MINUTES OF THE
SENATE COMMITTEE ON GOVERNMENT AFFAIRS

Seventy-sixth Session
February 28, 2011

The Senate Committee on Government Affairs was called to order by Chair John J. Lee at 9:03 a.m. on Monday, February 28, 2011, in Room 2135 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 Mark A. Manendo, Vice Chair
Senator Michael A. Schneider
Senator Joseph (Joe) P. Hardy
Senator James A. Settelmeyer

GUEST LEGISLATORS PRESENT:

Senator Mike McGinness (Central Nevada Senatorial District):

STAFF MEMBERS PRESENT:

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

OTHERS PRESENT:

J. David Fraser, Executive Director, Nevada League of Cities and Municipalities
Wes Henderson, Deputy Director, Nevada Association of Counties
Keith Larson, Mayor, City of Caliente
Barry Smith, Executive Director, Nevada Press Association, Inc.
Michael Tanchek, Labor Commissioner, Office of Labor Commissioner, Department of Business and Industry
Warren B. Hardy II, Ex-Senator; Associated Builders and Contractors, Inc., Nevada Chapter

Clara Andriola, President/CEO, Associated Builders and Contractors, Inc., Nevada Chapter
Jack Mallory, Director of Government Affairs, International Union of Painters and Allied Trades District Council 15; Southern Nevada Building and Construction Trades Council
David Kersh, Government Affairs, Carpenters/Contractors Cooperation Committee, Inc.
Paul McKenzie, Executive Secretary-Treasurer, Building and Construction Trades Council of Northern Nevada, AFL-CIO
Jason King, P.E., State Engineer, Office of the State Engineer, Division of Water Resources, Department of Conservation and Natural Resources
Kyle Davis, Political and Policy Director, Nevada Conservation League
Andy Belanger, Management Services Manager, Southern Nevada Water Authority, Las Vegas Valley Water District
Dean Baker, Baker Ranches, Inc.
John A. Erwin, Director, Natural Resources Planning and Management, Truckee Meadows Water Authority
Steve K. Walker, Lyon County; Douglas County; Carson City; Storey County
Randy Robison, City of Mesquite; Virgin Valley Water District
Bjorn Selinder, Churchill County; Eureka County; Elko County
Vicky Parker, Town of Pahrump
Harley Kulkin, Town of Pahrump
William A. Kohbarger, Manager, Town of Pahrump
Steve Osborne, Planning Director, Nye County Planning Department
Joni Eastley, Commissioner, Board of County Commissioners, Nye County
Dan Schinhofen, Commissioner, Board of Commissioners, Nye County
Constance J. Brooks, Senior Management Analyst, Administrative Services, Clark County
Brian O'Callaghan, Government Liaison, Las Vegas Metropolitan Police Department

CHAIR LEE;
I will open the hearing on Senate Bill (S.B.) 65.

SENATE BILL 65: Revises provisions concerning the quarterly publication of certain financial information by incorporated cities. (BDR 21-400)

J. DAVID FRASER (Executive Director, Nevada League of Cities and Municipalities): There is a handout being distributed to the Committee (Exhibit C). A 1939 law requires local government to publish in a local newspaper the receipts, disbursements and details of the bills received and paid. In 1939, this was a small volume but in today's world, these financial transactions equate to hundreds and thousands of transactions per year. At that time, the local newspaper was the best way to disseminate information. Now, requiring this information to be distributed through this particular medium can be expensive and inefficient. Printing amounts to approximately 40,000 lines, which equate to 2,000 pages of print. The cost for the larger cities will be in the neighborhood of $125,000 per quarter for these notices. We support the information being distributed to the public and agree with the intent of the 1939 law.

We live in an electronic age and can provide this information to the public via Internet and other means that can exceed the intent of the 1939 law. If public information is available on the Internet, we can make it possible for a customer to query the site. The bill proposes to provide financial notices on Internet, rather than in the local newspaper, where cities would have the ability to publish a quarterly summary of the financial data. We are willing to create a quarterly publication to include information regarding the options available for citizens to know what the local government is proposing. We are proposing three methods of notification: a Website, a telephone number or a visit by the citizen to city hall at a particular address.

By drafting a smaller publication, citizens can review—rather than be overwhelmed by—the material. Citizens who may want to have more detailed information would have three options to obtain it. The Nevada Association of Counties will propose an amendment (Exhibit D) to this bill. Since S.B. 65 only applies to cities, the proposed amendment will extend it to the counties.

SENATOR SETTELMEYER:
How do you feel about a citizen coming into your office when you have to print the information and provide it to them for free?

MR. FRASER:
The cost established for printing is located in the Public Records chapter 239 of *Nevada Revised Statutes* (NRS). I would be hesitant to commit to printing

material and providing it for free because we may be talking about 2,000 printed pages.

SENATOR SETTELMEYER:
I spoke to the Assessor in Storey County, and she had always planned to provide copies for free. During her 27-year history, no one ever requested any copies.

SENATOR HARDY:
Were there any discussions when this was being formulated to have a real time publication on the Internet versus a quarterly report?

MR. FRASER:
You make a good point; it would be a significant advantage to have the reports readily available as opposed to quarterly. Currently, if you miss the proper issue of the newspaper, you could miss the information altogether. Citizens who regularly monitor what goes on at city hall would know to go to the Internet to obtain information. For those citizens who might inquire on a more sporadic basis, the summary might be more meaningful.

SENATOR HARDY:
If we had information in real time, it would provide transparency in government. I see no reason to wait to provide the information on a quarterly basis if it is available prior to the end of the quarter.

SENATOR MANENDO:
I was also concerned about the information being three to four months later. Do all of the cities and municipalities have a Website? Cities and municipalities without a Website would not be able to comply with this legislation. Where would the average person find this information on the Website?

MR. FRASER:
The quarterly notice would include the Web address directing the citizen to the Website for additional information. We would be receptive to eliminating the quarterly requirement entirely.

SENATOR MANENDO:
I still want to be sure all of the cities and municipalities have a Website.

MR. FRASER:
We could certainly discuss a way to ensure that question is answered.

SENATOR MANENDO:
I am not comfortable moving the bill until this question is answered.

CHAIR LEE:
The summary printed in the newspaper would be liabilities, payables, receivables, assets and generic city business. If a citizen wants more detailed information, they would be directed to the Website. Would the summary itself cover many of the larger details?

MR. FRASER:
The summary would provide a snapshot, but all of those items you mentioned are public record and available online or at city hall.

WES HENDERSON (Deputy Director, Nevada Association of Counties):
We are neutral on S.B. 65 as written. We are proposing an amendment and are interested in changing the reporting requirements to a summary. Our amendment includes the counties along with the cities and municipalities.

CHAIR LEE:
Based upon Mr. Manendo's question, can you provide additional information?

MR. HENDERSON:
All of the counties with the exception of Mineral County have Websites.

KEITH LARSON (MAYOR, CITY OF CALIENTE):
We are a municipality without a Website, but we expect our Website to be up and running before the end of the year.

BARRY SMITH (Executive Director, Nevada Press Association, Inc.):
I am opposed to S.B. 65 but am in favor of continued exposure of the city and county expenditures to the public. This is a good time for scrutiny of what the cities and counties are spending. Senate Bill 65 would remove a 70-year practice of taxpayers reading what bills are paid for each quarter.

For Carson City, it would mean sifting through 800 bills in one quarter from the year 2010. I went to City Hall in Carson City to see how the language could be

applied. I checked the *Nevada Appeal* when the list was published for one of the bills I wanted to review. The employees were very helpful, and it took less than five minutes. But I do not see how it would be practical for a citizen to go to city hall and ask staff to bring up each of the bills paid in the last three months for examination. It does seem to take away an important opportunity for the public to scrutinize what Carson City is spending. In Carson City, the cost to publish the list was $2,338. That was just one bill relative to $15 million worth of spending in one quarter. The office employees at City Hall in Carson City indicated they rarely get any phone calls once the list is published. Providing the information on the Internet is a deterrent for inappropriate payments, as it is public information and can be questioned.

Bell, California, was the poster child for money being spent without anyone paying attention to city hall. The city went through millions of dollars over the years until someone sifted through the public records.

When the notices are published, they are also on the Internet. There is a public notice system in place in the State where you can look up bill by bill and county by county. A number of other things mentioned regarding the summary or the notice are not detailed in the bill. There certainly needs to be some detail about what information the notices must include.

I share the concern regarding publishing the notices on the Internet because there is no third-party accountability. There are over 350 Nevada commissions, cities and counties, and you are asking citizens to know where this specific information is located. I do not believe Reno and Las Vegas are compliant with the law. There is room for improvement regarding the process of providing this transparency, but I do not think it is S.B. 65.

CHAIR LEE:
I am concerned about posting this information in the newspaper. It should be five consecutive days for those people who read the paper. If this bill passes and the summary was published, I want to make sure the citizen did not miss the information in the Tuesday edition. You brought up good points in your testimony. We will close the hearing on S.B. 65 and open the hearing on S.B. 16, which makes changes to the establishment of prevailing wage.

SENATE BILL 16: Makes various changes relating to the establishment of prevailing wages. (BDR 28-478)

MICHAEL TANCHEK (Labor Commissioner, Office of Labor Commissioner, Department of Business and Industry):
Senate Bill 16 is designed to address a problem with prevailing wage as a result of a Nevada Supreme Court decision called *Labor Commissioner v. Littlefield,* 123 Nev. 35, 153 P.3d 26 (2007), which said that no job classification at any level can be changed without going through the rule-making process. I provided information for the Committee (Exhibit E) and will refer to it during my testimony.

What I lack as Labor Commissioner is a mechanism to adjust prevailing wage classifications based on results of the annual surveys. The bill is an alternative to S.B. No. 376 of the 75th Session that passed but was subsequently vetoed by the Governor. That bill would have required the classifications for prevailing wage to be completed statutorily. Any changes made from the classification surveys would have to be approved by the Legislature. That creates a problem because the surveys begin in mid-March and end at the end of October, which means any changes would have a year-and-a-half wait until the Legislature reconvenes.

This language was cloned from the first reprint of S.B. No. 376 of the 75th Session, so I am dedicated to some sections and not others. Section 1 has language stating any person who wishes to bid on a project has to ascertain the rates from the Labor Commissioner. *Nevada Revised Statute* 338.020 requires public bodies to include the prevailing wage rates in their bid documents. There is a provision having to do with nonresidential construction less than four stories in height. Instructions for the prevailing wage survey refer to multifamily fewer than five stories for residential projects. The change will get us aligned with the 1931 Davis-Bacon Act requirement, which is less than four stories. We generally do not do residential, although we have had some experience as a result of the Green Jobs Initiative when we had to create a system for dealing with a limited range of residential properties.

The most important section is section 1, subsection 3 where I would establish the classifications by regulation. Exhibit E includes a survey that lists 38 classifications that I propose adopting by regulation. Any additional changes to the list would come later.

Section 1, subsection 5, paragraph (b) allows the Labor Commissioner through administrative action to correct technical or clerical errors. The language may be a little broad, but we have mistakes in the wage rate tables such as a transposition of numbers resulting in $35 an hour instead of $53 an hour. A technical error is not a misprint but an obvious error.

An example is Jacks Valley Road in Douglas County when hours were mistakenly allocated to Carson City instead of Douglas County. That obvious mistake should not warrant a hearing to correct. The language reads, "including, without limitation," but I am only looking to make technical and clerical changes. Subsection 8 gets into benefits and could be an interesting topic.

One difference in the cloned version of S.B. No. 376 of the 75th Session was the word **"**including,**"** whereas I used the word **"**excluding**"** with a laundry list of benefits to establish. One such benefit is zone pay, and it is fairly historical. The bill also refers to subsistence and travel, which is not the same as zone pay. Intellectually, you can make a connection between travel, subsistence and zone pay, but they do not work together. Subsistence and travel would be an added expense included in the rates.

Shift differential is also listed, but the only place with a shift differential is the category of operating engineers. Shift differential is noted incorrectly in the rate tables as a job classification. It is an "adder" to the rate. It is unclear why shift differential is necessary because Nevada is one of only two or three states with a daily overtime requirement. Shift differential increases the cost. By including overtime in the bill, you now have a statutory requirement to pay overtime, a collective bargaining requirement to pay overtime based on the job classification; because it is already in so many places, it confuses the issue. For instance, a roofer is installing a sheet metal roof; do employers follow the overtime requirements for the collective bargaining agreement, or do they refer to the sheet metal workers collective bargaining agreement because it is already required to be paid?

Weekend and holiday pay is not paid now, so that language would be an added cost. Language regarding September 1 has to do with collective bargaining agreements on file with the Office of the Labor Commissioner in section 1, subsection 8 that codifies what is already being done. If we are going to use a collective bargaining agreement, it must be filed with the Office of the Labor Commissioner by September 1 in order to be built into the rate tables.

The section 2 NRS 233B.039 exemption from rule-making deals with two issues; one is the rates and the other establishes the subclasses. The portion regarding rates comes directly from the *Littlefield* decision when the Nevada Supreme Court determined the Labor Commissioner did not need to go through rule-making in order to establish the dollar amounts for the prevailing wages. The court only dealt with the classifications, but the subclassification information is included in case we have to go through rule-making to establish the subclassifications. If we do, we are back to the 370-page regulation.

CHAIR LEE:
There is a term called "scrivener's error," where a scribe transposed a number such as 35 instead of 53, for the correction of technical errors. Ms. Chlarson, is this language included in other areas of law and is the language similar?

HEIDI CHLARSON (COUNSEL):
This language was added at the request of the Labor Commissioner to provide a way to correct an inadvertent error without having to go through the entire hearing process.

WARREN B. HARDY II (Ex-Senator; Associated Builders and Contractors, Inc., Nevada Chapter):
We understand the bill was brought forward to address a couple of Nevada Supreme Court rulings that have impacted the responsibilities of the Labor Commissioner. We are in support of the bill and understand some concerns will be expressed shortly. However, if the Commissioner is required to make changes by the direction of the Nevada Supreme Court, these clarifications are necessary, particularly section 1, subsection 8 with regard to the exclusion of certain items such as shift differential, overtime, etc. We believe there may be other ways to accomplish this, but if this bill is enacted without the provision in this section, it will require the contractors to be under the jurisdiction of a collective bargaining agreement for the purposes of those issues. It is important they be excluded. I understand the opposition to the exclusion of the items but would be glad to meet to determine a compromise in order to clarify that nonunion contractors are not subject to the collective bargaining agreements relative to these requirements. We stand in support of the bill.

CLARA ANDRIOLA (President/CEO, Associated Builders and Contractors, Inc., Nevada Chapter):
I echo statements by Mr. Hardy. We are in support of the bill as written.

JACK MALLORY (Director of Government Affairs, International Union of Painters and Allied Trades District Council 15; Southern Nevada Building and Construction Trades Council):
Addressing the statements brought forward by the Associated Builders and Contractors, Inc., the 1931 Davis-Bacon Act and prevailing wage laws were put in place a number of years ago. They were put into place to level the playing field and establish rates consistent for work to be performed, allowing for fair competition. I understand the concerns brought up regarding section 1, subsection 8. I can speak on behalf of the Painters and Allied Trades District Council 15 regarding the issue of zone pay versus subsistence and travel pay.

Our collective bargaining agreements do not contain zone pay. Therefore, it is not contained in the prevailing wage, and it is not there for a specific reason. Zone pay is a taxable event and subsistence is not. We would prefer subsistence versus zone pay in our agreements because it reduces any potential implication to both the worker and the employer. Our largest concern with S.B. 16 is the waiver of the Nevada Administrative Procedure Act, NRS 233B. We can understand a situation where the Labor Commissioner is adopting subclassifications already utilized in the previous survey, but adding or deleting subclassifications from the posting of the prevailing wage should invoke an open hearing for that process. We agree that the Labor Commissioner should have the ability to correct a technical or typographical error without having to hold a hearing.

DAVID KERSH (Government Affairs, Carpenters/Contractors Cooperation Committee, Inc.):
Our organization has a long-standing working relationship with the Labor Commissioner by helping to ensure Nevada's workers are paid correctly and contractors are held accountable when they violate the law. We clearly understand the issue the bill seeks to address; however, we have concerns with the way the bill is drafted. I have shared our concerns with the Labor Commissioner and look forward to working with all of the stakeholders in addressing these concerns.

The first concern, referenced by the Labor Commissioner, is in section 1, subsection 5, paragraph (b) regarding the issue with the technical errors, and we are in agreement. We have no problem with the Labor Commissioner correcting a technical or clerical error, but the language "including, without limitation" could open up a situation where the Labor Commissioner could bypass a hearing whenever he wanted to.

We also have an issue with section 1, subsection 8 with the four criteria listed under paragraph (a). We are open to work on the language for this bill, but we do not want the bill to minimize the existing prevailing wage. For instance, the zone pay is currently part of the rate; the way the bill reads, it would no longer be part of the rate. The intent of the bill is to establish classes and subclasses, it is not to take something away that already exists. Our key issue has to do with not having a hearing for the subclasses. Clearly, you can have a situation where a subclass is brought in as part of the collective bargaining agreement and undermine a class already surveyed. You can have a situation where a contractor says we are going to pay the lower wage and that wage has never been surveyed because it was brought in as a subclass.

PAUL MCKENZIE, (Executive Secretary-Treasurer, Building and Construction Trades Council of Northern Nevada, AFL-CIO):
When this legislation was first introduced, we met with the Labor Commissioner to discuss our immediate concerns that referenced excluding zone pay, shift differential, overtime, etc., in section 1, subsection 8. I want to share some of the reasons we are opposed to S.B. 16. The rates are established under collective bargaining agreements; it would seem the financial burden being paid by the contractors would go a long way toward establishing the prevailing rate. If a contractor is paying zone pay or overtime under certain conditions and the contractor's rate prevails when the survey is disseminated, those sections the contractor is paying would all apply.

We discussed changing from the word **"**excluding**"** to **"**including**"** with the Labor Commissioner and discussed a couple of minor issues that we took back to our members. They stressed strong concern regarding the class of workers.

The Labor Commissioner is looking for a way to resolve an issue brought by two Nevada Supreme Court decisions. If you look at the classification of workers provided in Exhibit E, craft codes 37 and 38 pertain to the Nevada Supreme Court cases. The Labor Commissioner wants clarification in the law to

address these decisions. The Equipment Greaser 37 and the Soils and Materials Tester 38 were both subclassifications of the International Union of Operating Engineers Local 12 Las Vegas and have been represented by the Operating Engineers for years. Their rates have been collectively bargained by the Operating Engineers, and they have represented workers in those classifications for a number of years.

The Labor Commissioner made the decision to take those two subclassifications out of the Operating Engineers job classification and eliminate them from the prevailing wage. That was the reason for the two Nevada Supreme Court cases. After the rulings, the Labor Commissioner made major classifications that had to be surveyed individually for prevailing wage. This was the action taken forward to the Nevada Supreme Court. If the Labor Commissioner is attempting to resolve the issues pertaining to these two cases, he would roll back his classifications to the same level as they were prior to the Nevada Supreme Court decisions. Those subclassifications that were broken out without the regulatory hearing would be moved back to where they were.

Additionally, the members I represent have concerns regarding the exclusions in section 2, saying the language is too broad. By inferring anything the Labor Commissioner does under NRS 338.030 is excluded from the regulatory process, my members are concerned the class of workers could be modified again, and they would not have the protection of the regulatory process left in the law. They want that language limited to section 1, subsection 8 where it states the Commissioner can list the wages and subclassifications as collectively-bargained. For clarification, if the collectively bargained rate did not prevail, he can utilize the rate that did prevail for subclassifications, which may be simply foremen and workers. We would appreciate the opportunity to work on the language and understand the issues the Labor Commissioner is trying to address.

CHAIR LEE:
We will close the hearing on S.B. 16 and open the hearing on Senate Bill 153.

SENATE BILL 153: Revises provisions governing the appropriation of water by municipalities. (BDR 48-821)

MAYOR LARSON:
Some years ago, around 1972, the City of Caliente asked for water rights as encouraged by state representatives and others concerned about the community. I was Mayor of the Town from 1976 through 1985 when water rights were not a big issue, and nobody asked any questions about them. The City of Caliente is a small community that has always struggled, but it is a beautiful place needing water, growth and jobs.

When the State Engineer notified the City that our water rights were far above our needs, Sunrise Engineering created a plan to show the water rights would meet those needs. This bill will give communities like Caliente and municipalities throughout the State an opportunity to plan for their future. It will give the municipalities an opportunity to adjust their water rights to the needs of the master plan. The municipal water, domestic uses and anticipated future needs should be addressed.

We would like the State Engineer to approve the planning horizon and acknowledge our opportunities ahead. We would also like to partially perfect the water rights by 25 percent, protect against a lack of perfection upon cancellation, solidify existing developed rights and continue working on the remaining water rights.

We do not oppose the amendment proposed by the Southern Nevada Water Authority (SNWA) (Exhibit F), but we want to discuss the amendment with the State Engineer to ensure his concerns are addressed. The City of Caliente is trying to formulate an additional plan. We had a 2007 master plan developed and approved by the Caliente City Council and have annexed additional territory. We want the ability to prepare a master plan that will address our future needs.

SENATOR SETTELMEYER:
I am a water right holder familiar with water right law, and it seems we are trying to change the existing rules. Why do you feel municipalities should be allowed this type of a change when they have an extraordinary right compared to private property owners?

MAYOR LARSON:
What we are looking for is the opportunity to keep that right for a little longer than the five years required by the State Engineer. The rural areas are having a difficult time getting out of the growth issue, and we are seeing time periods requiring a longer period of adjustment. While the plans need to be adjusted, they also need to qualify for the period of time it takes to develop a plan. We have opportunities now, but it will take time and effort that may be longer than five years. We are reviewing states that have longer periods of time for their municipalities.

JASON KING, P.E. (State Engineer, Office of the State Engineer, Division of Water Resources, Department of Conservation and Natural Resources):
As noted in my testimony (Exhibit G), our office does not support S.B. 153 as introduced. The bill attempts to give the municipalities flexibility, in terms of time constraints, to put their water to beneficial use. Over the past 30 years, the State Legislature has chosen to treat municipalities different than other water right holders and rightfully so. Municipalities must look to the future needs of their customers to plan for growth, adapt to changes in growth and spend money on infrastructure well in advance of putting water to beneficial use. I would caution the Committee that giving deference to municipalities as proposed in this bill would allow our office to approve a water right and allow 50 years to put the water to beneficial use. This could give municipalities the ability to tie up the water resource and potentially monopolize the water use in a given basin without any penalty for their nonuse.

Today, after the first ten years and then every five years thereafter, the municipality has to provide evidence to the State Engineer by demonstrating a steady application of effort to put the water to beneficial use. If the municipality cannot show this, the water can be taken away and reallocated to someone else. Municipalities are unique and need flexibility with their water rights, but we want you to be aware of some of the pitfalls.

Section 1 provides the State Engineer will determine a reasonable planning horizon for a municipality to hold a water right to serve its reasonably anticipated future needs. The individual community should determine its planning horizon. The language of this section will result in unnecessary litigation over what the State Engineer believes is a reasonable length of time versus what the local planning agency believes to be reasonable. Under provisions of NRS 533.380, the State Engineer can grant extensions of time for

either completing the diversion works or placing the water to beneficial use regardless of a planning horizon. Municipalities can now receive extensions for up to five years at a time compared to one year for everyone else. Section 1 is an unnecessary addition to the water law.

References to municipal water use are found throughout the water law. For example, under NRS 533.030, municipal use can be declared a preferred use of water in a designated basin, therefore section 3 is unnecessary.

A municipality should not be excluded from the consideration of the consumptive use of a water right if a change application is filed. The consumptive use provision in statute is a mechanism to protect other water right holders. For example, if a municipality buys irrigation water rights and wants to convert them to municipal and they lie in a basin that is fully appropriated, the State Engineer should consider the consumptive use of the basin right when filing a change application. Otherwise, the overuse of water in the basin could be exacerbated.

The language in section 5, subsection 1, paragraph (b), subparagraph 4, provides a minimum of 15 years to a maximum of 50 years for a municipality to put water to beneficial use. In a state with very limited resources, this language may allow municipalities to tie up the remaining water resources in the State and never put that water to beneficial use. This could impact economic development in much of the State and be interpreted as speculative, which goes against the water law.

The language in section 5, subsection 4, paragraphs (e) and (f), adds additional items to be considered by our office in addressing a request for an extension of time to put water to beneficial use. This is also unnecessary as we already have that ability within NRS 533. The law provides the Office of the State Engineer to consider whether the water right holder is proceeding in good faith and due diligence to put the water to beneficial use. If part of the water right has already been developed, that would be included in any analysis of whether the applicant is exercising due diligence in putting the water to beneficial use. We are not in support of the language in this section as it is unnecessary.

The language in section 6 is also unnecessary. We are concerned so many special interest additions to the water law are making it unwieldy and unnecessarily complex. The State Engineer does consider reasonable planning

for future growth and development by communities as part of the measure of reasonable diligence in putting water to beneficial use. The analysis of a water right holder's due diligence in putting water to beneficial use takes into consideration many different aspects and needs which are addressed individually. Mandating by law removes the flexibility within the analysis. If an item is not on this growing list of considerations, does that preclude the State Engineer from considering what may be very relevant to the particular situation?

Relevant to sections 7 and 8, when a water right application is granted, the Office of the State Engineer issues the applicant a water right permit which allows the applicant to proceed with the development of the water resource. Once the resource is developed, a proof of beneficial use form is filed that indicates how much water has been put to beneficial use; the term of art means the water right has been perfected. If the State Engineer approves the proof of beneficial use, a water right certificate is issued to the permit holder for the amount of water actually put to beneficial use. This can be the full amount or less if all of the water authorized on the permit was not used.

Section 7 would split the process and allow for filing proof of beneficial use on a portion of the water right perfected and to keep the rest of the permit active under the permitting process. We do not support splitting these permits into subpermits, as it would complicate record keeping. A possible example, in basins where we conduct inventories, we must send four-year nonuse letters to those permit holders that may be subject to forfeiture. The Office of the State Engineer would be tracking potential forfeiture on a number of certificates for incremental amounts on a given permit, while tracking potential cancellation of the remainder of the same right. The accounting would be a nightmare and does the purveyor no good.

Section 11, subsection 2, provides the Office of the State Engineer discretion to issue any number of extensions of time for any number of years. If the permit holder is showing a steady application of effort, the State Engineer can issue any amount of extensions up to five years. Our office would not be opposed to raising the time limit to seven or ten years as long as the fee for reviewing the application is commensurate with the amount of years being approved.

Section 11, subsection 5 is a direct contradiction to the current interpretation of the law and how we presented it to the Nevada Supreme Court. The forfeiture provision of the water law provides that failure to use water for five consecutive

years works as a forfeiture of the water right. The State Engineer interprets the forfeiture provision as applying only to a perfected water right, meaning the forfeiture only applies to certificated water rights. The language in this section would make forfeiture applicable to permitted water rights not put to beneficial use.

This changes the interpretation of the forfeiture law in place for more than 50 years. Water rights not yet put to beneficial use are subject to cancellation or an extension of time under the provision of NRS 533.380. If this language is accepted, those holding permitted water rights have to file applications for extensions of time to avoid forfeiture. This complicates the water law and the processes for both the Office of the State Engineer and the water right holders. We are strongly in opposition of the language in this section.

KYLE DAVIS (Political and Policy Director, Nevada Conservation League):
I do not have much to add following Mr. King's arguments. He made many of the points I would be making. I would like to highlight why our organization is opposed to S.B. 153. We do not think it is a proper way to manage our water resources. The largest issue is the 50-year issue noted in section 5. We are looking at approving water applications in the near term, but there is no requirement that this water be put to beneficial use for up to 50 years.

The picture of the water basin could change dramatically in 50 years due to the impacts of climate change. This is not an appropriate way to manage the waters in our State given what we know about changes we have seen and will continue to see. When talking about the planning horizon, there is no mention of land use being aligned with the plan of the municipality. This would allow for the water resources to be tied up for long periods of time. We are certainly willing to participate in any working session planned for this bill to meet the needs of the communities without putting undue pressure on the water law.

ANDY BELANGER (Management Services Manager, Southern Nevada Water Authority, Las Vegas Valley Water District):
We are in general support of the concept of S.B. 153 but recognize concerns with the bill. The definitions are too narrow and the scope of the bill a bit too broad. We proposed an amendment, Exhibit F, which has been posted to Nevada Electronic Legislative Information System for review by the Committee. If the bill is processed, the definition of municipality is not broad enough to encompass all types of municipal water providers in the State. Our amendment

addresses and expands the definition of municipality, although we recognize the State Engineer has expressed valid concerns.

DEAN BAKER (Baker Ranches, Inc.):
I agree with what was stated by the State Engineer. I spent 50 years in Snake Valley developing water, using water, drilling wells and watching the impacts. The past 20 years have been vastly different because of long-term water filings. For instance, when the Great Basin National Park was created and the U.S. National Park Service needed housing, obtaining water rights became difficult due to complications of existing water rights. At that time, Baker Ranches, Inc., transferred water rights to Baker General Improvement District. Historically, many once-large towns are now small.

Economic changes affect towns by increasing or decreasing their population. Because municipalities are small, they would be better served by having their requests pass through the county since the county is responsible for zoning. Letting municipalities look around the State and apply for water rights may complicate the existing interbasin transfers.

Drawdowns on the interbasin transfers have been created by building on top of the aquifer. The amount of water available in a valley is affected by brush with roots in the water and water use flowing there. If it is not put on top of the aquifer, it can create problems. Where ever significant drawdowns occur, there are also negative impacts, whether in the eastern part of the State of Washington, the Midwest or Diamond Valley. For municipalities to apply for water all over the State does not seem logical, and I agree with the State Engineer's remarks regarding this bill. The Office of the State Engineer has had to adhere to the State's water laws and deal with political pressure, but to diminish what they have done in the past is wrong.

JOHN A. ERWIN (Director, Natural Resources Planning and Management, Truckee Meadows Water Authority):
We concur with many specifics mentioned by the State Engineer. In general, the topic is of keen interest to the utility in order to protect our existing resources.

In particular, we have had this economic downturn where developers and businesses have come in and transferred a water right to the utility. Over the past few years, residences have been built, and some residences are now vacant. The utility has made a commitment to those customers for perpetuity.

The utility is looking for the protection it needs to preserve existing water rights in order to preserve availability. Residences will be occupied again. We service about 102,000 service connections in the Truckee Meadows and some wholesale connections.

We service approximately 400,000 people. Based on those numbers, resources are committed both for ongoing service commitments and our drought plan and management. We annually rely on the Truckee River for 90 percent of our water; in low-flow years, the River may not supply that water. We then have to turn to our surface water and groundwater resources. We balance our resource mix of surface water and groundwater to meet our long-term commitments both in years of plenty from the Truckee River and in years of low flow.

Having the protections that the City of Caliente is trying to achieve, we concur with the concept, but the specifics in the bill have weaknesses. We would like to work with the various parties and the State Engineer to ensure those entities have the ability to protect their resources, both current and future.

STEVE K. WALKER (Lyon County; Douglas County; Carson City; Storey County):
All my counties are opposed to the bill as written, but they would work with the bill sponsors and other entities to fix some things to receive a benefit from this legislation. The bill is based on a consumptive use issue that seems unfair to transfer a water right, the place of use, the manner of use and the amount of use. Consumptive use law takes care of that issue. We are opposed to the bill, but noted the language providing time extensions from five years to seven and ten years may be something we can salvage from this bill.

RANDY ROBISON (City of Mesquite; Virgin Valley Water District):
After meeting with representatives from these two entities, they have noted the same concerns already addressed. We have seen the amendment proposed by the Southern Nevada Water Authority, Exhibit F, that would alleviate many of our concerns.

BJORN SELINDER (Churchill County; Eureka County; Elko County):
I would echo the comments made by the State Engineer.

MAYOR LARSON:
It came to the attention of the City of Caliente that we were going to lose our water rights and would have to show beneficial use. We want to ensure the

City of Caliente has an opportunity to expand. The additional annexation we just completed is ten times larger than today's community. We have a real struggle with growth in Caliente.

CHAIR LEE:
We will close the hearing on S.B. 153 and open the hearing on Senate Bill 155.

SENATE BILL 155: Allows certain unincorporated towns the option to control planning and zoning. (BDR 22-714)

SENATOR MIKE MCGINNESS (Central Nevada Senatorial District):
Issues of zoning and planning have been heard for years in Pahrump and southern Nye County. My first Session was in the Assembly in 1989, and we were also hearing these issues at that time. The Town of Pahrump has asked for incorporation and wants this issue to be on the ballot in 2012. I believe the people should make the decision and then come back for legislative assistance if the idea is approved. This would give the town control over planning and zoning.

VICKY PARKER (Town of Pahrump):
I am on the Pahrump Town Board and an appointed member of the Pahrump Regional Planning Commission. According to the new census figures, Pahrump has a population of 36,441 people comprising 83 percent of the population of Nye County. The Town of Pahrump has no control over planning and zoning. As an elected member of the Pahrump Town Board, the greatest number of complaints I receive are relative to planning and zoning. Dozens of people have complained about it; because it is a County function, I have no ability to resolve their problems. I am asking that Pahrump have the right to plan its own destiny.

The Nye County Commissioners often say the members of the Pahrump Regional Planning Commission and all of the employees in the planning department live in the Town of Pahrump. However, after sitting on the Planning Commission for the past two years, the purpose of the Planning Commission and the planning department is to enforce the Nye County rules.

The perception is that Pahrump is unfriendly and tends to run off prospective business. At this point, we have 17 percent unemployment. According to Bill Verbeck, Director of the Pahrump Valley Branch Campus of Great Basin College, more than 25 percent of the people in Pahrump are unemployed or

underemployed. Our No. 1 objective has to be jobs. In order to bring jobs to town, we have to become business-friendly. We have to recruit and assist businesses to locate in Pahrump rather than throw fees and roadblocks at them. Please allow Pahrump to assume responsibility for planning and zoning.

HARLEY KULKIN (Town of Pahrump):
I am a Pahrump Town Board member and a former Pahrump Regional Planning Commissioner. With 36,441 people in Pahrump, which is 83 percent of Nye County's population, Pahrump needs to take charge of its future. Nye County is not operating in the best interest of the public. With 17 years of residency and very active involvement, I can confirm what we all suspect. Nye County is an embarrassment and a financial liability to the State. As it stands, the unincorporated Town of Pahrump has little say so over its future.

As an unincorporated town, Pahrump has jurisdiction over its parks, fire and ambulance services, and the cemetery. Planning and zoning is controlled by Nye County. The County also controls the Pahrump Regional Planning Commission. Whenever the Planning Commission makes a decision the commissioners do not like, they reverse the decision. A perfect example of this is the Planning Commission said no to a zone change for a prison in a nice housing area and said no to removing a law prohibiting a prison within nine and one half-miles of a home. That is a public safety issue. The commissioners reversed both decisions. After the prison construction began, the commissioners reinstated the nine and one half-mile safety law. It is no secret the law is put in place by the commissioners, and the planning department must follow them. This has kept hundreds of businesses from expanding or moving into the area. Many existing businesses have left the area. Not only did Pahrump lose existing jobs but potential jobs.

One example is an Iraq veteran who built a building while he was still recovering from injuries he received in Iraq. His dream was to build an auto repair shop. He received his approved paperwork and constructed his building. After his building was complete, he contacted the local supplier and requested the water be turned on. The supplier required exorbitant fees. He asked why he had to pay when all they had to do was turn on the valve. The veteran went to the Public Utilities Commission of Nevada. While he was dealing with that issue, the Planning Commission changed the zoning on his building, prohibiting him from operating what he built and had a permit for in the first place. He had to tear the building down. The veteran also had an issue with the sheriff. While still

recovering from his wounds received in Iraq, he was severely injured and admitted to the hospital. While he was in the hospital, that is when the Planning Commission changed the zoning for his building.

Another example is a company called Silver State Armory that makes ammunition. The company makes ammunition in unusual sizes used by the North Atlantic Treaty Organization. Less than two years ago, the company received a new contract and needed to expand from 25 employees to 50 employees and enlarge its facilities. Nye County's requirements were so prohibitive, the business moved to the State of Washington where it was welcomed with incentives and now has over 85 employees.

Coupled with exorbitant impact fees and more, the Town of Pahrump's ability to seek out and recruit business has been a tremendous failure. Pahrump is not in a position to offer more than an arduous time dealing with planning and zoning. Pahrump's crime and drug problems are growing as well as the welfare recipients. Children growing up in poverty have no quality future in sight. There are few quality jobs available, the kind of jobs that offer wages sufficient to raise a family. Pahrump's children must move away to seek quality education. Of my three children—one a college graduate and two working toward degrees—all of them had to move to Las Vegas to get their education and find work.

The Pahrump Town Board passed a resolution acknowledging Pahrump as a community in poverty. Many think Pahrump should incorporate in order to solve these problems. In these trying financial times, does it make sense to expand financial liabilities, or should we consolidate and conserve our resources and reorganize? I support the latter. The tail has been wagging the dog far too long.

Nye County has five commissioners; one lives 200 miles north of Pahrump, and another lives 240 miles north of Pahrump. Forty percent of the commissioners live hundreds of miles from Pahrump when only 17 percent of the people live north of Pahrump. These planning and zoning issues have gone on for years, and the commissioners have taken no action to reverse business being turned away. Nye County has taken no steps to draft a business incentive plan. Given the 1,500-bed Nevada Southern Detention Center with plans to double to 3,000 beds and a new 300-bed county jail being built in Pahrump, it is easy to see what the commissioners have planned for the Town. That plan is a

community based on criminal detention and policing the crime it brings. Is that the future you would like to see for your community?

Pahrump has continuously been short-changed by receiving little of the sales tax received by the County. Nye County received over $200 million from the Payments-Equal-To-Taxes provisions of the Nuclear Waste Policy Act of 1982. Because of nearby U.S. Department of Energy's Nevada Test Site and Yucca Mountain, the federal government pays money in lieu of property taxes. Pahrump sees less than $2 million while our community center, built in 1972, is closed because the roof has failed. The Town of Pahrump has no operational public meeting place.

Pahrump leaders have an obligation to provide a quality future for its citizens. We are all responsible for the health, welfare and safety of our constituents and took an oath to serve our community's best interests. Pahrump has a moral and ethical right to make its own decisions and with your help, we will make it an asset to the State. Pahrump will be able to change the planning and zoning laws to reflect the needs of the community and attract the business and jobs we desperately need. Pahrump will have a future for children. If this bill passes, you will find Pahrump to be a place you can be proud of and a place you would like to call your home.

We have a unique situation here. Nye County operates the building department in Pahrump, but we do not have a Countywide building department. Nye County running things in Pahrump equates to the same as the federal government saying we are going to regulate all this stuff, but in the rest of the state, you can do whatever you want. It does not make sense that only Pahrump has planning, run by Nye County. I assure you, with my 17 years of residence in Pahrump, the planning laws are in place and purposeful in keeping out business.

CHAIR LEE:
Is Pahrump the only unincorporated town with a population over 24,000?

MR. KULKIN:
Yes. Senate Bill 155 would only affect Pahrump because we are in an extremely unique situation. Many other communities are incorporated with less population.

SENATOR SETTELMEYER:
There seems to be a great deal of testimony about Pahrump not having much ability to control things. You even went into detail about how District 1 is represented by a person in Round Mountain, which is so far away from Pahrump. You also stated District 2 is represented by someone in Tonopah, but you seem to forget District 3 is a person who lives in Pahrump, District 4 is a person who lives in Pahrump and District 5 is a person who lives in Pahrump. There are three out of the five representatives who live in Pahrump. In my world, that is called a majority. Because Pahrump controls three of the five seats, it seems they would get exactly what they want.

MR. KULKIN:
You are talking about a perfect world; unfortunately, we do not live in one. In my opinion, the Nye County Commissioner in Tonopah commands authority over that board, and the ones in Pahrump basically do what they are told.

WILLIAM A. KOHBARGER (Manager, Town of Pahrump):
Pahrump is asking for the responsibility for planning and zoning if we so choose. Senate Bill 155 only affects unincorporated towns whose population is over 24,000, and Pahrump is the only unincorporated town meeting this criteria in the State. Passing this bill gives Pahrump the responsibility for planning and zoning, and the citizens of Pahrump can hold us accountable if we fail. We want to ensure all the citizens of Pahrump have a voice in this process.

CHAIR LEE:
Someone mentioned that in 2012 you will have a question on the ballot to incorporate Pahrump. It was stated this could be expensive, so how do you feel about waiting until 2012 and taking this back to the people?

MR. KOHBARGER:
At this time, we are only interested in the responsibility for planning and zoning instead of all the duties associated with incorporation. We are trying to complete this in stages to show the citizens of Pahrump we have the expertise to accomplish these tasks successfully. Senate Bill 155 will give us approximately a year and a half to prove our success before we put the question of incorporation to the citizens.

STEVE OSBORNE (Planning Director, Nye County Planning Department):
The Nye County Planning Department has control over planning and zoning matters for Nye County, including the unincorporated area of the Town of Pahrump. I am neutral on the bill and am present to listen to the discussion.

JONI EASTLEY (Commissioner, Board of County Commissioners, Nye County):
I am neither for nor against S.B. 155, but from reading the language, this is a de facto incorporation bill which is something the residents of Pahrump have voted down three times in the past. I want to talk about the planning responsibilities the Town of Pahrump would be required to perform if the town chooses to take over this function, plus all of the tasks Nye County currently performs.

Senate Bill 155 would allow the governing body of the unincorporated Town of Pahrump to be treated as a city. That is why it is a de facto incorporation bill pursuant to NRS 278.010 to 278.630 inclusive. Pahrump must form a planning commission of seven members who cannot be members of the Pahrump Town Board. That planning commission must meet at least once each month; Nye County's Planning Commission meets twice a month. They must adopt rules for the transaction of business and keep a record of all its resolutions, transaction findings and determinations which are all public record. The Town of Pahrump governing board must provide the funds, equipment and accommodations necessary for the Town's planning commission work.

In the event this bill passes, Nye County does not have the financial resources or the interest in providing funding or accommodations for government operations outside of its control. The Town of Pahrump must establish, by local ordinance, the procedures for obtaining conditional use permits. Pahrump must establish procedures for obtaining a conditional use permit for the use, manufacture, processing, transfer or storage of explosives, or other hazardous substances. Within 90 days of filing a conditional use permit, the planning commission must hold a public hearing to consider the application. There are also other government regulations involved with holding public hearings as they relate to these conditional use permits.

Nye County has a master plan under which we make decisions for the Pahrump Regional Planning District. The Town of Pahrump planning commission must adopt or create a master plan, which is an expensive and lengthy process. That master plan must be coordinated to fit properly into the regional master plan. In

this case, it must be coordinated with Nye County's comprehensive land use plan.

I can continue with a list of responsibilities the Town of Pahrump must assume through its planning commission, but you are probably all familiar with most of those responsibilities. Where we utilize a one-stop-shop business practice, adoption of this bill and transferring the responsibilities for the planning function will split the processing between two jurisdictions. Nye County will control flood plain administration, the air quality program and the impact fee administration. Currently Nye County spends about $616,000 a year on the planning function, the majority of which is spent in the Town of Pahrump. Transferring the planning function to the Town of Pahrump would not mean planning activities in the rest of the County would be abandoned. We would still be responsible for those areas outside the Town of Pahrump.

DAN SCHINHOFEN (Commissioner, Board of Commissioners, Nye County):
I am a Nye County Commissioner for District 5 which is the southwestern part of Nye County and the southwestern part of the Town of Pahrump (Exhibit H). I served as a commissioner for over two years. While it may have been under County control, all other planning commissioners were residents of the Pahrump Regional Planning District with one of the voting members a member of the Town Board.

I am unsure how other counties operate, but in Nye County, the Department of Public Works is integral to the planning process. Transferring the planning responsibilities to the Town of Pahrump without the Public Works Department will create more problems than it can solve by obtaining control, not to mention dust control, code enforcement, building and so on.

While there may be some discord regarding certain aspects of planning and zoning, the residents of Pahrump are well represented on the planning commission and by the Nye County Commissioners. Three of the five Nye County Commissioners are residents of the Town of Pahrump. As an elected representative of District 5, my first responsibility is to represent the southwestern-most part of Pahrump and Nye County.

I do not see how having a Town Board control the planning department will make the process any better when the planning process is so closely tied with

other County departments. At best, this will make the planning process even more cumbersome.

SENATOR HARDY:
Enterprise, Paradise, Winchester and other townships within Clark County have populations of 74,000, 196,000 and over 26,000. Would those townships with populations over 24,000 be included in this bill?

CONSTANCE J. BROOKS (Senior Management Analyst, Administrative Services, Clark County):
We have four compelling reasons why we oppose S.B. 155 and thank Senator Hardy for recognizing how this would impact the unincorporated towns within Clark County. The language in the bill is vague regarding whether a town advisory board may qualify as a governing body for purposes of the bill. *Nevada Revised Statute* 269 suggests the board of county commissioners is the governing body of unincorporated towns with no elected town board. Whether NRS 269 would apply to NRS 278 is unknown.

There are seven unincorporated towns with populations over 24,000 in Clark County. If they each had their own zoning and land use authority, each town board would likely impose their own provincial interests or outlook, thereby undermining the ability to coordinate planning on The Strip as well as throughout the Las Vegas Valley.

If S.B. 155 applied to the unincorporated towns in Clark County, confusion and uncertainty would be apparent. Citizens would have increased difficulties keeping track of each unincorporated town's unique zoning laws and policies. Standardization would be impacted, and many separate rules and regulations imposed. In addition, this bill would impact regional planning and potentially expand the amount of work by staff and consultants by a factor of up to seven. This bill could mean that each town would have its own comprehensive plan and master plan with all of the required elements. At the least, each town that requested to be classified this way would want its own land use plan at a minimum cost of $250,000 per town. We are opposed to the bill.

BRIAN O'CALLAGHAN (Government Liaison, Las Vegas Metropolitan Police Department):
Every time planning comes up, it is routed through the Las Vegas Metropolitan Police Department (METRO). The METRO represents how each change will

affect our law enforcement agency. Right now, it is coordinated so each plan routes through the county offices and then comes to METRO to make recommendations. We are neutral, but we do have concerns regarding this bill.

SENATOR MANENDO:
Is it the practice of Clark County Commissioners to appoint town board members who are employees of the County to chair the committee?

MS. BROOKS:
It is not a regular practice. There may be some instances where a unique situation may have required it in the past, but it is not an overwhelming practice utilized by our Commissioners.

SENATOR MANENDO:
I would like our Committee Counsel to look into that for me, since I received complaints regarding County employees participating on town boards that are serving the county commissioners. It would be hard to be objective when your boss is telling you what to do.

MS. BROOKS:
I would be happy to provide that information.

CHAIR LEE:
We would ask the Pahrump Town Board to contact Senator McGinness, the sponsor of the bill.

MR. KOHBARGER:
We are created under NRS 269. Those unincorporated towns referenced in Clark County are not unincorporated towns but advisory boards to the Clark County Commission. We will contact Senator McGinness and get some answers for the Committee.

CHAIR LEE:
We close the hearing on S.B. 155. With no further business before the Senate Committee on Government Affairs, the meeting is adjourned at 10:57 a.m.

RESPECTFULLY SUBMITTED:

Martha Barnes,
Committee Secretary

APPROVED BY:

Senator John J. Lee, Chair

DATE:

EXHIBITS			
Bill	**Exhibit**	**Witness / Agency**	**Description**
	A		Agenda
	B		Attendance Roster
S.B. 65	C	David Fraser	Testimony supporting the bill to allow public notices be on the Internet as well as published in newspapers.
S.B. 65	D	Wes Henderson	Proposed amendment
S.B. 16	E	Michael Tanchek	Prevailing wage documentation
S.B. 153	F	Andy Belanger	Proposed amendment
S.B. 153	G	Jason King	Testimony opposing S.B. 153
S.B. 155	H	Dan Schinhofen	Testimony supporting S.B. 155