

**MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY**

**Seventy-sixth Session
May 13, 2011**

The Senate Committee on Judiciary was called to order by Chair Valerie Wiener at 9:06 a.m. on Friday, May 13, 2011, in Room 2149 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 Valerie Wiener, Chair
Senator Shirley A. Breeden
Senator Don Gustavson
Senator Ruben J. Kihuen
Senator Mike McGinness
Senator Michael Roberson

COMMITTEE MEMBERS ABSENT:

Senator Allison Copening, Vice Chair (Excused)

STAFF MEMBERS PRESENT:

Linda J. Eissmann, Policy Analyst
Brad A. Wilkinson, Counsel
Kathleen Swain, Committee Secretary

OTHERS PRESENT:

Robert D. Faiss, Adjunct Professor, Gaming Law Studies, William S. Boyd School of Law, University of Nevada, Las Vegas
Chelsea Nelson, William S. Boyd School of Law, University of Nevada, Las Vegas
Andrew Hall, William S. Boyd School of Law, University of Nevada, Las Vegas
Jaime Serrano, William S. Boyd School of Law, University of Nevada, Las Vegas
Richard Perkins, Wynn Las Vegas

Senate Committee on Judiciary
May 13, 2011
Page 2

CHAIR WIENER:

I will open the hearing on Assembly Bill (A.B.) 213.

[ASSEMBLY BILL 213 \(1st Reprint\)](#): Makes various changes relating to gaming.
(BDR 41-163)

ROBERT D. FAISS (Adjunct Professor, Gaming Law Studies, William S. Boyd School of Law, University of Nevada, Las Vegas):

This month is the tenth anniversary of the Boyd Gaming Law Legislative Advocacy Program. In each Session during those ten years, students have identified the need for amendments to the Nevada Gaming Control Act, drafted the amendments, arranged for their introduction as bills, and won the adoption of each of those bills. They have a 100 percent record of passage, due in large part to the constant support throughout that ten years of Chair Wiener and Senator McGinness, for which they thank you.

Today, they hope to continue that record by winning your support for A.B. 213. Here to lead that effort is the team captain of the program, Chelsea Nelson.

CHELSEA NELSON (William S. Boyd School of Law, University of Nevada, Las Vegas):

I have written testimony explaining the need for A.B. 213 ([Exhibit C](#)).

ANDREW HALL (William S. Boyd School of Law, University of Nevada, Las Vegas):
I also have written testimony which is included in [Exhibit C](#).

CHAIR WIENER:

What changes were made in the Assembly on this bill?

JAIME SERRANO (William S. Boyd School of Law, University of Nevada, Las Vegas):

The phrase "preliminary finding of suitability" was added to section 2, subsection 2, paragraph (a), and "preliminarily suitable" was added to paragraph (b). As we were reviewing the bill, we noticed that we had written "finding of suitability," but we did not explicitly write out "preliminary finding of suitability." We anticipated that a clever lawyer might read this to exclude someone who had a preliminary finding of suitability from some of the provisions of this section.

CHAIR WIENER:

And of course, the intent is to determine whether they should be in the process. Could you explain the two years provision in section 1, subsection 2, paragraph (b)?

MR. SERRANO:

There can be transactions that involve investments in casino operations. To go through the process of due diligence and structuring financing transactions could take up to a year. We therefore thought two years would be a good period of time to begin negotiations without being so long as to leave it open-ended.

CHAIR WIENER:

Section 1, subsection 3, paragraph (c) of the bill defines "corporate acquisition opposed by management." Is this referenced anywhere else in the gaming statutes, or is it new language?

MR. SERRANO:

I cannot recall if it is defined exactly the same way in other parts of the *Nevada Revised Statutes* (NRS). This provision prohibits a hostile takeover. That is defined elsewhere in statute, though I do not know where.

BRAD A. WILKINSON (Counsel):

I believe it was stated in earlier testimony that those definitions come out of the gaming regulations.

CHAIR WIENER:

If it comes from the regulations, that would explain why we have not seen it in statute. I have been alerted that there is a possible need for a technical amendment on page 4.

MR. WILKINSON:

In reading over the bill, I noticed that we include a reference in section 2 to "preliminary finding of suitability" in the initial provisions about complaints. However, on page 4, lines 9, 17 and 42, we do not include references to "preliminary finding of suitability," although we have references to "finding of suitability." I was unsure if that was a deliberate omission or a technical drafting error.

Senate Committee on Judiciary
May 13, 2011
Page 4

MR. SERRANO:

I believe that was an inadvertent omission. We will work with Mr. Faiss and Mr. Wilkinson to rectify it.

CHAIR WIENER:

Mr. Faiss, do you have any objection to that technical amendment?

MR. FAISS:

No. We appreciate Mr. Wilkinson finding something we overlooked.

CHAIR WIENER:

I will close the hearing on A.B. 213 and open the hearing on A.B. 459.

ASSEMBLY BILL 459: Makes various changes relating to gaming enterprise districts. (BDR 41-1122)

RICHARD PERKINS (Wynn Las Vegas):

As you may recall, with S.B. No. 208 of the 69th Session, the Legislature took a large step into land use decisions in Clark County. That bill was passed in response to neighborhood casinos cropping up all over Clark County and residents' concerns at the proliferation. The bill required casinos to be built in gaming enterprise districts (GEDs), which must be 500 feet away from residential property and 1,500 feet away from schools and churches, unless they are located either within 1,500 feet of Las Vegas Boulevard in downtown Las Vegas or in rural Clark County.

Assembly Bill 459 expands the Las Vegas Boulevard GED to include property behind Wynn Las Vegas and Encore Wynn Las Vegas. All of the land surrounding the site, including the golf course, is zoned H-1 in Clark County, the zoning required for high density resort development. This zoning is determined at the county level through the same public input process used for all land use decisions in that jurisdiction.

This site has two conflicts with the current GED requirements. One is the Guardian Angel Cathedral across East Desert Inn Road. It is important to note that the cathedral itself is actually inside the Las Vegas Boulevard GED and benefits from the location. The land on which the cathedral is located is also zoned H-1. It is not possible to walk from the church to Wynn Las Vegas; there is no pedestrian connectivity because of the Convention Center underpass.

The second conflict is an apartment complex on East Twain Avenue, which is itself already surrounded by commercial development. The County designated land use for these properties and properties for miles surrounding the Wynn site as commercial tourist, the planning designation required to build a casino. This is clearly not the neighborhood incursion S.B. No. 208 of the 69th Session was meant to prevent.

Some of the land on what is now the Wynn Country Club was zoned H-1, but some was also zoned residential. It created a patchwork of zoning and uses and prohibited the parcel itself from being grandfathered in by S.B. No. 208 of the 69th Session.

In the past, we have been asked if this is not a matter for the planning commission that could be handled at the local level. Unfortunately, because of the Legislature's decision to become involved in gaming land use decisions in 1997, the answer is no. We need this amendment to the NRS to move forward.

There was no opposition to this bill in the Assembly, and no amendments were offered. I have a map showing the area that would be affected by the bill ([Exhibit D](#)).

CHAIR WIENER:

You mentioned that the area had mixed zoning at one point. When was that resolved?

MR. PERKINS:

That was resolved after the purchase of the property, including all the homes on the golf course. After all those parcels were put together by the company, those zoning changes would have occurred at that point.

CHAIR WIENER:

Have you had conversations with the church and the apartment complex about this proposal?

MR. PERKINS:

Conversations have been had over the years in those areas. My understanding is that objections have not been made, at least in recent history.

SENATOR BREEDEN:

Are the homes on the golf course no longer there? Are people living in them?

MR. PERKINS:

They are no longer there, and no one is living in them.

SENATOR BREEDEN:

What do you plan to do with the property? What is going to go there?

MR. PERKINS:

There are no immediate plans. It is a land holding for the company. Financing being what it is in the current market, there are no immediate plans for growth. When the economy recovers, they will have to go through the same hearings process at the county level to let those plans move forward.

SENATOR BREEDEN:

When you talk about the apartments, are you talking about the apartments north of East Desert Inn Road? There are apartments north of East Desert Inn Road and others east of Paradise Road. A lot of people live in that area, and there is already a lot of traffic on Paradise Road. Should this bill pass, the hearings would include all these people, who would all receive notices.

MR. PERKINS:

The apartments I was referring to are east of Paradise Road and north of East Twain Avenue, near Palos Verdes Street and Elm Drive. There is a mixed use development north of East Desert Inn Road that is not zoned residential.

To answer your question, anything that would be constructed on that site would have to go through the county application process, and neighbors would be involved.

SENATOR BREEDEN:

I am aware of the process. I also know that it is usually the homeowners who lose out.

SENATOR KIHUEN:

I notice that on the final vote in the Assembly, there was one nay vote. Do you know the reason that person voted against the bill?

MR. PERKINS:

I do not. We had good discussion in the Assembly Committee on Judiciary, and that person voted for the bill in the Committee, then changed his vote on the Assembly Floor. We had dialogue with him during the Committee meeting about the mixed use project north of East Desert Inn Road, and he apparently did some work on that project in his private capacity. I made many attempts to have conversation with him about his vote but have not been successful.

CHAIR WIENER:

One of the considerations we had in working through S.B. No. 208 of the 69th Session was about distance between gaming enterprises and other kinds of properties. You mentioned the cathedral. Does it satisfy the 1,500-foot requirement, or is that not necessary in this conversation? You mentioned that it does not have access because of the convention center underpass, but does it have that separation?

MR. PERKINS:

One of the reasons for the need for this bill is because the 1,500-foot rule would create an incursion deep into that piece of property, even though the church is actually in the GED. To go 1,500 feet to the east and to the south would carve directly through this piece of property. That is why we need this bill. Furthermore, the church would actually be farther away from the site than it is to various casinos in the GED today.

CHAIR WIENER:

Has the 1,500-foot limit been an issue?

MR. PERKINS:

Yes. Within the swath of Las Vegas Boulevard, the properties are sort of exempt from the 1,500-foot rule.

CHAIR WIENER:

Either that or we have just gotten by.

MR. PERKINS:

You may remember that there was a much larger GED bill last Session that collapsed under its own weight. It had great opposition. We did not see opposition to A.B. 459 this time.

Senate Committee on Judiciary
May 13, 2011
Page 8

CHAIR WIENER:

Is there any public comment or any further business to come before the Committee? Hearing none, we are adjourned at 9:45 a.m.

RESPECTFULLY SUBMITTED:

Lynn Hendricks,
Committee Secretary

APPROVED BY:

Senator Valerie Wiener, Chair

DATE: _____

<u>EXHIBITS</u>			
Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 213	C	Chelsea Nelson	Written testimony
A.B. 459	D	Richard Perkins	Map