

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

**Seventy-Fifth Session
April 30, 2009**

The Committee on Government Affairs was called to order by Chair Marilyn K. Kirkpatrick at 9:04 a.m. on Thursday, April 30, 2009, in Room 3143 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4406 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, 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/75th2009/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 K. Kirkpatrick, Chair
Assemblyman Paul Aizley
Assemblyman Kelvin Atkinson
Assemblyman Jerry D. Claborn
Assemblyman Ed A. Goedhart
Assemblywoman April Mastroluca
Assemblyman Harvey J. Munford
Assemblywoman Peggy Pierce
Assemblyman James A. Settelmeyer
Assemblywoman Ellen B. Spiegel
Assemblyman Lynn D. Stewart
Assemblywoman Melissa Woodbury

COMMITTEE MEMBERS ABSENT:

Assemblyman David P. Bobzien, Vice Chair (excused)
Assemblyman Chad Christensen (excused)

GUEST LEGISLATORS PRESENT:

None

STAFF MEMBERS PRESENT:

Susan Scholley, Committee Policy Analyst
Cynthia Carter, Committee Manager
Michelle Smothers, Committee Secretary
Olivia Lloyd, Committee Assistant

OTHERS PRESENT:

Pete Anderson, State Forester Firewarden, Division of Forestry
James M. Wright, Chief, State Fire Marshal Division, Department of
Public Safety
Randy Robison, North Las Vegas, Nevada, representing the City of
Mesquite, Nevada
Renny Ashleman, Las Vegas, Nevada, representing the City of
Henderson, Nevada
Lisa Foster, Reno, Nevada, representing the City of Boulder City, Nevada

Chair Kirkpatrick:

[Roll called.] We will open the hearing on Senate Bill 94 (R1).

Senate Bill 94 (1st Reprint): Imposes various requirements relating to fire protection in the areas of the Lake Tahoe Basin and the Lake Mead Basin that are located in this State. (BDR 42-444)

Pete Anderson, State Forester Firewarden, Division of Forestry:

[Spoke from prepared testimony ([Exhibit C](#)).]

Assemblywoman Pierce:

Does the federal government in the National Recreation Area of Lake Mead and the Tahoe Regional Planning Agency (TRPA) govern the regulations on the land that is within and around the TRPA and Lake Mead areas?

Pete Anderson:

Yes, they do. One of the biggest issues in the Tahoe Basin specifically, is the menagerie of different rules and regulations that overlap. Our focus is on the nonfederal land, the state land, and the private land, so a homeowner is not lost in the bureaucracy and can get clear direction, which was one of the key issues brought out of the Blue Ribbon Commission. So it is our hope that, if we can

get a consistent approach to defensible space, we can keep everyone within those regulations but still have a clear understanding of what they can do on their property.

Assemblywoman Pierce:

So this would be in coordination with TRPA?

Pete Anderson:

Yes, Assemblywoman Pierce, they are absolutely in coordination with TRPA.

Assemblywoman Pierce:

It does not seem like it is going to clarify things for people up at the Lake if there are regulations coming from the State Forester Firewarden and the TRPA. That does not clarify anything. I would like this to be amended the way Assembly Bill 75, the other bill we sent over to the Senate was amended, because any reports having to do with the Lake Tahoe Basin need to go to the Legislative Committee for the Review and Oversight of the Tahoe Regional Planning Agency and the Marlette Lake Water System. So I would ask that a requirement that the review and evaluation go to the Oversight Committee be included in section 5, subsection 2.

Assemblyman Goedhart:

Often times, with so many overlapping regulatory agencies, people are being told to do one thing by one agency and another thing by another agency. My sister has a house up at Lake Tahoe, and to mitigate any runoff concerns from her private property, they told her to put six to eight inches of pine needles right up to the edge of her house. And we all saw what that did a few years ago. But the joke of the neighborhood was, after she had all of her pine needles down, got signed off, she put the pine needles in 40 Hefty trash bags and gave them to her neighbor, who then got his house signed off and repackaged the pine needles and gave them to his neighbor across the street. We have a lot of agencies that are making these laws, rules, and regulations without looking at the holistic picture. We appreciate your efforts to try and bring a bit of common sense to this mishmash of different regulatory agencies and rules that they have not properly thought through.

Assemblyman Stewart:

Do you cooperate with the Nevada Fire Safe Council in removing underbrush and similar things of that nature? How successful have you been? Do you feel the fire situation was relieved if you did that?

Pete Anderson:

Yes. We were very much a part of the creation of the Nevada Fire Safe Council. We work with them all around the state in many communities. Tahoe, obviously, is one of the highest priorities for the Fire Safe Council and ourselves, as well as all of the other agencies up there. It is an excellent mechanism for folks to understand the environment they live in and the actions and activities they can take on their private land to protect themselves. It has been a very successful program. We have made tremendous progress on the Nevada side, and I would be happy to share, if you would like, some mapping that shows all the project locations and acres treated both within the Lake Tahoe State Park and on the private lands on the Nevada side. There is still a lot to do, in all kinds of different aspects from education to actual land treatment. It is steep country, and on the forest service side, a lot of work remains. It is not that easy to get into the country to treat it. We have been very effective with our conservation camp crews, by putting them on foot and walking them into the areas you cannot get vehicles in and then utilizing biomass every chance we can, through the correctional facility down at Stewart. We are making tremendous progress, and I would be happy to share some of those accomplishments.

Chair Kirkpatrick:

Does anyone else have any questions? I have a question on section 3. I am curious as to why it has been amended to go within the uniform building codes and fire codes to say, "without limitation...all regulations." What other regulations would there be? Without limitation always makes me somewhat nervous because it could include the kitchen sink.

Pete Anderson:

We went through a series of workshops with many of the parties that cooperated in the Tahoe Basin and had concerns. You will see, in the end, a consensus put into regulation rather than into statute, so that we can address different aspects for different pieces of it. The idea is to consistently bring clarity to the whole situation and then dovetail that with uniform building codes or international building codes.

Chair Kirkpatrick:

Would all of those regulations come before the Oversight Committee or would they just stay within your division?

Pete Anderson:

Actually, local jurisdiction prevails much of the time. For example, the North Lake Tahoe Fire Protection District has the authority for that on the ground, as does the Tahoe Douglas Fire Protection District at the south end. It

is a very confusing situation. Rather than state oversight, we are looking at local jurisdictional control, but then bringing consistency to the regulations so the homeowners know, depending on which fire district they live in, they are still doing the same treatments on the ground.

Chair Kirkpatrick:

I do not want to be back here in two years and have the homeowners mad because the "without limitations" language included a lot of regulations. I am trying to figure out what kind of regulations and who oversees them.

Pete Anderson:

If you would like, I could compile the existing fire district regulations that exist today, and we could look at those as a whole, so you would have a better picture of which jurisdictions are doing what. And, really, that is the goal of the report: to compile that information and report back to you, so that you have that information. This is for report production.

Chair Kirkpatrick:

Are these going to be temporary regulations? Do they go through the legislative process as those types of regulations or something totally different?

Pete Anderson:

We will see at the end of this exercise. This bill gives me the capability to do exactly what you are saying, which is to compile all the different regulations and put them in the report together with recommendations to you all. The next step would be to fix any problems that we see.

Chair Kirkpatrick:

Does anyone else have any questions? How does this bill interface with A.B. 75?

Pete Anderson:

Assembly Bill 75 is for an annual report on accomplishments, so that we can start tracking all the work that is being done. This bill is a one-time report exercise that will give you the information to see what we can do to bring consistency across the fire districts.

Chair Kirkpatrick:

Does anyone have any questions? [There were none.] Is there anyone else who would like to testify in support of Senate Bill 94 (R1)?

James M. Wright, Chief, State Fire Marshal Division, Department of Public Safety:

I am here in support of S.B. 94 (R1). This may help answer the Chair's question about the rules and adoption of regulations. With the responsibility established in the state fire codes, our rule-making process is through workshops and hearings and goes before the Oversight Committee, so if there are any questions on that, it will be covered under those processes.

Chair Kirkpatrick:

Does anyone have any questions? [There were none.] Is there anyone else who would like to testify in support of or in opposition to Senate Bill 94 (R1)? [There was no one.] Is there anyone who is neutral on S.B. 94 (R1)? [There was no one.] We will close the hearing on S.B. 94 (R1) and open the hearing on Senate Bill 124 (R1).

Senate Bill 124 (1st Reprint): Expands the number of members of the boards of trustees of certain general improvement districts. (BDR 25-196)

Randy Robison, North Las Vegas, Nevada, representing the City of Mesquite, Nevada:

I am here to urge your favorable consideration of S.B. 124 (R1). This particular Committee has seen this issue several times in the past, but we think we finally got it right this time. I will present a quick overview of the bill. The Overton Power District No. 5 provides electrical power to five communities in the northeast corner of Clark County, and those communities are: the City of Mesquite and the unincorporated towns of Bunkerville, Logandale, Overton, and Moapa. The Overton Power District Board is comprised of five members, one member for each of those entities. The bill seeks to expand the board to seven members, allow one more elected member from the largest incorporated city in the district, which happens to be the City of Mesquite, and add one more member who would be elected at large from within the district.

Assembly Bill 513 of the 74th Session was introduced by this Committee and we did a tremendous amount of work on that bill. We attempted to expand the board to seven members but that bill called for proportional representation, which would have given the City of Mesquite a four-to-three majority on that particular board. That was obviously of concern to other members of the Overton Power District Board; nonetheless, this Committee and the Assembly passed it unanimously, and it went over to the Senate side at that time. The Senate Government Affairs Committee was chaired by Senator Warren Hardy, who actually represents all of the effected entities. He asked us, instead of proceeding with that bill, to get together in the interim and work out an agreement that all of us could live with, so we did that. We had one meeting

and came to an agreement, which was a surprise to all of us, so we had a second meeting just to make sure that the first meeting was for real and that the agreement held together. The bill, as initially drafted, did not reflect that agreement, so we amended it in the Senate to reflect the agreement that was made, which is what you have before you now.

That concludes my testimony, Madam Chair, although I would mention that a technical amendment has been submitted that clarifies some of the language to address any possible unintended consequences ([Exhibit D](#)). I would be happy to answer any questions.

Chair Kirkpatrick:

The bill that Mr. Robison mentioned was the largest Christmas tree in the entire building last session. At the end we had close to 14 amendments on it, so I gave Mr. Robison my word that it would not be like that this year. You have an amendment in front of you that I am working on with Legal, and Ms. Scholley will explain it for you.

Susan Scholley, Committee Policy Analyst:

The proposed amendment 4703 to S. B. 124 (R1) corrects an oversight. There are five general improvement districts in Clark County. The intent was only to focus on Overton, so this amendment, which excludes any General Improvement Districts (GIDs) in which the board of county commissioners serves as the board of trustees for the GID, will fix that. It was just a drafting clarification to make sure the bill did what it was intended to do.

Chair Kirkpatrick:

The Legislative Counsel's Digest will now match.

Assemblyman Stewart:

We need to recognize this as an historic occasion when the Moapa Valley Pirates and the Virgin Valley Bulldogs agree on something. I just want to make sure that your Uncle Acel from Moapa Valley is on board with this.

Randy Robison:

This has given me an opportunity to reestablish a relationship with my Uncle Acel, for which I am appreciative. I talked with him a number of times. To be fair to him, he did express some concerns on more of a philosophical basis, but once I clarified with him that there was an agreement between the two entities, he said he was fine with it, as he feels that is the way the process works.

Chair Kirkpatrick:
Are there any questions?

Assemblyman Aizley:

I must be missing something. In section 3, subsection 2, it says the names of the candidates for trustee of a district may be placed on the ballot for the primary or general election. Why do you not put the names of the nominees on the ballot?

Chair Kirkpatrick:
What section are you in?

Assemblyman Aizley:
I am looking on page 3, lines 30 and 31.

Chair Kirkpatrick:
We heard they do straw pulls down there, for example in Laughlin, they have a whole different system for how they elect their members. That is existing language that I bet you has been in place since the inception of Nevada, and it works for them, so I am not willing to change it without their discussion.

Randy Robison:
I believe the "may" in that section refers to the fact that you can put the name on the ballot for either the primary or the general election. In the case where there may be only one candidate for the office, you can decide to take care of that at the primary election or leave it to the general election.

Chair Kirkpatrick:
Does anyone else have any questions? [There were none.] Is there anyone is Las Vegas who would like to testify? Is there anyone else who would like to testify in support of or in opposition to Senate Bill 124 (R1)? [There was no one.] Is there anyone who is neutral on S.B. 124 (R1)? [There was no one.] We will close the hearing on S.B. 124 (R1) and open the hearing on Senate Bill 354 (R1).

Senate Bill 354 (1st Reprint): Revises provisions governing land use decisions.
(BDR 22-235)

Renny Ashleman, Las Vegas, Nevada, representing the City of Henderson:
I am appearing before you on S.B. 354 (R1). Senate Bill 354 (R1) had a unanimous vote in the Judiciary Committee in the Senate, and it was unanimous on the Floor. We worked hard with the people who were interested in the bill, and as far as I know, we do not have anyone with any remaining concerns,

although one can always be surprised. The purpose of this bill is severalfold. We originally began working on the bill because we were having problems with people who, for competitive reasons, were appealing land use decisions that were not related to their property. Essentially, they were using a form of legal blackmail, saying, "Well, if those people ever want to open their business and if you guys ever want to get out of the courts, you are going to have to give us what we want in some other location." We had quite a number of those problems, and Clark County had this problem as well. This is not so much of an issue for the City of North Las Vegas or the City of Las Vegas, so the bill only applies to Clark County, being a population-capped bill. They either do not oppose or they support the bill.

Another problem we have had is with appeals, where the people never appeared or they never told the city council or the county commission what their problem was, so there would be an opportunity to correct it in the first place. That obviously has its difficulties. As we got to looking into it, we discovered that there were classes of folks who ought to be able to appeal decisions, either to the commission or to the courts, who were probably precluded by the way this statute was originally written, so we tried to expand that list.

That brings me to the way we have done the wording in section 1, at line 5. Instead of, "is aggrieved by a decision of," we changed the language to "appeared before." That is talking about the planning commission, the board of adjustment, or the hearing examiners making administrative decisions, because at certain levels the planning commission, to give an example, might send something out to staff, and when it comes back from staff, it is final, but there is no way that you could be there, at that point, to say that you were aggrieved. So, under this bill, if you have ever appeared in the matter, you have the right to take it up, and we do not have to worry about all the niceties of when things happen in the chain. That is the reason behind the language at lines 15, 16, and 18.

It is a bit different when you go over to page 3, subsection 4, on line 14, where it says, "is aggrieved by the decision of the governing body," because in those cases the governing body makes final decisions and it is all done there, so you know whether or not you are an aggrieved party and where you stand. We specified that the decision had to be, in some way, related to the people appearing and who were aggrieved by the decision. Then we added the language "is aggrieved by a decision of the governing body, which was made without the necessity of a decision or recommendation" of the ones below, which is the problem I mentioned earlier. Those are at lines 19-23. Moving on, at line 27, "the appeal to the district court must be confined to the issues considered by the governing body," which makes it an exclusive remedy.

People have been using declaratory judgment to escape the land use planning decision process, which was intended to confine these decisions to issues about which they were directly related. Then, on page 3, lines 43-45, and on page 4, lines 1-4, the bill says that the person appearing before the governing body must claim that the injury he will suffer will have a substantial adverse effect on his legal interests or property rights, except that he cannot be aggrieved simply because the decision may increase or decrease competition, which is one of the direct problems we have had.

Then on page 4, at line 6, we wanted to make sure we preserved the opportunity for folks to express their opinions. Not everyone knows they should go to a planning commission meeting, and for those people who have broad general interests, such as trying to protect environmental concerns, for example, the courts would say the damage is not that great for you because you do not really have an interest. Well, yes they do, and we want to make sure that we are not taking their rights to appeal away from them. In general, other statutes would give them additional rights, but we wanted to make sure we did not cut them off in any way. So, at lines 7-10, we added the language "Seek appropriate redress for any violation, state or federal law," if you have "exhausted all available administrative remedies," which would be going to the commission.

People usually fail to appear at some planning commission meeting, decision, or before a hearing officer because they may not have known about it or not understood how to protect their interest. This actually happens quite a bit. If they appear in front of the commission and express their concerns, that still gives them standing, but it also, at least, gets us to where they have to tell us what their problem is, so we have a chance to deal with before they go to court.

I know that was somewhat complicated, and I tried to do it as quickly as I could. This is indeed a bill that only a lawyer could love, and I would be happy to answer any questions you may have.

[Submitted written testimony ([Exhibit E](#)).]

Assemblywoman Spiegel:

The way the bill is written, it talks about a person who has appeared. What happens if the person appearing before the planning commission is representing a homeowners association, but then, at some subsequent point, there is a turnover in the board or something and someone else is representing that same group. Would that still count as a person in order to preserve standing, or does it have to be the actual person?

Renny Ashleman:

Yes, that still counts. I believe it is in the original language of the statute, and I know it is the language of this bill. You are deemed to appear if you do so personally or through a representative, so you are taken care of.

Assemblyman Settlemeyer:

When I originally read the bill last night, I felt that it was the opposite of what you are saying—it would actually increase the number of people who would be able to protest, but now I think I understand. Are you indicating under this bill that not only would they actually have to appear in front of a governing body, but they would also have to prove that they were aggrieved? Is that how it would reduce the number of complaints?

Renny Ashleman:

I am not sure it will reduce the number of appeals or complaints, but it will make sure they are appropriate. That is what we are trying to do.

Assemblyman Settlemeyer:

So it would reduce the number of frivolous complaints?

Renny Ashleman:

Correct, as well as blackmail attempts, where people, who were not related to the problem, tried to use it for competitive or other reasons or just to injure folks. We have had all sorts of bizarre things happen, so we are trying to cut that off. The one place we will reduce appeals is if you do not show up and give us some ability to address your concern, then you will not be able to go to the courts, and that is only appropriate.

Chair Kirkpatrick:

Are there any other questions? [There were none.] For clarification, if you do not appear before a governing body, could you send in your information? Sometimes you cannot make it to the planning commission or the city council, but you can fax in your information so that someone can contact you. The school district sometimes does not send representatives to meetings when it affects them, so would they have the ability to send documents as opposed to being there?

Renny Ashleman:

Yes, it says in the statute, on page 2, at lines 17-20, "shall be deemed to have appeared under an ordinance if the person appeared, either in person, through an authorized representative, or in writing." So you could do it any of the three ways.

Chair Kirkpatrick:

I am looking for clarification. On page 4, beginning at line 6, it says, "The provisions of this section must not be construed to impair or prohibit a person," because the ordinance is adopted pursuant to subsection 1. I wanted to make sure that it is clear that it all applies.

Renny Ashleman:

Yes, indeed, it does. You have to finally appear in some guise, but that can be only at the commission stage, you could have missed the other stages and still get back in the game.

Chair Kirkpatrick:

Are there any other questions? [There were none.] I know there was a concern with how fast someone could get through the ordinance process if this were to pass July 1st. Would it take at least six weeks to get through the ordinance process between June and July?

Renny Ashleman:

Yes, it would; however, we do not have a clause that says it must be adopted within that 30-to-60 days. There is no mandatory date for the time of adopting it. It just says you have to adopt it.

Chair Kirkpatrick:

Are there any other questions? [There were none.] Is there anyone else who would like to testify in support of S.B. 354 (R1)?

Lisa Foster, Reno, Nevada, representing the City of Boulder City, Nevada:

I simply want to echo what Mr. Ashleman said. Boulder City feels that this bill makes the land use process a little less political and keeps it focused on those who are truly impacted. As he mentioned, there are times when land owners can hold up the process through the appeals system, simply for competitive purposes and not because they are truly impacted. So we support this bill.

Chair Kirkpatrick:

Ms. Foster, you serve on the planning commission up here, but do you have to pay to do appeals? Is there a time frame?

Lisa Foster:

Yes, and to appeal can be very expensive, too. So when an appellant is another land owner, of course it is certainly a lot easier for them to do that.

Chair Kirkpatrick:

Is there anyone else who would like to testify in support of S.B. 354 (R1)?
[There were none.]

Assemblywoman Pierce:

So if someone comes before the governing body or writes a letter, it would be up to the court to decide whether the basis of his appeal is legitimate or he is trying to diminish competition? That would be the court's decision, correct?

Renny Ashleman:

Yes, that is correct. Obviously, you can always file something in the courts, and the courts would then make that decision. We would not make the decision. We would cite what we thought the reasoning was to stop the appeal, if we thought that was true, and then the court would make the final decision.

Chair Kirkpatrick:

Is there anyone who is neutral on S.B. 354 (R1)? [There was no one.] Is there anyone who is in opposition to S.B. 354 (R1)? [There was no one.] With that, we will close the hearing on S.B. 354 (R1). Is there any comment from the public? [There was none.] Are there any comments from the Committee? [There were none.] With that, we will adjourn until 9:00 a.m. tomorrow morning and do not forget I will see you all on Saturday.

[Assembly Bill 75 (R1) was mentioned, no jurisdiction.]

[Assembly Bill 75 \(1st Reprint\)](#): Requires the State Forester Firewarden to submit annual reports concerning fire prevention and forest health in the Nevada portion of the Lake Tahoe Basin to certain persons and entities. (BDR 47-439)

[Meeting adjourned at 9:42 a.m.]

RESPECTFULLY SUBMITTED:

Michelle Smothers
Committee Secretary

Denise Sins
Editing Secretary

APPROVED BY:

Assemblywoman Marilyn K. Kirkpatrick, Chair

DATE: _____

EXHIBITS

Committee Name: Committee on Government Affairs

Date: April 30, 2009

Time of Meeting: 9:04 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
S.B. 94 (R1)	C	Pete Anderson	Prepared testimony
S.B. 124 (R1)	D	Randy Robison	Proposed amendment
S.B. 354 (R1)	E	Renny Ashleman	Prepared testimony and Copies of memorandums