

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

**Seventy-fifth Session
March 30, 2009**

The Senate Committee on Government Affairs was called to order by Chair John J. Lee at 1:37 p.m. on Monday, March 30, 2009, in Room 2144 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412, 555 East Washington Avenue, Las Vegas, 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 Shirley A. Breeden
Senator William J. Raggio
Senator Randolph Townsend
Senator Mike McGinness

GUEST LEGISLATORS PRESENT:

Senator Dennis Nolan, Clark County Senatorial District No. 9
Senator Valerie Wiener, Clark County Senatorial District No. 3

STAFF MEMBERS PRESENT:

Heidi Chlarson, Committee Counsel
Brenda Erdoes, Legislative Counsel, Legislative Counsel Bureau
Michael Stewart, Committee Policy Analyst
Cynthia Ross, Committee Secretary

OTHERS PRESENT:

Bryan Gresh, Regional Transportation Commission of Southern Nevada
Jacob Snow, General Manager, Regional Transportation Commission of Southern Nevada
Zev Kaplan, Regional Transportation Commission of Southern Nevada

Senate Committee on Government Affairs
March 30, 2009
Page 2

Sabra Smith-Newby, Director, Department of Administrative Services,
Clark County
Ted Olivas, Director, Government and Community Affairs, City of Las Vegas
Mike Hillerby, Regional Transportation Commission of Washoe County
Mike Bernstein, M.Ed., Injury Prevention, Office of Chronic Disease Prevention
and Health Promotion, Southern Nevada Health District
Dr. Diane Lipscomb, Physician, Sunrise Children's Hospital
Shelly A. Cochran, Safe Kids Clark County
Ronald L. Lynn, Nevada Organization of Building Officials; Director, Department
of Development Services, Clark County
Brianna Rukavina, Clayre Foundation
Joseph Rukavina, Clayre Foundation
Michael W. Bouse, Director, Building and Fire Safety, City of Henderson
Graham Galloway, Nevada Justice Association
Rocky Finseth, Nevada Association of Realtors
Ed Rybold, Community Planner and Liaison Officer, Naval Air Station Fallon
Colonel Howard D. Belote, Commander, 99th Air Base Wing; Installation
Commander: Nellis Air Force Base, Creech Air Force Base, Nevada Test
and Training Range
Bjorn Selinder, Churchill County
John B. Hester, Director, Community Development, City of Reno
Luis F. Valera, Director, Government Relations, University of Nevada, Las Vegas
Jennifer Lazovich, Pardee Homes; Focus Property Group
Michael Hillerby, Wingfield Nevada Group
Maddy Shipman, Southern Nevada Home Builders Association
Garrett Gordon, Olympia Group
Richard "Skip" Daly, Laborers International Union, Local 169
Cheryl Blomstrom, Nevada Motor Transport Association
Barry Smith, Executive Director, Nevada Press Association
Samantha Stone, Nevada Taxpayers Association
Jeanette Belz, Associated General Contractors, Nevada Chapter
Pat Hines
Russell M. Rowe, University of Nevada, Las Vegas, Alumni Association
Luke Andrew Busby, Assistant General Counsel, Public Utilities Commission of
Nevada

CHAIR LEE:

We will open this meeting and move directly into work session.

Senate Committee on Government Affairs
March 30, 2009
Page 3

SENATOR CARE:

Senate Bill (S.B.) 279 is my bill. I need to rewrite this bill as people who read the bill misinterpret its intent. Chair Lee has agreed to pull this bill from today's agenda. This bill will be put back on the agenda at a later time.

SENATE BILL 279: Makes various changes relating to public records.
(BDR 19-82)

CHAIR LEE:

Mr. Stewart will begin by reading the work session document.

MICHAEL STEWART (Committee Policy Analyst):

The first bill for consideration in work session is S.B. 213. It proposes to amend the City Charter of Sparks to permit the City Manager to appoint department heads and various executive and administrative employees without confirmation by the City Council. It also clarifies certain classes of persons protected from employment discrimination and authorizes the Mayor, rather than the City Council, to nominate the Mayor pro tempore, subject to the approval of the Council. Finally, S.B. 213 provides that in the event of a vacancy in the office of Mayor, the Mayor pro tempore shall serve as acting Mayor until the next general election. There were no amendments to this bill.

SENATE BILL 213: Revises the Charter of the City of Sparks to make various changes in provisions concerning city government. (BDR S-462)

SENATOR RAGGIO MOVED TO DO PASS S.B. 213.

SENATOR TOWNSEND SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR BREEDEN VOTED NO.)

* * * * *

MR. STEWART:

The next bill is S.B. 256. This bill designates an area on the grounds of Northern Nevada Adult Mental Health Services as a historic cemetery. It requires the reinterment of human remains from gravesites found in an area outside the designated boundaries of the cemetery to the area inside the historic cemetery. The administrator from the Office of Historic Preservation (SHPO), in

cooperation with persons having an interest in the matter, must maintain and improve the cemetery, and that will be the subject of one of the amendments. In addition, S.B. 256 directs the State of Nevada to terminate a 1959 land lease with the City of Sparks that includes a portion of the former cemetery and designates that land as part of the cemetery. Finally, the bill repeals the 1949 statute that abolished the use of the cemetery. There was an amendment proposed by the State Office of Historic Preservation to remove the requirement that SHPO maintain and improve the cemetery; instead, the office provides oversight of the cemetery's maintenance and improvement. This amendment is attached to the work session document ([Exhibit C](#), pages 4-7). Testimony indicated maintenance would be by groundskeepers on site; however, Dr. Harold Cook did note that his office would assess the necessary resources for the cemetery's maintenance and improvement [Exhibit C](#), page 3.

SENATE BILL 256: Designates an area on the grounds of Northern Nevada Adult Mental Health Services as a historic cemetery. (BDR S-922)

SENATOR RAGGIO MOVED TO AMEND AND DO PASS AS AMENDED
S.B. 256.

SENATOR TOWNSEND SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR BREEDEN VOTED NO.)

* * * * *

CHAIR LEE:

The third bill is S.B. 336.

SENATE BILL 336: Removes the eligibility threshold for obtaining an exemption from certain requirements of the Local Government Budget and Finance Act. (BDR 31-1163)

MR. STEWART:

Senate Bill 336 removes the \$200,000 threshold as the maximum amount of annual total expenditures of a special district to be eligible to petition the Committee on Local Government Finance for an exemption for the filing of certain budget documents and audit report. Instead, the bill provides that the Committee on Local Government Finance shall adopt regulations setting forth

this threshold for such exemptions by special districts. Testimony indicates 226 taxing entities in the State of Nevada, 34 of which receive the exemption under law. If the Committee on Local Government Finance adopts regulations that set a \$500,000 threshold, about 70 taxing entities would be eligible for such exemptions. No amendments were offered.

SENATOR CARE MOVED TO DO PASS S.B. 336.

SENATOR MCGINNESS SECONDED THE MOTION

THE MOTION CARRIED UNANIMOUSLY.

* * * * *

CHAIR LEE:

We will now hear S.B. 375.

SENATE BILL 375: Establishes the Nevada Advisory Commission on Intergovernmental Relations. (BDR 19-1160)

MR. STEWART:

Senate Bill 375 creates the Nevada Advisory Commission on Intergovernmental Relations, which is comprised of 15 members, to include 6 members of the Legislature, 6 local government representatives and 3 members from State agencies as appointed by the Governor. The bill charges the Commission with serving as a forum for discussion of government matters, engaging in activities and conducting studies on issues relating to State and local governments, and reporting to the Legislature. Finally, the Commission can recommend legislation to the Legislature. A fiscal note is forthcoming. The bill requires staffing by the Legislative Counsel Bureau, and we want to ensure these fiscal impacts will be included. One amendment proposed by Senator Townsend would broaden the State agency appointees by the Governor to say "Three members appointed by the Governor who are either employees or authorized representatives of an agency, as appointed."

CHAIR LEE:

Lorne Malkiewich, Director of the Legislative Counsel Bureau, notified me there would need to be money to staff the committee and to pay for travel and per diem expenses. Do not let a small fiscal note interfere with moving this bill.

Senate Committee on Government Affairs
March 30, 2009
Page 6

SENATOR TOWNSEND:

If the staff believes this is correct language—I did not propose language only the concept—I would move we amend and do pass. The amendment, with appropriate language, deals with a director or a person who works in the Governor's Office or one who represents people that the Governor wants represented on the committee.

SENATOR TOWNSEND MOVED TO AMEND AND DO PASS AS AMENDED S.B. 375.

SENATOR CARE SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

CHAIR LEE:

This is the end of our work session. We will move on to S.B. 245. This is a bill I brought forth. I have been working hard with transportation issues. My intention is to not affect other areas while working on these issues.

SENATE BILL 245: Makes various changes relating to regional transportation commissions. (BDR 22-585)

BRYAN GRESH (Regional Transportation Commission of Southern Nevada):

We have been working on this bill and have recently met with interested parties who have had the opportunity to read the bill. We have worked in bringing an amendment (Exhibit D) that will satisfy the concerns into a language that will work for all of us.

JACOB SNOW (General Manager, Regional Transportation Commission of Southern Nevada):

We have many responsibilities at transportation. When I came to the agency, it was difficult to find where those responsibilities were outlined in the *Nevada Revised Statutes* (NRS).

We are responsible for managing the freeway system and the roadway system, including traffic signals. When one uses an excavating crane or a backhoe and digs through fiber optics or other electrical communication infrastructure, we

can have an entire quarter of the Las Vegas Valley go dark in terms of traffic signal coordination and our freeway management system. We have to pay to fix another's mistake when they dig up that infrastructure. One of the key provisions of this bill is to recognize the Regional Transportation Commission's (RTC) Freeway and Arterial System of Transportation (FAST) as a utility. The FAST utilizes fiber optic cable to control traffic signals, view intersections and freeways by traffic cameras, and control our dynamic message signs on the freeways. This bill will allow FAST to hold those who damaged those lines liable for the damage they cause.

One concern is a line where we allow customers to purchase tickets from ticket vending machines. We have several more lines as a part of our A system. There is no provision in law for us to deal with one who evades paying a fare. As a transit agency, we use 15 million gallons of fuel per year. Current State law allows us to hedge fuel to lock in a price for a budget only for a one-year period. Under this legislation, we would be able to extend this to five years and thus lock in fuel costs when they are low for an extended period of time, saving taxpayer money. This act allows us to act cooperatively with the cities of Clark County on a banner advertising program that would benefit all those involved. We have had conversations, as Mr. Gresh mentioned, with the cities in Clark County, and we have a proposed amendment that clarifies language in the bill in regard to banners.

ZEV KAPLAN (Regional Transportation Commission of Southern Nevada):

The primary effort is to consolidate all the various statutory authority that exists for regional transportation commissions into one NRS chapter for ease of operation and to review what the operating authorities of regional transportation commissions might be. I will review new language we have requested. As Mr. Snow noted, sections 15 and 28 address the issue of street banners. We were approached by an advertising firm that actually has a different contract with the RTC for the authority to do street banners. The RTCs did not have such authority nor did counties, only municipalities and unincorporated towns. After meeting with Clark County, they suggested the vendors seek legislative authority. We have jointly proposed language to do so. As a result, there were concerns from several municipalities and the County with the language as originally drafted. We have proposed changes in our amendment which will clarify that the street banner program would be administered by an RTC but subject to a condition precedent to an interlocal agreement between the municipalities and the RTC or the County and the RTC to assure the local

government and members of the RTC that they would retain the control over their rights-of-way. They would receive the bulk of any advertising revenue that would be split with a private vendor and the RTC. That money would be earmarked for road improvements and road maintenance, with the RTC receiving an administrative fee that could be negotiated with the various entities to cover the cost of administering the program. We think that satisfies the concerns. We know it satisfies the concerns of Clark County and the City of Henderson. We understand the City of Las Vegas has not resolved whether they are satisfied, but with further discussions, we believe they will come to the same conclusion and support this.

Sections 17 and 31 deal with vending stands. The RTC was approached with an unsolicited proposal to put vending stands in conjunction with bus stops and bus shelters along various rights-of-way in Clark County. We concluded we did not have the authority. We initially proposed we could do so, but in further consultation with our member entities, they felt this would usurp their control over their rights-of-way. We have proposed language in our amendment that rather than putting vending stands with bus stops and shelters, we clarified it to ensure that any RTC-owned or -operated facilities, such as bus terminals or park-and-ride terminals in the planning stages, would be entitled to have vending operations. This might already be permissible, but the language makes it clear.

The next section Mr. Snow alluded to is section 26, which would be new language and authority for RTCs. It grants the authority for an RTC to establish a civil penalty by resolution or ordinance for fare evasion. There are no enforcement provisions other than criminal violations for defrauding a governmental entity. In light of more serious crimes, it is a burden on law enforcement to take up these issues. This would resolve it by means of a civil violation, which could be issued by designated individuals as agents of the RTC. For instance, if a person is riding on a bus, we would have designated individuals come through the vehicle, asking to see their fare media; if the person cannot produce it, they would be issued a citation. In turn, they would be billed for the civil penalty, as established by the Commission. We do not anticipate a lot of people will pay the civil penalty, but the hope is an enforcement effort will discourage other riders from evading fares.

Section 27 deals with the use of transit facilities. There are prohibitions for using bus stops and bus turnouts except for emergency use in traffic law. We have seen private resort shuttles attempting to use the bus stops and shelters

along Las Vegas Boulevard. Our language would clarify and make clear it is the RTC's purview to permit use of its bus stops, shelters or other terminals by commercial operations. This would afford us the control we need to assure it will not interfere with public transit operations.

Section 29 is new language for procurement. Regional transportation commissions receive significant federal monies to support the capital improvement. A vast majority of our procurements are subject to federal procurement laws which often conflict with state law. This would simplify the process to make the procurement process for RTCs compatible with the federal procurement process. It is still a competitive procurement process. We want the State law to work in compatibility with federal law, and this section would resolve that conflict. Under federal law, procurement is solely based on low bid, but there is a scoring system where other factors are considered. In many instances, the RTC in southern Nevada has been on the cutting edge with acquiring various types of transit equipment. It would be difficult to do so purely on a low-price basis. Under federal law, there is flexibility to consider various things such as innovation, unique characteristics and experience. There are not many American bus manufacturers. Newer technologies are foreign. We also have an issue by United States requirements under federal law. When we do a competitive procurement, we are able to comply with this as well, in most instances.

We had a proposed amendment for section 27. The original bill did not limit it to RTC-owned, -leased, or -operated facilities. Our member entities had concern that the language was too broad. This was not our intent. It is limited to RTC-owned, -leased or -operated facilities for limiting use of bus turnouts, shelters and terminals. Language we are proposing makes clear the Las Vegas Monorail is not under the jurisdiction of the RTC. This is addressed under a new section 27, subsection 1, paragraph (f).

Section 34 deals with our freeway and arterial signalization system. Utility designation is limited in purpose, not to be used as a utility in its general sense under NRS 704 but for purposes of "call before you dig" and the protection that affords; it gives the FAST system and its communication systems utility designation to require contractors to call before they dig. It permits the RTCs to do repairs and seek reimbursement for the cost of those repairs. It also gives the discretion, if the RTC so chose, to force the contractor to make the repairs.

Section 38 is new language that addresses the extension of the fuel hedge authority from one year to slightly more than five years.

Section 55 is new language. As RTCs were enabled by statute for counties to create, it was still within the discretion of the counties to dissolve an RTC. Since RTCs are multijurisdictional entities, any dissolution of an RTC should be done in consultation or cooperation with all member entities, not solely at the counties' discretion. Section 55 changes language of the law to require if a commission were ever to be dissolved, it requires the consent of member entities. This is the case under law in terms of impairment of any bonding, but if there are no financings, that would be impaired, and this would be applicable.

We had proposed language in section 39 regarding tort immunity when an RTC contracts out service so the contractor would be sued, not the RTC. In consultation with the Nevada Justice Association, we agreed to delete this section.

SENATOR RAGGIO:
What is a guideway system?

MR. KAPLAN:
In transit terms, it is a dedicated right-of-way such as a bus lane, an elevated system such as the Monorail, people-movers at the airport, railroad tracks, light rails and the like.

SENATOR RAGGIO:
I am trying to understand the distinction and the emphasis on street banners. These are not fixed ads? What kind of banners are these?

MR. KAPLAN:
The temporary banners are suspended from light poles. Banners are used when conventions come to Las Vegas. If the Las Vegas Convention and Visitors Authority or a private resort convention center wanted to announce a convention, they could use banners. Sponsors of a convention might also advertise by use of street banners. Banners are used for sporting events. Street banners are used for a limited period of time and are controlled by the interlocal agreement between the cities or the county and the RTC. Most likely, it would be a multiyear, competitively procured contract with the advertising company.

SENATOR RAGGIO:

Why would you agree with the Nevada Justice Association to delete section 39? Why would you want to have liability when the RTCs are not involved in the operation or management of those items?

MR. KAPLAN:

Two sessions ago, we attempted to extend the statutory cap to our contractors, and the lawyers were opposed. We did not want to jeopardize the overall piece of legislation by having disagreement with the Nevada Justice Association, so we agreed to withdrawal.

SENATOR RAGGIO:

I can understand that, but why would you want liability?

MR. KAPLAN:

We do not, and we have a statutory cap. We also protect ourselves contractually with our contractors. They indemnify and hold us harmless and defenseless.

SENATOR CARE:

Much of what is in the bill is existing law, which explains the number of deletions. Section 19, subsection 1 reads, "In counties whose population is 100,000 or more, the commission must be composed of ..." and there is a comparable in subsection 2, which reads, "In counties whose population is less than 100,000" Is this existing law?

MR. KAPLAN:

Yes.

SENATOR CARE:

Section 21 reads, "A commission may be designated as a metropolitan planning organization pursuant to 23 U.S.C. section 134 and 49 U.S.C. section 5303." Is this existing law?

MR. KAPLAN:

YES.

SENATOR CARE:

Is section 24 regarding eminent domain existing law?

Senate Committee on Government Affairs
March 30, 2009
Page 12

Mr. KAPLAN:

Yes, this is existing language.

SENATOR CARE:

Is this word for word?

MR. KAPLAN:

Yes.

SENATOR CARE:

Street banners are going to be hung on any street, avenue, boulevard, alley or public highway, and under the amendment, under a commission member entity-owned public facility. What is a commission member entity-owned public facility?

MR. KAPLAN:

This came from Clark County. Their intent is to permit banners on the light poles they own.

SENATOR CARE:

How do you make the decision as to what banners will be hung under the language "and which promotes a convention, exposition, trade show, entertainment event, sporting event, cultural activity or like gathering"? What if a convention comes to Las Vegas that people take exception to, they want to hang a banner and someone says, "No, we are not going to let you do it, but we will do it for everybody else?" How will this be addressed?

MR. KAPLAN:

We would address this through the Commission as it makes its advertising policy, which is commercial speech, permitted only under various court decisions. We can restrict it to commercial speech only, and we have a contractor who as the intermediary must follow the policy in accepting advertising.

SENATOR CARE:

It is the existing selection process?

MR. KAPLAN:

Correct. This has worked fairly well. As far as time, place and manner, this would be controlled in the negotiation between the member entity and the RTC at the time the interlocal agreement is adopted. If they want to place additional restrictions on time, place and manner their contractor would have to follow, they could do so through the interlocal agreement.

SENATOR CARE:

Is section 40 existing law? It states, "In addition to the general and special powers conferred by this chapter, a commission is authorized to exercise such powers as are necessary."

MR. KAPLAN:

No. Section 40 and section 41 are new to RTCs. They are existing law in NRS 494, State Airports Act. They would be applied to RTCs as well. This language is verbatim from the Airports Act in NRS.

SENATOR CARE:

What do you envision "... as are necessary" encompassing?

MR. KAPLAN:

There are no specific items at the time, but under Nevada law, unless you have the expressed authority to do something, most local governments do not have authority. If there was something we needed to carry out, this would provide for this opportunity.

SENATOR CARE:

It means, "authorized to exercise such powers as are necessary," words to the effect of the execution of this chapter.

MR. KAPLAN:

Correct.

CHAIR LEE:

In the strictest understanding on page 15, lines 6 through 11, it states "(a) Reimburse the commission for the cost of repairing the damage to the electrical or communication system or related infrastructure; or (b) Repair the damage to the electrical or communication system or related infrastructure to the satisfaction of the commission." This does not mean if someone who is an

electrician hits a pole, they get to fix it. Can you explain who is responsible for the repair?

MR. KAPLAN:

Under law, whether it is a business or individual, it is whoever has the contract with the RTC or one working for another entity who actually damages or destroys the RTC communication system. By definition under law, that person is responsible. It does not mean the individual working out there, but the company doing the work.

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

Our staff worked with the RTC staff on the proposed amendment, and we approve all the changes. We are neutral on this bill.

TED OLIVAS (Director, Government and Community Affairs, City of Las Vegas):

We are neutral on this bill. The bill sponsor and the RTC have worked closely with us to craft the amendment. We support the amendment. There was a communication problem as Mr. Kaplan mentioned. This should get resolved by a phone call, but the call did not get completed before this hearing.

MIKE HILLERBY (Regional Transportation Commission of Washoe County):

We support the legislation.

CHAIR LEE:

This hearing is closed on S.B. 245. We will open the hearing on S.B. 250.

SENATE BILL 250: Requires cities and counties to adopt ordinances that require certain swimming pools be enclosed or equipped with an alarm. (BDR 22-1114)

SENATOR DENNIS NOLAN (Clark County Senatorial District No. 9):

Senate Bill 250 addresses a problem in communities throughout the State, and it deals with children. We have seen an increase in the number of drownings and near-drownings. Approximately 25 children under the age of 6 drown every year in accidental events. I was approached by Safe Kids Clark County. An identical organization represents northern Nevada, and rural communities have similar organizations to address the morbidity and mortality of children. Accidental drowning is preventable. When speaking of small children finding

their way into swimming pools, it is not necessarily neglect on behalf of parents that result in these kinds of accidents. Toddlers sometimes get out of sight for a minute, and if this minute is in a swimming pool, it has disastrous consequences. Senate Bill 250 would have municipalities adopt ordinances requiring newly constructed swimming pools to be enclosed by a barrier or to be equipped with a less-expensive, motion-sensing alarm. The bill would allow cities and counties to adopt provisions through building code ordinances for the design and specifications. Additionally, the bill would require the purchaser of a new residential property having a swimming pool to enclose the swimming pool with a barrier or install an alarm within 180 days after purchase.

I pared down this bill in an effort to hit middle ground with the opposition to this bill. I want to work with them to prevent the needless deaths of children. Proponents want to see a tighter enforcement and provisions to ensure every pool is protected.

MIKE BERNSTEIN, M.ED. (Injury Prevention, Office of Chronic Disease Prevention and Health Promotion, Southern Nevada Health District):

We are in support of stronger language. Effective injury prevention programs encompass the three Es: education, engineering and enforcement. The Southern Nevada Health District has coordinated the public information and education component for childhood drowning prevention for ten years. We have worked with local building officials and the Southern Nevada Pool Code Committee to ensure the community is aware of the engineering components in terms of effective barriers available to reduce the risks of children drowning. The piece not adequately addressed at this point is enforcement, and that is why we are in full support of this proposed legislation.

Southern Nevada Health District (SNHD) has tracked drowning and near-drowning of children 14 years of age and younger since 1994 through the Emergency Medical Services and Trauma System. Over this period, nearly 80 percent of these incidents have involved children 4 years of age and under; 86 percent of these incidents occurred in pools, with over 60 percent of those occurring in residential pools. In Clark County, drowning is the leading cause of injury-related death among children 4 years of age and under. In 1998, Health District staff analyzed the collected data and found the death rate from drowning for the 0 to 4 age group averaged over nine deaths per 100,000 population as compared to the national average of three deaths per 100,000. As a result, the Health District started the yearly Childhood Drowning

Prevention Public Information Campaign in 1999. During the ten years we have been conducting this campaign, we have made steady progress in reducing the rates of drowning deaths and total submersion incidents. Prior to the start of our annual campaigns, the death rate from drowning for our targeted age group, 0 to 4 years, averaged 9.2 deaths per 100,000 population per year. Since 2000, when our annual TV and radio campaign began, the drowning death rate for the 0 to 4 age group has been reduced to an annual average of 4.6 per 100,000. This is a reduction of 50 percent in a time of explosive population growth.

The Southern Nevada Health District staff participated during 2008 on the Pool Barrier Steering Committee under the leadership of the Building Division of Clark County Development Services to develop draft legislation for the Nevada Child Drowning Prevention Act for the 2009 Session. The passage of the Virginia Graeme Baker Act in December 2008 is an additional impetus for drafting legislation, which would allow Nevada to become eligible in 2010 for additional funding through the U.S. Consumer Product Safety Commission to enhance and expand our drowning prevention education and enforcement efforts.

Drowning prevention efforts led by SNHD with support from Clark County during the past nine years has led the way to bringing State and local building officials, the pool building industry and other local officials together with pool safety advocates to support legislative efforts to enhance safety and reduce risks to young children from drowning in residential pools and spas.

Despite the progress made through the yearly public information and education efforts, we have hit a plateau as far as further reductions in drowning deaths, particularly those involving children under 4 years of age. During the past two years, we have seen a slight rise in the number of children drowning. Nine children drowned in 2007 and ten children drowned in 2008; all were under 4 years of age. We have already had three children under 4 drown this early in 2009, and swimming season has not begun. Passage of this legislation is a necessary component in order to stem the tide of childhood drowning and continue the progress in reducing childhood drowning to below the national average.

DR. DIANE LIPSCOMB (Physician, Sunrise Children's Hospital):

I have been a practicing physician in Las Vegas for 12 years. Of the children who have been involved in drowning accidents and deaths, I have cared for

50 percent of them. The incidence of drowning in this community is phenomenal. We are two to three times the national average for deaths due to drowning. What is a drowning accident and what does that mean? We have the numbers and the statistics, but what does it mean to cost of life? It does not stop with a number and a piece of paper. You will have children who will experience submersion accidents that are brief, they come up, and they survive. These are not the children we are talking about. We do not want those children to become one of the children we are talking about. There will be children with unknown downtime. After five or ten minutes, the parents come back to find their child facedown in the bottom of their pool. They get them out of the pool, and the child is not breathing and the heart is not beating. This begins the nightmare for this family. These children undergo aggressive resuscitation, and 50 percent of those children will die. The 50 percent who survive the drowning accident have significant long-term disabilities. These disabilities range from breathing problems—where the children have tracheotomies in their necks to help them breathe and they are fed through tubes—to seizure disorders where they are in a persistent vegetative state. These were children young enough and active enough to climb into a pool who are now kept in a vegetative state. These children will never be normal. They will never be productive members of our society. They will have to be cared for the rest of their lives with high-level medical needs that cost millions of dollars. It is not only about the children. After a drowning accident, these families undergo a nightmare for the rest of their lives. There are social implications to losing a child through drowning. Many families end in divorce because of the accusations, the guilt and all the different things that can happen. They lose jobs, health care insurance is maxed, and they have to get on Medicaid. This is 100 percent preventable.

We are two to three times the national child-drowning average. We have seat belt laws for a reason. We have child car seats laws for a reason. Our State has six years and 60 pounds for a reason. To not have all of our pools protected is unthinkable. It is imperative we pass this bill and to make it more restrictive. If people are worried for cosmetic reasons about having a pool fence, there is the option of the pool alarm system. There is no acceptable reason in Las Vegas as we advance to protect our children that we do not have fences and guards for our pools. Child drowning is 100 percent preventable, and we have to pass this bill for our children.

SHELLY A. COCHRAN (Safe Kids Clark County):

I have five pages of testimony from Jeanne Cosgrove, our director, who cannot be here. The written testimony represents her passion and commitment to this cause. She approached Senator Nolan to champion this issue. Because there is no time to read her written testimony ([Exhibit E](#)), I echo the comments of Mike Bernstein and Dr. Lipscomb. It is imperative we take action because our children in Clark County are dying at three times the national average. Some oppose this bill due to money, but the costs we already pay are far too great. Dr. Lipscomb said drowning is preventable as are the other negative outcomes. Save the lives of our precious residents.

SENATOR RAGGIO:

The language in section 1, subsections 1 and 2, says "Completely enclosed by a barrier designed to prevent drowning by children; or Equipped with a swimming pool alarm." If a swimming pool is in a backyard which is entirely fenced, is this the discussed barrier? Or does this language talk about something more restrictive?

SENATOR NOLAN:

Statute and this bill reference two different barriers. One is a primary barrier and the other is a secondary barrier. A primary barrier is the wall around the backyard that keeps others out of the yard and protects property. A secondary barrier is what we are referencing here. This would be a fence around the pool or an alarm system in place. The motion-activated alarm sounds if the barrier was broken and someone entered the pool.

SENATOR RAGGIO:

You are referencing what is called a secondary barrier.

SENATOR NOLAN:

Yes.

SENATOR RAGGIO:

It does not say "secondary barrier" in the bill.

SENATOR NOLAN:

There will be amendments forthcoming on this bill.

CHAIR LEE:

We have an amendment in front of us from the Nevada Child Drowning Prevention Act ([Exhibit F](#)).

SENATOR NOLAN:

This is the initial bill as originally proposed on behalf of the Safe Kids coalition and the representatives from the municipalities. Senate Bill 250 is what I brought forward. On one hand I have people associated with Safe Kids that are responsible for the Nevada Child Drowning Prevention Act. They formulated this in statute. It is a proposed amendment. It is the original bill as it came out. If it passed, this would optimally be the best way to prevent childhood drowning, but S.B. 250 is a pared down version. As a sponsor of the bill, I am willing to accept the amendments as proposed if the Committee sees fit.

RONALD L. LYNN (Nevada Organization of Building Officials; Director, Department of Development Services, Clark County):

In July 2008, the Nevada Organization of Building Officials sent out a statewide e-mail inviting people to discuss the issue of the chronic deaths we are experiencing in our State, particularly in southern Nevada. On July 25, 2008, a roundtable was held. The end result was a steering committee formed to bring forth the Nevada Child Drowning Prevention Act to the 2009 Legislature. The committee met several times, and we discussed the compromise bill, S.B. 250. If a dent is to be made in the number of childhood drownings, children aged 4 and under, this bill is going to do it.

Prior to 1981, we talked primary barriers. These are the barriers Senator Raggio mentioned, such as the fence around the house. This did help to reduce drowning. In 2003, as excessive drowning continued in southern Nevada, particularly of young children, we installed a new bill in southern Nevada in ordinances adopted by all jurisdictions. This Act mirrors that bill. This is out in southern Nevada except for retroactive requirements. These requirements are of most concern to the opponents of this bill.

We already require new pools in southern Nevada to have secondary barriers. We provide six options. On page 8 of [Exhibit F](#) in the Nevada Child Drowning Prevention Act, under NRS 278.5860, we talk about primary and secondary access barriers required. We define a primary access barrier, [Exhibit F](#), page 9, under NRS. 278.5863. It talks about chain-link fences, masonry fences and the like which are used. In response to secondary access barrier, [Exhibit F](#), page 10,

under NRS 278.5864, defines secondary access barriers and provides six options. What was omitted that should have been under Alternative Plans and Devices on page 12, [Exhibit F](#), under NRS 278.5867, is the provision for resort hotels and casinos, which are allowed to propose a plan to the building official employing active oversight as one of those options.

We can cut down the number of drownings, and we proved it by the primary access barriers. We need to take the next step. As Mr. Bernstein commented, 20 children drowned over the past two years. Every one of those fatalities was in a house that did not have a secondary barrier. They were built prior to the requirement of that law. This bill requires homes be retrofitted at the point of sale or at some time thereafter. We recommend the fencing, but if that proves to be impossible or too expensive, one other option is an alarm system. This means alarms affixed to the doors or openable windows out into the pool. They have a performance specification of 85 decibels inside the house, so when the doors or windows are opened, you hear the alarm and know to respond.

I cannot overemphasize we are talking about a segment of our population who cannot defend themselves. Look at the laws we changed after the MGM Hotel and Casino fire. We had 84 people die. Since that time, we have had many times that number of children drown in Clark County.

SENATOR HORSFORD:

I understand the importance of providing child safety and measures to improve that. Did the Coalition discuss other strategies around education and awareness for individuals who own pools? Was it discussed that barriers to one's property can create an artificial safety comfort, that somehow children are better-protected, when it is parental responsibility to ensure children are safe in their homes? People have to safety-proof their houses, and there are other eminent dangers such as the electrical outlets. Was this discussed?

MR. LYNN:

Yes. We have a pamphlet called the *ABC & D of Drowning Prevention*. The first point is adult supervision. The Safe Kids coalition, the Southern Nevada Health District, Clark County Fire Department and Clark County Building Department contribute monies to this pamphlet. It is distributed every time we see a pool. Our inspectors though all the incorporated cities in Clark County carry these. We meet with homeowners to talk about drown-proofing. A one-prong approach will not be 100-percent effective.

Provisions in this bill address the Virginia Graeme Baker Act. This is a federal act for anti-entrapment and access barriers. This meets the Act, and federal funds will be available for retrofitting.

SENATOR HORSFORD:

Retrofitting of existing pools would be done upon the sale of a home. Especially because of these difficult economic times and our rate of foreclosures in southern Nevada, what fiscal impact can this have to a person's ability to buy a house? For the people selling the property, this price would have to be set in advance. Was this discussed?

MR. LYNN:

Yes, and these retrofitting provisions are reasons for opposition to this bill. The new provisions going forward met with no opposition. The retrofitting had opposition, and we handled this in a multi-prong approach. One consideration is the least expensive approach, alarming the pool at a cost of \$100 to \$200. These alarms are easy to find and fasten. They are not the best secondary barrier, but we do consider it a legitimate approach. We have 102,000 pools in southern Nevada, and 95,000 of them were constructed prior to the secondary-access barriers requirement. As far as whether the buyer or seller is responsible, we are open to this. We talked about notifications. We do not want to hold up the sale of a home if possible. This is one of the areas of contention. The real estate industry was participating in the committees, and they did support components of this bill, but they did not support the retrofit because of the logistics and possible holdup of a property sale. We are sensitive, and we live in this economic environment. We addressed the cost issue, driving it way down and embracing the logistics we are willing to work with to make retrofitting happen. To ignore the 95,000 existing pools will ill-serve us.

SENATOR MCGINNESS:

By ordinance, this is already covered in Clark County.

MR. LYNN:

Everything is covered but the retrofit provisions. We had an assessment done with the Clark County ordinance, and it did meet with the Virginia Graeme Baker Act. The primary and secondary barriers are covered since 2003.

SENATOR MCGINNESS:

If a pool were left empty, would one not have to provide the barriers?

MR. LYNN:

Water such as rainwater does get into pools. A child can drown in a small amount of water. The 18 inches determination, which is a national determination, is whether the pool has the capacity for 18 inches, not whether the water is actually there.

BRIANNA RUKAVINA (Clayre Foundation):

My daughter Clayre died on April 7 of last year when she was 13 months old. The joy a husband and wife share, and an entire community shares, is unparalleled, and we were no exception with these feelings.

The day our daughter Clayre died, I was getting ready for school and my husband was at work. I left the sliding glass door open or I left it unlocked. My daughter wandered outside and fell into the pool. I found her floating body wearing her lavender pajamas, and I performed CPR, as I had been certified, until the ambulance came, but the workers could not revive her. They pronounced Clayre dead at the hospital.

Similar to the joy she brought to the community, her death has impacted many. This grief is something many of us will carry for the rest of our lives.

My husband and I knew the dangers a pool brings, and we started saving for a pool fence before our daughter Clayre was born. We had finally saved enough to build our fence and Joe scheduled his vacation to build it. Clayre fell into the pool two weeks before the fence was scheduled for construction.

Every parent knows they cannot watch their child every moment of each day. Every person I have shared my story with could tell me a personal story of their own about how they thought they had 100-percent supervision over their child and something went wrong. They were all lucky, however, and caught their child in time before swallowing too much dishwasher soap, before a car came around the corner while the child was in the street or before their child's lungs filled with too much water. It only takes seconds for a child to get out of sight and fall into a pool.

The idea for the Clayre Foundation was started the day she died. We came up with the idea and started the process of this Foundation on our way home from the hospital. We have since partnered with Safe Kids Clark County. The Clayre Foundation is set up to raise money to help fund families who are in the process

of saving money for pool fences. We also attend events, such as Neighborhood Night Out, to raise awareness. While speaking to parents, I find parents know the dangers of unprotected pools, but they cannot afford pool fences. Fencing a pool with a nonremovable fence is the most secure way to safeguard a pool. Action needs to be taken to make barrier fences affordable or mandatory.

The costs of building fences can be included in the sale of a home. A half of a percent of the cost of a home is worth it to protect a child. Nevada needs to update its pool codes. This is what the Pool Barrier Steering Committee and the Clayre Foundation is set out to do. The Nevada Association of Realtors is also a part of this Committee, but they oppose this pool safety legislation due to the retroactive language. Although our Clayre Foundation and Safe Kids are doing what we can, it is not enough. Babies are still dying.

As with many of you, I have seen stories every summer about children drowning and was astounded at how parents could let this happen. What I know now and what everyone needs to understand is that losing a child to drowning can happen to anyone, even to the best parents.

The Consumer Product Safety Commission has set aside \$2 million in grant money to each state that adopts legislation to update codes according to the Virginia Graeme Baker Act. Our bill does meet these requirements.

JOSEPH RUKAVINA (Clayre Foundation):

Senator Horsford expressed concern regarding how to finance these barriers. There are several ways. A buyer-seller split at the time of escrow is one way. A noninterest-bearing impound account where the expense can be divided up into 10 to 30 years from a few extra dollars added to one's monthly house payment is another option. A fence would be minimal for most homes in southern Nevada. A fence would go from the side of a house to the back wall. Most houses can be done for \$1,000 to \$1,200. This bill and what we are doing with the Clayre Foundation will attack the pool-barrier issue twofold. The bill would focus on those pools at the point of sale. We focus on fencing pools for people who are not planning to sell. With our Foundation, we try to cover what the bill does not.

CHAIR LEE:

Regarding the alarm system, if a dog jumps in a pool or a duck lands in a pool, what is the sensitivity of the alarm?

MR. LYNN:

One of the options is a floating pool alarm. I do not like it. The fencing is a static built-in defense. This is the best option. The only floating pool alarms we find acceptable are those which signal inside the house. This means the alarm meets the 85-decibel level inside the house. There is a remote transmitter, and if a dog jumps in the water, the alarm will activate. If it is windy, the wind will also trigger the alarm. This is why I do not like the floating alarms. When they get too many false alarms, people turn them off. There is also the door alarm. At a minimum 54 inches above the ground, they are high enough so a child is unable to disconnect them. They are relatively inexpensive. They are alarmed in the house, so if a child leaves through any of the doors or crawls out of a window, the alarm sounds.

CHAIR LEE:

If a child casually stepped down the stairs of a pool, would the alarm signal?

MR. LYNN:

In regard to the water alarm, yes, the alarm will sound if water level is disturbed. The floating water alarms error on the side of alarming. They are sensitive.

MICHAEL W. BOUSE (Director, Building and Fire Safety, City of Henderson):

I served on the steering committee that made the proposed amendments. Four of the children who drowned in Clark County in the last two and a half years were toddlers living in Henderson. In every one of those cases, the toddler drowned in a pool in backyards which predated our current secondary barrier requirements. The City of Henderson supports the amendments to S.B. 250 as proposed by the Committee.

MR. OLIVAS:

We support his bill. I have twin eight-year-old boys. We have a pool at our house, and we have a secondary barrier. Those boys have no business in the pool area, as they can slip and fall. On a personal note, this is good legislation.

GRAHAM GALLOWAY (Nevada Justice Association):

The Nevada Justice Association's goal is to promote safety. We promote safer products, safer environments and safer services. This bill furthers our goal of safety, and we support this legislation.

CHAIR LEE:

Imagine one has a walled backyard. A child walks outside into the backyard; would a chain-link fence along the front of the pool be considered a secondary barrier?

MR. OLIVAS:

Yes, this is the case and is exactly what we have at our house.

CHAIR LEE:

For the record, Keith Layman of Nevada Association of Realtors and Devin Riss of Nevada Realtors were unable to testify as we lost our satellite connection with Las Vegas.

ROCKY FINSETH (Nevada Association of Realtors):

We oppose this bill. We worked diligently with Safe Kids for six months. We made it known early in our work with the coalition that a point-of-sale retrofit would create problems for us. We offered multiple solutions, none of which were found acceptable. Among the issues raised, in Lake Tahoe, this requirement would cause problems with the Tahoe Regional Planning Agency with its requirements and approval process. In eastern and northern Nevada, harsh winters would result in delays to compliance. These requirements make it cost-prohibitive to sell or purchase a home with a pool or a spa in some cases. Any encumbrance on the sale of a property potentially could further delay escrow. We already have a difficult real estate market. This legislation would further make real estate difficult to process. On page 2 section 1, line 12 of the bill the language states "Completely enclose ... by a barrier" We read this not to be a fence outside the door but around the pool.

This body faced a similar issue several sessions ago with children left unattended in vehicles. The problem was corrected. We no longer hear of children left inside of cars because penalties were stiffened. This goes back to the issue of parental responsibility.

SENATOR NOLAN:

I have worked with Mr. Finseth and the Realtors. By way of disclosure, I am a real estate broker dealing in land. I am sensitive to the livelihood of realtors. My father did this line of work his entire life. We do not want to create a situation where at a point of sale, all of a sudden, someone backs out because of a financial hardship. We did contact title companies and asked them whether

there was a means by which prior to a close of sale, if enacted, there could be a withholding in escrow that would be a disbursement to a contractor for constructing a barrier and then wrapped up into a mortgage. The title companies said this was possible, and they already have similar situations in residential real estate closings. If it were to be \$3,500 to put an enclosure around the pool or \$200 to \$300 to buy a motion-sensor alarm, these costs may be distributed in a 30-year mortgage. It would be only a couple of dollars a month on top of the mortgage payment to fence a pool.

CHAIR LEE:

Regarding page 2, line 12 where the language states "completely enclose," does this imply a complete circle around the pool? Would this be covered by the first barrier?

SENATOR NOLAN:

If one had a three-sided wall in the backyard and a pool in the middle, one would only have to provide a fence around the open side of the pool so kids could not get from the house into the pool.

CHAIR LEE:

By chance someone wants to buy a home, but they do not want the seller to put up a chain-link fence. Rather, they want to put in a decorative fence. Is there a way through impounds to do this?

SENATOR NOLAN:

With regard to the sale of the home, it is possible to negotiate. The buyer can put in the fence or alarm of their choosing. The withholding and impound through the escrow account can be done. One can put in the expensive fence by doing a withholding on the impound account. The price would be added to the cost of the home and become a part of the mortgage payment.

The video to be shown was the most recent story of a child in a residential area from a middle-income home who became loose, fell into a swimming pool and drowned on Saturday. The story went on to encapsulate the problem we have in the number and increase of children drowning.

CHAIR LEE:

The hearing is closed on S.B. 250 and we will hear S.B. 301.

SENATE BILL 301: Makes various changes relating to military installations.
(BDR 22-689)

SENATOR NOLAN:

Senate Bill 301 will help our military installations conform to other states' laws regarding encroachment issues bases are facing. The bill requires various municipalities to enact additional master plan provisions and zoning ordinances in and around military installations as well as provide additional notification and disclosures to people who are buying homes and properties. This is a serious ongoing problem in light of the enormous contribution the Fallon and Las Vegas area military installations make as well as that at Hawthorne, although Hawthorne does not have the encroachment issue experienced by Fallon and Nellis Air Force Base at Las Vegas. They are significant to the degree that if we do not take additional protections, we threaten the operations these military bases have. When we do that, the competition between military installations for additional jobs and deployments is fierce. Every time a round of Defense Base Closure and Realignment Commission closures come forth, our Congressional Delegation has to go to Capitol Hill and fight to keep our military installations solid and to keep the number of operations as well. If operations are limited because of continual encroachment on the bases, it threatens to lose a portion of operations. Nellis Air Force Base, the largest tactical air base in the nation with five air wings—most have two or three air wings—certainly could stand the chance of losing some of those operations. And with those operations, we could lose some of the 13,000 civilian jobs which are premium in southern Nevada. Naval Air Station (NAS) Fallon has the same issues.

ED RYBOLD (Community Planner and Liaison Officer, Naval Air Station Fallon):
The Commanding Officer, Captain Michael H. Glaser, United States Navy, supports this legislation as a proactive measure for the long-term sustainability of Naval Air Station Fallon. Our air station is a crown jewel for naval aviation. We prepare aircrews to perform integrated tactical air warfare training in simulated combat conditions. The training and facilities within the Fallon Range Training Complex that facilitate integrated naval flight operations cannot be replicated anywhere in the world. Mr. Rybold's testimony is entered into the record ([Exhibit G](#)).

The stated measures in S.B. 301 will add another layer of protection for the air station's sustainability. Fortunately, we have forged a close relationship with the Churchill County Board of Commissioners, the County Planning Commission

and the Churchill County staff. This relationship has fostered the coordination and implementation of all these measures in many County ordinances over the past six years. Their forward-looking vision anticipated the potential threat of urban development around the base and protected this U.S. national security asset following the tragedy of September 11, 2001. The NAS Fallon commends the Churchill County for their leadership and vision. We consider Churchill County as well as the City of Fallon as model partners in civil-military affairs.

Even though Churchill County has acted decisively in the recent past, today the Battle Born State of Nevada is also demonstrating its leadership by protecting and supporting its national security interests through specifications in S.B. 301. These measures will enhance local coordination already established through S.B. No. 269 of the 74th Session sponsored by Senator Mike McGinness, Senator Warren B. Hardy II, Senator John J. Lee, Assemblyman Chad Christensen, Assemblyman Joe Hardy, Assemblyman Pete Goicoechea and Assemblyman Tom Grady in 2007.

Senate Bill 301 offers exceptional land-use compatibility standards and construction guidelines for homes to attenuate noise produced by nearby high-performance jet aircraft operating from NAS Fallon. This legislation will reinforce local measures. Again, the Navy appreciates the Committee's consideration in listening to this statement and in supporting this bill.

CHAIR LEE:

In county commissions, Accident Potential Zones (APZs) are already in place so one cannot place a gas station at the end of a runway. What happens to land that the military no longer wants people to use? Does the military purchase the property? Is this an issue?

MR. RYBOLD:

We are trying to stay ahead of the situation. We are partnering with the County and other nongovernmental organizations to consider at-risk land. We do have properties in APZs. We also have established a grievance procedure to, for example, place easements on certain properties to be maintained in agriculture. We are staying ahead of this. The added measures in this bill are for properties not obtained through the purchase of easements that would extend beyond the local area for years to come. For example, we respect the property rights of others and of the landowners. When the land does become at-risk and property owners decide to sell or develop the property we want to coordinate and

determine the best approach for that particular piece of property. We do not want to get involved in takings.

CHAIR LEE:

I can see a ten-story building in the wrong place not working. For instance, let us consider the speedway in southern Nevada. The speedway has a high structure, and they want to replace it with even a higher structure. If you prohibited this, the military would be taking something of value away from them. How about a piece of zoned property that is changed to something else? Does this come up for discussion, or when it comes up for sale, you speak with the owners?

MR. RYBOLD:

We already have an agreement with Churchill County. We have a coordination mechanism, so if developers apply for permits, we get notified. We coordinate and go through the public process, addressing those kinds of issues. We determine what the potential impacts are to the military activities. We have the opportunity to address and coordinate those issues early on.

COLONEL HOWARD D. BELOTE (Commander, 99th Air Base Wing; Installation Commander: Nellis Air Force Base, Creech Air Force Base, Nevada Test and Training Range):

I am accompanied by Ms. MacNeil, who is my Director of Public Partnerships. I am the only wing commander in the United States Air Force who has a full-time staff devoted solely for public outreach because we are surrounded by many people at Nellis Air Force Base. Ms. McNeil has to deal with Clark County, Lincoln County, Nye County, City of Las Vegas, City of North Las Vegas, City of Henderson, City of Mesquite, Boulder City, Indian Springs, Sunrise Manor and all the planning commissions for those—and we are swamped. This bill causes people to come to us early in the process and let us discuss impacts to Nellis operations.

We have particular challenges that face Nellis and the Nevada Test and Training Range. We talk about this as a whole. Nellis would not exist without the Nevada Test and Training Range, 2.9 million acres of the most incredible training in the world. We call it the "crown jewel," a genuine national treasure because we are able to simulate anything out there. Nellis has been here since January 25, 1941, and Creech, formerly Indian Springs, since 1943. We are

here because of the opportunity to go fight huge “wars” that simulate anything that can happen anywhere in the world today.

We can create air wars that involve hundreds of airplanes. We can simulate any system that exists in the world, from a full Chinese- or Russian- integrated air defense or anything encountered in Iraq or Afghanistan. We have our own cell phone network and a series of specially equipped sport utility vehicles (SUV) that drive anywhere one can see the red targets ([Exhibit H](#), page 3). Terrorists these days communicate via cell phone and satellite phone, so rather than telling a pilot to pretend to bomb a target, we have simulated terrorist training camps that are not visible from the air in a place called Pack Rat Canyon. The “terrorists” use their cell phones, and out to the East the aircraft will be the eavesdroppers listening on the special cell phone tower. It is our network, so we do not cross into spying on Americans. They listen and the cell phone conversations are handed off to fighter aircraft that then go find these particular SUVs. The SUVs know if they have been illuminated by an airborne laser, so we come orchestrate an entire fight. When a young man or woman flies that sortie in Iraq, he or she has seen it before here in southern Nevada. As my colleague from NAS Fallon says, we cannot recreate those capabilities anywhere in the world. At the Nevada Test and Training Range, we drop 3.6 million pounds of live and heavyweight training ordinance a year. That is 75 percent of all ordinance dropped in training by the entire United States Air Force. About 70 percent of that takes off from Nellis and flies north onto the Nevada Test and Training Range. We can then zero in on individual cockpits and during the playback session, show what the pilot was seeing and why they found the target or why they did not. This is absolutely critical for how we are fighting and training for today’s war.

We make a \$5.1 billion a year impact on the southern Nevada economy. Those are recession-proof dollars. Most places, the \$5 billion would be the sole guiding factor of a local economy, but in Las Vegas, it is not. We are a high-tech campus in the northern part of the Valley. There are more than 125,000 people in the wider community who use Nellis, and there are approximately 13,000 jobs with uniformed military, civilians and contractors who support us. Because of what Nellis represents to the United States Air Force, we are 65 percent of the military construction budget for air combat command. We are bedding down F-22s, we are slated to bed down F-35s because of the incredible capability we represent. While most bases are losing, we are gaining and bringing new missions to southern Nevada.

The danger is we would get choked out and no longer get those live and heavyweight missions up to the north. As you can tell by the big red splotch on page 4, [Exhibit H](#), from 1975 to 2008, Nellis was once by itself on the northeastern edge of the Las Vegas Valley, but the cities have grown around us. We already voluntarily do not take off to the south with live or heavyweight ordnance because we want that extra measure of protection for our neighbors. If encroachment were to go all the way around to our north and prevent us from taking off with those live and heavyweight missions, then our ability to do the incredible training and test missions is almost gone.

I personally grew up in Virginia Beach, Virginia. My parents live about four miles away from Naval Air Station Oceana. The BRAC directed that Oceana give all of its fighters away. Those fighters would have gone away, and my hometown would have lost the Navy's premier training base on the East Coast, except the City of Jacksonville did not want them. However, Oceana is unable to do its full mission because the City of Virginia Beach encroached all the way around it. That is what we are trying by proactive engagement with all of these municipalities and development organizations to make sure the critical aspects of Nellis operations continue with minimal impact to our neighbors. The highlighted pictures showing encroachment demonstrate the need to take off and land out of Nellis. We need to get to and from the Nevada Test and Training Range. We are almost the size of Switzerland in the big air space we can use. The light blue highlighted area on the right side of the pictures is the federal land withdrawn for Air Force use. The purple is both a mixture of Bureau of Land Management and private holdings. Throughout most of that area, we fly as low as 100 feet, we fly as high as 60,000 feet, we fly supersonic; and in those areas, we do not want any kind of takings. We want to let everyone know we are out there. We want wide-open acknowledgement when people transfer land that the United States Air Force is here. There is no tremendous danger to everybody, but we want folks to know we are there because when an airplane supersonically flies overhead, it tends to get attention.

The blue lines all over the map show our approaches, and the red lines are our departures. Those are the ones we would use with heavyweight ordnance. We want clear zones where folks know we are coming and going. Aviation is inherently dangerous; despite our best efforts, every once in awhile, airplanes either fall out of the sky or things fall off of airplanes. I found myself on camera a couple of months into my tenure as the Installation Commander when a small, 25-pound dummy training device fell off an A-10 and impacted on Nellis,

bounced 800 feet onto Las Vegas Boulevard and hit a truck. I met the truck driver 15 minutes later; he was cool, but he wanted a new truck. It could have been worse. Had he been half a second farther down the road, it would have hit the cab of the truck rather than the hood.

We do not want to be involved in taking people's rights. We want early engagement, and Ms. MacNeil and Master Sergeant Ernie Allis spend all their professional time scanning the agendas of dozens of public bodies to ensure we can reach out and talk to developers. We are all about not saying no but about compatible development and finding what height restrictions or noise restrictions or slight modifications to use that will allow us to work together. We are about full disclosure. We understand we are public servants, and we are about making things possible for the citizens of Nevada by not taking things away. This is how we see this bill. We also see this as protecting that viability of Nellis's missions. As long as the United States Air Force is flying, Nellis Air Force Base will be flying fighter and uninhabited aerial system aircraft because of the incredible importance and capabilities in southern Nevada.

BJORN SELINDER (Churchill County):

As Mr. Rybold indicated, most of the aspects of S.B. 301 have already been implemented or instituted to some degree within Churchill County, with a certain amount of success in helping to protect one of our most important economic assets in the County and in northern Nevada. The reason we have instituted the changes in plans and requirements is that we have long recognized the positive economic benefits that a military installation such as NAS Fallon brings to our community. We are able to do so with relatively small administrative cost. What is being proposed for other installations works effectively if given enough time to evolve in an orderly fashion. The economic contributions more than offset potential administrative costs. We have implemented amendments to our master plan. We have zoning ordinances, we recognize the Air Installation Compatible Use Zones (AICUZ) and the Accident Potential Zones. They are reflected in our building codes, density requirements and so forth. In addition, there have been purchases of development rights to ensure open space will be maintained. From Churchill County's perspective, we have a much different situation than at Nellis in that we started off with relatively low density surrounding our air installation; therefore, implementation has been less of a problem. Certainly it is worthwhile to learn from our positive steps taken. I urge you to consider S.B. 301.

JOHN B. HESTER (Director, Community Development, City of Reno):

We had a group of staff from Reno, Sparks, Washoe County and the Reno-Tahoe Airport Authority meet, and we took this legislation to the Reno City Council. They support this legislation, but they request amendments.

We recognize the commanders best know what is going on, and these are vital and important installations. We want to work with them. Perhaps Reno, Sparks and Washoe County have a different environment, and we look at this with a different perspective. We have a number of questions regarding some definitions. These are found in our handout ([Exhibit I](#)). For example, we would like to see "vicinity" clarified, and we would like to know the identification of the commander of a particular installation so we do not have to seek them out but have a reciprocal arrangement. Our changes are specified in the ten-page handout. To summarize: we would like to work with the military installations. In the past, we have not known the commanders, and this has been difficult when we needed to seek these people out. Unlike Nellis or NAS Fallon, we do not even know what takes place at these facilities. It is difficult to find them. We would like them to come to us and tell us what they are doing, what they need protection from or operations we need to be protected from and how we can work together. We have not enjoyed the cooperation other folks have talked about. In terms of the takings issue, in Reno, Sparks and Washoe County, we do have development more than agriculture in these APZs and high-noise areas. We are concerned we could get to the point of limiting development, and we would have a taking. If a military installation wants us to regulate, we would be happy to, but we want them to accept liability if there is a taking. If we are regulating on behalf of the federal government, we would like the liability to be with the federal government. With these comments, the Reno City Council supports this legislation.

LUIS F. VALERA (Director, Government Relations, University of Nevada, Las Vegas):

We have concerns with S.B. 301 as it concerns the University of Nevada, Las Vegas (UNLV), North Campus. The planning and development process for the UNLV campus already has cooperative elements stated in agreement between the Nevada System of Higher Education and Nellis Air Force Base. This includes master-planning and land-use collaboration that address planning and development, use, noise, operations and other impacts to Nellis Air Force Base and its operations.

Using the proposed UNLV North Campus as an example and taking into consideration facilities receiving sound attenuation that may be of no benefit, compliance with S.B. 301 would have a fiscal impact of approximately \$128 million.

SENATOR RAGGIO:
Could you explain the fiscal impact of \$128 million?

MR. VALERA:
According to our analysts, these additional costs would benefit about 34 percent of the gross square footage in sound attenuation. The rest would not have a benefit.

CHAIR LEE:
We are in the process of building a regional shooting range about two miles from you on the same side of Sheep Mountain. It is an interesting corridor. The Air Force is to fly on one side of the mountain, but they have not invested in the right to fly on the other side of the mountain. I understand your point.

JENNIFER LAZOVICH (Pardee Homes; Focus Property Group):
Pardee Homes is the major residential developer within Coyote Springs, portions of which are in Clark County and Lincoln County. In my capacity as a land-use lawyer, we have worked closely with Nellis for project development in areas they have concerns with. In the past, we have solved their concerns and proceeded with our development. Our concern with the bill is how it is drafted. Section 3 exempts projects that have approved development plans. But we read section 5 to say since no residential buildings have been constructed in Coyote Springs, the residential noise attenuation standards can be extreme to the point we could not build homes people could afford, let alone develop out our entire community.

MS. SMITH-NEWBY:
We understand the situation with Nellis regarding development; however, we have concerns, specifically that section 3, subsection 1, paragraph (a) may be overbroad where it describes a territory in the vicinity of a military installation to include all areas of the county in which major or significant levels of military activity take place. The language would include most military jet flight corridors, not only high noise areas or APZs around the Air Force Base. The language in Sec.3, subsection 1, paragraph (a) reading "in the vicinity of military

installations" broadens the area in question without finite limits. Addressing what is included in "the vicinity of the military installation" needs to be more specific.

Clark County has experience with the takings issue. Section 3, subsection 7 allows prior approved plans to proceed. The bill can result in takings action against the County and the State. If one has a zoning or use permit in place or purchases property with zoning or use permits in place but is not allowed to proceed with the development because they do not have the previously approved development plan and their new proposal is incompatible with the military installation, the property owner can allege a wrongful taking, claiming they had an investment-backed expectation to proceed under the existing zoning or permit despite the lack of an approved development plan. Section 4 is under-inclusive in that it only refers to variances when NRS 278.315 includes variances, use permits and other special exemptions. In section 8, subsection 3, the seller should be required to record the disclosure document against the property instead of retaining it. The disclosure will be identified in title reports and be made a permanent record against the property.

MICHAEL HILLERBY (Wingfield Nevada Group):

We are the owner and developer of Coyote Springs. We signed in as neutral on the bill. We are interested in section 3, subsection 7, which talks about not restricting existing zoning agreements. We want this language clarified. We view other sections as potentially in conflict. We want to ensure existing development agreements and building permits issued as a result of those agreements would not be affected by new regulations that might be passed in the bill.

MADDY SHIPMAN (Southern Nevada Home Builders Association):

I am signed in between neutral and opposed because the Association members clearly do not want to do or have anything done that would cause Nellis to leave the area. This is not our purpose. Our issues are the vagueness of language used in the bill and section 3, subsection 7. What does a development agreement or a development plan intend to cover and how does this affect zoning where one has purchased property or expected to build on existing property? In section 8, a seller would be expected to hold onto these signed disclosure notices. These should be recorded. I spoke with Senator Nolan, and an amendment may be forthcoming to require recordation, leaving the seller not responsible for holding onto a disclosure indefinitely in the event of a lawsuit

10 to 20 years down the road. We need to have a change in this section. Most of our concerns regard vagueness of language and the decibel standard.

GARRETT GORDON (Olympia Group):

We share the concerns of Coyote Springs, specifically with section 3 in how the definition of development plan is worked out and in regard to the exemptions.

CHAIR LEE:

This hearing on S.B. 301 is closed. We have with us Senator Wiener, and we will hear Senate Bill 267.

SENATE BILL 267: Makes various changes concerning the procedures for adopting administrative regulations and the requirements of the Open Meeting Law. (BDR 18-62)

SENATOR VALERIE WIENER (Clark County Senatorial District No. 3):

I appear before you to seek your support for Senate Bill 267. This legislation makes various changes concerning the procedures for adopting administrative regulations. It also changes requirements of the Open Meeting Law.

As you might recall, I first presented legislation to improve the Nevada Administrative Procedure Act in the 2005 Session. That bill, now law, made sweeping changes that have impacted how we process regulations that come before the Legislative Commission. Last Session, I did additional work on the Act by addressing notice requirements, posting of meeting details, deadlines and more.

I bring you S.B. 267 which continues the journey of improvements for the Act. Senate Bill 267, like the measures that preceded it, makes State agencies more accountable to the people they serve.

It was interesting to read the Legislative Counsel's Digest for this bill. Existing law referenced in the Digest was addressed and improved in the two earlier bills I was privileged to sponsor. I urge your support of S.B. 267. An amendment has been offered (Exhibit J) by Russell M. Rowe relating to the University Foundation. I am fine with it.

BRENDA ERDOES (Legislative Counsel):

I am a part of nonpartisan staff, and I have been asked to explain this bill, which addresses Legal Division drafts and reviews for the Legislative Commission and all the administrative regulations pursuant to NRS 233B.

The biggest change in this bill happens in sections 4 to 6. Those sections change the standard for voting on administrative regulations by the Legislative Commission. The practice in the Legislative Commission is if there are not enough votes to object to a regulation, the regulation moves forward and is deemed approved. This bill flip-flops so if there are not enough votes to approve the regulation, the regulation is not approved and does not become effective.

The second group of changes is sections 1 and 3. Section 1 makes the change and section 3 allows the other sections to conform. Agencies are required to give a 30-day notice before there is a hearing on a regulation to make changes. This controls the time in which the notice is given to the public. Existing law says the regulation can be given 30 days or more after they deliver a copy to the Legislative Counsel Bureau's Legal Division. This is timed out so we have 30 days to complete our review or redraft of the regulation. They can also give notice after receiving approved or revised text of the regulation. This is what is left in this regulation. Under this regulation, the agency would have to wait until they receive a copy back from us in order to make the filing and give notice. Then it would be 30 days before they could hold their hearing. There is concern in the delay. My office is not always able get the regulation back to the agency within 30 days. We do our best, but there are more and more regulations. Some of these regulations are over 400 pages, and there is no way we can do them in 30 days. Even short regulations with problems take time. When this happens, and an agency has given the 30-day notice for the hearing, sometimes the regulation copy is not out until the day of the hearing. This can interfere with a productive hearing. This is the intent. The 30 days is an average.

Section 2 requires all hearings be held pursuant to the Open Meeting Law. This is not always the case. Some Executive Branch agencies given to adopt regulations are not boards, commissions or other public bodies. They are individuals, such as the Insurance Commissioner who is given the authority to adopt regulations. That person does not have to have a public hearing after the first ones that require taking action on this regulation. This is a change.

Senate Committee on Government Affairs
March 30, 2009
Page 38

Section 7 requires one copy of the regulation documentation the agency uses for that hearing to be available to the public. The bill becomes effective July 1 if passed.

SENATOR RAGGIO:

On page 5, beginning on line 18 where you are changing the language regarding the Legislative Commission or the Subcommittee to Review Regulations, you are striking out the language "does not object to" and requiring "approves." Is this consistent with the remainder of sections which talk about objections? It continues to say, "If the Commission or Subcommittee objects to the temporary regulation ..." and on line 32 " ... written notice of the objection ... ," is this still consistent? I am trying to understand what it means.

MRS. ERDOES:

We toyed with changing this language, but the standards are there. What they are talking about is if the Commission objects or if the Subcommittee objects to a regulation, then these things happen. We believe it is clear from the text—but maybe not, considering your comments—that the Commission either approves or objects to the regulation. No matter what language you have up front, the action is still taken. If there are enough votes to approve it, then the regulation is approved.

SENATOR RAGGIO:

"Objects" is the opposite of "approval"?

MRS. ERDOES:

Exactly.

RICHARD "SKIP" DALY (Laborers International Union, Local 169):

We are here to support this bill, specifically, the portion on the Legislative Commission objecting. It takes a majority vote to pass legislation here. It should be the same when passing a regulation, which is essentially a law. The language as originally written says, if people do not object, potentially a vote to object a regulation ties 6 to 6. In that case, the bill did not receive a majority vote, yet the regulation would still go into effect as there was no affirmative vote to object. This will change the language to have an affirmative vote to approve. If a motion to approve ties 6 to 6, the motion would fail. Any regulation that goes into effect should require 7 votes on the Legislative Commission to move forward.

CHERYL BLOMSTROM (Nevada Motor Transport Association):

We have worked with Senator Weiner over the past two sessions to support this kind of action. We hope this bill culminates in a meeting of the spirit and letter of the law with respect to administrative regulations. The idea is that all participants have an opportunity to openly and actively participate in the process, including having all the documents they need to review ahead of time, submitting their comments and having those comments considered when actions are taken. We strongly support this bill.

BARRY SMITH (Executive Director, Nevada Press Association):

I support this bill. As for placing the workshops in public hearings under the Open Meeting Law on page 3, lines 31 to 33, it seems obvious these would be public meetings, but under the definition, they are not covered. As Ms. Erdoes explained, they are not necessarily deliberative bodies. In December 2007, a workshop was scheduled in Carson City. A simple clerical mistake put the address of the workshop at the wrong location. At least one person missed that workshop, and there was no recourse. This is an example of what could take place but on a much larger scale. Putting this in the Open Meeting Law would prevent this.

SAMANTHA STONE (Nevada Taxpayers Association):

Nevada Taxpayers Association wants to echo what has already been said. We support the greater accountability and transparency in Senator Wiener's bill.

JEANETTE BELZ (Associated General Contractors, Nevada Chapter):

When we moved the Legislative Session to 120 days, one of the impacts went to the regulatory stage. The numbers of regulations are greater. The workshop example I did see in the paper alarmed me, as the premise was that workshops are not public meetings, as public policy is not determined at that time. Much of the development of a regulation is done at the workshop stage. It was incomprehensible that a workshop was not considered a public meeting.

Secondly, as for the 30-day requirement, I understand the Legal Division cannot always get a regulation out in a timely matter, but when one represents a membership organization, to walk into a regulatory hearing with a copy of a newly received regulation makes it difficult to go back to the membership for input.

Thirdly, when we approached Senator Wiener about this bill this Session, my intent was to get a copy of the supporting materials, excluding those things deemed confidential, made available in the back of the room for the public to view. What is difficult to follow is when one is in a committee meeting and, possibly deliberately, a group will say, "Everybody, if you will turn to tab C in the book, that's the budget. Can I take a motion?" Then it is over, and one does not even know what it says. Some public bodies are better than others providing information ahead of time. Some say it is not public until it becomes public on the day of the hearing, even though it might have been sent out to committee members ahead of time. This makes one copy available in the back of the room so people can take a look at materials and become informed.

PAT HINES:

I have a son who is a resident in the criminal justice system. I support this bill. I appreciate Senator Wiener's involvement in making State agencies more accountable. We wanted parole material placed into the legislation. This is a step in the right direction. Using words such as "may" instead of "must" when things need to be transparent is a step in the right direction. And to use "approve" instead of saying "they do not object, so we will pass it" is an improvement.

CHAIR LEE:

There is one amendment to this bill.

RUSSELL M. ROWE (University of Nevada, Las Vegas, Alumni Association):

This is a familiar amendment, as I submitted a similar one on an earlier bill this Session. I spoke with the sponsor of this bill to allow this amendment. The explanation is the definition of a "university foundation" is so broad, it envelops every nonprofit organization associated with a university or a State college. No matter the size, they must comply with the Open Meeting Law according to interpretation. This amendment in [Exhibit J](#) is to clarify the definition of a university foundation. Senator Wiener recommended to exclude alumni associations and better define university foundations. This is to ensure the requirements and statutes for a university foundation apply only to university foundations and do not bleed over to alumni associations or other nonprofit organizations including private nonprofit organizations associated with universities.

SENATOR CARE:

Ms. Chlarson, this amendment goes to NRS 396.405. I am also thinking of the Administrative Procedures Act in NRS 233B. A court would not allow it.

MRS. ERDOES:

I agree. In court, this would not go. Our standard in subsection 2, Rule No. 14.7 in the Joint Standing Rules, is germane if a single subject is stated by the topics listed. Not only the governmental administration, which is broad on this bill, goes to the Open Meeting Law portion that agencies are subject to, but it also applies to their being subject for a regulation. It is germane.

LUKE ANDREW BUSBY (Assistant General Counsel, Public Utilities Commission of Nevada):

We are taking a neutral position on this bill, but we would like to bring a provision of the bill to your attention. Nevada Revised Statute 233B.0601 allows an agency such as the Public Utilities Commission (PUC) to issue and publish a notice of intent to adopt, amend or repeal a regulation 30 days after delivering the proposed regulation to the Legislative Counsel Bureau (LCB) without receiving the proposed regulation back. The practical effect of this change in section 1 would require the PUC to wait until the LCB completes its review process before the Commission can publish this notice. We want to be clear we are not criticizing the LCB, but this provision could be problematic in cases where the Legislature may direct the PUC to adopt regulations within a certain time period because the PUC cannot quantify the period and tell how long it will take to implement certain statutory requirements.

Senate Committee on Government Affairs
March 30, 2009
Page 42

CHAIR LEE:

There is no further business. The meeting of the Committee on Senate Government Affairs is adjourned at 4:12 p.m.

RESPECTFULLY SUBMITTED:

Cynthia Ross,
Committee Secretary

APPROVED BY:

Senator John J. Lee, Chair

DATE: _____