

**MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON GOVERNMENT AFFAIRS**

**Seventy-Fourth Session
March 14, 2007**

The Committee on Government Affairs was called to order by Chair Marilyn K. Kirkpatrick at 9:01 a.m., on Wednesday, March 14, 2007, in Room 3143 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/74th/committees/. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblywoman Marilyn Kirkpatrick, Chair
Assemblywoman Peggy Pierce, Vice Chair
Assemblyman Kelvin Atkinson
Assemblyman Bob Beers
Assemblyman David Bobzien
Assemblyman Chad Christensen
Assemblyman Jerry D. Claborn
Assemblyman Pete Goicoechea
Assemblyman Ruben Kihuen
Assemblyman Harvey J. Munford
Assemblywoman Bonnie Parnell
Assemblyman James Settlemeyer
Assemblyman Lynn D. Stewart
Assemblywoman RoseMary Womack

GUEST LEGISLATORS PRESENT:

Assemblyman Edwin Goedhart, Assembly District No. 36



STAFF MEMBERS PRESENT:

Amber Joiner, Committee Policy Analyst
Scott McKenna, Committee Counsel
Rachelle Myrick, Committee Secretary

OTHERS PRESENT:

Neena Laxalt, Representing League of Cities
Nicolas Anthony, Legislative Relations Program Manager, Office of the
City Manager, City of Reno
Irene Porter, Executive Director, Southern Nevada Home Builders
Association
David Howard, National Association of Industrial and Office Properties,
Northern Nevada Chapter
Laura Billman, Nevada Elect, Representing Nye County
Madelyn Shipman, Attorney at Law, Representing Southern Nevada Home
Builders Association
Michael Phillips, Government Affairs Advocate, Kummer and Kaempfer
Attorneys at Law, Representing Focus Property Group
Gary Milliken, GEM Consulting, Representing Focus Property Group
Jay Parmer, American Strategies, Inc., Representing Focus Property
Group
Kimberly McDonald, State Legislative Affairs Office, City Manager's
Office, City of North Las Vegas
Ted Olivas, Representing the City of Las Vegas
Richard Daly, Business Manager, Laborers Union Local 169

Chair Kirkpatrick:

[Meeting called to order at 9:01 a.m.] [Roll called.]

I would like to start with Assembly Bill 138.

Assembly Bill 138: Expands purposes for which certain impact fees may be
used. (BDR 22-477)

Neena Laxalt, Representing the League of Cities:

Assembly Bill 138 is requested by the League of Cities and the intent is to define fire and police station projects. The City of Reno was the city member that came to the League of Cities for this request.

Nicolas Anthony, Legislative Relations Program Manager, Office of the City Manager, City of Reno:

I am pleased to bring before you A.B. 138 relating to impact fees for police and fire station projects. Police and fire station project impact fees are allowed under the law. It is enabling legislation. The local governments can enact an ordinance to impose those impact fees.

What we are seeking to do is expand that definition of police or fire station project to include administrative uses, as well. Over the past many years the focus on public safety has changed. As our communities have grown we have spread out from a central base out into the expanding reaches of the city limits. With that has come an added need in those expanding areas. The need is not only for police officers and firemen, but for administrative uses, as well.

Right now you can build a police or fire station project, the four walls of the building, but you cannot include administrative uses such as community service, code enforcement, fire suppression, or fire prevention. These are new services that have evolved in Public Safety. We would like to put these services out in the community.

It would enable the citizens to go to a police station and file a report in their community as opposed to traveling downtown to a central police station. On the fire services side, it would allow code enforcement officers to be present to review building plans and fire plans and check those off without the developer or the applicant having to travel to downtown Reno.

We have been working with the builders in the north and south on this issue. We are trying to come up with some consensus language. I do not have that language for you today. What we want to do is remove all of the appurtenances and incidentals necessary for a facility or a portion of a facility in subparagraph b on page 2, and also under section 2.

We would also specifically define fire suppression, which is related to the fighting of wildland fires and to brush removal, and fire prevention, which is code enforcement and plan review.

Chair Kirkpatrick:

Does anyone have any questions?

Assemblyman Settlemeyer:

One of my constituents questioned the concept that impact fees need to be for things that are essential to an area. How would you describe how administrative things are essential? Can we do something in the bill to make sure we are addressing the essential needs and to specify that is what impact fees are truly for?

Nicolas Anthony:

Under a litany of Supreme Court case decisions that have come down, there has to be a nexus based on that new development. We could narrowly tailor that so administrative uses are specifically for that area. We are not talking about hiring personnel or things you cannot do.

Chair Kirkpatrick:

Does anyone have any questions? [There were none.]

Those in favor of A.B. 138, please come forward. [There were none.]

Those against A.B. 138, please come forward.

Irene Porter, Executive Director, Southern Nevada Home Builders Association:

I rise in opposition to this bill as currently written. We had a conversation with Mr. Anthony. He and I agreed that he would be bringing forth amendments, which we have not yet seen. We would like to have the opportunity to review those amendments with him to see if there can be some resolution to the issue.

The bill, as written, poses some problems for us. The first problem would be the greatly increased cost in that impact fee. When you add additional facilities, and additional services to the facility being built, you are going to raise the impact fee more than it would be if building a police substation or a fire substation.

What they are doing would decentralize their fire and police facility. There is always a centralized administrative function for police and fire. This would be decentralizing that.

Over a period of time, the homeowners of the future would be paying for the replacement of those centralized facilities by putting in the police and fire substations. This would add significantly to the cost. This is why we were trying to narrow what the cost would be and determine if we could come to some conclusions. If the Committee would like us to have some additional discussions to see if we can come to a solution, we can try.

David Howard, National Association of Industrial and Office Properties, Northern Nevada Chapter:

We would like to join our homebuilders in opposition to this bill on the basis of increased cost. We have been advised in Washoe County that we are facing a 200 to 300 percent increase in impact fees for regional transportation matters. This would only add to that expense. You are looking at shutting down economic development in terms of industrial and office properties in northern Nevada and the State.

Until we see the amendments, we stand in opposition to this bill.

Chair Kirkpatrick:

Does anyone have any questions?

Assemblyman Bobzien:

We want to make sure we get the definition correct so the nexus concept is maintained. I am really concerned there might be blatant misuse and departure from the nexus that would be allowed into this bill versus the possibility that the city is trying to proactively deliver services in a more effective way and, therefore, they are trying to retool this legislation. We want to know where your negotiations are going and which side of that you are going to fall on.

I can see some decentralization being warranted to effectively provide the services. I can see that being a concern because that is fairly broad. Can you comment about how much room there is to move on this? I could see some retooling and collocation of some of these services versus needing to tighten this up a bit.

Irene Porter:

We have had one meeting and started talking about what administrative services meant and what they entailed. The City of Reno told us they would get back to us with a more defined list.

I agree that police and fire services are changing. We have been approached by one of the major cities in southern Nevada to participate in a committee to look at the question of building fire stations and as part of how the fire service is changing.

I have spent a lot of time traveling and have been to Europe many times. They handle fire services considerably different. Their development is much denser and they have many structures that are thousands of years old. They have a lot of fire issues. They do not have to build fire stations that have sleeping, cooking, and recreational facilities because their personnel are on 12-hour shifts.

One of the cities in contact with us is looking at a complete change. It could be a total change in what kind of impact fee had to be paid. It may be a lot less in the future. Perhaps the City of Reno might want to look at what other cities are starting to look at in fire service.

Until the City of Reno gets back to us with some kind of list, I cannot truly answer your question, Assemblyman Bobzien. We would be happy to come back to discuss it further.

Chair Kirkpatrick:

Do you have anything to add to that, Mr. Howard?

David Howard:

I agree with Irene on those principles. One concern about impact fees is where they are spent. That is something that needs to be addressed. We have citizens in the community who are more than willing to pay for something that serves them directly.

The service area issue concerns me as much as anything else. There is no question that the impact fees are going to go up. We have already been told they are going to go up and we are going to have to address that. How they are charged and where they are charged is a much bigger issue.

Assemblywoman Pierce:

How much are impact fees?

Irene Porter:

There is no fire impact fee in place in the State at the current time. There are exactions that are going on. An impact fee is a substitute for an exaction. Under the exaction process, development agreements are ranging from \$500 to \$1,000 per house, and perhaps a lot more. Under some development agreements, the builders have to build the entire fire facility. In the newest master planned facility in the city of Las Vegas the developers have to build an entire fire facility, provide equipment, and build the shell of a police substation next to it. When you spread that out across the project for a number of years, in that rational nexus, that could be significantly more than \$1,000 per house.

There is a city that has proposed an impact fee for fire that is currently being considered, in fact it is going to their planning commission tonight, and it is \$683 per house.

Chair Kirkpatrick:

We would like to hear about any progress that you make. More local governments should be a part of the discussion so there are no surprises. We will allow you to work together.

I suggested to Mr. Anthony that incidentals always make me nervous, because what does that mean? The term incidentals has to be a little more defined. If we are talking about bricks and mortar, that is one thing, but if we are talking about office chairs and things like that, I have a big concern with it. The person moving into the house is the one paying for it. We discussed, during the interim session, affordable housing. There were a lot of fees that came about and this would be something else.

Are there any questions?

Assemblyman Bobzien:

I see the City of Reno being very proactive in their code enforcement. When I go to neighborhood advisory meetings the most popular agenda item is when the code enforcement guy gets up and shows all of the before and after pictures. As we are trying to match the services to the growth, the ability to collocate something like code enforcement with police, there is a nexus there; and we should strive for some more flexibility to allow for the effective delivery of services, and at the same time, make sure that we do not lose the nexus.

Chair Kirkpatrick:

Are there any more questions? [There were none.]

Is there anyone else who would like to speak in opposition to A.B. 138? [There were none.]

Is there anyone who would like to speak as neutral on A.B. 138? [There were none.]

We will close the hearing on A.B. 138.

The next bill is Assembly Bill 253.

Assembly Bill 253: Revises provisions relating to the imposition of impact fees.
(BDR 22-854)

Assemblyman Edwin Goedhart, Assembly District No. 36:

The way we made the change to A.B. 253 was to include the ability for the impact fees to not only pay for the cost of the structure, whether it is a fire station or a police station, but we also included in that definition of a capital

expenditure a line or facility used to provide water or sewer service for that facility.

In rural areas it is not always a given when you build a building that you will have water and sewer at the front of your property, so this bill will also allow the use of some of that impact fee money to hook up to that line.

There is an amendment that has been proposed by the home builders. I will turn it over to one of the consultants and lobbyists for Nye County.

Laura Billman, Nevada Elect, Representing Nye County:

Nye County did implement the impact fees under *Nevada Revised Statutes* (NRS) 278B and got a lawyer to help them do this. Assembly Bill 253 specified we could construct buildings, but it did not specifically state we could pay for our water and sewer hookups. The attorney said it would be best if we got a clarification from the State regarding this. Impact fees are used in the area of development. It is unlikely that we would have to expand the sewer and water system a mile if it is done right in the district that the impact fees affect.

Irene Porter, Executive Director, Southern Nevada Home Builders Association:

I come before you in support of A.B. 253. Over the past year, we have worked with Nye County throughout the process of developing their impact fees and developing their ordinances. There have been several cases where clarification has been needed. We have been able to work them out. We do understand what their need is. It was always envisioned that you would be able to pay for your connection fees and the hookup of your water and sewer to the facility.

We have worked consistently with Nye County. We worked with them in development of their service areas for their impact fees. One of the things that we are finding is there seems to be some confusion as to what a service area is. Is the service area the area that is supposed to be served and that has that rational nexus? Some of the local governments are starting to take the position that service areas are an entire city.

I was closely involved in the original impact fee law in 1989 when this Committee was chaired by Assemblyman Danny Thompson. Prior to that there was an interim study on infrastructure financing. The findings of that interim study were to bring forth an impact fee bill. It was actually the home building community that proposed the impact fee law. The impact fees are a substitution for exactions.

We feel that it makes more sense to have the impact fee evenly spread across all new development than to apply it when improvements are built to serve a

service area. You would not want to have fees at the north end of your city being collected to build a facility at the south end of your city. The people who are subject to that fee do not get the benefit of it. They have to be able to get the benefit. That is why you break it into two or more service areas so there is the benefit of that rational nexus.

The City of Reno has three service areas for their roads impact fees. They agreed to allow us to put an amendment ([Exhibit C](#)) into their bill more tightly defining what a service area is.

The amendment language would define service area. Service area means a specified area, or several areas, within the boundaries of a local government in which new development necessitates capital improvement for facility expansions and that new development is directly served and benefits by the capital improvement or facilities expansion as set forth in the capital improvements plan. A service area must not be the entirety of a city or county.

I reviewed the 1989 minutes and several other sets of minutes of hearings before the Assembly Government Affairs and Senate Government Affairs Committees, from the 1989, 1995, and 2001 sessions. We have consistently found within those minutes the intent of the impact fee law and the definition of the service area. We more clearly defined it in this service area amendment.

It was very interesting going back through the minutes because there are statements about the fairness of having the impact fee directly related to the people who are paying the bill, the homeowners. The homeowner is really the one we are speaking for. Homeowners are the ones who will benefit the most from having the impact fee.

We submit this amendment for the consideration of the Committee.

Chair Kirkpatrick:

Does anyone have any questions?

Assemblyman Goicoechea:

I am concerned about language in the statute that says a service area must not be the entirety of a city or county. In some of these smaller communities, I am assuming the impact fees are on par with the more developed areas. This is based on the assumption of buildout in the future. This would not cover the costs of the rural jurisdictions because of the need for more supporting infrastructure. If the buildout does not occur, the impact fees have not been enough to cover the actual costs.

Irene Porter:

Madam Chair, would it be permissible to ask one of our attorneys to come up and help answer that question?

Chair Kirkpatrick:

Yes, it would.

Madelyn Shipman, Attorney at Law, Representing the Southern Nevada Home Builders Association:

That goes to administrative services or centralized services that if you have a need on a countywide or citywide basis for a facility, then the cost should be borne by everyone because everyone is benefiting.

The discussion back then of having service areas was to assure that the benefit is felt by the new development being done. It may be possible in a small town that impact fees are not appropriate.

Impact fees are not a perennial answer to infrastructure either. They are only for new development. Entities, cities, and counties are going to have to find other ways to deal with older neighborhoods, to deal with places where new development is not occurring.

Assemblyman Goicoechea:

In a small community, growth is what requires new service lines for that community because it has outgrown the line that was there originally. Do we apply the impact fees to offset that? I think that is the real issue we see in some of these smaller rural communities.

Madelyn Shipman:

When you are dealing with water or sewer issues you have other laws that allow for the reimbursement and proportionate payment of growth. Even if impact fees were appropriate for that growth, there is still a cost that should be absorbed by the existing community. At least eight inches of that line, or ten inches, is not a new development-required cost or benefit.

Assemblyman Goicoechea:

As I look at A.B. 253, the new language talks about including expansion to allow a facility to provide water and sewer.

Madelyn Shipman:

Correct.

My understanding from the Nye County representatives is that what they really had was a conflict between two attorneys, the one who developed their impact fee law and the other one being their County District Attorney. In an opinion, one thought the connection to water and sewer was part of the cost of the facility, and the other said he was not sure. They wanted to clarify that language. They are not intending to build a line a mile down the road to hook up to a facility.

Laura Billman:

Nye County is trying to clarify that the construction of the building would absolutely include a toilet. Because impact fees are supposed to be used in the area that is being developed, the water and sewer lines themselves should already be there because state law says they have to be in order to have homes there.

Assemblyman Goicoechea:

I am still saying that at the point you put that in the language, the bottom line is how do you bring the toilet to the facility if it requires a mile of sewer line or a mile of water line?

Irene Porter:

There are many ways you can take care of building that line. The most common one we have used in southern Nevada is the developer builds the line, it requires oversizing, and then there is a refunding agreement done for either water or sewer. As people connect to it, the developer is refunded for the excess amount of that line.

Within the impact fee law there is a way to build water facilities. You can have two service areas when you sit down and work it out. Here is your area where you are getting new growth and these water lines are going to that. That becomes one service area. The rest of the community becomes the second service area. There is a way with all of these amendments to make that work. Even for a small community, there is an option of building water facilities either with impact fee law or with a refunding agreement.

Chair Kirkpatrick:

Does anyone else have a question?

Assemblyman Beers:

We have not heard Assemblyman Goedhart's opinion of the amendment.

Assemblyman Goedhart:

We have talked with the home builders on that amendment and we are fine with that language.

Chair Kirkpatrick:

We have had this in statute for a long time and Nye County is the only one that has attorneys who cannot agree to disagree?

Laura Billman:

That is correct. We had two attorneys who could not agree.

Chair Kirkpatrick:

Who is going to design those service areas? Are they done by local ordinance?

One thing I am going to keep on top of this Session is that local ordinance has not been adopted in a timely fashion.

How long do you think an ordinance would take?

Irene Porter:

Development of impact fees is typically done as part of the ordinance process. It takes a considerable length of time to put the impact fee document together and most local governments have used outside consultants to work with them and try to develop it.

We have found that organizations that are interested, like mine, sit down and work with the local governments. We look at the service areas, we look at what the impact fee is going to be, how it is put together. There has to be a capital improvement program that is done for the impact fee as well. It is all developed as a part of that ordinance.

Some consultants have a better understanding of impact fee law. Some consulting firms get confused between the development tax and the impact fee. The whole ordinance process could take anywhere from six months to a year to be completed.

Chair Kirkpatrick:

Does anyone else have any questions? [There were none.]

Would anyone like to come up to speak in favor of A.B. 253?

Michael Phillips, Government Affairs Advocate, Kummer and Kaempfer Attorneys at Law, Representing Focus Property Group:

Focus supports A.B. 253 with the clarification that the intent of the new language is not to increase impact fees at the local level.

Gary Milliken, GEM Consulting, Representing the Las Vegas Chapter of the Associated General Contractors:

We are in favor of A.B. 253 with the amendment provided by the Southern Nevada Home Builders.

Jay Parmer, American Strategies, Inc., Representing the Builders Association of Northern Nevada:

We are here in support of A.B. 253 with the proposed amendment offered by Southern Nevada Home Builders.

Chair Kirkpatrick:

Are there any questions? [There were none.]

Is there anyone else who would like to speak in favor of A.B. 253?

Neena Laxalt, Representing the League of Cities:

I am representing the League of Cities.

The League of Cities has no opposition to A.B. 253; however, the amendment proposed by the home builders is brand new to us. I want to clarify to Mr. Goicoechea that the discussion that was currently taking place is focused on the water and sewer, but the definition being changed actually applies to the entire impact fee statute. It expands when you are talking about service areas not being the entirety of the county or the city. Not only does that impact the water and sewage, but it impacts everything we just talked about. We will hold off on our detailed response to the amendment until we can talk about it within our ranks.

Kimberly McDonald, State Legislative Affairs Officer, City Manager's Office, City of North Las Vegas:

I would like to go on record as voicing a concern about the proposed amendment by the Southern Nevada Home Builders for A.B. 253. The city of North Las Vegas is considering a fire impact program. Our planning commission is considering it this evening. It would have an effect citywide. We would like to leave the door open for further discussion.

Ms. Porter and our organization have been discussing this very project for several months. It would have an impact on what we are trying to do. The fire

impact program would affect our ability to maintain our current level of services and also to provide future fire stations, equipment, and so forth, as our city grows. We would like to leave this discussion open.

Ted Olivas, Representing the City of Las Vegas:

I agree with the comments made by Ms. Laxalt and Ms. McDonald.

Chair Kirkpatrick:

Does anyone have any questions? [There were none.]

Is there anyone else who would like to speak in favor of this bill? [There were none.]

Is there anyone who is neutral on this bill? [There were none.]

Is there anyone who is opposing A.B. 253?

Richard Daly, Business Manager, Laborers Union Local 169:

My opposition to the bill, rather than saying I was neutral, is not that I am against impact fees; I want to try to understand them better.

They want to start building police stations, and fire stations, or other types of public works and then they are not public works projects, but are privately financed, not subject to any other public works rules. Those were some of my concerns.

We may need another interim study to take a look at where this has evolved and where the loopholes are.

I want to refer to the legislative minutes from 1989. Chair Thompson stated that A.B. No. 372 of the 65th Legislative Session is a substantial piece of legislation and he wanted to make sure all of the holes were plugged in order to prevent anyone from playing games with the bill. It has evolved into that.

There is a connector road from Sparks Boulevard to Pyramid Highway, extending Disc Drive. That was paid for by impact fees. Public financing or private financing, I do not know which, has evolved into a private financing mechanism. That was not the intention. Impact fees were meant to be supplemental public financing for capital improvement projects, which are public jobs. I was told the road was built by a private contractor, there was no public bidding, and there was no prevailing wage.

The other concern I have, I was talking to a developer friend of mine who said that it was perfectly okay because impact fees are intermingled with

concurrency. In other words, if you are going to do this development, you have to have a level of service and the roads are built to concur with your development and the impact. The developer says you cannot hold me back from building that, or wait for me to build that because you are not going to collect any impact fees to build that, and you are not going to let me build my development until those roads are built. There is a need for impact fees.

You can get the road built, and then develop, and then collect the impact fees. The way I read the legislative history, the impact fees were meant to create a revenue stream to issue bonds so that infrastructure could be built. Now they want to expand infrastructure. They give credits to the developers. You built the road, we will give you a credit coupon booklet and then as you build the new development, you give us back the coupons and you do not have to pay the money.

What came from a supplemental public financing mechanism has gone on to become totally private and I do not think that was the intention, which is not what I got out of the history. I would hope before we start expanding some of this that we all understand this better. The impact fees were created to spread the cost.

We need to take another look at impact fees before we move forward to expand what they can be used for. After 18 years some of the holes have come unplugged.

Chair Kirkpatrick:

Does anyone have any questions? [There were none.]

Is there anyone else who would like to speak for, against, or neutral? [There were none.]

We will close the public hearing on A.B. 253.

Is there any public comment? [There was none.]

Is there anything from the Committee?

Assemblyman Claborn:

These impact fees look to me like just another tax. If a developer pays this he is going to pass the cost on to the homeowner. It is actually a tax in disguise. The homeowners pay the taxes. Where did we get away from floating bonds

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like we used to do to build schools, and city and county projects? Have we all forgotten that we still have a bonding process?

Chair Kirkpatrick?

Are there any more comments from the Committee? [There were none.]

[Meeting adjourned at 9:53 a.m.]

RESPECTFULLY SUBMITTED:

Rachelle Myrick
Committee Secretary

APPROVED BY:

Assemblywoman Marilyn K. Kirkpatrick, Chair

DATE: _____

EXHIBITS

Committee Name: Committee on Government Affairs

Date: March 14, 2007

Time of Meeting: 9:00 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 253	C	Irene Porter	Proposal of Amendment to A.B. 253