

ASSEMBLY BILL NO. 398—ASSEMBLYMAN EDWARDS

MARCH 17, 2015

Referred to Committee on Transportation

SUMMARY—Ensures protection of public access to public lands.
(BDR 35-580)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact.
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 public lands; revising the duty of certain public agencies to maintain certain public roads; revising provisions allowing petitions seeking certain actions from a board of county commissioners relating to certain public roads; revising provisions authorizing the Attorney General to bring an action to vindicate the rights of certain persons or governmental entities with respect to certain roads which cross certain federal land; revising provisions relating to the closure or temporary closure of certain state parks, monuments, historic landmarks or recreational areas; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law authorizes the Administrator of the Division of State Parks of the State Department of Conservation and Natural Resources to establish, name, plan, operate, control, protect, develop and maintain state parks, monuments and recreational areas for the use of the general public. (NRS 407.065) **Section 7** of this bill requires the Administrator, before closing or temporarily closing a state park, monument, historic landmark or recreational area, to provide notice to the public of such closure or temporary closure. **Section 8** of this bill allows three or more residents of this State to petition the Administrator to halt such a closure or temporary closure, or to reopen a closed state park, monument, historic landmark or recreational area. The Administrator must conduct a public hearing on the petition, and must base his or her decision as to the petition on: (1) the benefit to the general public; (2) whether any significant impairment of the state park, monument, historic landmark or recreational area will result; and (3) the duties, obligations and responsibilities of the Administrator pursuant to law.

Existing law defines certain roads or ways which exist upon certain rights-of-way granted between 1866 and 1976 by Congress over public lands of the United



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States and not reserved for public use as “accessory roads” or “public roads.” (NRS 405.191, 405.201) No public agency is required to maintain certain public roads which meet that definition, nor is a public agency required to accept any such public road as a main, general or minor county road. (NRS 405.193) **Section 1** of this bill requires a public agency to work collaboratively on a plan to maintain such a public road upon the request of a resident or residents of the area served by the road. The plan may include the voluntary provision of basic maintenance of the road by the resident or residents provided that the public agency conducts reasonable inspections of the road to ensure the safety of any road so maintained.

Existing law allows five or more residents to petition a board of county commissioners to open, reopen, close, relocate or abandon a public road within the county. (NRS 405.195) **Section 2** of this bill revises to three the number of residents required for such a petition, and requires that any such petition must clearly identify the specific area or areas that will be affected, and may include a proposal by the residents to perform some or all of the work required to carry out the goals of the petition at no or reduced cost.

Existing law provides that, if an agency of the United States responsible for the lands over which an accessory road runs pursues the closure of the accessory road or demands a fee or permit for the use of the accessory road, the Attorney General may bring an action for a declaratory judgment on behalf of: (1) the State and its residents; (2) owners of lands served by the accessory road; (3) holders of grazing rights served by the accessory road; and (4) all other users of the accessory road. Such an action is to vindicate the rights of all users of the unimpeded maintenance, use and enjoyment of the accessory road, and the rights of owners of the lands served by the accessory road to just compensation for any closing found necessary. (NRS 405.204) **Section 5** of this bill revises the authorization of the Attorney General to participate as a party in an action to quiet title as well as an action for declaratory judgment, and provides that such actions may be brought regarding those roads defined as “public roads,” which exist upon a right-of-way granted by Congress over public lands of the United States not reserved for public uses and which have been accepted by general public use and enjoyment. **Section 5** also urges the Attorney General to take a leadership role in pursuing actions on behalf of the State and its counties in formalizing and finalizing title to such accessory and public roads, and **sections 8, 9 and 11** of this bill direct the Attorney General, the Land Use Planning Advisory Council and the Nevada Association of Counties to work cooperatively to develop, maintain and assist in the implementation of a legal protocol whereby a county may perfect its rights to and finalize title to an accessory road or a public road.

Existing law authorizes the Attorney General to bring or maintain certain actions, or intervene in certain actions, if certain acts by a federal entity with respect to public lands impairs or tends to impair the sovereignty of the State. (NRS 328.500) **Section 10** of this bill urges the Attorney General to negotiate with the Federal Government on behalf of a local government to facilitate the use of public lands and waters appurtenant to and public roads over those lands for public projects to provide water and other resources to areas of the State where an extreme need exists.

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

Section 1. NRS 405.193 is hereby amended to read as follows:
405.193 1. ~~No~~ Except as otherwise provided in subsection
3, no public agency is required to maintain any public road which is



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so designated only because it meets the requirements set forth in subsection 1 or 2 of NRS 405.191 nor is any public agency required to accept any public road as a main, general or minor county road.

2. *A public agency which has jurisdiction over a public road shall, upon a request by a resident or residents of the area served by the public road, work in collaboration with the resident or residents to develop a plan to maintain the road. Such a plan may include, without limitation, the voluntary provision of basic maintenance of the road by the resident or residents. Any plan developed pursuant to this subsection that includes the voluntary provision of basic maintenance of a public road by the resident or residents must also require reasonable inspections of the public road by the public agency to ensure the safety of any public road so maintained.*

3. No action may be brought against the county, its officers or employees *or a resident or residents, his or her designee, or their designees, providing basic maintenance pursuant to subsection 2* for damage suffered by a person solely as a result of the unmaintained condition of a road made public pursuant to NRS 405.195.

Sec. 2. NRS 405.195 is hereby amended to read as follows:

405.195 1. ~~{Five}~~ *Three* or more residents of this state may petition any board of county commissioners to open, reopen, close, relocate or abandon a public road within the county. The petition must be accompanied by proof of the petitioners' residency and adequate maps and documentation to ~~{justify a hearing on the petition.}~~ *clearly identify the specific area or areas to be affected. The petition may also include a proposal by the petitioners to perform all or any portion of the work necessary to carry out the goals of the petition without charge or at a reduced cost.* Upon receipt of such a petition and the required documentation, the board of county commissioners shall set a date to conduct a public hearing on the petition. The date selected must not be earlier than 30 days, nor later than 45 days, after the petition is submitted. In addition to any other notice required by law or ordinance, the board shall cause notice of the time, date and location of the hearing to be published at least once each week for 2 successive weeks in a newspaper of general circulation in the county.

2. Upon conclusion of the public hearing, the board shall determine whether the road in question has acquired the status of a public road because:

(a) Construction of the improvement occurred while the land was unappropriated, unreserved public land;



(b) The improvement was constructed by mechanical means which made the physical change to the natural area necessary for the customary or usual passage of traffic; and

(c) The right-of-way was:

(1) Accepted by the state or local government for dedication as a road for public use and thereafter the road was used by the public at large; or

(2) Accepted by use as access to a mining claim or other privately owned property.

3. If the board concludes that the road is a public road, the board may order the public road to be opened, reopened, closed, relocated or abandoned, *with or without the services offered by the petitioners pursuant to subsection 1*, for all or part of the year. The board's decision must be based on specific findings, including, but not limited to:

(a) The resulting benefit to the general public;

(b) Whether any significant impairment of the environment or natural resources will result; and

(c) Whether the decision will result in a significant reduction in the value of public or private property.

➤ The order of the board must be reduced to writing, including a statement of any actions which must be taken to effectuate the decision and the person to whom each such action has been assigned. If possible, the order must be signed by any person who has agreed to take a specific action to effectuate the board's decision. The lack of such a signature does not invalidate the order.

4. If the order of the board is to close or abandon a public road, the board shall, upon the petition of ~~five~~ *three* or more residents of the State, designate and provide an alternate route serving the same area. The closure or abandonment of a public road by the board does not prohibit or restrict the use of that road by a governmental agency or a public utility regulated by the Public Utilities Commission of Nevada for the maintenance, construction or operation of a facility of the agency or utility.

5. Any person or governmental agency may bring and maintain an action in the district court of the county in which the public road lies to prevent any person, including a public agency, from violating an order issued pursuant to subsection 3.

6. The Attorney General may , *pursuant to this section or as provided in NRS 405.204*, bring and maintain an action in any court or before any federal agency if an agency or instrumentality of the Federal Government denies the use of a public road located on public land in this state. *In lieu of or in addition to bringing or maintaining such an action, the Attorney General may authorize or engage any appropriately licensed and qualified attorney to*



bring or maintain such an action on behalf of the State of Nevada without charge or at a reduced cost to the State.

7. Nothing in this section affects the right of the Department of Transportation to regulate freeways or highways in this state.

Sec. 3. NRS 405.201 is hereby amended to read as follows:

405.201 As used in NRS 405.201 to 405.204, inclusive, unless the context otherwise requires:

1. "Accessory road" means any way established over public lands between 1866 and 1976 pursuant to section 8 of chapter 262, 14 Stat. 253 (1866), former 43 U.S.C. § 932, as to which general public use or enjoyment before 1976 is not established, but which provides access to privately owned land.

2. *"Public road" has the meaning ascribed to it in subsection 2 of NRS 405.191.*

3. "Public utility" means any public utility, as that term is defined in NRS 704.020, that is subject to the jurisdiction of the Public Utilities Commission of Nevada.

Sec. 4. NRS 405.203 is hereby amended to read as follows:

405.203 1. The State Forester Firewarden or the board of directors of a fire protection district may temporarily close or restrict the use of an accessory road when the danger of fire arising from use of the road so requires. The closure or restricted use may not restrict, impede or preclude the use of the road by a public utility in maintaining, constructing or operating any of its facilities. *The State Forester Firewarden or the board of directors of a fire protection district shall, except in the case of an emergency, provide written notice of any temporary closure or restricted use to each owner of land served by the road and to each stock raiser known to use the road. Such written notice must be provided not less than 5 days before the temporary closure or restriction of the use of the road.*

2. A board of county commissioners may permanently close an accessory road in its county when the public safety or welfare so requires. Before permanently closing an accessory road, the board of county commissioners shall hold a public hearing. The board shall give written notice of the time and place of the hearing to each owner of land served by the road, and to each stock raiser known to use the road. The board shall also publish the notice in a newspaper of general circulation in the county for 3 successive weeks before the date set for the hearing.

3. Following the hearing, the board of county commissioners shall not close the road unless the benefit to public safety or welfare from its closing outweighs the detriment to owners of land served by the road, to raisers of livestock using the road and to the general public.



4. If the permanent closing of an accessory road deprives an owner of access by road to the owner's land, the public agency closing the road shall pay the owner just compensation for the owner's loss.

Sec. 5. NRS 405.204 is hereby amended to read as follows:

405.204 1. The Legislature hereby finds and declares that ~~the~~:

(a) *Formalizing and finalizing title to accessory roads and public roads is necessary for the State and its counties to protect continued access to and multiple uses on federally administered lands; and*

(b) *The public interest of the State of Nevada is served by keeping accessory roads and public roads open and available for use by the residents of this state because:*

~~(a)~~ (1) There exists within this state a large number of accessory roads ~~;~~

~~—(b)—~~ *and public roads;*

(2) *Accessory roads and public roads provide access for the control of fire on adjacent lands, the enforcement of laws by peace officers, search and rescue operations, medical personnel and ambulances, and public utilities;*

~~(c)~~ (3) *Accessory roads and public roads provide access to public lands for members of the general public; and*

~~(d)~~ (4) *Accessory roads and public roads enhance the taxable value of the private property served by such roads.*

2. *The Legislature therefore urges the Attorney General to take a leadership role in pursuing actions on behalf of the State and its counties in formalizing and finalizing title to accessory roads and public roads in this State pursuant to the powers and duties set forth in this section and NRS 228.180, 228.190 and 405.195.*

3. The Legislature therefore directs that ~~the~~:

(a) *If an agency of the United States responsible for the lands over which an accessory road or a public road runs pursues the closing of ~~an accessory~~ such a road, ~~or~~ demands a fee or permit for the use of ~~an accessory~~ such a road, prescribes or asserts management authority over such a road or in any other way creates a case or controversy as to the use or title to such a road, the Attorney General, pursuant to this section or NRS 405.195, as applicable, may participate as a party in a quiet title action pursuant to 28 U.S.C. § 2409a or bring an action for a declaratory judgment as soon as practicable in cooperation with or on behalf of:*

~~(a)~~ (1) The State and its residents;

~~(b)~~ (2) *The county or counties in which the road lies;*

(3) Owners of lands served by the road;



~~[(e)]~~ (4) Holders of grazing , *mineral or other* rights served by the road; and

~~[(d)]~~ (5) All other users of the road,
↳ to *protect the ownership of and title to the road, or to* vindicate the rights of all users to the unimpeded maintenance, use and enjoyment of the road, and the rights of owners of lands *or holders of rights* served by the road to just compensation for any closing found necessary.

(b) The Land Use Planning Advisory Council created by NRS 321.740, the Attorney General and the Nevada Association of Counties shall work cooperatively to develop, maintain and assist in the carrying out of a legal protocol whereby a county may perfect its rights to and finalize title to an accessory road or a public road.

Sec. 6. Chapter 407 of NRS is hereby amended by adding thereto the provisions set forth as sections 7 and 8 of this act.

Sec. 7. 1. *Except as otherwise provided in subsection 2, before a temporary closure or proposed closure of any state park, monument, historic landmark or recreational area, the Administrator shall provide notice of such closure. Notice must be provided not less than 60 days before such closure and must be:*

(a) Conspicuously posted at the state park, monument, historic landmark or recreational area which is the subject of the temporary closure or closure;

(b) Posted in three public places of the county or counties in which the state park, monument, historic landmark or recreational area is located; and

(c) Published at least once each week for 2 consecutive weeks in a newspaper of general circulation in the county or counties in which the state park, monument, historic landmark or recreational area is located.

2. *The provisions of subsection 1 do not apply to the temporary closure of a state park, monument, historic landmark or recreational area due to:*

(a) The need for extraordinary maintenance of reasonable duration; or

(b) An emergency situation involving the public health or safety.

Sec. 8. 1. *Three or more residents of this State may petition the Administrator to:*

(a) Halt a proposed temporary closure or closure of a state park, monument, historic landmark or recreational area; or

(b) To reopen a closed state park, monument, historic landmark or recreational area.



2. A petition submitted pursuant to subsection 1 must be accompanied by proof of the petitioners' residency and justification for:

(a) Halting the proposed temporary closure or closure of a state park, monument, historic landmark or recreational area; or

(b) Seeking the reopening of a closed state park, monument, historic landmark or recreational area.

3. Upon receipt of a petition that meets the requirements of subsections 1 and 2, the Administrator shall set a date to conduct a public hearing on the petition. The date selected must not be earlier than 30 days, or later than 45 days, after the petition is submitted. The Administrator shall provide notice of the hearing not less than 7 days before the date of the hearing. Such notice must be:

(a) Conspicuously posted at the state park, monument, historic landmark or recreational area which is the subject of the petition;

(b) Posted in three public places in the county or counties in which the state park, monument, historic landmark or recreational area is located; and

(c) Published at least once in a newspaper of general circulation in the county or counties in which the state park, monument, historic landmark or recreational area is located.

4. Upon conclusion of the public hearing, the Administrator shall determine whether to halt the proposed temporary closure or closure of the state park, monument, historic landmark or recreational area or to reopen the closed state park, monument, historic landmark or recreational area, as applicable. The Administrator's decision must be based on specific findings, including, but not limited to:

(a) The benefit to the general public;

(b) Whether any significant impairment of the state park, monument, historic landmark or recreational area will result; and

(c) The duties, obligations and responsibilities of the Administrator pursuant to this chapter.

5. If the Administrator makes a decision pursuant to subsection 4 to reopen a closed state park, monument, historic landmark or recreational area, the Administrator shall provide notice of that reopening in the manner provided for a hearing in subsection 3.

Sec. 9. NRS 321.750 is hereby amended to read as follows:

321.750 The Land Use Planning Advisory Council shall:

1. Advise the Administrator on the development and distribution to cities and counties of information useful to land use planning.



2. Advise the State Land Use Planning Agency regarding the development of plans and statements of policy pursuant to subsection 1 of NRS 321.7355.

3. Work cooperatively with the Attorney General and the Nevada Association of Counties as required pursuant to subsection 3 of NRS 405.204.

Sec. 10. NRS 328.500 is hereby amended to read as follows:

328.500 1. The Legislature finds that more than 87 percent of the land in the State of Nevada is held by the Federal Government, of which 69 percent is public land, and the actions of federal agencies and instrumentalities involving the public lands and waters appurtenant to and public roads over those lands significantly affect the health, safety, welfare and happiness of the citizens of this State and may interfere with the traditional sovereign functions of the State of Nevada with respect to those lands, waters and roads and their uses.

2. Except as otherwise provided in subsection 3, the Attorney General ~~may~~ *is hereby urged to:*

(a) On his or her own initiative or at the request of the Governor or any state agency, bring and maintain any action; or

(b) Intervene on behalf of or bring and maintain an action on the relation of, any person in any meritorious case,

↳ in any court or before any federal agency if any action or proposed action by a federal agency or instrumentality with respect to the public lands or waters appurtenant to or public roads over those lands impairs or tends to impair the sovereignty of the State of Nevada.

3. The Attorney General may bring an action pursuant to this section if:

(a) The Legislature has appropriated sufficient money for the operation of the Attorney General's office, *, or sufficient money is available from gifts, grants, donations and other sources,* to permit the Attorney General to bring and maintain the action until its conclusion; or

(b) The Attorney General has obtained the permission:

(1) From the Legislature, if it is in session, expressed by a concurrent resolution; or

(2) If the Legislature is not in session, from the Interim Finance Committee.

4. The Attorney General is hereby urged, upon the request of a local government, to negotiate with the Federal Government on behalf of the local government to facilitate use of the public lands and waters appurtenant to and public roads over those lands for public projects to provide water and other resources to areas of this State where an extreme need exists.



1 **5.** As used in this section, “public lands” means all lands
2 within the exterior boundaries of the State of Nevada except lands:

3 (a) To which title is held by any private person or entity;

4 (b) To which title is held by the State of Nevada, any of its local
5 governments or the Nevada System of Higher Education;

6 (c) Which are located within congressionally authorized national
7 parks, monuments, national forests or wildlife refuges or which are
8 lands acquired by purchase consented to by the Legislature;

9 (d) Which are controlled by the United States Department of
10 Defense, Department of Energy or Bureau of Reclamation; or

11 (e) Which are held in trust for Indian purposes or are Indian
12 reservations.

13 **Sec. 11.** The Land Use Planning Advisory Council, the
14 Attorney General and the Nevada Association of Counties, as soon
15 as practicable after July 1, 2015, shall work cooperatively to
16 develop the protocol required pursuant to NRS 405.204, as amended
17 by section 5 of this act.

18 **Sec. 12.** This act becomes effective on July 1, 2015.

