

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

**Seventy-Seventh Session
February 18, 2013**

The Senate Committee on Government Affairs was called to order by Chair David R. Parks at 1:43 p.m. on Monday, February 18, 2013, in Room 2135 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412E of the Grant Sawyer State Office Building, 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 David R. Parks, Chair
Senator Pat Spearman, Vice Chair
Senator Mark A. Manendo
Senator Pete Goicoechea
Senator Scott Hammond

STAFF MEMBERS PRESENT:

Patrick Guinan, Policy Analyst
Heidi Chlarson, Counsel
Martha Barnes, Committee Secretary

OTHERS PRESENT:

Christopher B. Smith, Administrator, Division of Emergency Management and
Homeland Security, Department of Public Safety
Rick Martin, Program Officer, Division of Emergency Management and
Homeland Security, Department of Public Safety
William Burks, Brigadier General, The Adjutant General of Nevada, Office of the
Military
Dana Grigg, Captain, Assistant Judge Advocate General, Office of the Military

Chair Parks:

The Office of the Attorney General has requested a bill draft from the Senate Committee on Government Affairs.

SENATOR MANENDO MOVED TO INITIATE A BILL DRAFT REQUEST TO REVISE NEVADA'S FALSE CLAIMS ACT AND ENSURE COMPLIANCE WITH FEDERAL LAW.

SENATOR SPEARMAN SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

Chair Parks:

We have a bill draft request (BDR) for Committee introduction referred by the Senate Committee on Legislative Operations and Elections modifying the extension of such agreements between local government employee and recognized employer organizations.

BILL DRAFT REQUEST 23-727: Revises provisions relating to collective bargaining agreements of local government employees. (Later introduced as Senate Bill 168)

SENATOR SPEARMAN MOVED TO INTRODUCE BDR 23-727.

SENATOR MANENDO SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

Chair Parks:

The Colorado River Commission has requested a bill draft from the Senate Committee on Government Affairs. The amount of the refinancing would be \$35 million.

SENATOR GOICOECHEA MOVED TO INITIATE A BILL DRAFT REQUEST FOR THE COLORADO RIVER COMMISSION TO REFINANCE THE OUTSTANDING DEBT WITH MORE FAVORABLE INTEREST TERMS, RECOVERING THE COST PAID THROUGH THE GENERATION OF POWER AT HOOVER DAM.

SENATOR SPEARMAN SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

Chair Parks:

The final request for a bill draft seeks to reconcile statutory definitions of emergency and severe financial emergency as they relate to collective bargaining provisions.

SENATOR SPEARMAN MOVED TO INITIATE A BILL DRAFT REQUEST SEEKING TO RECONCILE STATUTORY DEFINITIONS OF EMERGENCY AND SEVERE FINANCIAL EMERGENCY AS THEY RELATE TO COLLECTIVE BARGAINING PROVISIONS.

SENATOR MANENDO SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

Chair Parks:

We will now hear a presentation from the Division of Emergency Management and Homeland Security.

Christopher B. Smith (Administrator, Division of Emergency Management and Homeland Security, Department of Public Safety):

The Division of Emergency Management and Homeland Security (NDEM) ([Exhibit C](#)) is a coordination agency. We help to ensure that resources around the State are ready to be deployed when an incident occurs to provide better service to our citizens.

Our vision is to enhance safety and preparedness through strong leadership, collaboration and partnerships with local jurisdictions, tribal jurisdictions and municipalities.

The Division of Emergency Management merged with the Homeland Security Office in 2010, and the Administrator serves as the representative for grant applications while working with the Federal Emergency Management Agency (FEMA). We also serve as the State approving agency for grants with the U.S. Department of Homeland Security. I serve as the Homeland Security advisor to Governor Brian Sandoval and as the Emergency Management Administrator for the Division.

The top three threats germane to the State of Nevada are floods, earthquakes and wildfires. Other threats are winter storms, high winds, severe storms, hazardous material spills or transport, terrorism and an emerging threat of cybersecurity. The NDEM assists jurisdictions when dealing with these threats.

The responsibility of the NDEM is to ensure preparedness with training and exercise programs and to mitigate existing conditions and hazards around the State through grant programs and projects. We also coordinate resources through the State Emergency Operations Center when there is an incident impacting a local jurisdiction. The NDEM is available to support local jurisdictions anytime they operate their emergency operation centers.

Additional NDEM responsibility is coordinating the FEMA Emergency Management Performance grant which helps to sustain emergency management programs around the State. A Department of Homeland Security grant helps build statewide capability for local, regional and critical national incidents. The Emergency Preparedness Working Group grant is a partnership with the Department of Energy as is the Waste Isolation Pilot Project grant. These grants are funded by the Department of Energy to support the development of hazardous materials transport and any events near the Nevada National Security Site.

It is imperative for the NDEM to invest in recovery and mitigation funding. This money helps reduce the amount of future damage by mitigating potential hazards before they become actual hazards.

There are currently four open, President-declared disasters in the State: the Waterfall Fire in northern Nevada; the flash flood in southern Nevada; the New Year's Eve flash flood in northern Nevada; and the Fernley canal breach. Nevada's response to the Hurricane Katrina disaster is in the closing phase. It takes a long time for a disaster to clear fiscally, and we have put forth some legislative changes to help us address this issue.

The NDEM engages in two types of compacts. The State is a representative of the Emergency Management Assistance Compact (EMAC), which is national and regional. The EMAC allows us to share Nevada resources with other states in the event there is an incident of national significance. The Nevada Emergency Management Assistance Compact (NEMAC) is a county-to-county agreement.

Fire agencies share resources on a regular basis. Extenuating circumstances such as the National Championship Air Races crash in Reno-Stead brought about the sharing of resources through medical examiners from Clark County to Washoe County. These are good examples of how the NEMAC has statewide importance.

The EMAC was engaged in the Superstorm Sandy event in the northeastern part of the Country. All the states impacted by the storm made requests for services and resources, so other states proposed to fill those needs. All 17 counties in Nevada are members of the NEMAC. Many incorporated cities have become signatories, and we plan to expand further to include special districts and tribal partners. Overall, the NDEM is poised to help coordinate and to be the hub for all incidents within the State.

Senator Goicoechea:

In the event of a wildland fire, who has access to the resources you make available?

Mr. Smith:

Requests come to NDEM duty officers from field incident commanders asking for a specific resource. The NDEM will acquire the resources and send them to the incident commander. The job of incident commanders in the field is to fight fires, not to locate resources. The NDEM locates the resources and deploys them to the incident commanders.

Senator Goicoechea:

If you have an incident commander on the ground who needs assistance with a serious incident, could you activate the Chinook helicopters housed by the National Guard? Would you contact the Governor about activating the Guard? Or can the incident commander make the request, and you have the resources delivered to him?

Mr. Smith:

The Division of Forestry has a direct agreement with the National Guard and can request those assets immediately. The NDEM also has an agreement with the National Guard to deploy those assets, although we do have to coordinate with the local entity. If there are shared costs involved in fighting a fire, there is a federal Fire Management Assistance Grant Program available to obtain funding so that financial obstacles can be overcome. Once that is settled, we bring in whatever aerial assets we have to fight the fire.

Chair Parks:

We will open the hearing on Senate Bill (S.B.) 39.

SENATE BILL 39: Revises provisions governing the Nevada Commission on Homeland Security. (BDR 19-342)

Mr. Smith:

Senate Bill 39 allows the Nevada Commission on Homeland Security the ability to close any meeting of a committee appointed by the Commission. It is necessary for committee members to be provided classified information that could jeopardize the safety and security of citizens of the State and the Nation if released in an open forum.

Only the Commission on Homeland Security will have the authority to allow a committee of the Commission to close a meeting. The committees have representative members from many parts of Nevada. We are not able to have meaningful conversations when the items to be discussed are classified as coming under the Protected Critical Infrastructure Information (PCII) Program or are law enforcement-sensitive or for official use only. The proposed changes will allow committees that can demonstrate a need to the Commission on Homeland Security for permission to close a portion of a meeting to address topics that would ultimately increase the capabilities of Nevada's first responders.

Senator Spearman:

Who would be the arbitrator in terms of deciding whether the topic is definitely for official use only or a closed meeting? What protocols do you have in place?

Mr. Smith:

Typically, the individual who produced the document would determine if the topic was for official use only. The PCII is a classification protecting industry owners and their capabilities within certain infrastructures in the State. This is a national classification, so these are also identified by the owners themselves and those of us in the business. Parameters of the meeting will not change within the Nevada Open Meeting Law. We anticipate the committee will ask permission of the Commission to close a future meeting or a portion of a meeting. During the closed session, we will record the meeting and take notes as usual, but a portion of the meeting will not be open to the public.

Chair Parks:

Have there been many instances of having a closed meeting in the recent history of the agency?

Mr. Smith:

One instance in the past year required us to close a meeting of the Commission on Homeland Security. We needed to provide some capability information to the Commissioners regarding a facility in southern Nevada. Otherwise, we have not attempted to close a meeting because of the present restrictions under the law.

However, there are times we need to have discussions about critical infrastructure in the State. We cannot confidentially work with the committees on critical infrastructure because it could jeopardize the security of the facilities we are trying to secure. While we have not attempted to close a meeting, there have been at least two times when we needed to discuss confidential topics and were unable to do so.

Chair Parks:

Would this be an infrequent occurrence under circumstances that require keeping information confidential?

Mr. Smith:

Yes. We anticipate the need to close a meeting would be infrequent.

Senator Goicoechea:

You indicated you could use this option more frequently if you had the ability under the law. How do you brief the Commission now?

Mr. Smith:

We do not brief the Commissioners because we need to avoid certain topics during the meeting. We do the best we can to work within the current parameters. Some of the collaborative work we address when we meet cannot be discussed because of the restrictions under the Open Meeting Law.

Senator Goicoechea:

Because of the sensitive nature of the topics you discuss, you need to secure the information from the public. Would you utilize the closed meeting option if it were available to you now?

Senator Hammond:

You indicated you would have a meeting as normal; when a sensitive subject arose, you would dismiss everyone from the meeting but continue recording and taking notes at the meeting. Would those notes be opened as public record sometime in the future?

Mr. Smith:

Notes from a closed meeting would not be open to the public but kept on file as a record of the meeting.

Senator Hammond:

Would you continue to take notes to ensure a record of the meeting?

Mr. Smith:

Yes. We would have a record of the meeting, but I am unsure of the time frame of releasing the information to the public.

Senator Hammond:

Do you envision beginning the meeting with the confidential information so the public could be brought in afterward and not have to be dismissed from the meeting?

Mr. Smith:

Yes.

Senator Spearman:

How would the Freedom of Information Act govern any future references or discovery with respect to these meetings? Would it be 10 years or 15 years? How would the release of information be handled?

Mr. Smith:

I do not know how the information would be affected by the Freedom of Information Act. I will conduct some research.

Chair Parks:

Section 1, subsection 2 of the bill indicates the Commission may hold a closed meeting at this time. You are asking for any appointed committee having sensitive information for discussion to utilize this option?

Mr. Smith:

Yes.

Chair Parks:

I will close the hearing on S.B. 39 and open the hearing on S.B. 44.

SENATE BILL 44: Revises provisions relating to allocations from the Disaster Relief Account. (BDR 31-341)

Mr. Smith:

We request S.B. 44 to allow State agencies and jurisdictions adequate time to develop and complete accurate applications for assistance to the Disaster Relief Account (DRA) following a catastrophic event. In many emergencies or disasters where other programs are available for funding, the actual cost is not known for several months following the event.

Therefore, the existing time frame of 60 days to complete an application for assistance is not realistic. We are also trying to define the process of submitting applications to expedite DRA applications and funding. We are specifically identifying counties and municipalities within the State that can apply to the Disaster Assistance Account.

Rick Martin (Program Officer, Division of Emergency Management and Homeland Security, Department of Public Safety):

The primary goal in making these changes is to address the 60-day time frame in which to submit a full application. We ask to allow applicants to submit an intent to apply document within the 60-day time period. Historically, in these emergencies or disasters we do not have enough time to work with the local jurisdictions to find all the potential recovery programs and put together an effective application. This language change will allow us to locate the funding sources to ensure we are not duplicating processes before submitting the application to the DRA.

Senator Hammond:

Reviewing section 4, subsection 5, could you provide an explanation of the added language?

Mr. Martin:

Nevada Revised Statutes (NRS) 353.2751, referenced in section 6, subsection 1, paragraph (c) of S.B. 44, includes statements for the local jurisdictions for mitigation opportunities. We are requesting the same language for the State agencies.

Senator Hammond:

When you see additional damage following a disaster that could be prevented, are you asking for funding to address the problem?

Mr. Martin:

We are asking that an application could be submitted by a State agency as well as a local jurisdiction to have the same opportunity. We would like to have an opportunity to ask for funding when we see a need.

Senator Hammond:

You want to divert some of the funding that would normally go toward disaster relief in order to avoid a problem. Do we not have money anywhere else that can be used for this kind of situation when preventing an event?

Mr. Martin:

We have predisaster and postdisaster mitigation available. Predisaster mitigation has been taken away thanks to funding issues across the Nation. In a disaster situation, we would ask that the State agency have the same opportunity to receive funding. Right now, the local jurisdictions can offer help to prevent or eliminate future disasters.

If we had a flood, there would be an opportunity to increase culvert size in certain areas. We could perform bank stabilization if a fire burned the side of a roadway and we were expecting rain with the possibility of flooding. In anticipation of seismic activity, we could perform nonstructural mitigation, such as strapping monitors and computers and securing books and bookshelves to the wall. We would address anything that could be a potential falling hazard.

Senator Spearman:

Are you giving ground commanders more flexibility by decentralizing the decision-making process—so the people closest to a situation can make the assessment and allocate funds?

Mr. Martin:

We are asking for more flexibility to put together a complete application to determine what programs pay for what events. We want to avoid duplicating funds when we bring the information before the Interim Finance Committee or the State Board of Examiners.

Mr. Smith:

We are looking at a State fund to assist us in incidents that do not reach the level of federal declarations. Local jurisdictions can determine their costs or expenses incurred with certain responses. We are asking for flexibility to allow State agencies to utilize funds and engage in some mitigation activities. We can invest in a local's capability to deal with a specific flooding incident by increasing a culvert size. That may not have been part of the initial outlay or cost during the emergency, but we are trying to prevent an incident in the future.

Senator Goicoechea:

What would be the percentage of match for a local government in a grant? Using your flood scenario, if a local government needed a 24-inch culvert instead of an 18-inch culvert to cover a 25-year or 50-year event, would there be a match from the local government or would local officials submit an application to NDEM for funding to replace the culverts?

Mr. Martin:

As NRS reads today, there has to be a minimum match of 25 percent from a local government.

Chair Parks:

The new limitation of 18 months after a declared disaster would allow NDEM to have all relevant costs and repairs identified rather than at 60 days. Senate Bill 44 is extending the time period to 18 months.

Mr. Martin:

Yes. Eighteen months is a more realistic time frame and helps us to gather all of the appropriate information and notify the partners involved in the process.

Chair Parks:

I will close the hearing on S.B. 44 and open the hearing on S.B. 18.

SENATE BILL 18: Makes various changes to provisions governing the Office of the Military, Nevada National Guard, Nevada National Guard Reserve and volunteer military organizations licensed by the Governor. (BDR 36-316)

William Burks, Brigadier General, (The Adjutant General of Nevada, Office of the Military):

I have written testimony that provides an introduction and a description of the program ([Exhibit D](#)).

Dana Grigg, Captain (Assistant Judge Advocate General, Office of the Military):

The written testimony provides background beginning on page 2 and outlines the revisions being submitted in the proposed amendment ([Exhibit E](#)).

Senator Spearman:

When reviewing the bill, I did not see anything that controverted the terms of Article 32 of the Uniform Code of Military Justice (UCMJ). The investigation of Article 32 of UCMJ is not affected by this?

Captain Grigg:

Are you asking about the title status of Article 32?

Senator Spearman:

Yes. Article 32 of the UCMJ requires that an investigation take place to establish the truth or the lack thereof before charges are brought forward. Will these changes affect Article 32?

Captain Grigg:

No. This is because the revision to S.B. 18 does not embrace the UCMJ. We actually look to NRS 412 for our specific code, the Nevada Code of Military Justice. The language is not in the law because we follow our own model.

General Burks:

The Army National Guard utilizes an Army investigation procedure called Army Regulation 15-6. We would continue to conduct these investigations. The Air National Guard utilizes an investigation procedure called the Commander-Directed Investigation. Basically these are one and the same, but there is a difference in culture within the components. Investigations are conducted in anticipation of any type of action taken.

Senator Goicoechea:

You do not have the ability to do this now?

General Burks:

The punitive sections of the Code were written a long time ago. Many actions are no longer appropriate for today's climate. Most of the actions are limited to a \$100 fine. When the language was originally written, the fine was appropriate. Today, the fine is not steep enough. We are trying to put some teeth back into the regulation to better govern our people.

Senator Goicoechea:

Can you assign other duties as well as detention or deny leave? Your proposed changes enhance the penalty and allow local law enforcement to prosecute. Or can the National Guard take the appropriate action when there is an overlap in jurisdiction?

Captain Grigg:

The ability for civil authorities to have the first jurisdiction already exists in NRS 412.562. What we ask in the revision is to provide us with the ability to more promptly address issues that may not rise to the level of first jurisdiction under the Nevada Code of Military Justice. If a crime is more relative to the military side and the civilian authorities do not want to take action, we may have to turn a blind eye. With the changes, we would have the ability to take a direct approach with a greater ability to effectuate certain disciplinary procedures, such as nonjudicial punishment.

Many of our bases use the court martial. Having this ability would allow us to utilize both court martial and nonjudicial punishment. We do have administrative processes in place to deal with certain crimes but to have this authority under our own Code would strengthen our disciplinary procedure.

Senator Goicoechea:

You are asking to adopt the Code through NRS for the ability to enforce it?

General Burks:

Our active duty counterparts are governed by a different section, Title 10 of the United States Code. The National Guard is governed by Title 32, United States Code. Under Title 32 when individuals do something wrong, they look to their UCMJ and say, you should do X, Y or Z. The NRS does not allow us to do X, Y or Z because it drives us in a different direction. Adopting this code will allow us to be more uniform. When an act happens, the reaction would be more in line with the anticipated reaction of active duty personnel.

Senator Spearman:

You mentioned UCMJ Article 15 as nonpunitive, then you talked about court martial. Are you talking about field grade or general officer? What are you referencing when you talk about punitive?

Captain Grigg:

Punitive falls under those articles that already exist under NRS 412 and the language requested, such as sexual assault and extortion. If a member commits one of those crimes and it does not fall under the purview of civil authorities, it is still considered punitive. If we want to do a nonjudicial punishment, it may be based on what the commander, who has first review, determines is the impact. It could rise to the level of a court martial.

Much of the language that we ask to revise is based on the State model code. To rise to a level of court martial under nonjudicial punishment, Article 15 under the UCMJ—already codified in NRS—allows a member to choose a special court martial in lieu of taking nonjudicial punishment.

We are not asking to divert that option, but there are certain crimes that pertain. If we want to move forward with a court martial, it would have to be between the civilian authorities and above the level of what a nonjudicial punishment could actually address. Few crimes fall in between.

In 99 percent of the cases, the cases would remain at a lesser degree of nonjudicial punishment. This will allow our commanders greater ability to go after things like failure to show up for formation. Very few crimes rise to the level of court martial. That is all listed within our Code and our revisions as to how it would change procedurally.

Senator Spearman:

When I was a company commander, I had a great deal of latitude whether I wanted to issue an Article 15 or if I wanted to move it up to the brigade commander. This language gives a company brigade commander the authority to pull in provisions of the law to prosecute crimes that fall into the gray area.

Captain Grigg:

Yes. From an active duty standpoint, it is difficult to understand why we do not already have this authority.

Senator Parks:

In 2003, Congress directed the Secretary of Defense to produce a Model State Code of Military Justice. How long did it take to complete the Code, and why is it coming forward if Congress enacted it 10 years ago?

Captain Grigg:

This is an ongoing process. We have been in contact with one of the spearheads for the Air National Guard who is a legislative liaison to the Wisconsin National Guard. He is with the Judge Adjutant General for the Air Force. He took on this initiative 10 years ago, and it continues to branch out to all of the National Guard bases. You are talking about getting 54 states and territories on board with one code similar to a federal law. That may be why it is taking so long. Each state wants to maintain some exclusivity. Nevada comes down to Governor Sandoval's initiative brought forward in 2011.

General Burks:

The Governor issued Executive Order 2011-01, to streamline the legislative and budgetary processes. We did not have much budgetary impact with only one account. When looking at NRS 412, we saw that a section needed improvement to eliminate the discrepancy between the qualifications of the Assistant Adjutant General and the Adjutant General. It should not be harder to become an Assistant Adjutant General than it is to become the head of the department. When we reviewed the punitive sections in the statute, we saw they needed to be revised and brought into the new millennium.

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Chair Parks:

I will close the hearing on S.B. 18 and adjourn the meeting of the Senate Government Affairs Committee at 2:41 p.m.

RESPECTFULLY SUBMITTED:

Martha Barnes,
Committee Secretary

APPROVED BY:

Senator David R. Parks, Chair

DATE: _____

<u>EXHIBITS</u>				
Bill	Exhibit		Witness / Agency	Description
	A	1		Agenda
	B	3		Attendance Roster
	C	11	Christopher B. Smith	Division Of Emergency Management and Homeland Security Overview
S.B. 18	D	3	William Burks	Written Testimony
S.B. 18	E	2	Dana Grigg	Proposed Amendment