

**MINUTES OF THE
SENATE COMMITTEE ON GOVERNMENT AFFAIRS**

**Seventy-fifth Session
April 27, 2009**

The Senate Committee on Government Affairs was called to order by Chair John J. Lee at 1:04 p.m. on Monday, April 27, 2009, in Room 2144 of the Legislative Building, Carson City, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator John J. Lee, Chair
Senator Terry Care, Vice Chair
Senator Steven A. Horsford
Senator William J. Raggio
Senator Randolph Townsend
Senator Mike McGinness

COMMITTEE MEMBERS ABSENT:

Senator Shirley A. Breeden (Excused)

GUEST LEGISLATORS PRESENT:

Assemblywoman Sheila Leslie, Assembly District No. 27

STAFF MEMBERS PRESENT:

Heidi Chlarson, Committee Counsel
Michael Stewart, Committee Policy Analyst
Cynthia Ross, Committee Secretary

OTHERS PRESENT:

Constance J. Brooks, Senior Management Analyst, Office of the County
Manager, Clark County
Sabra Smith-Newby, Director, Department of Administrative Services,
Clark County
Lisa A. Gianoli, Washoe County

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Lee Rowland, Northern Coordinator, American Civil Liberties Union of Nevada
Juanita Cox, Citizens in Action
Janine Hansen, Nevada Eagle Forum
John Wagner, State Vice Chairman, Independent American Party
John Slaughter, Washoe County
Madelyn Shipman, Southern Nevada Home Builders Association
Jennifer Lazovich, Pardee Homes; Focus Property Group
Jay Parmer, Builders Association of Northern Nevada
Valerie M. Rosalin, Director, Office for Consumer Health Assistance, Office of the Governor
J. David Fraser, Executive Director, Nevada League of Cities and Municipalities
Dan Musgrove, Nevada League of Cities and Municipalities
Mary Liveratti, Deputy Director, Programs, Department of Health and Human Services
Carole Vilardo, Nevada Taxpayers Association
Ronald P. Dreher
Peter Chase Neumann
Tracey Woods, City of Reno
Ileri Rivas, Organizer, Progressive Leadership Alliance of Nevada
Robert F. Joiner, City of Sparks

CHAIR LEE:
We will begin with Assembly Bill (A.B.) 49.

ASSEMBLY BILL 49: Authorizes a board of county commissioners, under certain circumstances, to provide a civil penalty in lieu of a criminal penalty for the violation of certain ordinances. (BDR 20-449)

CONSTANCE J. BROOKS (Senior Management Analyst, Office of the County Manager, Clark County):

I am presenting Assembly Bill 49. The intent of this bill authorizes the Board of Commissioners under certain circumstances to provide a civil penalty in lieu of a criminal penalty for the violation of ordinances related to the licensing and regulation of businesses.

We view this bill as a proactive measure that will enhance our ability to encourage compliance with code, thereby improving the health, welfare and safety of our community.

Examples of ordinance violations include businesses operating without a valid business license, businesses violating county codes in ways that affect public safety and public health, businesses that falsify license applications and other operations deemed detrimental to public safety.

When violations occur, our system allows citations to be issued but with no fines attached. Violations of ordinances are addressed in the following manner. The business license agent would issue a warning or notice of noncompliance. If the condition or violation continues, the agent issues a citation that goes to our judicial system. This citation would impose no fine to the violator. If the person or business cited would go through the judicial system, they would go before a judge and possibly have to get an attorney. The judge would determine the extent of the violation and the fine amount.

The problems with our process are twofold. One, it places demands on our already taxed court system. Most cases are not pursued by the District Attorney's (DA) office because the violations do not rise to the level of critical prosecution such as robbery and assault cases. For flagrant violations, our only recourse is to shut businesses down. This should be a last resort given the dire economic conditions.

To ensure fairness in equity in opposing a civil penalty or fine, business representatives would have the opportunity to participate in an appeals process led by a hearing officer and a hearing officer board representing the Clark County Department of Business License. In no case would a person or business be fined without appearing before the hearing officer. Statute provides this authority for cities but not necessarily for the counties. We would like to amend statute to extend the same liberties to the county.

This bill also addresses the parity of businesses. There can be two businesses in two different jurisdictions; one could regularly break the law with the other held to a stricter standard based on getting fined due to business location. This is not fair to the business that plays by the rules under the possible penalty of fines.

The intent of this measure is not to generate revenue but to enforce code compliance and allow county alignment with its surrounding jurisdictions, protecting the health, safety and welfare of our community.

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SENATOR CARE:

How did you arrive at the \$1,000 figure for each violation?

Ms. BROOKS:

I do not have an exact answer, but I believe it is based upon other jurisdictions. I will get an exact answer for you

SABRA SMITH-NEWBY (Director, Department of Administrative Services, Clark County):

The \$1,000 is based on what the cities do. Since it is an issue of parity, we use the same amount.

SENATOR MCGINNESS:

Is it normal to change a criminal penalty to a civil penalty? Are there other places where we do this?

Ms. BROOKS:

We are not trying to change a criminal penalty to a civil penalty. For those ordinances against the law, criminal penalties remain applicable.

SENATOR MCGINNESS:

Can you state an example of what this bill would do? Is the Criminal Division of the District Attorney's Office overloaded so we will let the Civil Division pick up the work?

Ms. BROOKS:

The intent of this bill is to provide a graduated sanction to allow more oversight and regulatory measures for businesses. We have our hands tied. This bill would allow us to have a better relationship with businesses and to help them to become compliant.

Ms. SMITH-NEWBY:

The bill states the civil penalty would be in lieu of a criminal penalty. This is another wrench in the tool box that does not impact the courts or the district attorneys. They are overloaded. The intent of this legislation is to bring businesses into compliance without putting them out of business or taking them to court, criminally. First, we would like to administer fines, and if this does not work, we would progress and close businesses down and go to court.

SENATOR MCGINNESS:

Is one reason for this bill based upon civil DAs needing more work?

MS. BROOKS:

No. The civil attorneys are busy, but criminal attorneys are overloaded. When a civil attorney is confronted with a business that sells to minors versus an assault charge, the latter will become the focus and rightfully so. Our intent is to offer options for the Business License Department and make it concurrent with what occurs in the cities.

Clinics involved with the hepatitis issue in both the City of Las Vegas and in unincorporated Clark County were closed. The clinic in the City of Las Vegas was fined civil penalties; however, no such option was available to clinics located in unincorporated Clark County. This is one example of a business that, if located in Clark County, does not face the same rules and enforcement.

SENATOR RAGGIO:

Washoe County is the only county showing a fiscal note, indicating an impact fee of \$4,800 per year by its planning manager. I do not understand, as the annual cost to hire hearing officers would be well above \$4,800. Revenues would also come from the civil penalties. I need an explanation from Washoe County regarding the fiscal note.

LISA A. GIANOLI (Washoe County):

I will check on this fiscal note. Your point is valid given a fee will be paid and there will be a minimal impact. The bill's intent needs to be clarified as there may have been a misunderstanding of the bill's purpose.

LEE ROWLAND (Northern Coordinator, American Civil Liberties Union of Nevada):

We support this bill. We frequently testify against bills adding criminal penalties for what we consider regulatory areas. Some offenses may have intent and be appropriate for criminal prosecution, and these options remain on the table. We see this legislation as expanding the tools, particularly in respect to civil penalties.

Senator Raggio questioned the fiscal note, and it is possible the fiscal note is underestimated. There should be a negative impact any time the DA goes through a civil fines system and does not bring a criminal charge. The Legislature's expert, Dr. James Austin of the Council of State Governments

Justice Center testified before the Advisory Commission on the Administration of Justice and noted statute that allows criminal penalties, even when they are misdemeanors, has a huge collective cost on the system. Prior convictions end up extending prison sentences down the road and creating criminal records for people already in the system. This is precisely the type of area that Dr. Austin's testimony, over the past three years, supports. A civil remedy would decrease criminal justice system costs. We support this bill and urge you to take a closer look at the fiscal impact that can have a negative impact.

JUANITA COX (Citizens in Action):

Last week while at a Washoe County workshop on a proposed enforcement ordinance, I learned about this bill, as the ordinance was contingent upon it, or so they think. Our rights to due process are threatened with Washoe County's new ordinance. Washoe County has been criminally charging people in the past for civil matters. The County has been sued or victims have appealed their cases, and this has cost the County.

We oppose A.B. 49 because no ordinance enacted by the County is criminal unless a State statute calls for criminal penalty; therefore, the county ordinances reflect the statute.

Why does this body need this legislation? By saying an act is civil in lieu of criminal appears redundant. In fact, the statute suggests ordinances are administrative without the use of a court. There will be no recourse for the people the county might target. This is happening in Washoe and Lyon Counties.

By allowing this statute, there could be a huge unconstitutional power grab by the county for private property rights. I have e-mailed you and passed out written testimony ([Exhibit C](#)) I want you to further read.

Although it is less expensive to have administrative hearings than court hearings, it takes our constitutional rights of due process.

This can be a lower standard proof against the citizen. The civil standard, as compared to the more stringent criminal standard, would make it easier for the county to make its case against a private citizen. This again shows contempt for the citizen's right to due process. The lower standard of proof against the citizen also allows for a lower standard of evidence. People could have their

property seized or taken for minor offenses. Fines could be placed on their tax bills and when people cannot pay, they lose their property and/or businesses.

These lower standards can target citizens for reasons other than described. Another concern is the adjudicator who is paid through the budget of a county commission. This adjudicator might answer to the county hierarchy and not to the voters. County hearing officer who dare to find in favor of citizens and businesses and not the county might find themselves removed from payroll. On the other hand, an elected justice of the peace is accountable to the voters. In Washoe County, there was a case where the justice of the peace found in favor of the citizen because a county employee did not follow the rule. In court, that was pointed out and the citizen won. The justice of the peace was threatened.

CHAIR LEE:

You need to address the bill which concerns the licensing and regulation of businesses.

Ms. Cox:

In the past, counties have superseded the law and moved beyond their authority in justice court. What will they do at an administrative court hearing?

CHAIR LEE:

They will fine a business that is not licensed properly.

Ms. Cox:

We are also talking about other agencies within counties. This legislation does not only concern business. It could also be a cash cow for counties, and maybe this is the bill's intent. Governments could expand fines or fees by the vote of the county commissioners. Please consider opposing A.B. 49.

JANINE HANSEN (Nevada Eagle Forum):

My concerns are philosophical in regard to changing criminal law into civil penalties. There are several problems. First, there are violations of individuals' constitutional rights within administrative courts. These courts turn into kangaroo courts. In one instance, an individual was unjustly fined \$800 by Occupational Safety and Health Administration (OSHA). This was appealed and by the time court finished, the individual ran up \$50,000 worth of fees. Court proceedings stopped with an agreement by OSHA not to pursue the fine and by

the individual accepting this condition. Rarely is there justice in administrative courts and to appeal is costly.

Article 1, section 3 of the Nevada Constitution provides a right to trial by jury, but civil penalties do not get a trial by jury; therefore, that right is denied. The person cannot appeal to an unbiased tribunal. If they do get the opportunity to appeal, it goes to a judge who can only determine if the administrative procedure was correct.

When the federal government imposed the Stamp Act in 1765, former President John Adams wrote instructions that the Massachusetts Legislature agreed to. One objection was in regard to admiral courts which denied citizens a right to trial by jury. The Founding Fathers were experiencing these administrative courts where people's constitutional liberties were denied, where due process was denied and where appointed bureaucrats were making decisions on one's future without opportunity ...

CHAIR LEE:

I hate to interrupt, but this legislation is about the regulation and licensing of business, this is not Constitution 101. Speak to the bill.

MS. HANSEN:

I am speaking to the bill. When changing to a civil penalty, one's constitutional rights are taken away. Bureaucrats are making decisions about people's futures with them not having an adequate right to appeal. This is the issue.

CHAIR LEE:

To ensure understanding, the cities do this now. Has there been an abuse?

MS. HANSEN:

Ms. Cox mentioned several abuses that have taken place in Washoe County. I mentioned an abuse in an administrative court, and I am in an administrative court with the Secretary of State's Office over a civil penalty which has been abused. Yes, there are many abuses taking place under administrative procedures where people essentially have no rights, and they spend a lot of money defending themselves because their due process is denied. It is one thing to enforce business regulations, but I am concerned with the encroachment of civil penalties. Civil penalties help businesses get better code compliance, and the courts are cumbersome because they are designed to protect individual

rights. Administrative courts are cheaper and easier to operate because people lose their rights in these administrative procedures. This is my concern about the process of civil penalties. Every time the Legislature comes back, there are more civil penalties and more individual rights denied with no decent appeal process.

JOHN WAGNER (State Vice Chairman, Independent American Party):
Janine Hansen's closing remarks reflect my sentiments.

Ms. Cox:

You asked if cities were abusing their power. I have witnessed this abuse. I am aware of a case where a disabled, blind woman with limited income lost her home. She had bushes covering the front windows of her home and this was not acceptable to the City of Reno, neither was her home's paint job or the roof. The City came in, made the repairs and assessed the woman. She had to move because she could not pay her increased tax bill. At her administrative hearing, she lost her right to appeal. We do not want to see this in the counties, and this should also be prevented in the cities.

SENATOR CARE:

Similar language exists in other statutes. I am looking at *Nevada Revised Statutes* (NRS) 244.189 that says, "A board of county commissioners may exercise such powers and enact such ordinances" It goes on to say,
... development of affordable housing; The control and protection of animals; The rehabilitation of rental property in residential neighborhoods; and The rehabilitation of abandoned residential property. ...The board of county commissions may, in lieu of a criminal penalty, provide a civil penalty ...

It says, "...unless State law provides a criminal penalty" The language is similar but not exact. There are other provisions in law where this is done, and I would like to see a list of those. Maybe the Committee would find it helpful to look them over. Regarding the issue of administrative hearings, there may be case law.

CHAIR LEE:

We will look into this matter. The hearing on A.B. 49 is closed and we will hear A.B. 74.

ASSEMBLY BILL 74 (1st Reprint): Revises provisions concerning tentative maps and final maps of certain subdivisions of land. (BDR 22-472)

JOHN SLAUGHTER (WASHOE COUNTY):

I am presenting A.B. 74. This bill deals with revising provisions of tentative maps and final maps of subdivisions of land. The bill addresses map extensions of time both for a tentative map and a final map.

We view this bill as a response to our economic downturn and as an aid to help with economic recovery. During economic downturns, there are subdivision projects that will lose their map approvals for no reason other than the economy is in a recession and lending has slowed or stopped. This bill provides a time extension to keep local projects shovel-ready. I have provided the Committee with a handout (Exhibit D). We have done research on what other states are doing related to map expirations, and a number of states do not mandate times.

When the economy improves and projects are ready to begin turning dirt, we do not want these projects to have to start from scratch, having lost their approvals. There is a major private investment on these approvals and a major public investment in the approval process for these projects.

Section 2, subsection 1, paragraph (a) addresses tentative maps and extending these map expirations from two to four years. Paragraph (c) deals with final maps and successful final maps and changing their time period from one year to two years. Section 1, subsection 4, lines 19 through 25, deals with requirements placed on approvals. It says no new conditions or requirements will be imposed unless related specifically to applicable changes in applicable state laws affecting public health, safety or welfare.

In the Assembly, a request and amendment on the bill placed an expiration, a sunset, of June 30, 2013. By this time, we hope the economy improves, but if not, it requires us to seek an extension of this authority. We ask that this bill become effective upon passage and approval to save existing, endangered map approvals from expiring. Note, there was no opposition to this bill in the Assembly.

CHAIR LEE:

We have developers with maps, but because of the economic downturn, these developers cannot get money. Rather than have them start the process over,

this bill gives an extension, a total of four years, to allow developers time to start their projects. In the event of new requirements related to public health, safety or welfare, they would have to comply; otherwise, this bill is a time extension for approved projects.

MR. SLAUGHTER:

Correct. These are vetted projects. We are seeking this legislation because of the economic downturn.

SENATOR HORSFORD:

How does a waiver work that has been granted within the plan? Some times when a development is submitted for review, they are granted a waiver for certain periods of time to code requirement. Would these waivers be enforced based on the provisions of this bill?

MR. SLAUGHTER:

I am not versed on that process, but my assumption is that the basis of the approval would move forward.

MADELYN SHIPMAN (Southern Nevada Home Builders Association):

We support this bill. It was vetted in the Assembly, the amendments addressing different options for the extension of these maps have been agreed to, and we have builders hanging on for dear life in southern Nevada who would appreciate forgoing the expense of renewing a tentative map that has been approved. This bill would allow the additional time necessary for our economy to improve and homes to be built.

JENNIFER LAZOVICH (Pardee Homes; Focus Property Group):

We are in support of the bill. It is an important piece of legislation for home builders, especially in southern Nevada, who need additional time to get their projects financed and built.

In southern Nevada, every jurisdiction is different in how they treat waivers and tentative maps. In most cases, tentative maps are their own agenda item. Any waivers or use permits that may go with that are separate items. In those cases, they have their own time lines, and extensions of time can go on forever. By law, we could not go beyond a certain period of time on tentative maps. If they were on separate agendas, we could continue getting extensions for the waivers. This legislation would allow us more time with the tentative maps.

SENATOR HORSFORD:

Do local governments look at the financial viability of a project before approval? Is this a consideration? I am wondering about the number of smaller projects that have experienced financial difficulties. They start, build a few homes and then do not complete the development. Everybody else is left with blight. Do local planning commissions or local governing bodies take this into account when they approve accounts?

MS. LAZOVICH:

For the last ten years, this never came up. With the world turning upside down, there have been conversations; in general, most local governments are willing to help developers in terms of approvals by allowing projects to move forward. The City of Las Vegas was taking a strong look at whether projects could move forward. They were not approving them for long periods of time. They were saying if a project was going to be built, developers had a year to get financing secured. Once done, developers were to come back and, if an extension was needed, explain where they were in the process to prevent speculation, especially in downtown City of Las Vegas. Financial viability has come up, but it is a new animal we are working our way through.

JAY PARMER (Builders Association of Northern Nevada):

In bringing forth this bill, Washoe County recognizes the downstream benefits of job creation and tax generation. We want to see people back at work and see financially viable projects come online in this additional time. The time extension allows us to ride out the credit market interruption until projects can be financed or become economically feasible to move forward. We urge this bill's passage. Many maps are in jeopardy of failing, and this would be a big benefit to keeping those projects in consideration for construction once the economy turns around.

CHAIR LEE:

If this bill is passed and signed by the Governor, is there a grace period people can work within, or are everyday people falling off the map schedules?

MS. SHIPMAN:

The law is a map expires after two years from the date of approval. There is no grace period or time allotted. This issue has come up, and I have dealt with it in the past in my representation of governments.

CHAIR LEE:

Every day, people who have spent money to get projects vetted are losing their maps and must start the process over.

SENATOR RAGGIO:

I understand the reason for it and the reason it should be processed promptly. What would happen to maps that have recently expired if we pass this bill? Could application be made to a map already expired by the two-year limitation?

CHAIR LEE:

I was told no. Once a map expires, it is expired. I would like to see a grace period.

SENATOR RAGGIO:

If that is the case, would an amendment be of assistance?

MR. SLAUGHTER:

When a map expires, it is expired. Any maps that expire prior to this bill's effectiveness are void. Developers would need to reinitiate the process.

CHAIR LEE:

Ms. Chlarson, do you have any comments or suggestions?

HEIDI CHLARSON (Committee Counsel):

The bill does not contain provisions that would allow an expired map to be resurrected; however, a transitory provision could be added to the bill. It would be a policy decision how far back you would want to go. This can be amended into the bill.

SENATOR MCGINNESS:

As much as that is tempting, where do you start and where do you stop? Do we go back to November 1 or was there a better project on October 31? We will open a can of worms if we try and set a date prior to passage.

CHAIR LEE:

This bill is affecting people daily. I see your point, Senator Raggio, and I also understand the wisdom of Senator McGinness.

SENATOR MCGINNESS MOVED TO DO PASS A.B. 74.

SENATOR CARE SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

* * * * *

CHAIR LEE:

We will now hear A.B. 122 which makes various changes relating to the Office for Consumer Health Assistance.

[ASSEMBLY BILL 122 \(1st Reprint\)](#): Makes various changes relating to the Office for Consumer Health Assistance. (BDR 18-35)

VALERIE M. ROSALIN (Director, Office for Consumer Health Assistance, Office of the Governor):

Assembly Bill 122 is a cleanup bill. There were requests concerning the definition of "consumer." Does this mean a consumer of this or that? It was identified as a consumer of health care issues we would be assisting. The second piece of this bill is to clarify the authority to write regulation for our Office, NRS 223.500 through NRS 223.580. The third component of change is for final determination, under judicial rule, a hearing for hospital patients billing issues. A potential unfair hearing gives me the right to designate a hearing officer in another agency such as the Department Business and Industry or the Division of Insurance.

SENATOR CARE:

The language in existing law in A.B. 122, section 4, subsection 3, paragraph (a) says "The accuracy or amount of charges billed to a patient." Paragraph (b) says "The reasonableness of arrangements made" and new language adds "for a patient to pay any bill for medical services, including, without limitation, arrangements to pay hospital bills" I am learning the scope of such a dispute. I can see somebody saying, "I do not owe that much," but what would the dispute be as to the other language?

Ms. ROSALIN:

Our regulation requires us to review information regarding the bill when we audit the hospital bill or the provider bill for accuracy and appropriateness

against contractual arrangements or if the patient is uninsured. Next, we propose how the bill should be paid. We determine payment arrangements or whether a patient qualifies for charity. We make this determination with the provider or hospital. The final determination is only on bill charges and how the bill gets paid.

SENATOR RAGGIO:

This office has been recommended for dissolution. It is not supported in the Executive Budget. What we decide to do here is dependent upon the action the Legislature takes with respect to the Budget.

We have a written form from AARP in support of A.B. 122 ([Exhibit E](#)).

CHAIR LEE:

The hearing on A.B. 122 is closed. We will open the hearing on A.B. 97.

ASSEMBLY BILL 97 (1st Reprint): Requires the establishment of procedures for transferring governmental functions between and among local governments and state agencies. (BDR 31-487)

J. DAVID FRASER (Executive Director, Nevada League of Cities and Municipalities):

This bill comes before you having been amended in the Assembly to reflect changes requested by State agencies and by the Assembly Committee on Government Affairs.

DAN MUSGROVE (Nevada League of Cities and Municipalities):

This bill strictly sets up procedures for the transfer of services or programs between units of government. We want to ensure there is a process both for an entity when giving a service to another or when a local government or State agency decides they can no longer provide that service. There needs to be time lines, guidance and discussion of the fiscal impacts, how to go forward and how to address fiscal impacts.

In section 1, the bill addresses what will happen when there is a transfer between State and local government. At the request of the Chair of the Assembly Committee of Government Affairs and with concerns addressed by Director Michael J. Willden of the Department of Health and Human Services, we want to make sure it fits within their budgetary processes. Mr. Willden gave

an example during his testimony regarding the transfer of child support enforcement by Washoe County returning to the State. Mr. Willden needed to know the timing and had to come to the Legislature to take on the responsibility. Section 1 deals with the process to fit within the governmental structure the State goes through when they budget for programs and services.

The new language in section 4 deals with the transfer between two local governments. After Session, we would sit down with the Committee on Local Government Finance, a legislative board, and the Department of Administration to discuss the transfer of services between entities. This does not address unfunded mandates. This bill talks about setting up a process so transfers can occur smoothly with transparency.

We have had examples of consolidation. One is where animal control was taken on between two entities. Another is one entity will take on the maintenance of street lights, as is done between Sparks and Reno. When an entity takes on another's entity's services, there needs to be a transfer of both funding and procedures.

SENATOR RAGGIO:

In section 4, the existing Committee on Local Government Finance will adopt regulations to implement transferring a function from one governmental entity to another, such as between a city and a county. What type of function might that be?

MR. MUSGROVE:

In Clark County, we consolidated animal control. One location harbors the animals, and there needed to be a process to help fund of the structure as well as address the responsibility of taking on animals from unincorporated Clark County into the facility.

SENATOR RAGGIO:

To keep it simple, the function of the city was transferred over to the county with an agreement to do that and provide payment for taking that over. Is this done by agreement or is it complex?

MR. MUSGROVE:

It tends to be complex based on each issue. We want to put together a standard format to establish a known process with provisions to be addressed each time a transfer occurs to ensure no unintended consequences.

SENATOR RAGGIO:

Under section 4, if they want to do a transfer and do it expeditiously, it would require a six-month notice? What is the 180-day notice to affected local governments?

MR. MUSGROVE:

Yes, this time period is correct. In the original bill, we talked about 90 days, but enough folks wanted more time. Six months is considered fairly quick regarding governments. The time period concerns when the first notice has to take place, but the agreement of transfer can start taking place.

SENATOR RAGGIO:

There is an agreement between a city and a county, and the bill says, "Include provisions requiring: At least 180 days' notice to the affected local governments of the intent to transfer" You have two governments. Who gives the notice, and why are they giving the notice to themselves?

MR. MUSGROVE:

Section 4, page 3, lines 24 through 26 say "unless a different period of notification is required by a statute or by contractual agreement" If a voluntary transfer is mutually agreeable, they could waive the 180 days based on their contractual agreement and make the time shorter as long as it is within their agreed time period. We could use that line in the statute to speed the notice time if both parties want expedition.

SENATOR RAGGIO:

What is the purpose of the six-month notice? Is this for people who might be affected by the transfer or receive services?

MR. MUSGROVE:

An example for the use of six months is the State taking on the responsibility of child support enforcement. This is not something the State wants to take over, but they understand the reasons for the transfer. We give the maximum

allowable time for the State to put necessary things in place to ensure the transfer is smooth and effective.

SENATOR RAGGIO:
I will further study this issue.

CHAIR LEE:
Section 1, line 18, on page 2 addresses the difference of notification time between the State and local government and that it has to occur before September 1 of an even-numbered year unless there is a contractual agreement. Can you explain this time period?

MR. MUSGROVE:
This is when the budgets of State agencies must be submitted to the Governor. It fits within their budgetary time period.

MARY LIVERATTI (Deputy Director, Programs, Department of Health and Human Services):

We had an instance a couple of years ago during the last week of the Legislative Session where we were informed by a county they were considering giving up elder protective services. This is a \$1 million transfer back to the State. At that point, we were able to negotiate not to do that because it was too late in the budget process.

We negotiated this bill to inform us in time to plan for the continuity of services, build the services into our budget and allow the Governor to consider it when putting his Executive Budget together. It would not become effective until July of the next odd-numbered year, when the next biennium starts.

Addressing the example of the Washoe child support enforcement, they considered sending the functions back to the State, but that has not happened. Some rural areas have given it back to the State, but in the last year with all the budget crunches, Washoe County was looking at essential government services. We were given three days notice when the Open Meeting Law was agendized on the Washoe County Commission. We would like more time to ensure continuity in the change of functions and allow us to build takeover functions, if deemed necessary, into our budget.

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SENATOR RAGGIO:
Could they do something unilaterally?

MS. LIVERATTI:
I am not sure because I was not involved. I only remember them as an example.
I can get you the information.

CAROLE VILARDO (Nevada Taxpayers Association):
I am in favor of the bill. Over the years, we have been involved in discussions with various local governments wanting to exchange services. In this bill, the Committee on Local Government Finance established mechanics and procedures in regard to time frame and what needs to be considered. We used the Committee before to set up mechanical procedures to prevent unintended consequences. We have done this when we have incorporated a city through the initiative process or by general law. The Committee on Local Government Finance reviews the information, sets the time frames and the like. They are an independent body.

Issues have come up in regard to bus service between Carson City and Douglas Counties. A process that addresses needs under consideration allows for an orderly transfer of function.

It is important transfers from State to local government or local to State government have mechanics in place where thoughtful deliberation and personnel impacts are considered as well as fiscal impacts, timing, continuity of service delivery and the like. We expect the Committee on Local Government Finance would establish this in their regulations.

The provision of police service between White Pine County and Ely and which government was to provide it demonstrates the need of this bill. It would ensure dialogue between the two governments.

CHAIR LEE:
The hearing on A.B. 97 is closed. We will open the hearing on A.B. 443, which revises provisions concerning the election of councilmen in the cities of Reno and Sparks.

ASSEMBLY BILL 443 (1st Reprint): Revises provisions concerning the election of Councilmen in the cities of Reno and Sparks contingent upon voter approval. (BDR S-811)

ASSEMBLYWOMAN SHEILA LESLIE (Assembly District No. 27):
Assembly Bill 443 is the ward voting bill for Reno and Sparks. In 2005, you had the same bill for North Las Vegas in front of you.

This bill allows people to choose their own representatives for city council by ward. In Reno and Sparks, the city charters call for ward voting in the primary election, but in the general election, members of their City Councils run citywide.

Across the country, there have been complaints from the U.S. Department of Justice. In the handout ([Exhibit F](#), original is on file in the Research Library), a number of lawsuits are cited. Many of the complaints concern people running at large, not by ward, in a general election. This can be seen as a violation of the Voting Rights Act. One well-known example concerning the impact of elections within a district or ward was the 1970s case of the Board of Supervisors in San Francisco. San Francisco, like Carson City, is a city-county.

The voters of San Francisco passed a measure to create the system of district elections in 1976. The following year, history was made as the City-County elected its first female African-American Supervisor, its first Asian-American Supervisor and its first openly gay Supervisor. This system allowed the different areas of San Francisco to elect Supervisors who would best represent their neighborhoods.

Your packet, [Exhibit F](#), has background information. Prior to 1992, Reno City Council was elected at large in both the primary and general elections. In [Exhibit F](#), you will see the November 1992 ballot in Reno having a three-part question, Question Number R-4. The first part of the Question addressed changing the manner in which members of the City Council were elected. The people voted 55 percent in support of this change. The second and third part of the Question addressed how the change was to be done. Alternate A, to elect their representatives in both the primary and general election by ward, passed by 66.6 percent of the voters. Alternate B, the option we use now to elect City Council people by ward in the primary election and elect them citywide in the general election, passed by 62 percent of the voters. The next couple of pages

in [Exhibit F](#) show the vote totals. The option of electing a City Council person in Reno by ward in both the primary and the general election had more people in favor. This was in November 1992.

In 1993, a bill introduced by Assemblyman Ken L. Haller of District 27—A.B. No. 320 of the 67th Session—was not heard until late June. In April 1993, the Reno City Council passed a resolution to place Advisory Question R-2, pertaining to the manner in how city council members are elected, on the June 1993 general election. The citizens voted to put the Question on the ballot, but there was a split decision with Councilwoman Florence Lehnert and Councilman Pete Sferrazza voting against placing the Question on the ballot. Instead of selecting the question concerning people running by ward in both the primary and general elections, the Council selected a confusing Advisory Ballot Question, [Exhibit F](#). This question addressed people voting by ward in the primary election and citywide in the general election. This question passed by 68 percent. The Legislature passed this into law with a change in the city charter in June 1993. The people never did get to vote by ward for both the primary and general elections.

In 2005, we had a similar bill in the Session to change the North Las Vegas city charter. It went to the vote of the people, and 70 percent of the voters favored changing the system.

The second handout in the packet, [Exhibit F](#), notes cases filed by the Civil Rights Division of the United States Department of Justice. I highlighted the ones specific to this issue. The most recent case was filed on March 31 in Palm Beach County, Florida, for violations to section 2 of the Voting Rights Act. There are states where this has come to trial, such as California, Florida, Louisiana, Montana, New York, North Dakota, Ohio, South Carolina and South Dakota. There is a bill working its way through the New York State Legislature to change voting for all cities in New York. The United States Department of Justice, Civil Rights Division has been winning decrees across the nation under the Voting Rights Act.

Assembly Bill 443 changes the city charters in Reno and Sparks to allow a vote of the people. The original bill had the charters making the change, but the bill was amended in the Assembly, at my request, to allow placement on the next general election ballot in November as a vote of the people.

There is specific language in sections 9 and 10 about how the charter change should be on the ballot to ensure understanding. The City of Reno has an amendment ([Exhibit G](#)) with cleanup language which works for them. We need to change an "at-large ward" to "a specific neighborhood ward." The Mayor's position would remain in Reno as a citywide vote.

Sparks City Councilwoman Julia Ratti, mentioned in the *Reno Gazette-Journal* newspaper article, [Exhibit F](#), e-mailed me this morning that the City of Sparks has an amendment.

CHAIR LEE:

I was able to work with North Las Vegas on this voting issue because North Las Vegas did not have a charter committee. The Council did not consider the thoughts of their residents. Reno and Sparks both have charters.

ASSEMBLYWOMAN LESLIE:

Yes, and this is the objection of the Sparks City Council people. They want change to go through their charter committees. Many people who approached me said they did not want to go that route and preferred to come to the Legislature because the majority of the charter committee members are appointed by the City Council members. This was confirmed to me by a City Council person. When there is a political issue, appointees tend to follow the wishes of their city council members. With the exception of Sparks Councilwoman Julia Ratti, all are opposed. This is to be expected. It is viewed as a personal attack against them which it is not. The people who have asked me to present this bill do not want to go through their charter committee because those representatives would probably do as bid by the people who appointed them.

CHAIR LEE:

The amendment by the City of Reno asks this change first be placed on the ballot. You are in agreement.

ASSEMBLYWOMAN LESLIE:

Yes. It meets my intent. I want the question to be understandable to the voters.

SENATOR RAGGIO:

We came to the present situation, and I am familiar with some of these cases presented, [Exhibit F](#). The issue in the courts is when all elections have been at

large. The situation in the City of Reno is quite different because there is assurance that someone from a particular ward will be on the City Council. We do not elect those in the primary election at large. The cases given consideration by the U. S. Justice Department have been those where procedure has been to deny voting privilege to Hispanics and African-Americans because the entire process was at large. In Reno, each ward has the opportunity in the primary election to nominate someone. This means a representative from each ward will ultimately serve on the City Council. I believe one Council person is elected entirely at large.

The upside to the present situation is that we now have the best of both worlds. We get assurance of a representative from each ward to serve on the Council, but if the general election were the same way, you would have everybody voting only for the interest of their particular ward. This is a primary consideration. The fact Council people must run at large in the general election gives assurance they would be concerned about the entire City, not only their ward and constituents.

ASSEMBLYWOMAN LESLIE:

One case directly relates to our situation, but you are correct; most cases are about race and their systems which are at large in both elections.

Three recent cases in Reno involve three people who have run by ward in a primary. Only the top two went on to the general election. The person who won citywide was the person who lost in the primary. Neighborhood people feel they do not have the opportunity to elect their representative. Once it goes citywide, their power as a neighborhood or a ward becomes diluted.

The City Council people take the position that if they have to run by ward, everything will become parochial. I see it differently. As Legislators, we run in districts. It would be like us saying we only care about our district, not the entire State. We must work together and vote. I represent my district, but I must also care about Las Vegas districts to ensure Las Vegas representatives will care about my district. A city is much smaller and the issues closer to the politicians, but even on a city council—and Sparks City Councilwoman Julia Ratti makes this comment in the *Reno Gazette-Journal* article, [Exhibit F](#) —“you need three votes to get anything done in the city.” It is a valid viewpoint, but it does not outweigh the need for citizens to elect their own representatives and have that representative accountable to them.

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SENATOR CARE:

I was here for the North Las Vegas discussion. The only people who opposed it were the incumbents.

CHAIR LEE:

The same system Assemblywoman Leslie wants was voted for in North Las Vegas.

ASSEMBLYWOMAN LESLIE:

It went on the ballot as I am suggesting, and 70 percent of the people voted in favor. Interestingly, all the incumbents won their next election.

RONALD P. DREHER:

I am a concerned citizen in Reno, and I ask for your support of A.B. 443. I have written testimony explaining my position ([Exhibit H](#)).

Elections in the City of Reno are by ward only in the primary and citywide in the general election. In other words, all wards in the City are at-large seats. My reason for supporting A.B. 443 is to make the City Council races fair and equal to other elected seats in our county. This bill levels the playing field. Our Assembly and Senate races are by district, our congressional seats are by district, our school board seats are by district, our judicial seats are by department, the City of Las Vegas has ward-only elections for city council. Why then should Reno and Sparks City Council races be held citywide?

The population of Reno and Sparks and Washoe County is well over 400,000. The ward maps of each of Reno's wards show how large the wards have become. A ward-only election would provide fair and equal opportunities for all candidates by allowing for grassroots campaigns instead of well-heeled or money-connected campaigns. In 2004, I entered the Reno City Council Ward 1 race. I made it through the primary election and at that point, I could not afford the citywide campaign that followed. The costs were enormous.

By having a ward-only race, a candidate can concentrate by hearing concerns of their constituents while the City Council deals with citywide issues; the Council person's major role is to represent the people of their ward. This ensures no one group of people has unfair control. If you look at the Reno City Council, you will find incumbents have been there for many years. The opportunity for grassroots

campaigns is almost impossible under the current system. A ward-only race removes the disparity, unfairness and inequity.

I respectfully request this Committee allow the voters of Reno and Sparks to decide if they want to give candidates seeking office on either the Reno or Sparks City Councils the opportunity to be elected only by citizens in their wards by passing A.B. 443.

PETER CHASE NEUMANN:

I am a citizen of Reno. I share Mr. Dreher's comments, and I have three points that support this bill. One, confusion about city elections would be eliminated. Many people following the primary election do not understand what happens to their candidate. People do not understand the system. Some voters think they can wait until the general election to vote for their candidate, but their candidate must survive the primary in order to go on to the citywide general election. It is confusing. One votes for their ward for the primary, but in the general, the entire city votes.

The second point is this bill will encourage democracy. We want people to run for office, and we want our government officials to be responsive and accountable—what better way than to make the pool of voters as small as possible. Reno is growing and no longer the place where everyone knows everybody. Now you know people in your neighborhood. This bill would encourage a system where people get to know who they are electing. This cannot be done in Reno with its population numbers.

The third point concerns the cost of elections. I have participated in several Reno elections. I supported Mr. Dreher and I supported Toni Harsh as her campaign manager in one election. The cost to run a city election in Reno is enormous and discourages people from running. It is expensive on a citywide basis. An election costs no less than \$150,000 to \$200,000. This should not be the case for City Council. There is also a cynicism in city elections that individuals' votes do not count; individuals are not encouraged to run for office, and there is little enthusiasm, especially in the general election.

This bill would do what our country was founded to do. The principles of democracy would be encouraged by having candidates elected by wards in the primary and general election.

TRACEY WOODS (City of Reno):

The City of Reno is neutral on A.B. 443. We are submitting an amendment in [Exhibit G](#) which I have shared with the bill's sponsor, Assemblywoman Leslie. It amends section 9 of the bill which deals with the ballot question language. We want to ensure that if the Legislature enacts this bill, the ballot language accurately reflects we already have a city charter and already have a ward system. The original language of the amendment was not clear that the City of Reno has a charter.

IRERI RIVAS (Organizer, Progressive Leadership Alliance of Nevada):

We are a statewide coalition of about 27 to 30 groups working to promote grassroots participation and the democratic process. We also do advocacy work. We express our support of A.B. 443 as it increases grassroots participation in this process. Written testimony has been distributed ([Exhibit I](#)). This bill would make the city ward elections more feasible for communities that are traditionally underrepresented, taking costs and the scope of a citywide election into consideration. Having a ballot question presented to the voters of Reno and Sparks before there is any change in the way city ward elections are conducted would effectively increase voter turnout and participation. In Progressive Leadership Alliance of Nevada, we have learned that citizens vote more often when they know the issues and understand the impact it will have in their daily lives. The proposed ballot initiative A.B. 443 would say to the voters that you are voting for your neighborhood and this will be direct representation.

ROBERT F. JOINER (City of Sparks):

The Sparks City Council has consistently opposed this bill. We contacted the bill's sponsor when the Bill Draft Resolution S-811 was published. Sparks is one of two charter committees in the State, but ours is different than the municipality of Carson City. Carson City's charter committee is active but separate from their city council. Their charter committee is made of appointees from each of the six city council and mayor members, and five represent our State delegation. They are independent and have their own voice. We have tried to solicit opinions from the people who appoint them and are told the committee members are their representatives.

Arguments have been made that our City Council has an independent voice we want to maintain. This change should go through our charter committee. The City Council is aware of the Reno amendment. We have a legislative team. The City Council is meeting today, but our legislative team met and can speak for

the Council. They ask that section 9 of the amendment be further amended. If this bill passes, Reno has an at-large member. They will need to deal with this issue by adding or subtracting a member of their council or dealing with how this person may or may not be elected in a ward system.

We have a nonvoting mayor. There have been discussions in our charter committee that this position be changed. They may want to add that position as an elected voting member, making the Council an even-numbered committee and perhaps consider adding another member to the Council.

We ask that if this bill passes and the vote of the people is affirmative, our charter committee adjudicate those issues that need to be amended for consistency with active Council and bring them back to this body in 2011.

CHAIR LEE:
Can you clarify your intention?

MR. JOINER:
First and foremost, I oppose the bill. If the bill moves forward, Sparks wants to further amend the bill to allow our charter committee to deal with housekeeping measures.

CHAIR LEE:
You can bring an amendment forward to exclude Sparks, as this bill is wide open.

SENATOR HORSFORD:
In the legislative redistricting process, certain criteria must be met for equal representation, and the Voting Rights Act clearly spells this out. How does the City of Sparks ensure equal representation based on the structure of your Council jurisdictions?

MR. JOINER:
Our charter was amended about four years ago to require that we review our wards every year. If each ward is within 5 percent of voter registration, we leave the jurisdictions alone. If they are not within the 5 percent, we adjust boundaries. For seven years, we were the fastest-growing community in our region, so we made adjustments almost every year. We have a lag in our

population growth, so we make adjustments every two years. We review jurisdictions yearly to ensure equal representation.

SENATOR HORSFORD:

This review is to establish boundaries. I understand individuals then run at large, correct?

MR. JOINER:

Yes, in the general election. In the primary election, people run by ward.

SENATOR HORSFORD:

Has the general election been looked into for compliance of the Voting Rights Act? I understand you meet the requirements based on jurisdictional boundaries, but running at large might run afoul of the Voting Rights Act.

MR. JOINER:

We have not been challenged, so it has not been an issue. We have discussed looking into the issue at our charter committee annual meetings.

CHAIR LEE:

Does Sparks vote for their city attorney?

MR. JOINER:

Yes, and this was an issue in our charter bill last Session.

CHAIR LEE:

How long before the Sparks City Council has their meeting? If there was an amendment, how long would this take?

MR. JOINER:

I could have the amendment in a day. The City Council is meeting today, and this issue will be discussed.

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CHAIR LEE:

Good. The hearing on A.B. 443 is closed. The meeting on Senate Government Affairs is adjourned at 2:42 p.m.

RESPECTFULLY SUBMITTED:

Cynthia Ross,
Committee Secretary

APPROVED BY:

Senator John J. Lee, Chair

DATE: _____