS: ASSEMBLYMEN OSCARSON, BOBZIEN, SWANK,
ELLIOT ANDERSON; DONDERO LOOP, FLORES, HEALEY,
MARTIN, OHRENSCHALL AND PIERCE

Referred to Committee on Government Affairs

SUMMARY—Revises provisions relating to the regulation of
planning and zoning by local governments.
(BDR 22-552)

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 land use planning; restricting certain powers of
local governments with regard to planning, subdivision
regulation and zoning of lands located in national
conservation areas, national recreation areas and adjacent
lands; and providing other matters properly relating
thereto.

Legislative Counsel's Digest:

1 Senate Bill No. 358 of the 2003 Legislative Session, known as the Red Rock
2 Canyon Conservation Area and Adjacent Lands Act, restricts the authority of local
3 governments to regulate planning, subdividing and zoning of certain lands located
4 in and adjacent to Red Rock Canyon in Clark County. (Chapter 639, Statutes of
5 Nevada 1993, p. 2673, as amended by chapter 105, Statutes of Nevada 2003, pp.
6 596-98) The Nevada Supreme Court recently ruled that the Act violates Sections
7 20, 21 and 25 of Article 4 of the Nevada Constitution on the grounds that it: (1) is a
8 "local or special law" that "regulat[es] county . . . business"; and (2) establishes a
9 "system of County . . . government" that is not "uniform throughout the State."
10 (*Attorney General v. Gypsum Resources*, 129 Nev. Adv. Op. 4 (2013))
11 This bill revises the Red Rock Canyon Conservation Area and Adjacent Lands
12 Act, the similarly worded Spring Mountains National Recreation Area Act (Chapter
13 198, Statutes of Nevada 2009, pp. 735-37) and the Nevada Revised Statutes in a



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14 manner consistent with the decision in the *Gypsum Resources* case. **Sections 1-4** of
15 this bill restrict generally the authority of any local government in this State to
16 enact certain changes relating to planning, subdividing and zoning of certain lands
17 located within any national conservation area, national recreation area or adjacent
18 lands. **Section 5** of this bill repeals certain provisions of the Act which the Court in
19 *Gypsum Resources* held unconstitutional and also repeals similar provisions of the
20 Spring Mountains National Recreation Area Act.

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

1 **Section 1.** Chapter 278 of NRS is hereby amended by adding
2 thereto a new section to read as follows:

3 *1. Notwithstanding any other provision of law to the contrary,*
4 *the powers otherwise conferred by this chapter which relate to*
5 *planning, subdivision regulation and zoning are subordinate to*
6 *the provisions of this section.*

7 *2. With respect to any lands located in a national*
8 *conservation area, national recreation area or adjacent lands, a*
9 *local government:*

10 *(a) Shall not, in regulating the use of those lands:*

11 *(1) Increase the number of residential dwelling units*
12 *allowed by zoning regulations in existence on the effective date of*
13 *this act, unless such an increase can be accomplished, within a*
14 *given area, by the trading of development credits or another*
15 *mechanism that allows a greater number of residential dwelling*
16 *units to be constructed in that area without increasing the overall*
17 *density of residential dwelling units in that area;*

18 *(2) Establish any new nonresidential zoning districts, other*
19 *than for public facilities; or*

20 *(3) Expand the size of any nonresidential zoning district in*
21 *existence on the effective date of this act, other than for public*
22 *facilities;*

23 *(b) May regulate other matters, including, without limitation,*
24 *landscaping, buffering, screening, signage and lighting; and*

25 *(c) Retains all other authority regarding planning, zoning and*
26 *regulation of uses of land otherwise conferred by this chapter.*

27 *3. The prohibitions set forth in paragraph (a) of subsection 2*
28 *do not restrict or limit:*

29 *(a) Any existing or future development or other rights held by*
30 *any owner of real property that is not part of a national*
31 *conservation area, national recreation area or adjacent lands,*
32 *including, without limitation, all rights, consents and agreements*
33 *established, enacted, granted or entered into by a governing body,*



1 *whether reflected in codes, ordinances, permits, agreements or*
2 *other documents;*

3 *(b) Any future use or development of real property that is not*
4 *part of a national conservation area, national recreation area or*
5 *adjacent lands; or*

6 *(c) The authority of any governing body to regulate real*
7 *property that is not part of a national conservation area, national*
8 *recreation area or adjacent lands.*

9 *4. As used in this section:*

10 *(a) "Adjacent lands" means any tract of land which is:*

11 *(1) Located not more than 5 miles from any national*
12 *conservation area; and*

13 *(2) Not located in a Bureau of Land Management disposal*
14 *area.*

15 *(b) "Bureau of Land Management disposal area" means*
16 *public land which is managed by the Bureau of Land*
17 *Management and which has been identified as potentially suitable*
18 *for disposal in an approved land use plan or through an*
19 *amendment to an existing plan.*

20 *(c) "National conservation area" means an area designated as*
21 *a national conservation area by the Congress of the United States.*

22 *(d) "National recreation area" means an area designated as a*
23 *national recreation area by the Congress of the United States.*

24 **Sec. 2.** Chapter 244 of NRS is hereby amended by adding
25 thereto a new section to read as follows:

26 *1. Notwithstanding any other provision of law to the contrary,*
27 *the powers otherwise conferred by this chapter which relate to*
28 *planning, subdivision regulation and zoning are subordinate to*
29 *the provisions of this section.*

30 *2. With respect to any lands located in a national*
31 *conservation area, national recreation area or adjacent lands, a*
32 *local government:*

33 *(a) Shall not, in regulating the use of those lands:*

34 *(1) Increase the number of residential dwelling units*
35 *allowed by zoning regulations in existence on the effective date of*
36 *this act, unless such an increase can be accomplished, within a*
37 *given area, by the trading of development credits or another*
38 *mechanism that allows a greater number of residential dwelling*
39 *units to be constructed in that area without increasing the overall*
40 *density of residential dwelling units in that area;*

41 *(2) Establish any new nonresidential zoning districts, other*
42 *than for public facilities; or*

43 *(3) Expand the size of any nonresidential zoning district in*
44 *existence on the effective date of this act, other than for public*
45 *facilities;*



(b) May regulate other matters, including, without limitation, landscaping, buffering, screening, signage and lighting; and

(c) Retains all other authority regarding planning, zoning and regulation of uses of land otherwise conferred by this chapter.

3. The prohibitions set forth in paragraph (a) of subsection 2 do not restrict or limit:

(a) Any existing or future development or other rights held by any owner of real property that is not part of a national conservation area, national recreation area or adjacent lands, including, without limitation, all rights, consents and agreements established, enacted, granted or entered into by a governing body, whether reflected in codes, ordinances, permits, agreements or other documents;

(b) Any future use or development of real property that is not part of a national conservation area, national recreation area or adjacent lands; or

(c) The authority of any governing body to regulate real property that is not part of a national conservation area, national recreation area or adjacent lands.

4. As used in this section:

(a) "Adjacent lands" has the meaning ascribed to it in paragraph (a) of subsection 4 of section 1 of this act.

(b) "Bureau of Land Management disposal area" has the meaning ascribed to it in paragraph (b) of subsection 4 of section 1 of this act.

(c) "National conservation area" has the meaning ascribed to it in paragraph (c) of subsection 4 of section 1 of this act.

(d) "National recreation area" has the meaning ascribed to it in paragraph (d) of subsection 4 of section 1 of this act.

Sec. 3. Chapter 268 of NRS is hereby amended by adding thereto a new section to read as follows:

1. Notwithstanding any other provision of law to the contrary, the powers otherwise conferred by this chapter which relate to planning, subdivision regulation and zoning are subordinate to the provisions of this section.

2. With respect to any lands located in a national conservation area, national recreation area or adjacent lands, a local government:

(a) Shall not, in regulating the use of those lands:

(1) Increase the number of residential dwelling units allowed by zoning regulations in existence on the effective date of this act, unless such an increase can be accomplished, within a given area, by the trading of development credits or another mechanism that allows a greater number of residential dwelling



1 *units to be constructed in that area without increasing the overall*
2 *density of residential dwelling units in that area;*

3 *(2) Establish any new nonresidential zoning districts, other*
4 *than for public facilities; or*

5 *(3) Expand the size of any nonresidential zoning district in*
6 *existence on the effective date of this act, other than for public*
7 *facilities;*

8 *(b) May regulate other matters, including, without limitation,*
9 *landscaping, buffering, screening, signage and lighting; and*

10 *(c) Retains all other authority regarding planning, zoning and*
11 *regulation of uses of land otherwise conferred by this chapter.*

12 *3. The prohibitions set forth in paragraph (a) of subsection 2*
13 *do not restrict or limit:*

14 *(a) Any existing or future development or other rights held by*
15 *any owner of real property that is not part of a national*
16 *conservation area, national recreation area or adjacent lands,*
17 *including, without limitation, all rights, consents and agreements*
18 *established, enacted, granted or entered into by a governing body,*
19 *whether reflected in codes, ordinances, permits, agreements or*
20 *other documents;*

21 *(b) Any future use or development of real property that is not*
22 *part of a national conservation area, national recreation area or*
23 *adjacent lands; or*

24 *(c) The authority of any governing body to regulate real*
25 *property that is not part of a national conservation area, national*
26 *recreation area or adjacent lands.*

27 *4. As used in this section:*

28 *(a) "Adjacent lands" has the meaning ascribed to it in*
29 *paragraph (a) of subsection 4 of section 1 of this act.*

30 *(b) "Bureau of Land Management disposal area" has the*
31 *meaning ascribed to it in paragraph (b) of subsection 4 of section*
32 *1 of this act.*

33 *(c) "National conservation area" has the meaning ascribed to*
34 *it in paragraph (c) of subsection 4 of section 1 of this act.*

35 *(d) "National recreation area" has the meaning ascribed to it*
36 *in paragraph (d) of subsection 4 of section 1 of this act.*

37 **Sec. 4.** Chapter 269 of NRS is hereby amended by adding
38 thereto a new section to read as follows:

39 *1. Notwithstanding any other provision of law to the contrary,*
40 *the powers otherwise conferred by this chapter which relate to*
41 *planning, subdivision regulation and zoning are subordinate to*
42 *the provisions of this section.*

43 *2. With respect to any lands located in a national*
44 *conservation area, national recreation area or adjacent lands, a*
45 *local government:*



(a) *Shall not, in regulating the use of those lands:*

(1) *Increase the number of residential dwelling units allowed by zoning regulations in existence on the effective date of this act, unless such an increase can be accomplished, within a given area, by the trading of development credits or another mechanism that allows a greater number of residential dwelling units to be constructed in that area without increasing the overall density of residential dwelling units in that area;*

(2) *Establish any new nonresidential zoning districts, other than for public facilities; or*

(3) *Expand the size of any nonresidential zoning district in existence on the effective date of this act, other than for public facilities;*

(b) *May regulate other matters, including, without limitation, landscaping, buffering, screening, signage and lighting; and*

(c) *Retains all other authority regarding planning, zoning and regulation of uses of land otherwise conferred by this chapter.*

3. *The prohibitions set forth in paragraph (a) of subsection 2 do not restrict or limit:*

(a) *Any existing or future development or other rights held by any owner of real property that is not part of a national conservation area, national recreation area or adjacent lands, including, without limitation, all rights, consents and agreements established, enacted, granted or entered into by a governing body, whether reflected in codes, ordinances, permits, agreements or other documents;*

(b) *Any future use or development of real property that is not part of a national conservation area, national recreation area or adjacent lands; or*

(c) *The authority of any governing body to regulate real property that is not part of a national conservation area, national recreation area or adjacent lands.*

4. *As used in this section:*

(a) *“Adjacent lands” has the meaning ascribed to it in paragraph (a) of subsection 4 of section 1 of this act.*

(b) *“Bureau of Land Management disposal area” has the meaning ascribed to it in paragraph (b) of subsection 4 of section 1 of this act.*

(c) *“National conservation area” has the meaning ascribed to it in paragraph (c) of subsection 4 of section 1 of this act.*

(d) *“National recreation area” has the meaning ascribed to it in paragraph (d) of subsection 4 of section 1 of this act.*

Sec. 5. 1. NRS 244.154, 268.105, 269.617 and 278.0239 are hereby repealed.



- 1 2. Sections 6, 7, 8, 9 and 10 of chapter 105, Statutes of Nevada
- 2 2003, at pages 596, 597 and 598, and section 8 of chapter 198,
- 3 Statutes of Nevada 2009, at page 736, are hereby repealed.
- 4 **Sec. 6.** This act becomes effective upon passage and approval.

**LEADLINES OF REPEALED SECTIONS OF NRS AND
TEXT OF REPEALED SECTIONS OF STATUTES OF NEVADA**

244.154 Planning, subdivision regulation and zoning: County's powers subordinate to limits upon development established in certain geographical regions by certain state acts.

268.105 City's powers subordinate in region for which Spring Mountains National Recreation Area Act and Red Rock Canyon Conservation Area and Adjacent Lands Act establish limits upon development.

269.617 Powers relating to planning, subdivision regulation and zoning subordinate in region for which Spring Mountains National Recreation Area and Red Rock Canyon Conservation Area and Adjacent Lands Act establish limits upon development.

278.0239 Supremacy of limits upon development established by certain special legislative acts.

Section 6 of chapter 105, Statutes of Nevada 2003:

Sec. 6. Chapter 639, Statutes of Nevada 1993, at page 2673, is hereby amended by adding thereto a new section to be designated as section 0.5, immediately preceding section 1, to read as follows:

This act shall be known as the Red Rock Canyon Conservation Area and Adjacent Lands Act.

Section 7 of chapter 105, Statutes of Nevada 2003:

Sec. 7. Chapter 639, Statutes of Nevada 1993, at page 2673, is hereby amended by adding thereto new sections to be designated as sections 1.3 and 1.7, immediately following section 1, to read as follows:

Sec. 1.3. *As used in this act, unless the context otherwise requires, the words and terms defined in sections 1.7 and 2 of this act have the meanings ascribed to them in those sections.*

Sec. 1.7. *"Adjacent lands" means the following tracts of land:*



1. *All of sections 34, 35 and 36, Township 20 South, Range 58 East, MDM;*
2. *All of sections 1, 2, 3, 10, 11, 12, 13, 14, 15, 22, 23, 24, 25, 26, 27, 34, 35 and 36, Township 21 South, Range 58 East, MDM;*
3. *All of sections 1, 2, 3, 10, 11, 12, 13, 14 and 15, Township 22 South, Range 58 East, MDM;*
4. *All of sections 31 and 32, Township 20 South, Range 59 East, MDM, with the exception of any lands that are located within the corporate limits of the City of Las Vegas on the effective date of this act;*
5. *All of sections 3 and 4, Township 21 South, Range 59 East, MDM, with the exception of any lands that are located within the corporate limits of the City of Las Vegas on the effective date of this act;*
6. *All of sections 5, 6, 7, 8, 9, 10 and 11, Township 21 South, Range 59 East, MDM, with the exception of any lands that are located within the Summerlin South unincorporated area on the effective date of this act;*
7. *All of sections 15, 16, 17, 18, 19, 20, 21, 22, 27, 28, 29, 30, 31, 32, 33 and 34, Township 21 South, Range 59 East, MDM; and*
8. *All of sections 3, 4, 5, 6, 7, 8, 9, 10, 17 and 18, Township 22 South, Range 59 East, MDM.*

Section 8 of chapter 105, Statutes of Nevada 2003:

Sec. 8. Chapter 639, Statutes of Nevada 1993, at page 2673, is hereby amended by adding thereto new sections to be designated as sections 4.3 and 4.7, immediately following section 4, to read as follows:

Sec. 4.3. *With respect to adjacent lands, a local government:*

1. *Shall not, in regulating the use of those lands:*
 - (a) *Increase the number of residential dwelling units allowed by zoning regulations in existence on the effective date of this act, unless such an increase can be accomplished, within a given area, by the trading of development credits or another mechanism that allows a greater number of residential dwelling units to be constructed in that area without increasing the overall density of residential dwelling units in that area;*
 - (b) *Establish any new nonresidential zoning districts, other than for public facilities; or*



(c) Expand the size of any nonresidential zoning district in existence on the effective date of this act, other than for public facilities.

2. Shall, at its discretion:

(a) Regulate matters to include, without limitation, landscaping, buffering, screening, signage and lighting; and

(b) Retain all other authority regarding planning, zoning and regulation of uses of land.

Sec. 4.7. The prohibitions set forth in section 4.3 of this act with respect to adjacent lands do not restrict or limit:

1. Any existing or future development or other rights held by any owner of real property that is not part of those adjacent lands, including, without limitation, all rights, consents and agreements established, enacted, granted or entered into by a governing body, whether reflected in codes, ordinances, permits, agreements or other documents;

2. Any future use or development of real property that is not part of those adjacent lands; or

3. The authority of any governing body to regulate real property that is not part of those adjacent lands.

Section 9 of chapter 105, Statutes of Nevada 2003:

Sec. 9. Section 1 of chapter 639, Statutes of Nevada 1993, at page 2673, is hereby amended to read as follows:

Section 1. The legislature *hereby* finds and declares that ~~this~~:

1. This special act which regulates activity in the Red Rock Canyon National Conservation Area *and on adjacent lands* is necessary because of:

~~1-1~~ *(a)* The unusual beauty of the Red Rock Canyon National Conservation Area; ~~and~~

~~—2-1~~ *(b)* The rapidly increasing population and growth in the region around the Red Rock Canyon National Conservation Area ~~1-1~~; *and*

(c) The need to harmonize:

(1) The retention of the scenic beauty, small-town values, historic character, sense of community and recreational opportunities for visitors and residents of the Red Rock Canyon National Conservation Area and adjacent lands; and



(2) Residential and commercial development within the Red Rock Canyon National Conservation Area and adjacent lands.

2. The Legislature supports acquisition by the Federal Government of vacant private lands that are:

(a) Located within and adjacent to the Red Rock Canyon National Conservation Area;

(b) Located outside of the boundary described in the Clark County Conservation of Public Lands and Natural Resources Act of 2002, Public Law 107-282, November 6, 2002; and

(c) Essential to the character and value of the Red Rock Canyon National Conservation Area.

Section 10 of chapter 105, Statutes of Nevada 2003:

Sec. 10. Section 2 of chapter 639, Statutes of Nevada 1993, at page 2673, is hereby amended to read as follows:

Sec. 2. ~~{As used in section 1 to 4, inclusive, of this act,}~~ "Red Rock Canyon National Conservation Area" means the area in and around Red Rock Canyon which has been designated as a national conservation area by Congress pursuant to Title 16 of the United States Code.

Section 8 of chapter 198, Statutes of Nevada 2009:

Sec. 8. With respect to the Spring Mountains National Recreation Area, a local government:

1. Shall not, in regulating the use of those lands:

(a) Increase the number of residential dwelling units allowed by zoning regulations in existence on the effective date of this act;

(b) Establish any new nonresidential zoning districts, other than for public facilities; or

(c) Expand the size of any nonresidential zoning district in existence on the effective date of this act, other than for public facilities.

2. May regulate matters to include, without limitation, landscaping, buffering, screening, signage and lighting.

3. Retains all other authority regarding planning, zoning and regulation of uses of land.

