

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

**Seventy-sixth Session
March 14, 2011**

The Senate Committee on Government Affairs was called to order by Chair John J. Lee at 9:08 a.m. on Monday, March 14, 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

STAFF MEMBERS PRESENT:

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

OTHERS PRESENT:

Michael Fischer, Acting Director, Department of Cultural Affairs
Daphne O. Deleon, CA, Administrator, Division of State Library and Archives,
Department of Cultural Affairs
Peter Barton, Acting Administrator, Division of Museums and History,
Department of Cultural Affairs
Terri Barber, Director, Intergovernmental Relations, City of Henderson
James G. Coyne, Principal, The Atalon Group LLC, Lake Las Vegas
Greg Harrington, Bond Counsel, City of Henderson

CHAIR LEE:

I will open the hearing with Senate Bill (S.B.) 74 scheduled for work session, which came from the Controller's Office.

[SENATE BILL 74](#): Changes the designation of certain state funds and accounts.
(BDR 31-397)

MICHAEL STEWART (Policy Analyst):

We heard S.B. 74 ([Exhibit C](#)) previously. It changes the designation of certain State funds and accounts and realigns numerous special funds into separate accounts within the General Fund. Testimony indicated this bill would assist the State Controller in complying with the recently adopted Governmental Accounting Standards Board (GASB) Statement No. 54, which redefines what is considered a special revenue fund. In order to qualify as a special revenue fund, the major source of dollars for the fund must originate outside of the General Fund. The purpose of S.B. 74 is to identify those special revenue funds that do not meet the qualifications set forth under GASB 54 and establish them as separate accounts within the General Fund.

An amendment was proposed by Lorne Malkiewich, Director of the Legislative Counsel Bureau, to delete section 7 of the bill which would amend *Nevada Revised Statute* (NRS) 218A.150 relating to the Legislative Fund. Mr. Malkiewich noted the Legislative Fund should be independent of the State General Fund for the purpose of separation of powers.

CHAIR LEE:

Every year we have changes in the Office of the Controller brought about by the GASB requirements.

SENATOR HARDY:

I want to ensure the GASB that applies to the Controller's Office will also allow the same process in the Legislative Counsel Bureau so we remain in compliance.

CHAIR LEE:

The chair will entertain a motion.

SENATOR SETTELMAYER MOVED TO AMEND AND DO PASS AS AMENDED S.B. 74.

SENATOR MANENDO SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR LEE:

I will open the hearing on Assembly Bill (A.B.) 10 on behalf of the Department of Cultural Affairs.

ASSEMBLY BILL 10: Revises provisions governing certain funds and the destruction of public records. (BDR 33-441)

MICHAEL FISCHER (Acting Director, Department of Cultural Affairs):

Assembly Bill 10 reallocates the earned interest that was credited to the General Fund incorrectly under NRS 356.087 to the Gift Fund. The Gift Fund is a fund for people who have utilized a service from the State Library to donate money to the same service. For instance, if people have benefited from the Talking Book Services, they have the ability to donate money directly to the Talking Book Services.

The Fund for Support of Division of Museums and History was zero-balanced in an attempt to balance the State's budget.

CHAIR LEE:

Do you have additional testimony you would like to get on the record?

MR. FISCHER:

There are some fiscal notes attached to this bill that indicate some concerns, and we intend to schedule discussions with those people in order to provide clarification.

DAPHNE O. DELEON, CA (Administrator, Division of State Library and Archives, Department of Cultural Affairs):

Speaking to sections 2 through 6 of A.B. 10, section 2 simply provides State agencies an additional option to image their records and declare each as the copy of record. The option already exists in NRS, but this can also be done with microfilm. We recognize the agencies are embracing new technology, and it is important to allow them this option. This bill does not require agencies to image their documents. The choice can still be made by the agency based on the need of the records which are being imaged or put on microfilm.

Sections 3 through 6 is primarily cleanup language and an update from the term "microphotography" to the more current term of microfilming.

PETER BARTON (Acting Administrator, Division of Museums and History, Department of Cultural Affairs):

Section 7 of this bill seeks to repeal NRS 381.0064, which was a fund created within the General Fund of \$300,000. The interest was used on an annual basis to support the Division of Museums and History. We did things like marketing with the proceeds. Assembly Bill No. 1 of the 25th Special Session swept this fund as a reserve to assist with the budget shortfall. Since the fund no longer exists, we are seeking to repeal this part of the law to maintain consistency with current practice.

CHAIR LEE:

You have a gifts fund generating interest income and the General Fund is sweeping the interest? How much money are we talking about?

MR. FISCHER:

When we have had difficult financial times, a number of funds having money in them were swept to balance the budget so the General Fund need was not as great. This fund was a victim of those sweeps.

MR. BARTON:

This was not a gift fund but a General Fund appropriation for the Division of Museums and History held in the State Treasurer's Office. The interest from the \$300,000 was used on an annual basis to support the Division.

CHAIR LEE:

We will review the bill and bring it back in a work session. We will close the hearing on A.B. 10 and open the hearing on S.B. 100.

SENATE BILL 100: Makes changes to provisions governing local improvement districts. (BDR 21-392)

SENATOR JOSEPH (JOE) P. HARDY (Clark County Senatorial District No. 12):
Senate Bill 100 basically came about with a local improvement district (LID) in which there are local improvement projects. Local improvement projects and assessment district financing in the State does not allow for the project to change its scope. For instance, if there was a road that encountered an obstruction or a water tank that needed to be changed to a pump system, the local improvement would not be allowed to change, even though it would make more sense to make changes or utilize new technology. This bill was created when Lake Las Vegas recognized specific problems could be removed if they could make changes. There would be no additional costs for those people holding assessments in the local improvement district.

When we look at the project not being developed adequately or the way it was originally intended, it can slow down the project, and more people are not working. If people are not working, they are not paying taxes and not paying their bills. Senate Bill 100 allows for a project direction to change in order to facilitate the project itself and get people back to work.

When you make changes, it affects the financing. We have an amendment ([Exhibit D](#)) addressing the financing issue. The people who have approved the bond and the people who received the bond must agree to make any changes that are not substantial in nature. If there is a specific substantial change, then everybody must agree to it. There are challenges with that agreement, and that is what the amendment is addressing.

CHAIR LEE:
I understand what you are trying to achieve.

TERRI BARBER (Director, Intergovernmental Relations, City of Henderson):
I would like to introduce James Coyne from Atalon Group and Greg Harrington, attorney and bond counsel for this project. I would like Mr. Coyne to provide the practical problems and the issues that have arisen as a result of the language in statute.

JAMES G. COYNE (Principal, The Atalon Group LLC, Lake Las Vegas):
My experience at Lake Las Vegas has highlighted several important examples with the inflexibility of the existing statutory language to allow modifications to different LID segments. This effectively results in a less efficient, more costly

development. In an attempt to speed things up, I will not read my entire written testimony ([Exhibit E](#)).

At Lake Las Vegas, the original conceptual engineering design for the master water system called for a tank system, a system where you have elevated tanks placed in the hillside to create the water pressure necessary for the houses. However, after performing extensive engineering and analysis on this type of system, our engineers and the City of Henderson determined this system would not provide the adequate pressure required. Instead, we needed to construct a pump system to pump water up the hill to provide pressure to the homes. The existing statute does not allow me to change or modify the original plans.

Similarly, the original conceptual plan for the sewer system called for several smaller lift stations, but after in-depth engineering analysis during the development of the project, we determined a gravity-fed system with one large lift station would be more economical and efficient. The change would benefit the development overall.

The third example pertains to the sheer size of the project segments. When the conceptual project was first designed, there were a number of different projects, such as a roadway segment with water and sewer in a street a mile and a half long. That concept may have been okay in 2005 and 2006 when the economy was booming and the demand for housing was optimistic. In today's environment, we need the flexibility to build smaller portions on that segment based on costs. We would like to build a portion of the segment now and build the rest when it is required. The current language does not allow the flexibility to make the kind of changes the developer—with the City's approval—would require.

This is important to Nevada because at Lake Las Vegas, Phase II is ready to move forward but is slow due to beneficial modifications against the rigid LID requirements. Modifying the current language to provide the flexibility needed for developers and municipalities will help the community move forward faster and create jobs, jobs for both infrastructure construction and, more important, the resulting home building. Once the infrastructure is in place, the landowners can build homes. In addition, once the infrastructure is complete and the homes are constructed, families will occupy those homes and broaden the tax base in Henderson. With a development that is successful instead of stalled, property values in the area will increase.

Lake Las Vegas is one of many LIDs in Nevada that would be affected by this change. Two others that come to mind are Inspirada and Mountain's Edge. This is not only a Lake Las Vegas issue, this is a development issue for LIDs throughout the State.

GREG HARRINGTON (Bond Counsel, City of Henderson):

I will focus on the amendment to S.B. 100, which specifies what type of project changes can be made and how to incorporate protections for the various stakeholders' interest so the changes can be made. If there are insubstantial changes in the project, the amendment will allow those to be made on the condition that the assessment engineer confirms the assessment on each parcel is no greater than the benefits to that parcel. This assessment will be a condition for any sort of change.

For more than insubstantial changes, if there is no increase in any assessment, there will be a notice and a public hearing where landowners can protest if they do not feel the change is appropriate. The bond owners would either have to consent or bond counsel would have to render an opinion. There is no adverse effect to the bond owners. The intent is to protect both the interests of the property owners and the bond owners, who are actually the lenders. If there is a proposed increase in any assessment, the owner of that property has to affirmatively consent. Without the consent, this could not go forward.

Probably 80 percent of the language in the amendment deals with the procedures for the protest hearing: How notice must be sent, where it must be held, how it must be held and what the protests need to include.

The changes in the amendment, Exhibit D, have been discussed with John Swenseid, bond counsel for a number of other jurisdictions that have large assessment districts.

CHAIR LEE:

You mentioned there are assessment engineers who review the plans. Do you contact value engineering first for review? Could you request suggestions of how to proceed rather than change direction in the middle of the project? It seems you are evaluating engineers to do less.

MR. COYNE:

When the project is initially designed, conceptual engineering is initiated for a large project. In our case, it is over 800 acres of mountainous terrain. There is considerable engineering performed to determine what it will take to convert this from a piece of raw land to a finished master plan development. It is not the detailed, in-depth engineering that happens with each segment when you review construction drawings. There are improvements made along the way or new thoughts. It is not haphazard in any way; it is very detailed. As you get into the nuts and bolts of the conceptual design, there are oftentimes better ways to complete the work.

CHAIR LEE:

I am in construction myself. It seems we are putting these plans together. If they do not work out, we change them rather than hold the engineering company responsible. Basically, it sounds like it is giving the engineering company an out because they did not do a good job. It seems like you are making it easier for the engineers to redesign.

MR. COYNE:

We must be characterizing this improperly. When the district is initially formed, you must determine how much money to raise to build all of the infrastructure. You have estimates of what needs to be done—water, sewer, roadways, drainage, etc.—all based on engineering at the time. It is conceptual and not in-depth detail. It is not the engineer's job to provide that in-depth detail. The engineer is providing an initial conceptual plan for the overall development and how much it will cost. In the case of Lake Las Vegas, a T-16 LID is about \$35 million. Once projects are set, the roadways must be constructed. Later, if you discover that it is better to move the roadway because of rock or some other obstruction, the statute does not allow that flexibility.

CHAIR LEE:

Say there is a change you would like to implement. You are saying you cannot make this type of change because of the statute. Can you ever make the change without changing the statute?

MS. BARBER:

It is my understanding, the way the statute is written, we cannot go back and change it if there is some kind of obstruction. The example provided is in regard to installing a pump system rather than water tanks on the side of the

mountain. The statute does not allow us to make those changes. In the case of Lake Las Vegas, it will be a buildout over many years. When technology improves and we find more efficient ways to build these developments, we want to be able to utilize the new technology. If the changes need to be made, we want to ensure everyone is protected in the improvement district.

MR. HARRINGTON:

The statute has always lacked a mechanism for accommodating any sort of change from minor changes to major changes. Most of the jurisdictions have tried workarounds, but you cannot do anything other than the most minor changes. Senate Bill 100 has been needed for quite some time for project changes or perhaps alignments. Some of the changes can be a result from changes in the market. For example, one type of housing was included in the conceptual design and the market has changed dramatically so the concept needs to change or maybe the project needs condominiums rather than single-family homes. This would result in some of the projects needing to be modified in order to accommodate the changes in the development plan.

MS. BARBER:

What we are trying to accomplish does not mean we are trying to reinvent the wheel. This has been done in many other states, and we found the ability to make changes is lacking in Nevada statutes.

SENATOR SETTELMAYER:

Let us speak to the amendment, [Exhibit D](#), which is much different from the bill. On the top of page 3, it says "each tract in the improvement district has consented in writing to such modification" I appreciate you are trying to ensure everyone is represented in the improvement district. Being from Douglas County, I represent more general improvement districts (GIDs) than the rest of the State combined. I am very familiar with GIDs and how they work and also the problems you can run into. You are trying to get 100 percent agreement. What if a person is incapacitated for some reason? What if a person is on vacation for six months, has a summer home or is a snowbird? For eight to ten months out of the year, homeowners live somewhere else. How will you deal with those issues?

MS. BARBER:

I am unsure of the nuances that distinguish a GID from an LID, so will defer to our legal counsel.

MR. HARRINGTON:

The amendment provides alternative mechanisms for making the changes. One approach would be to obtain the consent of all of the landowners. If the consent of all of the landowners was not available, you would go through the notice and protest procedure of a public hearing. At the end of that process—assuming there was no protest—you could go forward with the changes. You should never be in a situation where you absolutely require 100 percent approval.

SENATOR SETTELMAYER:

So this is another option. In other words, if you had the opportunity to get 100 percent buyoff, you would do that rather than going through the more formal public hearing process. If you could not obtain the 100 percent approval, you would begin the public hearing process?

MR. HARRINGTON:

Yes. That may be a better way to describe it. You can look to 100 percent approval and avoid the time and expense of having to conduct a public hearing.

CHAIR LEE:

This amendment has become larger than the existing bill, so with that, it is the Chair's decision to appoint a two-person subcommittee consisting of Senator Manendo and Senator Hardy. If you cannot get both Senators to agree, this bill will not go forward. Senator Manendo has agreed to chair the subcommittee. He will be noticing the interested parties. Once you have contacted him regarding your interest, we will set up a date and time to meet.

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We will close the hearing on S.B. 100 and bring it back in a work session. The Senate Committee on Government Affairs is adjourned at 9:39 a.m.

RESPECTFULLY SUBMITTED:

Martha Barnes,
Committee Secretary

APPROVED BY:

Senator John J. Lee, Chair

DATE: _____

<u>EXHIBITS</u>			
Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
S.B. 74	C	Michael Stewart	Work session document
S.B. 100	D	Senator Joseph (Joe) P. Hardy	Proposed Amendment
S.B. 100	E	James G. Coyne	Testimony supporting the bill