

Amendment No. 377

Assembly Amendment to Assembly Bill No. 396	(BDR 48-763)
<b>Proposed by:</b> Assembly Committee on Natural Resources, Agriculture, and Mining	
<b>Amends:</b> Summary: Yes Title: Yes Preamble: Add Joint Sponsorship: No Digest: Yes	

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) *green bold italic underlining* is new language proposed 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 that is proposed to be retained in this amendment; and (6) *green bold underlining* is newly added transitory language.

JRS/WLK



Date: 4/16/2013

A.B. No. 396—Revises provisions relating to the waters of this State.  
(BDR 48-763)



ASSEMBLY BILL NO. 396—ASSEMBLYMEN BOBZIEN; BENITEZ-THOMPSON, DALY,  
MARTIN, OHRENSCHALL, OSCARSON AND SPRINKLE

MARCH 18, 2013

JOINT SPONSORS: SENATORS SMITH AND JONES

Referred to Committee on Natural Resources,  
Agriculture, and Mining

SUMMARY—Revises provisions relating to the waters of this State.  
(BDR ~~(48-762)~~ 26-763)

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; providing persons with access to certain waters in this State for certain activities that use water; making an appropriation; and providing other matters properly relating thereto.

**Legislative Counsel’s Digest:**

1 The Nevada Supreme Court expressly adopted the public trust doctrine in *Lawrence v.*  
2 *Clark County*, 127 Nev. Adv. Op. 32, 254 P.3d 606 (2011). Under this doctrine, generally, a  
3 state holds the banks and beds of navigable waterways in trust for the public and subject to  
4 restraints on alienability. Under existing law, the water of all sources of water supply within  
5 the boundaries of the State of Nevada is declared to belong to the public. (NRS 533.025) The  
6 use of water for recreational purposes is also recognized under existing law as a beneficial use  
7 of water. (NRS 533.030) In addition, Nevada has a recreational use statute in existing law  
8 which, with certain exceptions, limits the liability of an owner, lessee or occupant of a  
9 premises to persons who enter or use the land for recreational activities, including, without  
10 limitation, fishing and water sports. (NRS 41.510)

11 Subject to certain specified restrictions, this bill authorizes persons to use water that is  
12 navigable or capable of being navigated by oar, paddle or motorized watercraft year round at  
13 or below the ordinary high-water mark for any otherwise lawful activity that uses water,  
14 including boating, fishing, swimming and wading. This bill authorizes the owner of the bed of  
15 such water to place a fence or similar barrier across the water for legally authorized purposes,  
16 but requires the owner in such circumstances to ;(1) authorize the placement of a ladder, gate  
17 or other device that allows portage around or over the fence or barrier; and (2) post a sign at  
18 a certain location along the water indicating the existence of the fence or barrier.

1 WHEREAS, The Nevada Supreme Court has expressly adopted the public  
2 trust doctrine in *Lawrence v. Clark County*, 127 Nev. Adv. Op. 32, 254 P.3d 606  
3 (2011); and

1 WHEREAS, Under the public trust doctrine, generally, a state holds the  
 2 banks and beds of navigable waterways in trust for the public and subject to  
 3 restraints on alienability; and

4 WHEREAS, In addition to other sources of Nevada law that manifest the  
 5 public trust doctrine, the Lawrence Court cited NRS 533.025 as “effectively  
 6 statutorily codify[ing] the principles behind the public trust doctrine in  
 7 Nevada” by recognizing that the water in Nevada belongs to the public not the  
 8 State (Lawrence, 254 P.3d at 613); and

9 WHEREAS, The Lawrence Court also recognized the application of the  
 10 public trust doctrine to recreational resources (Lawrence, 254 P.3d at 616);  
 11 and

12 WHEREAS, NRS 533.030 explicitly recognizes recreation as a beneficial use  
 13 of water; now, therefore,

14  
 15 THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN  
 16 SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

17  
 18 **Section 1.** Chapter ~~533~~ **322** of NRS is hereby amended by adding thereto  
 19 the provisions set forth as sections ~~3~~ **3** to ~~5~~ **5.6**, inclusive, of this act.

20 **Sec. 2.** ~~The Legislature hereby finds and declares:~~

21 ~~1. The Nevada Supreme Court expressly adopted the public trust doctrine in~~  
 22 ~~Lawrence v. Clark County, 127 Nev. Adv. Op. 32, 254 P.3d 606 (2011). Under the~~  
 23 ~~public trust doctrine, generally, a state holds the banks and beds of navigable~~  
 24 ~~waterways in trust for the public and subject to restraints on alienability.~~

25 ~~2. In addition to other sources of Nevada law that manifest the public trust~~  
 26 ~~doctrine, the Lawrence Court cited NRS 533.025 as “effectively statutorily~~  
 27 ~~codify[ing] the principles behind the public trust doctrine in Nevada” by~~  
 28 ~~recognizing that the water in Nevada belongs to the public not the State.~~  
 29 ~~Lawrence, 254 P.3d at 613.~~

30 ~~3. The Lawrence Court also recognized the application of the public trust~~  
 31 ~~doctrine to recreational resources. Lawrence, 254 P.3d at 616.~~

32 ~~4. NRS 533.030 explicitly recognizes recreation as a beneficial use of~~  
 33 ~~water. (Deleted by amendment.)~~

34 **Sec. 3.** ~~As used in [this section and] sections [4 and 5]~~ **3 to 5.6, inclusive, of**  
 35 **this act, unless the context otherwise requires, “public access water”:**

36 **1. Means water described in subsection 1 of NRS 533.025 which is:**

37 **(a) Flowing or collecting on the surface within a natural or realigned**  
 38 **channel or in a natural lake, pond or reservoir on a natural or realigned**  
 39 **channel; and**

40 **(b) Navigable or is capable of being navigated by oar, paddle or a watercraft**  
 41 **propelled by a motor.**

42 **2. Does not include an irrigation ditch, flume or canal located on private**  
 43 **property.**

44 **Sec. 4. 1. Public access water is open to use year round at or below the**  
 45 **ordinary high-water mark for any otherwise lawful activity that uses water,**  
 46 **including, without limitation, boating, fishing, swimming and wading.**

47 **2. A person using public access water is subject to any other restriction**  
 48 **lawfully placed on the use of the water by a governmental entity with authority to**  
 49 **restrict the use of the water.**

50 **3. When leaving a public access water, a person shall remove any refuse or**  
 51 **tangible personal property that the person brought to the public access water.**

52 **4. The provisions of this section do not:**

1 (a) Except as otherwise provided in this paragraph, authorize a person to  
2 enter upon, cross or use private property where the person has been warned by  
3 the owner or occupant of the property not to trespass in the manner prescribed in  
4 NRS 207.200, or where signs are displayed forbidding such entry, crossing or use  
5 without permission obtained from the owner or occupant of the private property  
6 other than at or below the ordinary high-water mark of a public access water. If a  
7 natural or artificial obstruction interferes with the use of a public access water, a  
8 person may, along with his or her vessel, portage around the obstruction ;

9 (1) At or below the ordinary high-water mark of the public access water;

10 (2) Along a trail identified for portage by the owner or occupant of the  
11 private property; or

12 (3) If the owner or occupant has not identified a trail for portage, in a  
13 manner that is reasonably direct and closest to the water to reenter the water  
14 immediately above or below the obstruction at the nearest point where it is safe to  
15 do so.

16 (b) Limit or enlarge any right granted by express easement.

17 5. As used in this section, "vessel" has the meaning ascribed to it in NRS  
18 501.096.

19 Sec. 5. 1. The owner of the bed of a public access water may place a fence  
20 or similar barrier across the public access water for agricultural, livestock or  
21 other purposes authorized by law. Such a fence or barrier must:

22 (a) Comply with any applicable federal, state or local law, ordinance or  
23 regulation; and

24 (b) Be constructed in a manner that does not create an unreasonably  
25 dangerous condition to persons lawfully using the public access water.

26 2. If an owner has placed or places a fence or similar barrier pursuant to  
27 subsection 1, the owner shall ~~authorize~~ ;

28 (a) Authorize the placement of a ladder, gate or other device that allows  
29 portage around or over the fence or barrier ; and

30 (b) Post a sign indicating the existence of the fence or barrier which is  
31 clearly visible from the public access water and is posted at a reasonable distance  
32 below and above the fence or barrier and along the public access water.

33 Sec. 5.2. The State Land Registrar shall:

34 1. Determine the location of each known diversion work, barrier and  
35 portage route located along all public access water in this State; and

36 2. Prepare and periodically revise a map setting forth the location of each  
37 of those diversion works, barriers and portage routes.

38 Sec. 5.4. 1. If the boundary between the bed of a natural lake in this State  
39 and the land that is adjacent to the bed of the lake is established by a specific  
40 statute, the boundary established by that statute shall be deemed to be the  
41 ordinary high-water mark of the lake for the purposes of sections 3 to 5.6,  
42 inclusive, of this act.

43 2. The provisions of sections 3 to 5.6, inclusive, of this act and any  
44 recreational activity authorized pursuant to those provisions do not affect any  
45 right to appropriate water for a beneficial use or the title or ownership of any  
46 water, bed or bank of any navigable or nonnavigable water or portage route in  
47 this State.

48 Sec. 5.6. In addition to any other remedy or penalty, if a person violates a  
49 provision of sections 3 to 5.6, inclusive, of this act, any person aggrieved by the  
50 violation may bring a civil action against the person for:

51 1. Actual damages;

52 2. Reasonable attorney's fees; and

53 3. Any other legal or equitable relief that the court deems appropriate.

1       **Sec. 5.8. NRS 41.510 is hereby amended to read as follows:**

2       41.510 1. Except as otherwise provided in subsection 3, an owner of any  
3 estate or interest in any premises, or a lessee or an occupant of any premises, owes  
4 no duty to keep the premises safe for entry or use by others for participating in any  
5 recreational activity, or to give warning of any hazardous condition, activity or use  
6 of any structure on the premises to persons entering for those purposes.

7       2. Except as otherwise provided in subsection 3, if an owner, lessee or  
8 occupant of premises gives permission to another person to participate in  
9 recreational activities upon those premises:

10       (a) The owner, lessee or occupant does not thereby extend any assurance that  
11 the premises are safe for that purpose or assume responsibility for or incur liability  
12 for any injury to person or property caused by any act of persons to whom the  
13 permission is granted.

14       (b) That person does not thereby acquire any property rights in or rights of  
15 easement to the premises.

16       3. This section does not:

17       (a) Limit the liability which would otherwise exist for:

18       (1) Willful or malicious failure to guard, or to warn against, a dangerous  
19 condition, use, structure or activity.

20       (2) Injury suffered in any case where permission to participate in  
21 recreational activities was granted for a consideration other than the consideration,  
22 if any, paid to the landowner by the State or any subdivision thereof. For the  
23 purposes of this subparagraph, the price paid for a game tag sold pursuant to NRS  
24 502.145 by an owner, lessee or manager of the premises shall not be deemed  
25 consideration given for permission to hunt on the premises.

26       (3) Injury caused by acts of persons to whom permission to participate in  
27 recreational activities was granted, to other persons as to whom the person granting  
28 permission, or the owner, lessee or occupant of the premises, owed a duty to keep  
29 the premises safe or to warn of danger.

30       (b) Create a duty of care or ground of liability for injury to person or property.

31       4. As used in this section, "recreational activity" includes, but is not limited  
32 to:

33       (a) Hunting, fishing or trapping;

34       (b) Camping, hiking or picnicking;

35       (c) Sightseeing or viewing or enjoying archaeological, scenic, natural or  
36 scientific sites;

37       (d) Hang gliding or paragliding;

38       (e) Spelunking;

39       (f) Collecting rocks;

40       (g) Participation in winter sports, including cross-country skiing, snowshoeing  
41 or riding a snowmobile, or water sports;

42       (h) Riding animals, riding in vehicles or riding a road or mountain bicycle;

43       (i) Studying nature;

44       (j) Gleaning;

45       (k) Recreational gardening; ~~land~~

46       (l) Portaging a vessel or any other crossing of private property in accordance  
47 with the provisions of sections 3 to 5.6, inclusive, of this act; and

48       (m) Crossing over to public land or land dedicated for public use.

49       **Sec. 6. ~~NRS 533.025 is hereby amended to read as follows:~~**

50       ~~533.025 1. The water of all sources of water supply within the boundaries of~~  
51 ~~the State whether above or beneath the surface of the ground, belongs to the public.~~

52       ~~2. The right of the public to use public water is governed by sections 2 to 5,~~  
53 ~~inclusive, of this act. (Deleted by amendment.)~~

1        **Sec. 7.** NRS 503.240 is hereby amended to read as follows:

2        503.240 1. ~~It~~ ***Except as otherwise provided in sections ~~27~~ 3 to ~~15~~ 5.6,***  
3 ***inclusive, of this act, it*** is unlawful for any person to hunt, fish in nonnavigable  
4 waters or trap upon land which is private property where the person has been  
5 warned by the owner or occupant of the property not to trespass in the manner  
6 prescribed in NRS 207.200, or where signs are displayed forbidding hunting,  
7 trapping or fishing without permission obtained from the owner or occupant of the  
8 private property.

9        2. Any person using that private property for hunting, fishing or trapping shall  
10 comply with the provisions of NRS 207.220.

11        **Sec. 8.** **NRS 533.025 is hereby amended to read as follows:**

12        533.025 **1.** The water of all sources of water supply within the boundaries of  
13 the State whether above or beneath the surface of the ground, belongs to the public.

14        **2. The right of the public to use public water is governed by sections 3 to**  
15 **5.6, inclusive, of this act.**

16        **Sec. 9. 1. There is hereby appropriated from the State General Fund to**  
17 **the State Land Registrar the sum of \$50,000 for use by the State Land**  
18 **Registrar in carrying out the provisions of section 5.2 of this act.**

19        **2. Any remaining balance of the appropriation made by subsection 1**  
20 **must not be committed for expenditure after June 30, 2015, by the entity to**  
21 **which the appropriation is made or any entity to which money from the**  
22 **appropriation is granted or otherwise transferred in any manner, and any**  
23 **portion of the appropriated money remaining must not be spent for any**  
24 **purpose after September 18, 2015, by either the entity to which the money was**  
25 **appropriated or the entity to which the money was subsequently granted or**  
26 **transferred, and must be reverted to the State General Fund on or before**  
27 **September 18, 2015.**