

SENATE BILL NO. 456—COMMITTEE ON TRANSPORTATION

MARCH 23, 2015

Referred to Committee on Transportation

SUMMARY—Revises certain provisions concerning the control and preservation of certain accessory roads. (BDR 35-1089)

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 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 lands; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

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 States and not reserved for public use as “accessory roads” or “public roads.” (NRS 405.191, 405.201) Existing law provides that, if an agency of the United States responsible for the lands over which such an accessory road runs pursues the closing 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 3** 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 3** 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 3-5** 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



24 assist in the implementation of a legal protocol whereby a county may perfect its
25 rights to and finalize title to an accessory road or a public road.

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

1 **Section 1.** NRS 405.195 is hereby amended to read as follows:

2 405.195 1. Five or more residents of this state may petition
3 any board of county commissioners to open, reopen, close, relocate
4 or abandon a public road within the county. The petition must be
5 accompanied by proof of the petitioners' residency and adequate
6 maps and documentation to justify a hearing on the petition. Upon
7 receipt of such a petition and the required documentation, the board
8 of county commissioners shall set a date to conduct a public hearing
9 on the petition. The date selected must not be earlier than 30 days,
10 nor later than 45 days, after the petition is submitted. In addition to
11 any other notice required by law or ordinance, the board shall cause
12 notice of the time, date and location of the hearing to be published at
13 least once each week for 2 successive weeks in a newspaper of
14 general circulation in the county.

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

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

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

23 (c) The right-of-way was:

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

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

29 3. If the board concludes that the road is a public road, the
30 board may order the public road to be opened, reopened, closed,
31 relocated or abandoned, for all or part of the year. The board's
32 decision must be based on specific findings, including, but not
33 limited to:

34 (a) The resulting benefit to the general public;

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

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



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

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

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

19 6. The Attorney General may , *pursuant to this section or as*
20 *provided in NRS 405.204*, bring and maintain an action in any court
21 or before any federal agency if an agency or instrumentality of the
22 Federal Government denies the use of a public road located on
23 public land in this state.

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

26 **Sec. 2.** NRS 405.201 is hereby amended to read as follows:

27 405.201 As used in NRS 405.201 to 405.204, inclusive, unless
28 the context otherwise requires:

29 1. "Accessory road" means any way established over public
30 lands between 1866 and 1976 pursuant to section 8 of chapter 262,
31 14 Stat. 253 (1866), former 43 U.S.C. § 932, as to which general
32 public use or enjoyment before 1976 is not established, but which
33 provides access to privately owned land.

34 2. *"Public road" has the meaning ascribed to it in subsection*
35 *2 of NRS 405.191.*

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

39 **Sec. 3.** NRS 405.204 is hereby amended to read as follows:

40 405.204 1. The Legislature hereby finds and declares that

41 ~~the~~ :

42 (a) *Formalizing and finalizing title to accessory roads and*
43 *public roads is necessary for the State and its counties to protect*
44 *proper authority over, continued access to and multiple uses on*
45 *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;*

~~[(e)]~~ (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 provided in this section and NRS 228.180, 228.190 and 405.195.*

3. *The Legislature therefore directs that ~~[(i)]~~ :*

(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 implementation of a legal protocol whereby a county may perfect its rights to and finalize title to an accessory road or a public road.

Sec. 4. 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. 5. The Land Use Planning Advisory Council, the Attorney General and the Nevada Association of Counties, as soon as practicable after July 1, 2015, shall work cooperatively to develop the protocol required pursuant to NRS 405.204 as amended by section 3 of this act.

Sec. 6. This act becomes effective on July 1, 2015.

