

Amendment No. 645

Assembly Amendment to Assembly Bill No. 30 First Reprint	(BDR 48-214)
<b>Proposed by:</b> Assemblywoman Swank	
<b>Amends:</b> Summary: No Title: No Preamble: No Joint Sponsorship: No Digest: No	

Adoption of this amendment will REMOVE the 2/3s majority vote requirement from A.B. 30 R1.
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ASSEMBLY ACTION				Initial and Date	SENATE ACTION				Initial and Date
Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____	Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____
Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____
Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) variations of green bold underlining is language proposed to be added in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill proposed to be retained in this amendment.

HAC



Date: 4/23/2019

A.B. No. 30—Revises provisions governing water. (BDR 48-214)





ASSEMBLY BILL NO. 30—COMMITTEE ON NATURAL  
RESOURCES, AGRICULTURE, AND MINING

(ON BEHALF OF THE DIVISION OF WATER RESOURCES  
OF THE STATE DEPARTMENT OF  
CONSERVATION AND NATURAL RESOURCES)

PREFILED NOVEMBER 16, 2018

Referred to Committee on Natural Resources,  
Agriculture, and Mining

SUMMARY—Revises provisions governing water. (BDR 48-214)

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; authorizing the State Engineer to require certain applicants to submit a monitoring, management and mitigation plan; authorizing the State Engineer, under certain circumstances, to consider such a plan before approving or denying an application for a permit; and providing other matters properly relating thereto.

**Legislative Counsel's Digest:**

Existing law requires the State Engineer to reject an application for a permit to appropriate water to beneficial use if there is no unappropriated water at the source of supply or if the proposed use or change of use of the water conflicts with existing rights or protectable interests in existing domestic wells or threatens to prove detrimental to the public interest. (NRS 533.370) **Section 1** of this bill authorizes, under certain circumstances, the State Engineer to require an applicant for a permit to submit a monitoring, management and mitigation plan. **Section 1** also requires the State Engineer to give certain notice and have a public hearing on such a plan before determining whether to approve or deny an application for a permit. **Sections 2-9** of this bill make conforming changes.

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

**Section 1.** Chapter 533 of NRS is hereby amended by adding thereto a new section to read as follows:

*1. Except as otherwise provided in subsections 2 and 3, the State Engineer may require any person who submits an application to submit a monitoring, management and mitigation plan.*

2. If there is water available for appropriation in the proposed source of supply in the amount of water set forth in an application, before rejecting an application because the proposed use or change set forth in the application may conflict with existing rights or protectable interests in domestic wells as set forth in NRS 533.024, the State Engineer may require the applicant to make a reasonable effort to avoid the potential conflict, including, without limitation:

(a) Configuring the point or points of diversion and diversion rates to avoid any potential conflict;

(b) Reduce the size of the project or improve water efficiency to avoid any potential conflict; and

(c) Work cooperatively with holders of existing rights and owners of domestic wells to enter into a mutual agreement that avoids any potential conflict.

↪ The applicant must submit to the State Engineer documentation of the efforts to meet the requirements of this subsection.

3. If the State Engineer finds that the applicant has demonstrated that the reasonable efforts made pursuant to subsection 2:

(a) Avoid any potential conflict, the State Engineer may, subject to the provisions of NRS 533.370, approve the application.

(b) Did not avoid any potential conflict, the State Engineer may require the applicant to submit a monitoring, management and mitigation plan.

4. The State Engineer shall:

(a) Hold a public hearing on every proposed monitoring, management and mitigation plan; and

(b) Before holding the public hearing required pursuant to paragraph (a), cause notice of the monitoring, management and mitigation plan to be:

(1) Published once a week for 4 consecutive weeks in a newspaper of general circulation in the county where the point of diversion is located. The notice must include, without limitation, the date of the public hearing required pursuant to paragraph (a). Proof of publication must be filed within 30 days after the final day of publication.

(2) If the application is for a proposed well described in subsection 3 of NRS 533.360, mailed to each owner of real property containing a domestic well that is within 2,500 feet of the proposed well, to the owner's address as shown in the latest records of the county assessor. If there are not more than six such wells, notices must be sent to each owner by certified mail, return receipt requested. If there are more than six such wells, at least six notices must be sent to owners by certified mail, return receipt requested. The return receipts from these notices must be filed with the State Engineer before the State Engineer may hold the public hearing on the plan pursuant to paragraph (a).

~~[↪ The State Engineer may require an applicant to pay the costs of publication and notice required pursuant to this subsection.]~~

5. If the State Engineer determines after the public hearing required pursuant to subsection 4 that the applicant has demonstrated that any potential conflict will be avoided pursuant to the monitoring, management and mitigation plan, the State Engineer may, subject to the provisions of NRS 533.370, approve the application on the condition that before the applicant appropriates water for beneficial use or changes the place of diversion, manner of use or place of use of water already appropriated:

(a) Every measure or action in the monitoring, management and mitigation plan is taken; and

(b) The potential conflicts are avoided.

6. If the State Engineer determines after the public hearing required pursuant to subsection 4 that the applicant has not demonstrated that the

*potential conflicts will be avoided pursuant to the monitoring, management and mitigation plan, the State Engineer shall reject the application pursuant to NRS 533.370.*

**Sec. 2.** NRS 533.370 is hereby amended to read as follows:

533.370 1. Except as otherwise provided in this section and NRS 533.345, 533.371, 533.372 and 533.503, the State Engineer shall approve an application submitted in proper form which contemplates the application of water to beneficial use if:

(a) The application is accompanied by the prescribed fees;

(b) The proposed use or change, if within an irrigation district, does not adversely affect the cost of water for other holders of water rights in the district or lessen the efficiency of the district in its delivery or use of water; and

(c) The applicant provides proof satisfactory to the State Engineer of the applicant's:

(1) Intention in good faith to construct any work necessary to apply the water to the intended beneficial use with reasonable diligence; and

(2) Financial ability and reasonable expectation actually to construct the work and apply the water to the intended beneficial use with reasonable diligence.

2. Except as otherwise provided in subsection 10 ~~and~~ *and section 1 of this act*, where there is no unappropriated water in the proposed source of supply, or where its proposed use or change conflicts with existing rights or with protectable interests in existing domestic wells as set forth in NRS 533.024, or threatens to prove detrimental to the public interest, the State Engineer shall reject the application and refuse to issue the requested permit. If a previous application for a similar use of water within the same basin has been rejected on those grounds, the new application may be denied without publication.

3. In addition to the criteria set forth in subsections 1 and 2, in determining whether an application for an interbasin transfer of groundwater must be rejected pursuant to this section, the State Engineer shall consider:

(a) Whether the applicant has justified the need to import the water from another basin;

(b) If the State Engineer determines that a plan for conservation of water is advisable for the basin into which the water is to be imported, whether the applicant has demonstrated that such a plan has been adopted and is being effectively carried out;

(c) Whether the proposed action is environmentally sound as it relates to the basin from which the water is exported;

(d) Whether the proposed action is an appropriate long-term use which will not unduly limit the future growth and development in the basin from which the water is exported; and

(e) Any other factor the State Engineer determines to be relevant.

4. Except as otherwise provided in this subsection and subsections 6 and 10 and NRS 533.365, the State Engineer shall approve or reject each application within 2 years after the final date for filing a protest. The State Engineer may postpone action:

(a) Upon written authorization to do so by the applicant.

(b) If an application is protested.

(c) If the purpose for which the application was made is municipal use.

(d) In areas where studies of water supplies have been determined to be necessary by the State Engineer pursuant to NRS 533.368.

(e) Where court actions or adjudications are pending, which may affect the outcome of the application.

1 (f) In areas in which adjudication of vested water rights is deemed necessary  
2 by the State Engineer.

3 (g) On an application for a permit to change a vested water right in a basin  
4 where vested water rights have not been adjudicated.

5 (h) Where authorized entry to any land needed to use the water for which the  
6 application is submitted is required from a governmental agency.

7 (i) On an application for which the State Engineer has required additional  
8 information pursuant to NRS 533.375.

9 5. If the State Engineer does not act upon an application in accordance with  
10 subsections 4 and 6, the application remains active until approved or rejected by the  
11 State Engineer.

12 6. Except as otherwise provided in this subsection and subsection 10, the  
13 State Engineer shall approve or reject, within 6 months after the final date for filing  
14 a protest, an application filed to change the point of diversion of water already  
15 appropriated when the existing and proposed points of diversion are on the same  
16 property for which the water has already been appropriated under the existing water  
17 right or the proposed point of diversion is on real property that is proven to be  
18 owned by the applicant and is contiguous to the place of use of the existing water  
19 right. The State Engineer may postpone action on the application pursuant to  
20 subsection 4.

21 7. If the State Engineer has not approved, rejected or held a hearing on an  
22 application within 7 years after the final date for filing a protest, the State Engineer  
23 shall cause notice of the application to be republished pursuant to NRS 533.360  
24 immediately preceding the time at which the State Engineer is ready to approve or  
25 reject the application. The cost of the republication must be paid by the applicant.  
26 After such republication, a protest may be filed in accordance with NRS 533.365.

27 8. If a hearing is held regarding an application, the decision of the State  
28 Engineer must be in writing and include findings of fact, conclusions of law and a  
29 statement of the underlying facts supporting the findings of fact. The written  
30 decision may take the form of a transcription of an oral ruling. The rejection or  
31 approval of an application must be endorsed on a copy of the original application,  
32 and a record must be made of the endorsement in the records of the State Engineer.  
33 The copy of the application so endorsed must be returned to the applicant. Except  
34 as otherwise provided in subsection 11, if the application is approved, the applicant  
35 may, on receipt thereof, proceed with the construction of the necessary works and  
36 take all steps required to apply the water to beneficial use and to perfect the  
37 proposed appropriation. If the application is rejected, the applicant may take no  
38 steps toward the prosecution of the proposed work or the diversion and use of the  
39 public water while the rejection continues in force.

40 9. If a person is the successor in interest of an owner of a water right or an  
41 owner of real property upon which a domestic well is located and if the former  
42 owner of the water right or real property on which a domestic well is located had  
43 previously filed a written protest against the granting of an application, the  
44 successor in interest must be allowed to pursue that protest in the same manner as if  
45 the successor in interest were the former owner whose interest he or she succeeded.  
46 If the successor in interest wishes to pursue the protest, the successor in interest  
47 must notify the State Engineer in a timely manner on a form provided by the State  
48 Engineer.

49 10. The provisions of subsections 1 to 9, inclusive, do not apply to an  
50 application for an environmental permit or a temporary permit issued pursuant to  
51 NRS 533.436 or 533.504.

52 11. The provisions of subsection 8 do not authorize the recipient of an  
53 approved application to use any state land administered by the Division of State

1 Lands of the State Department of Conservation and Natural Resources without the  
2 appropriate authorization for that use from the State Land Registrar.

3 12. As used in this section, "domestic well" has the meaning ascribed to it in  
4 NRS 534.350.

5 **Sec. 3.** NRS 533.371 is hereby amended to read as follows:

6 533.371 The State Engineer shall reject the application and refuse to issue a  
7 permit to appropriate water for a specified period if the State Engineer determines  
8 that:

- 9 1. The application is incomplete;
- 10 2. The prescribed fees have not been paid;
- 11 3. The proposed use is not temporary;
- 12 4. There is no water available from the proposed source of supply without  
13 exceeding the perennial yield or safe yield of that source;
- 14 5. ~~The~~ *Except as otherwise provided in section 1 of this act, the* proposed  
15 use conflicts with existing rights; or
- 16 6. The proposed use threatens to prove detrimental to the public interest.

17 **Sec. 4.** NRS 533.450 is hereby amended to read as follows:

18 533.450 1. Except as otherwise provided in NRS 533.353, any person  
19 feeling aggrieved by any order or decision of the State Engineer, acting in person or  
20 through the assistants of the State Engineer or the water commissioner, affecting  
21 the person's interests, when the order or decision relates to the administration of  
22 determined rights or is made pursuant to NRS 533.270 to 533.445, inclusive, *and*  
23 *section 1 of this act*, or NRS 533.481, 534.193, 535.200 or 536.200, may have the  
24 same reviewed by a proceeding for that purpose, insofar as may be in the nature of  
25 an appeal, which must be initiated in the proper court of the county in which the  
26 matters affected or a portion thereof are situated, but on stream systems where a  
27 decree of court has been entered, the action must be initiated in the court that  
28 entered the decree. The order or decision of the State Engineer remains in full force  
29 and effect unless proceedings to review the same are commenced in the proper  
30 court within 30 days after the rendition of the order or decision in question and  
31 notice thereof is given to the State Engineer as provided in subsection 3.

32 2. The proceedings in every case must be heard by the court, and must be  
33 informal and summary, but full opportunity to be heard must be had before  
34 judgment is pronounced.

35 3. No such proceedings may be entertained unless notice thereof, containing a  
36 statement of the substance of the order or decision complained of, and of the  
37 manner in which the same injuriously affects the petitioner's interests, has been  
38 served upon the State Engineer, personally or by registered or certified mail, at the  
39 Office of the State Engineer at the State Capital within 30 days following the  
40 rendition of the order or decision in question. A similar notice must also be served  
41 personally or by registered or certified mail upon the person who may have been  
42 affected by the order or decision.

43 4. Where evidence has been filed with, or testimony taken before, the State  
44 Engineer, a transcribed copy thereof, or of any specific part of the same, duly  
45 certified as a true and correct transcript in the manner provided by law, must be  
46 received in evidence with the same effect as if the reporter were present and  
47 testified to the facts so certified. A copy of the transcript must be furnished on  
48 demand, at actual cost, to any person affected by the order or decision, and to all  
49 other persons on payment of a reasonable amount therefor, to be fixed by the State  
50 Engineer.

51 5. An order or decision of the State Engineer must not be stayed unless the  
52 petitioner files a written motion for a stay with the court and serves the motion  
53 personally or by registered or certified mail upon the State Engineer, the applicant

1 or other real party in interest and each party of record within 10 days after the  
2 petitioner files the petition for judicial review. Any party may oppose the motion  
3 and the petitioner may reply to any such opposition. In determining whether to  
4 grant or deny the motion for a stay, the court shall consider:

5 (a) Whether any nonmoving party to the proceeding may incur any harm or  
6 hardship if the stay is granted;

7 (b) Whether the petitioner may incur any irreparable harm if the stay is denied;

8 (c) The likelihood of success of the petitioner on the merits; and

9 (d) Any potential harm to the members of the public if the stay is granted.

10 6. Except as otherwise provided in this subsection, the petitioner must file a  
11 bond in an amount determined by the court, with sureties satisfactory to the court  
12 and conditioned in the manner specified by the court. The bond must be filed within  
13 5 days after the court determines the amount of the bond pursuant to this  
14 subsection. If the petitioner fails to file the bond within that period, the stay is  
15 automatically denied. A bond must not be required for a public agency of this State  
16 or a political subdivision of this State.

17 7. Costs must be paid as in civil cases brought in the district court, except by  
18 the State Engineer or the State.

19 8. The practice in civil cases applies to the informal and summary character of  
20 such proceedings, as provided in this section.

21 9. Appeals may be taken to the appellate court of competent jurisdiction  
22 pursuant to the rules fixed by the Supreme Court pursuant to Section 4 of Article 6  
23 of the Nevada Constitution from the judgment of the district court in the same  
24 manner as in other civil cases.

25 10. The decision of the State Engineer is prima facie correct, and the burden  
26 of proof is upon the party attacking the same.

27 11. Whenever it appears to the State Engineer that any litigation, whether now  
28 pending or hereafter brought, may adversely affect the rights of the public in water,  
29 the State Engineer shall request the Attorney General to appear and protect the  
30 interests of the State.

31 **Sec. 5.** NRS 533.475 is hereby amended to read as follows:

32 533.475 The State Engineer and the assistants of the State Engineer shall have  
33 power to arrest any person violating any of the provisions of NRS 533.005 to  
34 533.470, inclusive, *and section 1 of this act* and to turn that person over to the  
35 sheriff or other competent police officer within the county. Immediately on  
36 delivering any such person so arrested into the custody of the sheriff, the State  
37 Engineer or assistant making such arrest shall immediately, in writing, and upon  
38 oath, make a complaint before the justice of the peace against the person so  
39 arrested.

40 **Sec. 6.** NRS 533.480 is hereby amended to read as follows:

41 533.480 Any person violating any of the provisions of NRS 533.005 to  
42 533.475, inclusive, *and section 1 of this act* shall be guilty of a misdemeanor.

43 **Sec. 7.** NRS 533.515 is hereby amended to read as follows:

44 533.515 1. No permit for the appropriation of water or application to change  
45 the point of diversion, manner of use or place of use under an existing water right  
46 may be denied because of the fact that the point of diversion described in the  
47 application for the permit, or any portion of the works in the application described  
48 and to be constructed for the purpose of storing, conserving, diverting or  
49 distributing the water are situated in any other state; but in all such cases where the  
50 place of intended use, or the lands, or part of the lands identified as the place of use,  
51 are situated within this state, the permit must be issued as in other cases, pursuant to  
52 the provisions of NRS 533.324 to 533.450, inclusive, *and section 1 of this act*, and  
53 chapter 534 of NRS.



2. The permit must not purport to authorize the doing or refraining from any act or thing, in connection with the system of appropriation, not properly within the scope of the jurisdiction of this state and the State Engineer to grant.

**Sec. 8.** NRS 533.520 is hereby amended to read as follows:

533.520 1. Any person who files an application for a permit to appropriate water from above or beneath the surface of the ground for use outside this State, or to change the point of diversion under an existing water right which has a place of use outside of this State, or to change the place of use of water from a location in this State to a location outside this State under an existing right, must file an application with the State Engineer for a permit to do so pursuant to provisions of NRS 533.324 to 533.450, inclusive, *and section 1 of this act*, and chapter 534 of NRS.

2. The State Engineer may approve such an application if the State Engineer determines that the applicant's use of the water outside this State complies with the requirements of NRS 533.324 to 533.450, inclusive, *and section 1 of this act* and those provisions of chapter 534 of NRS pertaining to the appropriation of water. In making the determination, the State Engineer shall consider:

- (a) The supply of water available in this State;
- (b) The current and reasonably anticipated demands for water in this State;
- (c) The current or reasonably anticipated shortages of water in this State;
- (d) Whether the water that is the subject of the application could feasibly be used to alleviate current or reasonably anticipated shortages of water in this State;
- (e) The supply and sources of water available to the applicant in the state in which the applicant intends to use the water;
- (f) The demands placed on the applicant's supply of water in the state in which he or she intends to use the water; and
- (g) Whether the request in the application is reasonable, taking into consideration the factors set forth in paragraphs (a) to (f), inclusive.

3. The State Engineer may, as a condition to the approval of such an application, require the applicant to file a certificate from the appropriate official in the state in which the water is to be used, indicating to the satisfaction of the State Engineer that the intended use of the water would be beneficial and that the appropriation is feasible.

4. A person who is granted a permit pursuant to this section shall comply with the laws and regulations of this State governing the appropriation and use of water, as amended from time to time, and any change in the point of diversion, manner of use or place of use of water under a permit issued pursuant to this section is subject to the requirements of this section.

5. The State Engineer may, as a condition of the approval of any permit granted pursuant to this section, require that the use of water in another state be subject to the same regulations and restrictions that may be imposed upon the use of water in this State.

6. Upon submittal of an application under this section, the applicant and, if the applicant is a natural person, the personal representative of the person, are subject to the jurisdiction of the courts of this State and to service of process as provided in NRS 14.065.

**Sec. 9.** NRS 534.110 is hereby amended to read as follows:

534.110 1. The State Engineer shall administer this chapter and shall prescribe all necessary regulations within the terms of this chapter for its administration.

2. The State Engineer may:

- (a) Require periodical statements of water elevations, water used, and acreage on which water was used from all holders of permits and claimants of vested rights.

1 (b) Upon his or her own initiation, conduct pumping tests to determine if  
2 overpumping is indicated, to determine the specific yield of the aquifers and to  
3 determine permeability characteristics.

4 3. The State Engineer shall determine whether there is unappropriated water  
5 in the area affected and may issue permits only if the determination is affirmative.  
6 The State Engineer may require each applicant to whom a permit is issued for a  
7 well:

8 (a) For municipal, quasi-municipal or industrial use; and

9 (b) Whose reasonably expected rate of diversion is one-half cubic foot per  
10 second or more,

11 ➤ to report periodically to the State Engineer concerning the effect of that well on  
12 other previously existing wells that are located within 2,500 feet of the well.

13 4. It is a condition of each appropriation of groundwater acquired under this  
14 chapter that the right of the appropriator relates to a specific quantity of water and  
15 that the right must allow for a reasonable lowering of the static water level at the  
16 appropriator's point of diversion. In determining a reasonable lowering of the static  
17 water level in a particular area, the State Engineer shall consider the economics of  
18 pumping water for the general type of crops growing and may also consider the  
19 effect of using water on the economy of the area in general.

20 5. This section does not prevent the granting of permits to applicants later in  
21 time on the ground that the diversions under the proposed later appropriations may  
22 cause the water level to be lowered at the point of diversion of a prior appropriator,  
23 so long as any protectable interests in existing domestic wells as set forth in NRS  
24 533.024 and the rights of holders of existing appropriations can be satisfied under  
25 such express conditions ~~or~~ *or a monitoring, management and mitigation plan to*  
26 *avoid any potential conflict is required by the State Engineer pursuant to section*  
27 *1 of this act.* At the time a permit is granted for a well:

28 (a) For municipal, quasi-municipal or industrial use; and

29 (b) Whose reasonably expected rate of diversion is one-half cubic foot per  
30 second or more,

31 ➤ the State Engineer shall include as a condition of the permit that pumping water  
32 pursuant to the permit may be limited or prohibited to prevent any unreasonable  
33 adverse effects on an existing domestic well located within 2,500 feet of the well,  
34 unless the holder of the permit and the owner of the domestic well have agreed to  
35 alternative measures that mitigate those adverse effects.

36 6. Except as otherwise provided in subsection 7, the State Engineer shall  
37 conduct investigations in any basin or portion thereof where it appears that the  
38 average annual replenishment to the groundwater supply may not be adequate for  
39 the needs of all permittees and all vested-right claimants, and if the findings of the  
40 State Engineer so indicate, the State Engineer may order that withdrawals,  
41 including, without limitation, withdrawals from domestic wells, be restricted to  
42 conform to priority rights.

43 7. The State Engineer:

44 (a) May designate as a critical management area any basin in which  
45 withdrawals of groundwater consistently exceed the perennial yield of the basin.

46 (b) Shall designate as a critical management area any basin in which  
47 withdrawals of groundwater consistently exceed the perennial yield of the basin  
48 upon receipt of a petition for such a designation which is signed by a majority of  
49 the holders of certificates or permits to appropriate water in the basin that are on  
50 file in the Office of the State Engineer.

51 ➤ The designation of a basin as a critical management area pursuant to this  
52 subsection may be appealed pursuant to NRS 533.450. If a basin has been  
53 designated as a critical management area for at least 10 consecutive years, the State

1 Engineer shall order that withdrawals, including, without limitation, withdrawals  
2 from domestic wells, be restricted in that basin to conform to priority rights, unless  
3 a groundwater management plan has been approved for the basin pursuant to NRS  
4 534.037.

5 8. In any basin or portion thereof in the State designated by the State  
6 Engineer, the State Engineer may restrict drilling of wells in any portion thereof if  
7 the State Engineer determines that additional wells would cause an undue  
8 interference with existing wells. Any order or decision of the State Engineer so  
9 restricting drilling of such wells may be reviewed by the district court of the county  
10 pursuant to NRS 533.450.

11 **Sec. 10.** This act becomes effective upon passage and approval.