

Assembly Bill No. 333—Assemblymen Krasner,
Roberts; Ellison, Hardy and O’Neill

CHAPTER.....

AN ACT relating to land use planning; establishing certain requirements for judicial review of certain land use planning decisions of a governing body, commission or board; exempting, under certain circumstances, the retention or detention of developed stormwater flow from provisions related to the appropriation of water; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law prohibits the filing of an action against a governing body, commission or board with respect to any final action, decision or order related to land use planning unless the action is commenced within 25 days after the filing of the notice of a final action, decision or order. (NRS 278.0235) **Section 1** of this bill establishes deadlines for: (1) filing a memorandum of points and authorities; (2) serving and filing a reply memorandum of points and authorities; and (3) requesting a hearing. **Section 1** authorizes the court to extend the deadlines and requires all memoranda of points and authorities to comply with Rule 28 of the Nevada Rules of Appellate Procedure.

Existing law requires that, subject to existing rights, the appropriation of any water in this State is subject to the provisions of chapter 533 of NRS, which, among other things, require any person seeking to appropriate water to obtain a permit to do so. (NRS 533.030, 533.325) **Section 2.5** of this bill provides that in a county whose population is less than 700,000 (currently all counties other than Clark County), the requirements of chapter 533 of NRS do not apply to the retention or detention of developed stormwater flow for the purpose of flood control or stormwater management if: (1) the governing body of the county or city requires such retention or detention as a condition of the approval of a development; and (2) such retention or detention does not impair the predevelopment recharge of the relevant sources of groundwater or the offsite predevelopment flow of the relevant sources of surface water. **Sections 3 and 4** of this bill make conforming changes related to exempting such retention or detention of developed stormwater flow from the general requirements of chapter 533 of NRS.

EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

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

Section 1. NRS 278.0235 is hereby amended to read as follows:

278.0235 **1.** No action or proceeding may be commenced for the purpose of seeking judicial relief or review from or with respect to any final action, decision or order of any governing body, commission or board authorized by NRS 278.010 to 278.630,



inclusive, unless the action or proceeding is commenced within 25 days after the date of filing of notice of the final action, decision or order with the clerk or secretary of the governing body, commission or board.

2. A petitioner or cross-petitioner who is seeking judicial review must serve and file a memorandum of points and authorities within 40 days after an action is commenced.

3. The respondent or cross-petitioners shall serve and file a reply memorandum of points and authorities within 30 days after the service of the memorandum of points and authorities.

4. The petition or cross-petitioner may serve and file a reply memorandum of points and authorities within 30 days after service of the reply memorandum.

5. Within 7 days after the expiration of the time within which the petitioner is required to reply, any party may request a hearing. Unless a request for hearing has been filed, the matter shall be deemed submitted.

6. All memoranda of points and authorities filed in proceedings involving petitions for judicial review must be in the form provided for appellate briefs in Rule 28 of the Nevada Rules of Appellate Procedure.

7. The court, for good cause, may extend the times allowed in this section for filing memoranda.

Sec. 2. (Deleted by amendment.)

Sec. 2.5. Chapter 533 of NRS is hereby amended by adding thereto a new section to read as follows:

1. In a county whose population is less than 700,000, the provisions of this chapter do not apply to the retention or detention of developed stormwater flow for the purpose of flood control or stormwater management if:

(a) The governing body of the county or city requires such retention or detention as a condition of the approval of a development pursuant to NRS 278.010 to 278.630, inclusive; and

(b) Such retention or detention does not impair the predevelopment recharge of the relevant sources of groundwater or the offsite predevelopment flow of the relevant sources of surface water.

2. As used in this section, "developed stormwater flow" means the increase of surface stormwater runoff created by or attributable to the construction of man-made impervious surfaces as part of the development of land.



Sec. 3. NRS 533.030 is hereby amended to read as follows:

533.030 1. Subject to existing rights, and except as otherwise provided in this section and NRS 533.0241 and 533.027  *and section 2.5 of this act*, all water may be appropriated for beneficial use as provided in this chapter and not otherwise.

2. The use of water, from any stream system as provided in this chapter and from underground water as provided in NRS 534.080, for any recreational purpose, or the use of water from the Muddy River or the Virgin River to create any developed shortage supply or intentionally created surplus, is hereby declared to be a beneficial use. As used in this subsection:

(a) “Developed shortage supply” has the meaning ascribed to it in Volume 73 of the Federal Register at page 19884, April 11, 2008, and any subsequent amendment thereto.

(b) “Intentionally created surplus” has the meaning ascribed to it in Volume 73 of the Federal Register at page 19884, April 11, 2008, and any subsequent amendment thereto.

3. Except as otherwise provided in subsection 4, in any county whose population is 700,000 or more:

(a) The board of county commissioners may prohibit or restrict by ordinance the use of water and effluent for recreational purposes in any artificially created lake or stream located within the unincorporated areas of the county.

(b) The governing body of a city may prohibit or restrict by ordinance the use of water and effluent for recreational purposes in any artificially created lake or stream located within the boundaries of the city.

4. In any county whose population is 700,000 or more, the provisions of subsection 1 and of any ordinance adopted pursuant to subsection 3 do not apply to:

(a) Water stored in an artificially created reservoir for use in flood control, in meeting peak water demands or for purposes relating to the treatment of sewage;

(b) Water used in a mining reclamation project; or

(c) A body of water located in a recreational facility that is open to the public and owned or operated by the United States or the State of Nevada.

Sec. 4. NRS 533.325 is hereby amended to read as follows:

533.325 Except as otherwise provided in NRS 533.027 and 534.065  *and section 2.5 of this act*, any person who wishes to appropriate any of the public waters, or to change the place of diversion, manner of use or place of use of water already appropriated, shall, before performing any work in connection with



such appropriation, change in place of diversion or change in manner or place of use, apply to the State Engineer for a permit to do so.

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