

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

**Seventy-sixth Session  
February 21, 2011**

The Senate Committee on Government Affairs was called to order by Chair John J. Lee at 9:03 a.m. on Monday, February 21, 2011, in Room 2135 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412E, 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 Mark A. Manendo, Vice Chair  
Senator Michael A. Schneider  
Senator Joseph (Joe) P. Hardy  
Senator James A. Settelmeyer

**GUEST LEGISLATORS PRESENT:**

Senator David R. Parks, Clark County Senatorial District No. 7  
Senator Valerie Wiener, Clark County Senatorial District No. 3

**STAFF MEMBERS PRESENT:**

Michael Stewart, Policy Analyst  
Heidi Chlarson, Counsel  
Martha Barnes, Committee Secretary

**OTHERS PRESENT:**

Jeanette K. Belz, M.B.A., Nevada Academy of Ophthalmology  
Paula Berkley, State Board of Physical Therapy Examiners; Board of Occupational Therapy  
Craig M. Stevens, Director of Government Relations, Nevada State Education Association  
Jack Mallory, Director of Government Affairs, International Union of Painters and Allied Trades, District Council 15

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Terry J. Care, Ex-Senator; Saguaro Power Company, Ltd.  
Brent M.T. Keele, Saguaro Power Company, Ltd.  
Debra Gallo, Director, Government and State Regulatory Affairs, Southwest Gas Corporation  
Constance J. Brooks, Senior Management Analyst, Administrative Services, Clark County

CHAIR LEE:

The first bill we are going to hear today is Senate Bill 7, an act relating to administrative services.

**SENATE BILL 7**: Revises provisions governing the adoption of emergency regulations. (BDR 18-13)

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

The impact of Senate Bill (S.B.) 7 is substantial, so I will provide a little history and then turn it over to others who are here to support the measure. This is my fourth Legislative Session working on administrative regulations. When we began the process, we had a great deal of work to complete, and each session it has decreased. This particular measure addresses transparency regarding emergency regulations. Each of the four sessions has created greater transparency and accountability for the development of regulations. This bill deals with emergency regulations. We have included the language "practicable" in the measure; however, the intent of the bill is to provide the same level of transparency and accessibility to regulations even in an emergency so the public can see what is being proposed prior to implementation. Just because it is called "emergency" regulations does not mean there is no impact on the public, as regulations do affect the people we serve. I urge your support for S.B. 7 as a piece of the package we have been working on for four Legislative Sessions to create transparency, accountability and good government.

CHAIR LEE:

For clarification, this affects Executive offices only, does it not?

SENATOR WIENER:

Yes, the bill only affects the Executive Branch agencies.

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CHAIR LEE:

What brought this idea forward?

SENATOR WIENER:

There is a witness here who can testify to a recent occurrence, but this piece was missing from the overall package.

JEANETTE K. BELZ, M.B.A. (Nevada Academy of Ophthalmology):

I am here to testify in support of S.B. 7. I want to ensure the Committee knows this is not specifically related to the Board of Medical Examiners, but here is my most recent example regarding a proposed emergency regulation.

I represent ophthalmologists, and the regulation considered by the Board of Medical Examiners was relative to medical assistance. Emergency regulations are enacted very quickly and last for a period of 120 days. If this particular emergency regulation had passed, it would have completely changed how ophthalmologists conduct business.

For example, if you visit an ophthalmologist's office, a medical assistant might run some tests on your vision or put drops in your eyes to dilate them before you see the ophthalmologist. This regulation would have required the patient to see the ophthalmologist before a medical assistant could run any routine tests. The ophthalmologist would have had to determine a treatment plan prior to having the results of the vision screening. Certain screening tests must be completed so the ophthalmologist has enough information to assess the patient.

I represent a number of groups and organizations with concerns. The value of this particular statutory change allows 24 hours to provide a proposed regulation to our members in order to evaluate the impact of the emergency regulations.

PAULA BERKLEY (State Board of Physical Therapy Examiners; Board of Occupational Therapy):

I was not planning to testify this morning because I submitted information to both of the boards I represent. They are in support of the bill ([Exhibit C](#)).

CHAIR LEE:

We will close the hearing on S.B. 7. We will open the hearing on Senate Bill 92 regarding community development.

**SENATE BILL 92**: Authorizes redevelopment agencies to expend money to improve schools. (BDR 22-579)

SENATOR JOSEPH (JOE) P. HARDY (Clark County Senatorial District No. 12):  
Senate Bill 92 had its genesis in the 2009 Legislative Session. The concept in section 4, subsection 2, paragraph (d), and section 4, subsection 3, allows redevelopment districts to use funding for the improvement of schools in the community but not to include ongoing expenses such as salaries. Inasmuch as redevelopment is a tax increment concept, it takes money away from education.

In Boulder City, the older schools do not seem to receive new funding compared to the new schools. The augmentation of physical facilities or one-time investments is not available for the schools in a more-established community. Senate Bill 92 allows the redevelopment agency to give money to a local school and not change the Nevada Plan.

Section 1 was formed when the Chair of the Assembly Committee on Government Affairs wanted to improve accountability and transparency in the arena of redevelopment agencies. The language was voted on in the Assembly and the Senate in the 2009 Legislative Session and passed, but was lost in the shuffle at the end of Session.

CHAIR LEE:

Section 1 through section 4 was approved during the 2009 Legislative Session, but because it was lost, the Legislative Counsel Bureau brought this bill forward.

SENATOR HARDY:

Yes, the language was brought forward through the Legislative Counsel Bureau.

CHAIR LEE:

The process exists without any direction from the Legislature, but S.B. 92 would clarify the process.

SENATOR HARDY:

Senate Bill 92 allows for the codification of a process currently being utilized.

SENATOR SCHNEIDER:

Would Boulder City ever consider having gaming directed toward education by allowing citizens from other communities to support the tax base?

SENATOR HARDY:

The issue has been discussed with some support, but I do not support the concept.

CRAIG M. STEVENS (Director of Government Relations, Nevada State Education Association):

The Nevada State Education Association supports S.B. 92 and the attempts to get more money into the schools. Schools are a large part of the community along with other businesses or community groups and should be full partners in putting an area back on its feet.

JACK MALLORY (Director of Government Affairs, International Union of Painters and Allied Trades, District Council 15):

I oppose this bill but not because of the concept to spend money improving educational facilities. Our concern with the language is when you have large communities like Las Vegas, North Las Vegas and the City of Henderson that have redevelopment agencies, you are going to have education facilities competing directly with economic development. Our view of redevelopment authorities and agencies is, for all intents and purposes, to create economic incentives for business development within those communities. We are not opposed to the concept of having redevelopment money dedicated toward improving education facilities, but it would be better to do something similar to what has been done with the Redevelopment Agency (RDA) in the City of Las Vegas. The City of Las Vegas indicates an 18 percent hit to the RDA fund for affordable housing.

SENATOR HARDY:

Regarding the nexus with economic development, we have heard testimony about the need for an educated workforce. Inasmuch as the educated workforce must come from the school system, I would propose we have an economic development nexus with education and particularly with the education of our students in the older schools.

CHAIR LEE:

We will close the hearing on S.B. 92. We will open the hearing on Senate Bill 109.

**SENATE BILL 109**: Revises provisions relating to local financial administration.  
(BDR 31-825)

SENATOR DAVID R. PARKS (Clark County Senatorial District No. 7):

Senate Bill 109 revises the fees set for business licenses which may be imposed by a local government on a public utility. This is an issue dating back ten years when an interim committee was established to review public utilities and how changes were taking place in the State. As a result, A.B. No. 32 of the 72nd Session was written. The bill included various changes with the providers of utilities.

TERRY J. CARE (Ex-Senator; Saguaro Power Company, Ltd.):

Saguaro Power Company is what is known as a cogeneration power plant. A cogeneration power plant generates steam but, in our case, also generates electricity for the sale—by wholesale—to NV Energy. Saguaro Power Company, Ltd., is a smaller power plant that has been around for about 20 years and is located in the Basic Management Incorporated complex off Lake Mead Parkway and U.S. 93/95. There are a half dozen of these cogens scattered throughout the Las Vegas Valley. Senate Bill 109 seeks to clarify statutes enacted in 1995 and amended in 1997. The need to provide clarification did not come to the attention of Saguaro Power Company, Ltd., until last year. The bill will amend the definition of “revenue” in *Nevada Revised Statute* (NRS) 354, local financial administration. Revenue would not include proceeds from the interstate sale of natural gas to a wholesale provider of electric energy. Saguaro Power Company, Ltd., is a wholesale provider of electric energy to NV Energy.

Senate Bill 109 is necessary because Clark County has revised an ordinance requiring public utilities to pay a business license fee. The ordinance also provides: “Every public utility providing electric energy or gas to any customer located within the county pay a license fee that it has collected from its customers.” Under the ordinance in Clark County, the license fee is capped at 5 percent of gross revenues. The ordinance also says a public utility is anyone who provides electric energy or gas whether or not the person is subject to regulation by the Public Utility Commission (PUC). Legislation, and therefore the ordinance, exempts the sale of natural gas to any proceeds from the interstate

sale of natural gas to a provider of electric energy which holds a certificate of public convenience and necessity issued by the PUC. That would be NV Energy. The ordinance does not apply to the sale of natural gas to NV Energy, which it uses to generate electricity, but Clark County says pursuant to the statutes, the ordinance should apply to everybody who purchases natural gas for the production or sale of energy on a wholesale basis. There is no tax for NV Energy, but there is for the cogen that purchases natural gas for the generation of electricity sold to NV Energy.

Clark County takes the position that the 1995 and 1997 legislation does not exempt the sale and therefore, because it is not exempted, it can apply the tax.

I am not trying to punish Clark County, but the legislation is drafted in such a manner that any county could charge the tax and apply it to any other cogen. We want to seek clarification in State law. I referenced S.B. No. 568 of the 68th Session and A.B. No. 508 of the 69th Session, which is strictly confined to the telecommunication industry and does not have anything to do with Saguaro Power selling to NV Energy.

We refer to the schematic we provided ([Exhibit D](#)) as a couple of taxing models. We believe legislative intent should be noted on Model I. You can see a one-time fee charged to the end user or retail customer of the energy sold by NV Energy. Under the interpretation of the statute by Clark County, shown in Model II, the county wants to impose the tax on the sale of natural gas to Saguaro Power Company, Ltd., and other cogens. There is a second tax imposed by NV Energy, but Saguaro Power Company, Ltd., is unable to recoup any fee imposed on them. There is a real fear of double taxation. We do not believe it was the intent of the Legislature, whether in 1995, 1997 or 2003, for this law to be interpreted as per Clark County.

Senator Parks mentioned 2003, and in our review of the legislative history and the committee minutes, that legislation pertains to the sale of natural gas to a retail end user, somebody who purchases natural gas from somebody other than Southwest Gas. The fees are supposed to be collected on all these sales, but that does not pertain to the sale of natural gas to a cogen such as Saguaro Power Company, Ltd.

SENATOR SCHNEIDER:

Does Saguaro Power Company, Ltd., sell power or produce any power out of state?

BRENT M.T. KEELE (Saguaro Power Company, Ltd.):

No, it does not. All the power Saguaro sells goes directly to NV Energy. Generally, independent power producers like Saguaro Power Company, Ltd., have sold the power they produce in a wholesale transaction to someone else who will resell it. If you look at the two models listed, [Exhibit D](#), you will see the first model is an example of a holder of a certificate of public convenience and necessity who buys gas directly from a gas producer and is specifically exempted. The company converts gas into electricity that is sold on a retail level, and the fee is applied. Historically, the original gas purchase has been exempted from the definition of revenue. The only distinction between the example and an independent power producer like Saguaro Power Company, Ltd., is that Saguaro is the one buying the gas and converting it to energy in the same manner as Nevada Power does. The difference is Saguaro Power Company, Ltd., just sells its power to Nevada Power. Relative to how the power is getting to the end user, if the statute is interpreted as proposed by Clark County, the fee would effectively be charged twice versus once.

Ultimately, as a policy, it will increase the fee being passed along to the end-use consumer because it will increase the cost of energy. The consumer will pay the fee twice. Senate Bill 109 is a clarification of what we believe has always been the intent of the law from the 1995 and 1997 Legislative Sessions. It was the intent not to tax these gas purchases to the power company because it would be taxed as an energy sale to the consumer. We do not believe it was ever contemplated there would be independent power producers in the market who were actually selling power to NV Energy and to help meet load demands. This fee has not been charged until recently, and we just became aware of Clark County's position. We want to clarify the fee should only be charged once to the consumer rather than at two different levels.

SENATOR SCHNEIDER:

Saguaro Power Company, Ltd., sells no power out of state. They do not produce power in any other state except Nevada.



MR. KEELE:

Saguaro Power Company, Ltd., sells all the power it produces to NV Energy in Clark County.

CHAIR LEE:

Has the fee been paid or is it being debated whether or not you owe the fee?

MR. KEELE:

We have not paid the fee. It has not been officially charged to Saguaro Power Company, Ltd., but it was charged to a gas seller who sold to Saguaro Power Company, Ltd.

CHAIR LEE:

Did the gas seller pay this fee?

MR. KEELE:

The company was subject to an audit and told it should have been paying this fee. The company paid the fee, but we are unsure if it will collect from Saguaro Power Company, Ltd. We understand it did pay a fee at the time of the audit, but we have not had access to the audit in order to verify the information or the amount.

SENATOR CARE:

We have had conversations with Clark County about the interpretation once we became aware of the statute. The County seems to be entrenched in its interpretation of the law. We disagree with their interpretation.

SENATOR SETTELMAYER:

From my interpretation of Clark County's position, they could almost charge the buyer and the seller for the gas and have the consumer pay it on the back end—so it could theoretically be charged three times.

MR. KEELE:

I believe you are correct. Based on the County's interpretation, Clark County can charge the buyer of the gas—Saguaro Power Company, Ltd.—a 5 percent fee. When Saguaro converts the gas to energy and sells the energy, that could be taxed as well. Finally, the end-use consumer who buys the power can be charged a fee. Technically, it could be charged three times.

SENATOR PARKS:

During the 2003 Legislative Session when A.B. No. 32 of the 72nd Session was heard in the Senate Committee on Commerce and Labor, former Chair Randolph J. Townsend stated, "When looking at Nevada Power Company numbers, I want to be sure we are not going to double collect a franchise fee. This is important to protect existing customers." The same concern was raised in 2003.

DEBRA GALLO (Director, Government and State Regulatory Affairs, Southwest Gas Corporation):

I am in favor of this bill because the genesis of the bill is regarding the sale of natural gas. I was involved in the hearings for A.B. No. 32 of the 72nd Session. What happened in 1995 and 1997 is the large customers of Southwest Gas began purchasing their own gas supplies directly from gas suppliers such as British Petroleum. Southwest Gas transports natural gas and collects a marginal fee. Our retail customers receive no margin component on natural gas. Once you understand the billing process, the customer's bill may not change, but Southwest Gas revenues decrease because the commodity portion of natural gas is between two-thirds and three-fourths of a customer's bill. Southwest Gas revenues decreased, so we need to make adjustments to the statute. In this case, Saguaro Power Company, Ltd., is correct when it says NV Energy customers would be paying the business license fee twice if the company were to collect and pay NV Energy. Saguaro's revenues include the price of the power.

CHAIR LEE:

NV Energy is a large user of Southwest Gas?

MS. GALLO:

Yes, we transport quite a lot of gas for NV Energy.

CHAIR LEE:

Would NV Energy be subject to this taxation if the bill was interpreted in this way? NV Energy could be taxed through Southwest Gas and then from NV Energy to the end user?

MS. GALLO:

No. Not the way the statute reads now.

CHAIR LEE:

Could this be interpreted this way in the future?

MS. GALLO:

The statute is specific now. A provider of electric energy holds a certificate from the Public Utilities Commission, which right now is just NV Energy.

SENATOR SCHNEIDER:

Does Southwest Gas conduct business in California and Arizona?

MS. GALLO:

Yes, that is correct.

SENATOR SCHNEIDER:

How is this matter treated in those two states?

MS. GALLO:

I do not deal with the franchise and business license fees, so I do not have that information but will get it for you.

CONSTANCE J. BROOKS (Senior Management Analyst, Administrative Services, Clark County):

We are in opposition of S.B. 109. While this bill seeks to clarify language, it does so to the benefit of natural gas sellers and to the detriment of local government. This bill will cause a significant loss of revenue to Clark County, up to approximately \$8 million annually. Franchise fees are collected by the County based on utility revenues. Sellers of natural gas are required by local governments that have adopted such provisions to assess and collect a fee from customers based on a percentage of revenues derived from the sale of natural gas. This fee is then remitted to local government. Senate Bill 109 would modify the definition of revenue as it relates to the collection of business license fees from sellers of natural gas to exclude the calculation of such fees as purchasers of natural gas that convert the product into electric energy for sale to a public utility.

Such sales are required to be included in the revenue of the natural gas sellers, which are assessed a 5 percent fee collected by the sellers and remitted to the County pursuant to Clark County code as well as NRS. The code as well as the statute aims to exclude the definition of revenues, thereby reducing County

franchise fee collections and all proceeds from the interstate sale of natural gas to a wholesale provider of electric energy. This would allow natural gas providers to escape taxation regardless as to whether the end user of the electricity is within or outside of the State. This fiscal year, we collected over \$7 million from an alternative natural gas seller related to the sale of electric power generators within Clark County. This was discovered during an audit of an out-of-state seller of natural gas. We are now scheduling audits of the other alternative gas sellers to determine if they are collecting the franchise fees appropriately. If S.B. 109 were already in law, we would neither have been able to collect those fees nor any franchise fees from other electric power companies for the past purchases or any future purchases of natural gas.

CHAIR LEE:

Clark County is interpreting the statute to charge these franchise fees?

MS. BROOKS:

Yes, we conducted an audit that allowed us to realize \$7 million in franchise fees. Last year was the first time Clark County conducted the audits.

CHAIR LEE:

In your opinion, should you have been able to collect these fees over many, many years, or did something happen last Session allowing you the authority to collect these fees? Other folks believe the statute is being interpreted in an unintended way when it was not done in the past.

MS. BROOKS:

I need to correct prior information. We actually conducted three audits last fiscal year. I do not have the exact date of the first audit. We conduct audits on a three-year cycle. We have certain companies to audit, and it was discovered during that cycle.

CHAIR LEE:

We are here today to clarify the intent of that statute?

SENATOR SETTELMAYER:

You stated this was only about one industry. Using Clark County's interpretation of the rule, if I bought water from Senator Manendo to run through my hydroplant, you could charge him this fee.

MS. BROOKS:

The specifics related to this exemption are natural gas and electric energy only. I do not know how it would be applied to other natural resources.

SENATOR SETTELMAYER:

What about Senator Townsend's comment back in 2003 to make sure we are not taxing twice?

MS. BROOKS:

As we interpret the statute and how our ordinance was developed, we feel entitled to charge these franchise fees based on the way the statute was written.

SENATOR SCHNEIDER:

What do they do in San Bernardino County, California, and Pima County, Arizona?

MS. BROOKS:

That is an excellent question, but I do not have the answer. However, it would be advantageous to research other states to determine how they handle this issue.

CHAIR LEE:

I would like to refer to our counsel, Heidi Chlarson, to obtain an opinion from the Legislative Counsel Bureau to establish intent.

HEIDI CHLARSON (COUNSEL):

The Legislative Counsel Bureau would be glad to provide an opinion to this Committee for clarification on S.B. 109.

CHAIR LEE:

I will utilize our counsel for additional information on this bill, and we will bring it back at a later date.

MS. BROOKS:

I would like to address the question posed by Senator Settelmeyer. Franchise fees are not collected for water usage, so your scenario would not apply.

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SENATOR SETTELMAYER:

It was not traditionally applied to natural gas, and then it was. The vague definition you are giving could extend into other arenas, although you may not realize it at this time. Maybe hydroplants do not now exist in Clark County, but they could in the future. Clark County's interpretation is rather vague.

CHAIR LEE:

We will close the hearing on S.B. 109. We will have a work session in about a week and a half, and we will be better prepared with information regarding the legalities of this bill. The meeting is adjourned at 9:53 a.m.

RESPECTFULLY SUBMITTED:

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Martha Barnes,  
Committee Secretary

APPROVED BY:

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Senator John J. Lee, Chair

DATE: \_\_\_\_\_

<b><u>EXHIBITS</u></b>			
<b>Bill</b>	<b>Exhibit</b>	<b>Witness / Agency</b>	<b>Description</b>
	A		Agenda
	B		Attendance Roster
S. B. 7	C	Paula Berkley	Letter from the Board of Physical Therapy Examiners
S. B. 109	D	Ex-Senator Terry J. Care	Schematic of local fees on purchases of natural gas used for the production of electricity