MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON GOVERNMENT AFFAIRS

Seventy-Third Session
May 5, 2005

The Committee on Government Affairs was called to order at 8:15 a.m., on Thursday, May 5, 2005. Vice Chairwoman Peggy Pierce presided in Room 3143 of the Legislative Building, Carson City, Nevada. Exhibit A is the Agenda. All exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Mr. David Parks, Chairman
Ms. Peggy Pierce, Vice Chairwoman
Mr. Kelvin Atkinson
Mr. Chad Christensen
Mr. Jerry Claborn
Mr. Pete Goicoechea
Mr. Tom Grady
Mr. Joe Hardy
Mrs. Marilyn Kirkpatrick
Mr. Bob McCleary
Mr. Harvey Munford
Ms. Bonnie Parnell
Mr. Scott Sibley

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

None

STAFF MEMBERS PRESENT:

Eileen O'Grady, Committee Counsel
Michael Stewart, Principal Research Analyst
Susan Scholley, Committee Policy Analyst
Deanna Duncan, Committee Manager

Nancy Haywood, Committee Attaché

OTHERS PRESENT:

Pamela Wilcox, Administrator, Division of State Lands, Department of Conservation and Natural Resources, State of Nevada
Ron James, State Historic Preservation Officer, State Historic Preservation Office, Department of Cultural Affairs, State of Nevada
Bjorn Selinder, Legislative Advocate, representing Churchill County and Eureka County, Nevada
Cheri Edelman, Legislative Advocate, representing the City of Las Vegas, Nevada
Greg Hess, County Commissioner, Storey County, Nevada
Michael "Bert" Bedeau, District Administrator, Comstock Historic District, Department of Cultural Affairs, State of Nevada
Calvin Dillon, Member, Comstock Historical Commission, Virginia City, Nevada
Pat Findley, Private Citizen, Carson City, Nevada
Steve Walker, Legislative Advocate, representing Lyon County, Nevada
Andria Daley, Author and Preservation Consultant, Incline Village, Nevada
Larry Wahrenbrock, Private Citizen, Silver City, Nevada
Mark Blomstrom, Deputy Director, Nevada Department of Information Technology
Riana Durrett, Intern for Senator Michael Schneider
Kimberly McDonald, M.P.A., Special Projects Analyst and Lead Lobbyist, City Manager's Office, Las Vegas, Nevada

Vice Chairwoman Pierce:
[Meeting called to order and roll called.] The first bill that we will hear today is S.B. 81, which makes various changes concerning the protection of historic and prehistoric sites.

Senate Bill 81 (1st Reprint): Makes various changes concerning protection of historic and prehistoric sites. (BDR 33-428)

Michael Stewart, Principal Research Analyst, Legislative Counsel Bureau:
As a member of the Legislative Counsel Bureau research staff, I cannot advocate or defend any measure. I am here today on behalf of Senator Dean Rhoads. I served as the staff person for the Legislative Committee on Public

Lands during the previous interim, and Senator Rhoads chaired that committee. Unfortunately, he sends his regrets; he had to chair a subcommittee on Senate Finance. I am here to briefly go through the rationale of S.B. 81.

[Mr. Stewart read from prepared material, Exhibit B, which is incorporated herein.]

Pamela Wilcox, Administrator, Division of State Lands, Department of Conservation and Natural Resources, State of Nevada:
This bill is going to give the State and its local governments some new options when they are contemplating acceptance of federal land. Because the state's laws to protect cultural resources are much weaker than the federal laws, the federal government is required to have the State do very expensive cultural clearance and mitigation. I have felt that the State should be able to provide the same level of protection to these lands that the federal government can. This will affect all federal transfers of any size. At the present time, in addition to the Humboldt Project, we are also contemplating the transfer of Carson Lake, which we have been working on since 1990. This one issue remains to be resolved and is the largest single remaining issue to be resolved.

Frequently, when federal lands come to the State, the State agency is already essentially managing the lands through some kind of cooperative agreement with the federal agency. Nonetheless, the federal law is quite clear that, unless the State can provide equivalent protection for these resources, the federal agencies must make sure that work is done up front before the transfer. For acreages of any size, these costs can run into the millions of dollars.

This bill gives State agencies who might be able to acquire federal lands a second option. That second option would be to voluntarily step forward and agree to work with the State Historic Preservation Office to ensure that the same level of protection is accorded to those resources.

I would like to read through the bill so that you understand how the bill does that. Section 11, page 2 is the substance of the bill. Upon request by any State agency or political subdivision, the State Historic Preservation Office (SHPO) may enter into an agreement regarding land that the State intends to acquire from the federal government. Continuing in the second subsection, that agreement must include provisions that are sufficient to ensure that the land, when acquired, will receive protection for any historic or prehistoric site at a level equivalent to the protection provided if the land had remained under federal ownership. The rest of the bill is detail on how that will happen.

[Pamela Wilcox, continued.] In Section 12, another piece of this puzzle was to ensure that if a person comes on State land and steals, defaces, or mutilates the resource, then those penalties would also be equivalent. We are also increasing the penalties for those kinds of actions. That is basically what the bill does.

Assemblyman Goicoechea:
How will the policing be done? We are going to incorporate some large expanses of land; would it be those same people who actually have the enforcement?

Pamela Wilcox:
The essence of this is that the agencies agree to undertake this voluntarily. They promise a written agreement to SHPO that will spell out in detail what protections will be afforded, how that will be done, and what they will guarantee. This is optional for both the agency and SHPO. They will have to adopt regulations with details of how this will happen, and those regulations will have to include appropriate protections.

The bill specifies that the agency that requests it is going to have to pay the bill, they are going to be responsible for ensuring that the resource is protected, and they are going to pay whatever it costs. Basically, what the bill provides is that anytime they are going to change their management, change their use, propose to disturb the land, or put up a building, they have to take that proposal to SHPO. They have to pay the expenses of the review, making sure the public, any interested tribal groups, and anyone who has a stake in those cultural resources has a chance to review it. It will then be up to SHPO to determine whether that can go forward—with or without mitigation—to protect the resource.

Assemblyman Goicoechea:
I am referring to Section 12 of the bill. I am talking about State lands. When we know that someone went out and did a dig, how are we going to know who is responsible for actual enforcement when it is in State hands and nothing is being proposed?

Pamela Wilcox:
This is a standard criminal penalty; it would be enforced and implemented like any standard penalty. It also includes, secondarily, the possibility of civil penalties if the damage that is done is substantial enough that the State wants to pursue that in court.

Assemblyman Goicoechea:
By whom?

Pamela Wilcox:
The sheriff could be called to come out and look at what has been done, view the defacement, and consider whether charges should be filed. It would become a criminal offense. To some extent, this already is a criminal offense, but the penalties are so small that it's a slap on the wrist. It has not been adequate to protect the resource and would not be accepted by the federal government. This increases the penalty and makes it more certain.

Assemblyman Goicoechea:
I was looking for someone from State Parks or State Lands.

Pamela Wilcox:
Certainly, the agency that is managing the lands is going to be responsible. Let's say that it's on State Park land, and the park ranger finds that a given site has been vandalized. He will call the sheriff, and the sheriff will come out and will work with State Parks to do an investigation to determine whether there is evidence to file charges against any person. It will become a crime in the same sense that any other criminal activity would be.

Assemblyman Goicoechea:
It would be far more secure in State hands than it presently is held, where 87 percent of it is under the Department of Interior. They don't have the ability either. We are going to incorporate some major expanses of land; I want to make sure we can provide the protection they need.

Assemblywoman Kirkpatrick:
I would like to compare the original bill to where we came to today. Why did you leave out the definition of the "Indian burial site" and "public work" when you made all of your transformations?

Pamela Wilcox:
Neither of those terms is used in the bill. We did reference the existing statutory definition for historic sites and prehistoric sites, and that is in Section 1. We added to that to ensure that prehistoric sites do include sites of religious or cultural importance to an Indian tribe. We did try to make sure that the existing definition fits the new legislation.

Vice Chairwoman Pierce:
What if a State agency or political subdivision comes to you and says that there is this nice site, and they want to put in a McDonald's? Can you do anything

other than express an opinion that it's not a good idea? Can you actually say no?

Pamela Wilcox:
If they want to change the use, this provides that they have to take the proposal to SHPO; that is in Section 11, subsection 3. If they want to change the land use, they have to come in with a proposal to do so. If we are looking at State lands, there are certainly existing protections for that. State land is acquired for specific uses, and only specific uses are contemplated on that. Any lease of State land or disposal of State land for commercial purpose, like McDonald's, would have to go through an extensive review approval process by the Interim Finance Committee. On State land, that kind of thing could not easily happen. Even without this bill, we have an extensive process already in place to protect State land.

Vice Chairwoman Pierce:
If a political subdivision came to you with an idea that you thought was completely inappropriate, is there a way for you to say, "No, you can't do that?"

Pamela Wilcox:
The intent of this is to approximate the protection that would be afforded if it were federal land. For cultural resources, that involves identification of the resource and protection or mitigation of whatever is proposed. It is our intent to give the same protection that the federal government would give.

Ron James, State Historic Preservation Officer, State Historic Preservation Office, Department of Cultural Affairs, State of Nevada:
There are people throughout Nevada who are living, working, and going to McDonald's on land that was formerly federally owned. The idea of transforming public land into a wide variety of private uses is not alien to the federal government. The concept of the southern Nevada land transfer is achieving that. In the process of those land transfers, how are the resources taken care of? They are either mitigated through analysis and excavation, or they are avoided, which is the way 90 percent of federally managed significant sites are treated.

After the State of Nevada or one of its subsidiaries obtained formerly federally managed land, if there was a proposal to develop that land, it would be analyzed with regard to its relationship to the resource. We have always worked very well with the federal agency and with Pamela Wilcox to take a look at options and to try to find options that are the cheapest and that preserve the resource as much as possible. Sometimes that doesn't work, and you end up

having to obliterate an archeological site. This provides the means to mitigate it, so at least the information that was contained within that site becomes a permanent record of the State of Nevada and the artifacts are permanently curated. Everyone wins, but the question is, at what price? This bill simply lays that out; at what price and with what mechanism.

[Ron James, continued.] When this bill first appeared, it was our opinion that it would not succeed in achieving the goal of those who proposed it. We would like to see a bill that is effective. In order to be effective, it has to satisfy federal agencies that the State is able and willing to take on obligations similar to the National Historic Preservation Act of 1966. This is only one optional tool; the players who might want to take on a land transfer can use this tool, or they can look at the tool and say, "No, this isn't worth it; let's not pursue it." The key is to make sure that this language is acceptable from a federal agency point of view.

My deputy went through an extensive process of working with the bill's proponents to make sure that this bill would work from a federal point of view. We proposed it with a different word, and for some reason, in the process of LCB [Legislative Counsel Bureau] staff working on it, that word was changed. In Section 11, paragraph 3, subsection (a) on page 4, where it says "provide to the office a written statement," that word "statement" was originally documentation, and as long as we understand that's the intent of this law and will be expressed in regulation as it's drafted, I think we are all right. There doesn't have to be a significant difference between "statement" and "documentation." We are talking about documentation in this case, and that would be part of the process of mitigating it. That is what the federal agency will be looking for in order to raise their comfort level to the point where they are willing to rely on our state legislation to take the place of the National Historic Preservation Act.

Assemblyman Hardy:
Let's pretend that the federal government, way back when we became a state, didn't give us four parcels but gave us two parcels, and let's pretend that they control 87 percent of the state. What if they woke up one day and said, "We want to give Nevada their rightful land back"? Would this facilitate that?

Ron James:
It would depend on how that was done. Congress can authorize a transfer of the entire 87 percent of Nevada to the State. If Congress were to pass a bill that said, "It's yours without any strings attached; forget all the other laws we have passed," this law supercedes them, and if the President signed it, that would go beyond and around this legislation. We would not enter into

agreements with the agencies that held the land; we would stand by and see it happen.

Assemblyman Parks:
This went through the Senate Committee on Human Resources and Education. Why didn't it go through Natural Resources?

Ron James:
The Senate engaged in a little bit of juggling of some jurisdictions, I think, on where the bills were referred. This bill in past sessions would have gone to the Senate Committee on Government Affairs. The Senate Committee on Human Resources and Facilities actually acquired the chapters in NRS [*Nevada Revised Statutes*] concerning historic preservation and historic monuments.

Assemblyman Parks:
It would appear to me that when we are talking about paying expenses associated with implementing an agreement, perhaps there is a fiscal note. Any thoughts there?

Pamela Wilcox:
We have thought about that, but this is entirely an optional process for an agency, and weighing it against an option that we know is going to be very expensive, this will generally be the least expensive of the options. They are going to have to find a way to do it, but they may be able to do it at little additional expense to what they already have. For example, Carson Lake and pasture, which we are seeking to transfer to the State, would be managed by the Department of Wildlife. It has already been managed by the Department of Wildlife under a three-party interagency agreement for many years. They do not contemplate any changes in their use of the site. For them, entering into this agreement would require some work with SHPO to go over records relating to the existence of cultural resources on the site, as well as some upfront work, which they may be able to do on a staff level. Since they do not contemplate any change in use, they are not going to disturb the land, and they are not going to build, there would be no additional expense to them. Often the expenses that would be involved would be less than the only other option, and things could be absorbed in-house by agencies that are routinely managing the land now.

Assemblyman Parks:
Maybe this is a caution. We might not want to forward this on to Ways and Means.

Bjorn Selinder, Legislative Advocate, representing Churchill County and Eureka County, Nevada:
I think the name of the game here is options, and the fact that it would be possible to have another option for ensuring the protection of lands that may be transferred from the federal government to local or state government is welcome. Therefore, I would urge the Committee to favorably consider S.B. 81.

Cheri Edelman, Legislative Advocate, representing the City of Las Vegas, Nevada:
If we end up coming upon any kind of culturally protected land, we go through SHPO. One of the things we have a concern with is that when we do right-of-way, roadway, or flood control projects, often it causes huge delays in the amount of time and effort that needs to go into those projects. We would request that we have the option to exempt those types of public use projects from this.

We did not oppose the bill on the Senate side, but this is all new language on the Assembly side with the reprint. Section 11, paragraph 2(c) requires that any expenses associated with carrying out the agreement are the responsibility of the State agency or political subdivision. We would say that this is an agreement and that those types of expenses should be negotiated. We would like to leave that flexibility in there. We believe that we would end up paying all the costs, but we don't want the federal government to bill us back for the legal expenses or anything else. They could require anything, and we would have to comply with it. Essentially, it could become an unfriendly mandate.

This is enabling language, but we are afraid that it is close to where it could become mandated. We would request that language be deleted or modified to allow us more flexibility.

Assemblywoman Pierce:
Do you have any proposed draft language?

Cheri Edelman:
No, not at this time. I could do that if you would like.

Assemblyman Goicoechea:
Does this pertain to lands that are State lands? As a political subdivision, if you were going to access it, would you be involved in the process? What would be required in the form of payment?

Cheri Edelman:
Any land that is developable and is not privately owned in southern Nevada is BLM [U.S. Bureau of Land Management] or federal land, and we believe this applies to all of that land. There are often expenses that are incurred—relocating protected plants or relocating any kind of protected cultural artifacts that are in the ground. When we dealt with SHPO on the Tropical Parkway overpass project, it caused us many problems, because they asked us for divorce rates going back 30 or 40 years and how that was going to impact the land. We think there are many things that can be negotiated through that contract. We want to be able to have more control and flexibility, and we think that should be a negotiated agreement, rather than mandating that we pay for everything.

Assemblyman Goicoechea:
Do you agree that those negotiations would be between the political subdivision and the federal agency?

Cheri Edelman:
Absolutely.

Assemblyman Goicoechea:
To me, it is far more flexible than what you would have today, because the federal agency could step up and require that you shall do this—you shall provide the cultural preservation—and you will pay for all of it. That is how it works today. With this ability, you can show that you have come up with a plan that provides protection that the federal agency would be willing to buy into, having far less of an impact than just writing a check.

Assemblyman Hardy:
I am looking at that same area, and I appreciate your concern and the history that you have had trying to build roads. If you had language to the effect of "locally incurred expenses," obviously the federal government has expenses. In reality, if they transfer land to a state, then they no longer have jurisdiction over that, to the point where they have costs incurred on an ongoing basis. They are in a position where they can save money. We don't control the federal government, and I don't know that we can make a law that says we are only going to pay this much of your expense. I don't know if we can hold them responsible for anything, but we can define what we are willing to do. I think the "locally incurred expense" may be a way around that.

Ron James:
In federal highway projects, we don't require anything, and I don't know what the reference to the divorce rates was about. The Federal Highway Administration responds to the National Historic Preservation Act—a federal

law—and implements that law, placing all the requirements with regard to cultural resources in projects that are on federal land or are federally permitted or funded. That is not a SHPO requirement, and we don't require anything. All we do is review the undertaking as the federal government has implemented it.

[Ron James, continued.] The State Historic Preservation Office doesn't require anything on federal projects; it's the federal agency that does. If there were exemptions placed in this bill that said that the federal government can transfer these lands to the state or its subdivisions, and cultural resources will be protected according to an agreement unless they decide to put a road through, the federal agency will run screaming away from this piece of legislation, and it will be completely ineffective. It means that all you have to do to negate the existence of a cultural resource is to put a road through it; say, "We didn't have to mitigate that because it's a road"; and then destroy the resource and move on with your development plan. That would eliminate the efficacy of this proposed piece of legislation. So, don't bother to pass it, as it won't be worth it.

The whole idea of identifying specifically where the funding for any mitigation would occur is important to the federal government, because it wants to know who is going to pony up the dollars. It is not an unfunded mandate by any stretch of the imagination, because you don't have to do this if you don't want to. It's simply a means to obtain federal land for wider purposes and to avoid resources that would have otherwise been mitigated before the transfer. That is a real critical component. If someone is looking at a county or state acquiring 1,000 acres because you want to develop three of the acres, but you need the 1,000 transferred for a management plan, and there are some cultural resources over in the corner that you are never going to touch, then you just promise never to touch them. Then, when you do, you will treat them properly. Without this law, the federal government will require full mitigation of the full 1, 000 acres.

This is a way to avoid that cost, to put it away for the future—a future that may never be realized by development. That's the whole point. Where the costs actually rest is critical, because if it's not clear, the federal government is going to wonder who is going to end up paying for it, and so am I. I will put a fiscal note on this, because it will end up on my agency's shoulders, and we don't want an unfunded mandate. We will put a fiscal note saying that if this is not clearly identified and this bill is implemented, we may end up needing $1 million a year to mitigate sites that are the result of transfers, and then we will end up in Ways and Means and back in Senate Finance. I couldn't be supportive of this bill, because it's not in the Governor's budget.

Vice Chairwoman Pierce:
[Closed the hearing on S.B. 81 and opened the hearing on S.B. 82.]

Senate Bill 82: Revises provisions governing Comstock Historic District Commission. (BDR 33-399)

Ron James, State Historic Preservation Officer, State Historic Preservation Office, Department of Cultural Affairs, State of Nevada:
Senate Bill 82 is a bill proposed by the Governor. This is intended to offer a cleanup of NRS [*Nevada Revised Statutes*] 384, the legislation that governs the Comstock Historic District Commission. The Comstock Historic District Commission is a State agency that provides architectural review for the national landmark that includes Virginia City, Gold Hill, Silver City, Dayton, and Sutro. Sutro and Dayton are small islands separate from the contiguous district that includes the three larger communities of Virginia City, Gold Hill, and Silver City.

After the 72nd Legislative Session, there was a contradiction in NRS identified throughout the entire history of the Comstock Historic District Commission, which was created in various forms beginning in 1969. The agency has complied with the Open Meeting Law, and we, therefore, posted meetings three working days in advance. The contradiction indicated that the notice should have a 10-day advance. We went to the Attorney General's Office with that contradiction, and the Attorney General indicated that although we could rely on the Open Meeting Law, we probably should go to the higher standard.

This causes residents of the district who want to change the paint color of their house, add an addition, or build a new structure on their property to be delayed in the process, because if they miss that 10-day advance but could have made the three-day advance, they then have to wait one month before the next meeting can occur to get approval. We simply want to hold them to the standard that was used throughout the entire history of the Comstock, with the exception of the past year or so, and also the standard that is used by every other architectural review commission in the state. This is the standard that is used by the Las Vegas Architectural Review Commission and the commissions in Reno, Genoa, and Carson City. We just want this commission to be able to function at that level.

The bill also allows for the district administrator of the agency to assume some of the easier reviews. For example, the change in paint colors—which relies on a heritage paint wheel—has always been approved by the district administrator, with that authority transferred from the Commission, because these were small

items and could easily be handled by the district administrator without controversy. This was pragmatic for the residents. It worked, and it was the way they had functioned since 1969, in various forms, depending on the qualities and the ability of the district administrator. The vast majority of the residents want to go back to the way the commission functioned and would really appreciate you changing this legislation. If this legislation were not to pass, then our agency would simply go on, but it's a burden to the residents, and that is what we are mainly concerned about.

[Ron James, continued.] With me I have the Commissioner from Storey County, Greg Hess, and also the district administrator for the agency, Michael "Bert" Bedeau. In the other House, we had the chairman of our commission, who is also a Lyon County Commissioner, present the bill. I believe he sent an email in support of this bill.

Assemblyman Grady:
This covers two counties, Storey and Lyon, and there is a commissioner who represents each of the counties on this board. Is that correct?

Ron James:
Yes. There is a nine-member commission, and two of the members are elected officials. One is from the Lyon County Commission, and one is from the Storey County Commission. The Architectural Review Commission is unique in that it crosses county lines, but that's the nature of the resource, and that is why this legislation was originally crafted the way it was, with both counties involved.

Assemblyman Parks:
I am looking at your booklet (Exhibit C); on page 3, it shows a map of the district. You indicated that Dayton is at the bottom. Is it entirely contiguous?

Ron James:
Dayton and Sutro are separate islands.

Assemblyman Parks:
Are they part of the district?

Ron James:
Yes. They were included in the original legislation.

Greg Hess, County Commissioner, Storey County, Nevada:
One of the things that has changed in the last year and a half on this bill is that it used to be fairly simple to do a change in Virginia City when you are doing a

house. Before, you would go through the process of getting on the board agenda and getting it approved. Then, if you had a change on something halfway through, you were able to go to Bert Bedeau's office, and he was able to give the okay on it as long as it fell within the guidelines and the structure of the Historic Commission. The way it is today, if you make a change, it can take as long as two months before you can get approval to go ahead with that minor, simple change. Now, if you miss that 10-day deadline, there is a very good chance that they may not meet for that next month's meeting because of inclement weather. There is a possibility that you can be delayed for two months over a simple window change.

[Greg Hess, continued.] Most of the people in the county are not in opposition to this bill; we are having a building boom in the area, and it's represented by the Historic Commission. Bert Bedeau is very competent, and there are guidelines that are already set that he has to follow, and it's not going to be underhanded or a burden for him. The County Commission and builders are in support of this bill.

Assemblywoman Parnell:
Regarding the book that you handed out (Exhibit C), is there a tight definition for the term "appropriateness"?

Greg Hess:
They have guidelines for just about everything. One of the things in Virginia City is the steepness of the roofs and windows, and there are guidelines in the book (Exhibit C) of what those should be. If you have a 12 by 12 pitch roof, and all of a sudden you want to go with a lesser pitch on the roof—which is much flatter and more modern—this guideline does not allow you to do that. They have a minimum pitch window height that is contiguous with the early 1800s and 1900s. Everything is in the guidelines; everything that I have ever come before the board with is answered in the book.

Assemblywoman Parnell:
If there is something that is not listed as appropriate, then that would have a more complete hearing or would go through the regular hearing process?

Greg Hess
Yes. Then you do have to wait for your time and go before the board.

Ron James:
This mechanism allows for easy application—the paint color that is on a heritage wheel or the moving of an appropriate window a foot to the right or the left. Those kinds of minor things are to be approved by the District Administrator.

The things that aren't appropriate—or even in the gray zone—would be rejected by the District Administrator based on his preliminary authority and would be passed on to the Commission. The Commission then is often asked to approve things that are regarded as inappropriate, things that could not be conceived of as being part of complying with the Secretary of the Interior's standards for rehabilitation—for example, the national document. That causes the project proponent and the appointed commissioners to enter into a discussion that is either resolved in that meeting or very often resolved over the course of several meetings for larger projects. There is ample time for large projects that are questionable to be discussed and deliberated upon, and those things frequently unfold. The easier projects are treated quickly, because they, in fact, comply.

[Ron James, continued.] Most of the residents within the district live there because they love the history and wouldn't dream of putting a flat roof on a tiled Spanish mission revival structure up there. We had that kind of proposal several years ago from someone moving from southern California who really liked that architecture, but he had to be persuaded to think of things in different terms. That process took a couple of months and was never approved.

Assemblywoman Kirkpatrick:
How often does this book (Exhibit C) change? It really doesn't state in here that we are going to go by these design guidelines. If I was an outsider moving into the area, I would want to know ahead of time, and it doesn't say in here about paint and those types of things. Do you have a building department that you go through where you ask to make changes?

Michael "Bert" Bedeau, District Administrator, Comstock Historic District, Department of Cultural Affairs, State of Nevada:
I am the on-the-ground person who deals with applications for review by the commission. Our process is part of a larger process for approval of projects. We are separate from the county building department, so there is a completely separate process that folks enter into, usually after they have come before the Commission to have their project reviewed by the county building department. The usual process is that an individual talks to me, and I send them a copy of our standards book (Exhibit C). This is the third version of this particular book. It was originally written in 1999, and it was updated in 2001 and 2005.

The standards that this commission goes by are incorporated into the statute itself. It refers to the Secretary of the Interior's standards for rehabilitation, which are a set of standards that have been in place and utilized by the federal government since the 1960s. We also have guidance in the statute itself about what factors are to be taken into account and whether a proposed project is appropriate for the historic district. They are contained in NRS 384.140. It

includes historic and architectural value and significance, architectural style, location on the lot, position of the structure in relation to the street and public way, and a whole range of issues that are laid out in the statute. We also have a definition in the statute that specifically talks about what range of projects we are supposed to review. We review any new construction of a structure or any alteration to an existing structure—to the exterior of that structure only. We do not control interiors of a structure.

[Michael "Bert" Bedeau, continued.] We also have a specific mandate to review signs, fences, paving, and walls. We have a wide range of things that have to come before us. The process, as it stands right now, is that an applicant comes into the office or talks to me, and I provide them with a copy of the design book (Exhibit C). That is the standard from which they ask questions, and we work through the scope of their project. All projects have to be placed on the agenda to be reviewed by our commission.

Our commission is strictly aesthetics. We don't deal with electrical systems, plumbing, structural requirements, or any of the other things that go along with normal building department reviews. We are simply looking at the project to see if it is in keeping with the character of the historic district, as outlined in the book. If you look at the latter sections of the book, you will see that there is a section on appropriate window treatments, appropriate siding materials, appropriate roofing material, pitches, and design. There is a lot of information to guide the applicant through the process.

Typically, what happens is that somebody comes to us, and they will put in an application. They wait for the next available agenda, it will get agendized, and they come to the hearing. In most cases, what is presented is acceptable, or the details are worked out at the meeting, and then the project is approved. They will then come back to me and get a certificate of appropriateness, an actual form that they then take to the building department, and the building department gets them going on their process. In some instances, it takes more than one meeting to work through the details. We will ask somebody to go out, redraw their drawings, and bring them back with the incorporated suggestions. In some cases, the proposal is not, in the opinion of the commission, acceptable under the statute, or the design is not appropriate, and they are rejected. That doesn't happen very often, but it happens on occasion.

Assemblywoman Kirkpatrick:
I think it's easier once you understand the process. For the record, I received 12 emails in support of this bill by 6:30 a.m.

Michael "Bert" Bedeau:
I have outlined the process and procedure by which we operate. It has been my privilege to be the administrator for the Comstock Historic District since 1999. In my time on the hill, there have been many issues that have come up in relation to managing the historic district. The one situation that happens over and over again is the short building season in Virginia City and the amount of other reviews that are necessary. We have a double-review system where the Historic District Commission reviews, and then it has to go through the county review system in either Storey or Lyon County. There is great frustration among property owners, builders, and the general public about the amount of time that it takes to review projects.

Reducing the notification requirement to 3 days is in keeping with the Open Meeting Law. We have to post our agendas, and by the time I get the agendas put together, I am asking people to submit information by the twenty-fifth of a particular month for the following month's meeting, which is on the second Monday. That is a three-week window, and if somebody misses my deadline, they will have to wait until the following month. It is a possible six-week delay, which, in a four- or five-month building season, can be problematic for people. This is a system that I think can be made easier and more accessible through the adoption of the 3-day notification requirement.

The other frustration is the need to wait for approval from the commission for small projects that meet the standards. If somebody wants to paint their house, they pick the appropriate paint colors, the weather is good, they want to begin, and I have to tell them, "You have to wait six weeks," that proves to be frustrating for both of us. I know that this is an appropriate action that should move forward. What this legislation will do is allow the commission to authorize staff to approve certain ranges of projects that they feel comfortable with. In my case, they may feel comfortable with paint colors, signs, and fences that meet the standard. In the case of somebody else, they may broaden or narrow it if there is another person sitting in my chair. This provides the commission the flexibility to be more responsive to the public. I urge you to adopt the bill.

Assemblywoman Parnell:
I think the concern with this entire issue would be the subjectivity. I would ask that you be sensitive to that. We want to retain the historic atmosphere. I don't want individuals coming from southern California being treated as outsiders and having decisions made that wouldn't apply to everyone. I think the equal application and objectivity would be the most important decision that you all make.

Ron James:
I sat on the commission for seventeen years, and there were occasionally split decisions and fierce debates. There were decisions made that I didn't think were appropriate. It is a nine-member commission that one could characterize as largely a citizen commission. These are composed of neighbors and residents who do their best and take that mandate very seriously. One hopes that with nine people on the commission, it evens out the subjectivity. I think it is usually successful. I can't say it's always successful, because that is the nature of things—especially with a citizen commission—but it is always successful in its sincerity. In general, it has improved the look of the landmark district, which would otherwise be in a sad state.

This bill doesn't address that subjectivity. What it does is shorten the amount of time that an applicant can go through the process, which is cumbersome. It gives the easy projects that are easily approved without that subjective gray zone to a qualified architectural historian, such as Bert Bedeau. He would be the first one to shy away from something that entered into that gray zone and needed the subjective review or disapproval of the larger commission.

The issue that you are asking about is always at the forefront of the mind of every commissioner when they sit at one of those meetings, because it is a painful process that requires a great deal of attention, and that level of sincerity is very important.

This bill is being requested by the vast majority of the residents, who want to return to a procedure that worked well for them. There are people who are very upset about the switch that we were forced to undergo. I don't think they blame the agency. They understand that there was a contradiction that was identified and that we had to address that contradiction in the best way possible. This is very personal—the place you live and the color you want to paint, the window you want to add to your house, or how small an addition is. We want to make it as easy as possible on the residents to comply with a very important mandate to protect this landmark. It's a balancing act. We want to go back to the original balance for their sake, not for ours.

Greg Hess:
It doesn't matter if you are from southern California or Reno. I am a fifth-generation Nevadan, and I have been turned down several times.

Calvin Dillon, Member, Comstock Historical Commission, Virginia City, Nevada:
I have noticed that the citizens aren't quite up in arms, but they would like to have a simpler procedure to paint their fences and houses and put on a new roof. They want it a little bit easier, because the weather in the Comstock can

change in five minutes. Six weeks can really make a difference of whether your project gets done in this particular fiscal year or not. I want to put my support in for Bert Bedeau. He is very qualified, and he puts a lot of thought into his decisions. I believe that this would be a win-win situation for the majority of people.

Assemblyman Christensen:
You mentioned that six weeks is a long time for people to wait, especially when it's an ongoing construction project. We are trying to accelerate that pace by implementing this bill. How do we get to the six weeks?

Calvin Dillon:
If your timing is off when putting in your request, it can be six weeks, or it can be a shorter time. If a person wants to do maintenance on their property, they feel that six weeks is a long time if they want this project done during the summer.

Michael "Bert" Bedeau:
The Historic District Commission meets once a month. In order to be able to post our agendas according to our statute, I must have applications in hand three weeks before, so that I can process the agendas, get them posted, and get the mailings done. At the minimum, you are looking at a three-week time frame between making an application for review by our commission and having the commission review your project. If your timing is not good and you come in the day after I have posted the agendas, then you are looking at a potential wait of six weeks, because you can't get on the next month's agenda. You have to wait for the following month, which is another four weeks. We are only the first step. You can't get a building permit in Storey or Lyon County for your project without a certificate of appropriateness from us. You add in our delay plus whatever time it takes to get your project approved through the county building department, and it could take all summer just to get your project approved, let alone start construction.

We are trying to do what we can to shorten that time as much as possible within the realm of what is reasonable. We need sufficient time to provide notice and have things reviewed in a careful and considered way. The state standard has been the Open Meeting Law since it was passed in the 1970s. We feel that standard was adopted by the Legislature after very careful consideration, and we believe that it would be appropriate to have that be the standard for notification for our commission, because we are a State agency and we are operating under that realm.

[Michael "Bert" Bedeau, continued.] We are the only commission that is mandated by state statute. So, rather than going to the city council for getting an ordinance changed, we come to the Legislature. In Reno, Carson City, Genoa, and Las Vegas, they have a three-day notification period, and they follow the state Open Meeting Law. That is what we would like to return to, and that is what we operated under for a long time, assuming that the Open Meeting Law superceded our statute because it was passed afterwards. But it turns out there isn't any clear direction on that. At the direction of the Attorney General, when this conflict was pointed out, they said, "You had better get the statute changed."

On the issue of small-scale projects, this is something that we can do. This statute would allow me to send people on their way for a small change without having to wait for the commission. The small projects frustrate the people, because they have to wait six weeks.

Assemblyman Christensen:
I applaud your efforts on this bill to try to strike that delicate balance, because these are the current jewels of our society, the history that we love, respect, and need to protect.

Pat Findley, Private Citizen, Carson City, Nevada:
I have been a general building contractor for the last 25 years, and in 1968 or 1969, I helped move quite a few buildings from Carson City to Virginia City. Presently, my wife and I own Edith Palmer's Country Inn, which consists of four historic buildings. When we have colors approved and then start putting them on the buildings, we realize that they aren't quite the right color. You then have to wait another month to get the new color approved. The same thing happens with roof repairs. If a roof meets the standards, as a contractor, I should be able to change them. On the side of the building, the window change had been approved, which was 30 by 50, but it didn't fit, so we needed to put in a 30 by 40. We had to stop building on the house and wait another month for approval. I am for this bill. It would help my business, and I don't see any detrimental element in it.

Steve Walker, Legislative Advocate, representing Lyon County, Nevada:
Chairman Bob Mills, Lyon County Commissioner, asked us to put on the record that Lyon County is supportive of this legislation.

Andria Daley, Author and Preservation Consultant, Incline Village, Nevada:
I chaired the commission for seventeen years, and I recommend going back to the old time frame. It's a hardship on the community to have to wait six or seven weeks to get minor changes done. I applaud the commission, and I think

Bert Bedeau is incredibly qualified. He is an architectural historian, an attorney, and has a background in history. He cares for the district appropriately.

Larry Wahrenbrock, Private Citizen, Silver City, Nevada:
I have presented the Committee with some preliminary notes (Exhibit D). I am here to play the devil's advocate regarding this issue. The difference between a statutory 3-day and 10-day notice only leaves seven days, and I don't see how that turns into 3 to 6 weeks. I was the one who pointed out to the district that they were not in compliance and needed to do it, and so the whole issue came to light.

The problem that I have is that the bill does not specify what an easy project or a little project is. The language in the bill says that the commission may turn over to the administrator whatever it chooses to turn over to the administrator regarding the approval of projects. It doesn't limit it. The commission has the authority over projects that may or may not require a county building permit. You don't need a county building permit to build a fence that is less than 6 feet tall, but you do need one from the Historic District Commission, no matter how tall it is. If there were some way of defining the difference between the scope of a project that would be allocated to an administrative process or approved by staff, as opposed to something that would have to go to a hearing as a whole and then in front of the Commission, I think that would be something to look at very closely.

Calvin Dillon, in his testimony, spoke of maintenance, people in the district being frustrated with the Commission, and being upset about the time frames that are involved with getting projects approved. The Commission has not issued a stop-work order in over three years. Everybody talks about how we have to get something approved, but the fact of the matter is, you don't need to get anything approved if nobody is going to come around and bust you for it. The Commission has discretionary authority to issue stop-work orders, but it's not mandatory. If there is violating behavior going on in the district, it takes action by the whole to put a stop-work order on a project. I don't see why we have to manipulate state language that allows for the regulatory authority over my personal property rights that are guaranteed under the *Constitution* to a staff level. In essence, the problem doesn't exist. I am sure that the people on the hill want to see it made easier. It is frustrating, and there are lots of mistakes being made, but I don't see this as solving the problem.

A very important part of the mistakes that are made by the district is the fact that there is a process in the state law that demands the issuing of the certificate of appropriateness. There is no follow-up language that perfects that permit. If you go to the county and get a building permit for a building, you

submit your plans, they are approved, there may be modifications, you begin your construction, there are inspections, and sooner or later, you get a C of O [certificate of occupancy]. This means that you did everything right, and you can now occupy your building. There is no such thing for the historic district in the statutes. All it says is that a resident must ask for a certificate of appropriateness or a permit to build the building. It doesn't say they have to go and demonstrate the fact that they did it according to the plans submitted. There is no piece of paper that I could ask for that demonstrated that my project was properly completed. I think that is a serious failing. I think that is what the Commission should be asking you about as far as changing the language in their legislation, because they have discretionary authority over all the rest of these issues.

[Larry Wahrenbrock, continued.] The booklet that was passed out (Exhibit C), regarding the standards, has not gone through review by the LCB [Legislative Counsel Bureau] according to the *Nevada Administrative Code*, and that concerns me. The constitutional issues of due process and the private property rights—this is not rocket science, and it's done from coast to coast.

The aesthetic decisions that are made are discretionary. There is always room for pros and cons. As Mr. James pointed out, the Commission struggles with those issues—oftentimes extensively, over several meetings, with particular projects. The policies and procedures that you institute that cover your jurisdictional authority are very critical. If it's done properly and goes through LCB review, it's all out on the table, and it makes a difference. It makes a difference for new people coming in as to what is acceptable.

If you look in the book (Exhibit C), it will tell you that a 6 and 12 roof pitch is a minimum, but it doesn't tell you that a 12 and 12 is a maximum. It doesn't tell you that a 6 and 12 is mandatory on a gabled roof but not on a mansard roof. There is a lot of discretionary decision making, and to put that at a staff level is a mistake. At least codifying it in state law, to put that into staff level, is a mistake and should not happen.

The major issues that need amending would be defining what projects could be delegated to staff level, based on some criteria that was coordinated with what required a county building permit and what didn't require a county building permit. The other would be in regard to noticing, along with the timeframe—the 10-day or 3-day issue. They also struck from the language that materially affected property owners need not be individually notified, which is the case now.

[Larry Wahrenbrock, continued.] Over the past couple of years, I have pointed out the fact to the Commission that their statute required that materially affected property owners need to be notified individually by mail. At first, they decided that "materially affected" would constitute property owners within 300 feet of the outside boundary. Then they decided, because of budgetary constraints and their mailing list, that only abutting property owners would be materially affected. Now they want to eliminate that issue altogether. They don't want to have to notify anyone in the district who may or may not be materially affected. I am not sure that is a good idea. I think that lessens the transparency that our government has, and I am concerned about that.

I live immediately adjacent to a project that was approved under the old rules that were approved by the Commission with conditions placed on it. The gentleman got a building permit and didn't follow the changes. The building sits next to me. It's totally inappropriate. It's in violation of all the conditions that the Historic District placed on the project when it was reviewed, but there was no follow-up, so the project sits there, and I have to look at it every day. At the time it was reviewed, it had gone through the mill, but there was no follow-up. I hope you had a chance to read the material that I presented.

Assemblywoman Kirkpatrick:
I understand your concerns, but in Section 6, it does spell out what is considered "appropriateness." It really matches this book (Exhibit C). NRS 384.140, Section 6 says what location on the lot and your architectural style, and keeping in the spirit of this book, I think it's pretty flexible as to where, administratively, it looks easier. Section 6, page 5, lines 4 through 26 address the statutes.

Larry Wahrenbrock:
The concerns I have are not in there, but they concern the practicality of changing the paint colors on your house or putting up a fence. Section 6 addresses the manner in which it's going to address all projects that are brought before them. Those are the issues that are to be considered, and those are the issues that are in the book. Within the book, there are all kinds of options in order to meet that standard.

My concern would be the difference between a project that requires a county building permit and a project that the Commission has authority over, but the county does not have authority over, for instance, paving, landscaping, fencing, painting, and the style of windows. The county doesn't care about that, but the Commission does. There is a distinction there.

Assemblyman Grady:
Did you testify on the Senate side?

Larry Wahrenbrock:
Yes, I did.

Assemblyman Grady:
Did you work for the Historic Commission?

Larry Wahrenbrock:
Yes. Early in the days of the Commission, they had a part-time contract staff position, which I held.

Assemblyman Grady:
Did you leave there on less-than-friendly terms?

Larry Wahrenbrock:
Not in my opinion.

Assemblyman Grady:
You are referring to just what the Historic Preservation Commission does. The builder is also governed under the building codes, and the building inspectors are there. The Historic Preservation Commission is only one part of this process; the licensing and building are other processes that are followed. Is that correct?

There are two steps to this project. One is that the Historic Preservation Commission has to give the certificate. Second, you have to go through the building department for building codes, et cetera. So there are two steps to this project, and the building inspectors do watch the buildings.

Larry Wahrenbrock:
That depends on the nature of the project. The county building inspector has no authority over any of the particular parameters of a project that is specific to the Comstock Historic District.

Assemblyman Grady:
But they do for code?

Larry Wahrenbrock:
They do for code, but the commission has nothing to do with code.

Assemblyman Grady:
As far as the 3-day versus the 10-day noticing, they want to come into compliance with everybody in the state who operates under the Open Meeting Law.

Larry Wahrenbrock:
Everyone except for those agencies that regulate private property—for instance, planning commissions and dealing with land use issues.

Assemblyman Grady:
I think they are under the 3-day Open Meeting Law.

Larry Wahrenbrock:
I would like to answer Assemblyman Grady's question regarding the county and the Historic District. Recently, there was a case where a gentleman purchased a piece of property in the Historic District and went to Lyon County and proposed to put a residential building on the property. He received a permit for a well and a septic tank, submitted the plans for the house, received a permit for the foundation, and completed those projects. He proceeded to bring a manufactured home into the district. Only at that point was the Historic District involved. The county did not notify the district, the county did not know if the property was in or out of the district, and the Historic District Commission told him no. When you look at the overall coordination between a county building inspector and having anything at all to do with the Historic District Commission, it just doesn't happen.

Vice Chairwoman Pierce:
I will close the hearing on S.B. 82 and open the hearing on S.B.130.

Senate Bill 130 (1st Reprint): Repeals prospective expiration of authority of Director of Department of Information Technology to classify certain records of Department as confidential. (BDR 19-608)

Mark Blomstrom, Deputy Director, Nevada Department of Information Technology:
Terry Savage, Director of the Nevada Department of Information Technology, sends his apologies. He is in Washington D. C, with his other state counterparts, briefing congressional leaders on information technology (IT) issues. One of the issues that he is briefing on is information technology security.

[Mark Blomstrom, continued.] Senate Bill 130 makes permanent the ability of the Director to declare certain records confidential. We are required under the current statute to provide an annual report to the Director of the Legislative Counsel Bureau, Mr. Lorne Malkiewich, which we do every February. This report identifies, at a very high level, those items which have been declared confidential in terms of data. Generally, these items are the IT vulnerability assessments and the list of secure passwords that are necessary to maintain should we lose somebody, such as the system administrator. These are specifications—actually, reaction steps for use in terms of a cyber attack—that we would take with regard to specific applications or programs and systems. Procedures are identified and openly available, but under the procedures, the steps are identified specific to any program we would like to maintain a level of confidentiality with, in regard to that information.

Without the ability to do this sort of classification, ultimately this type of information would be available upon demand, and we would sacrifice a large degree of IT security.

Vice Chairwoman Pierce:
Ms. [Susan] Scholley just passed out A.B. 441, and that contains the statute upon which the expiration date would be eliminated.

I will close the hearing on S.B. 130 and will open the hearing on S.B. 323.

Senate Bill 323 (1st Reprint): Enacts various provisions relating to high-rise residential common-interest communities. (BDR 22-778)

Riana Durrett, Intern for Senator Michael Schneider:
I am here on behalf of Senator Michael Schneider to ask that S.B. 323 be postponed until Tuesday, May 10.

Vice Chairwoman Pierce:
We can do that, but we have some people who are here to testify, so we are going to hear their testimony.

Assemblyman Parks:
We were only going to consider Sections 1 and 2 of the bill, and then send it to Judiciary. Judiciary is also having hearings on May 10, and we don't want to interrupt their testimony. We will have to talk to that committee and find out how best not to interfere with what they need to achieve. I would suggest that

we take any input that anyone has and put their comments into the record on Sections 1 and 2.

Cheri Edelman, Legislative Advocate, representing the City of Las Vegas, Nevada:
We are in opposition to the bill as it's proposed. We have been working with Senator Schneider, and we will be in attendance at that meeting on Monday. We believe that we will be able to work out an amendment that all parties will be able to agree upon. I can withhold my testimony until later, if that is acceptable.

Kimberly McDonald, M.P.A., Special Projects Analyst and Lead Lobbyist, City Manager's Office, City of North Las Vegas, Nevada:
We are in support of the bill and are open to whatever amendments the City of Las Vegas will be proposing. We will certainly be at that meeting.

Vice Chairwoman Pierce:
Are you working on Section 1 or 2, or both?

Kimberly McDonald:
I am not aware of the amendments or concern that another entity may have regarding the bill. As it stands, we support the bill as written.

Vice Chairwoman Pierce:
Ms. Edelman, could you tell us which section you are looking for an amendment on?

Cheri Edelman:
It is Section 1.

Vice Chairwoman Pierce:
We have a letter from Robert Maddox and Associates (Exhibit E). This does not apply to the portions of the bill that we are looking at. This would be a letter for Judiciary.

We will work with the sponsor to set a date for the hearing. I will close the hearing on S.B. 343. [The meeting was adjourned at 10:00 a.m.]

RESPECTFULLY SUBMITTED:

Nancy Haywood
Recording Attaché

RESPECTFULLY SUBMITTED:

Linda Ronnow
Transcribing Attaché

APPROVED BY:

Assemblyman David Parks, Chairman

DATE:

EXHIBITS

Committee Name: Committee on Government Affairs

Date: May 5, 2005 **Time of Meeting: 8:00 a.m.**

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
S.B. 81	B	Michael Stewart / Principal Research Analyst, Legislative Counsel Bureau	Background Information and History of LCB on Public Lands (2 pages)
S.B. 82	C	Michael Bedeau / Comstock Historic District	Comstock Historic District Construction Standards (52 pages)
S.B. 82	D	Larry Wahrenbrock / Private Citizen	Testimony, Comstock Historic District Commission (6 pages)
S.B. 323	E	Robert Maddox / Maddox and Associates	Letter (1 page)