MINUTES OF THE SENATE COMMITTEE ON GOVERNMENT AFFAIRS

Seventy-Seventh Session February 27, 2013

The Senate Committee on Government Affairs was called to order by Chair David R. Parks at 1:35 p.m. on Wednesday, February 27, 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:

Jeff Fontaine, Executive Director, Nevada Association of Counties

Nancy J. Boland, President, Nevada Association of Counties; Chair, Board of County Commissioners, Esmeralda County

Debra March, President, Nevada League of Cities and Municipalities; City Councilwoman, Ward II, City of Henderson

Wes Henderson, Executive Director, Nevada League of Cities and Municipalities Lee Bonner, Commissioner, Douglas County

Vida Keller, Commissioner, Lyon County; Nevada Association of Counties Steve Walker, Storey County; Eureka County Board of Commissioners Warren B. Hardy II, City of Mesquite

John J. Slaughter, AICP, Director, Management Services, Washoe County

Paul McKenzie, Executive Secretary-Treasurer, Building and Construction Trades Council of Northern Nevada, AFL-CIO

Rusty McAllister, Professional Firefighters of Nevada

Patrick T. Sanderson, Laborers' International Union of North America, Local 872

Chair Parks:

I will open the hearing on Senate Bill (S.B.) 2.

SENATE BILL 2: Grants power to local governments to perform certain acts or duties which are not prohibited or limited by statute. (BDR 20-174)

Jeff Fontaine (Executive Director, Nevada Association of Counties):

I will present S.B. 2 from my written testimony (Exhibit C).

Nancy J. Boland (President Nevada Association of Counties; Chair, Board of County Commissioners, Esmeralda County):

In addition to serving as President of the Nevada Association of Counties (NACO) this year, I am Chair of the Board of County Commissioners in Esmeralda County. The NACO considers functional Home Rule as an important tool for Nevada's counties. In the 2009 Legislative Session, I served as a member of the Interim Technical Advisory Committee for Intergovernmental Relations (ACIR) created by S.B. No. 264 of the 75th Session. The ACIR was made up of three county commissioners and three mayors and city council members representing Clark, Washoe and the rural counties. Governor Brian Sandoval also appointed three agency directors to the ACIR. The purpose for ACIR was to foster effective communication, cooperation and partnerships among State and local governments to improve the provision of services to Nevada citizens.

The ACIR recommended legislation granting functional Home Rule to local governments in Nevada, and $\underline{S.B.\ 2}$ is a result of those meetings. What is notable about this recommendation is that local elected representatives from all cities and counties unanimously supported it.

Many of the functional Home Rule bills have assisted the counties. Esmeralda County proposed A.B. No. 45 from the 76th Session to address office hours and legal advice provided by the local district attorney. The bill passed after amending the language so it would not affect other counties. This is an example of why Home Rule is important to our small county.

Debra March (President, Nevada League of Cities and Municipalities; City Councilwoman, Ward II, City of Henderson):

My written testimony (Exhibit D) provides support for S.B. 2.

Wes Henderson (Executive Director, Nevada League of Cities and Municipalities):

<u>Senate Bill 2</u> is supported by my written testimony, which is included in Ms. March's written testimony Exhibit D.

Senator Goicoechea:

There are often problems in the gray areas of the law. <u>Senate Bill 2</u> is cleanly written and clarifies some of the language utilized by local governments. I am probably the longest-serving county commissioner in the room and understand the issues you have described.

Chair Parks:

Is there a difference between Dillon's Rule and Home Rule?

Mr. Fontaine:

Dillon's Rule is the doctrine opined by Judge John F. Dillon in the 1860s. Dillon's Rule provides that a local government possesses and can exercise only those powers which are: expressly granted; necessarily or fairly implied in or incident to those powers expressly granted; or essential to the accomplishment of the declared purposes of government.

Four years after Judge Dillon's opinion was made, Judge Thomas McIntyre Cooley of Michigan opined the opposite. The converse of Dillon's Rule is Home Rule. Home Rule provides local government with more powers. The types of Home Rule are: structural; functional; fiscal; and personnel.

Ms. March:

There are blends of Dillon's Rule and functional Home Rule in states across the Country. Some states are true Dillon's Rule states, some are Home Rule states and some are a blend of the two. It depends on the authority granted to local governments in their state charters.

Mr. Fontaine:

For those states that follow Home Rule, the powers and limits of that Home Rule authority within the individual states are defined state by state. There is no universal definition of Home Rule.

Chair Parks:

How many states function under the Home Rule concept?

Mr. Fontaine:

My research is somewhat dated, but 31 states function under Dillon's Rule, 10 states operate under Home Rule. Nine states have a combination of Home Rule with some Dillon's Rule applications for certain municipalities. Some of the neighboring states—Montana, New Mexico and Oregon—are considered classic Home Rule states in the West.

Senator Hammond:

As I understand Dillon's Rule, the counties are the creation of the State and that would not change if the bill passes. The same relationship would exist but with more flexibility for local governments to run day-to-day operations.

Mr. Fontaine:

Yes. You just described the constitutional provision that the counties are a creation of the State of Nevada. Granting functional Home Rule would not affect that provision.

Senator Hammond:

You separated Home Rule into four different areas: functional, fiscal, structural and personnel. By not granting fiscal Home Rule, the counties will not have the ability to raise fees or taxes.

Mr. Fontaine:

Yes. You are not providing additional authority.

Ms. Boland:

If <u>S.B. 2</u> passes, it will allow Clark County the ability to address graffiti issues. In the past when graffiti was visible from sidewalks, the district attorney decided the County was not empowered by *Nevada Revised Statutes* (NRS) to address the issue, so the County could not move forward. If a similar situation

is not addressed or precluded by NRS, a county could address the issue without having to propose a bill to the Legislature.

Senator Hammond:

Are you limited by the enumerated powers of State government, and the implied powers are the gray areas? Could the implied powers potentially grow when you identify a need?

Ms. Boland:

Yes. We are seeking the ability to fix mundane issues that arise during daily operations within the County. As an example, if the Legislature has not passed a law allowing the counties to remove graffiti, then we cannot remove it.

Senator Hammond:

If you identify a problem using implied powers, does the Legislature still have the power to add clarifying language to the NRS?

Ms. Boland:

Yes.

Ms. March:

An example of Home Rule is from the State of Oregon. The State has rescinded some of the authority granted to local governments. This bill is asking for functional Home Rule, which is the function of government that deals with some of the mundane issues such as abandoned buildings, graffiti, land use planning issues or noise pollution. These are issues addressed daily at the county or city level that may need to be clarified every 2 years in NRS.

Senator Hammond:

Every 2 years, the Legislature can address laws needing clarification or corrections. The Legislature would still be spending time addressing these local issues.

Ms. March:

Yes. This should only happen if there is a complaint about a certain issue. There may be things the counties handle well that will not require any further time. The next bill coming up for discussion today addresses the ACIR, which is an interim committee that would involve membership from the Legislature to possibly review some of these issues during the interim.

Senator Manendo:

What does "desirable" mean in section 4, subsection 2, paragraph (b) where it states, "All other powers necessary or desirable in the conduct of county affairs, even though not granted by statute"?

Mr. Fontaine:

Powers granted by the statutes give the counties and cities more latitude. We will conduct some research to find out what desirable means in this context.

Senator Manendo:

The term seems very broad. Can you tell me how this bill will affect chapter 288 of NRS?

Mr. Henderson:

Passage of S.B. 2 will not allow any local government to operate in a manner that is not consistent with the current statutes.

Heidi Chlarson (Counsel):

The bill does not amend or repeal existing sections of the NRS relative to chapter 288. If there is a provision in NRS that limits the power of local governments or the Legislature when setting forth State law regarding an activity removed from the law, it is not impacted by this bill. The Legislature would certainly trump any activities of the local governments.

Senator Spearman:

One of the testifiers mentioned a developer who requested some changes, but they could not be completed because the county did not have the authority. Does this bill give you a template in order to conduct daily operations? What is the economic impact?

Mr. Fontaine:

We are asking for flexibility and autonomy in the daily operations of local government to better serve constituents. We have not conducted a fiscal impact analysis, but it would be a positive impact for government as well as the private sector. When local governments have to bring these bills to the Legislature, they are sometimes waiting 2 years for the bill to be heard—so it causes delays.

Senator Spearman:

Was there an economic impact because the developer was unable to complete the job?

Chair Parks:

The issue regarding graffiti was along the public right-of-way but on privately owned cinderblock walls. The Clark County District Attorney indicated the City of Las Vegas had the authority to make improvements to private property but Clark County did not.

There was another situation when Clark County became the owner of Commercial Center District, and while the parking lot was not a public right-of-way, there was a question whether Clark County had the authority to tow abandoned vehicles from the lot. These types of situations are what the bill is designed to address.

Mr. Fontaine:

The examples you brought up explain the types of issues local governments deal with on a day-to-day basis. We want local governments to have the ability to address these types of issues as they arise. We do not want local governments to be in a situation where they cannot address issues. There are 17 counties with 17 different elected district attorneys with varying opinions. We want the local governments to have the ability to address their own needs without having to come before the Legislature.

Ms. March:

If we were granted functional Home Rule, it would allow us to deal with the minutia of detail that should not have to come before the Legislature.

Lee Bonner (Commissioner, Douglas County):

The State has consistently invested in the counties, and we are willing to shoulder some of the financial responsibilities from the State. After the economic downturn, businesses began reviewing their operations differently. Rather than reviewing on a quarterly or yearly basis, they had to review monthly to be more nimble. The counties and cities are asking for the responsibility to act more quickly rather than every 2 years, especially in this economy. This authority is needed by the local governments.

We want to review government efficiencies to be more responsible with the taxpayers' money. It is not the best use of our time to await permission every 2 years to remove graffiti. It is not the best use of time for the Legislature to have to hear these bills. Senate Bill 2 is the right direction for the State and local government.

Vida Keller (Commissioner, Lyon County; Nevada Association of Counties):

I want to address the question posed by Senator Spearman regarding a fiscal impact associated to a developer. I was one of those developers in Churchill County. I was in the middle of separating some land and getting my final map when the economy died. I was unable to finish the road due to lack of funding. I was subject to waiting for the Legislature to meet about whether I was going to be granted a 2-year extension on the project. The County wanted to grant me a 2-year extension but were unable to do so until the Legislature met. In my case, there was a fiscal impact. This affected me as a citizen, not as a commissioner. I am in support of S.B. 2.

Steve Walker (Storey County; Eureka County Board of Commissioners):

Both Storey and Eureka Counties are in support of S.B. 2.

Warren B. Hardy II (City of Mesquite):

The City of Mesquite is in support of $\underline{S.B.}\ 2$. Allowing local governments the ability of functional Home Rule will be a good tool in dealing with local issues. It is true that keeping local government close to the people is the best way to resolve many of the issues being discussed.

Senator Hammond:

Can you tell me more about the history of Nevada? We know the population of the State has increased tremendously in the past 20 years. Did the problem of not having functional Home Rule pop up recently because there are more issues to deal with? How was this dealt with in the past, and why are things changing now? Is it due to the increase in population that we are unable to address issues with the small biennial Legislature we have now? Do you think this bill will address these issues?

Mr. Hardy:

This is an issue the Legislature has dealt with the entire time I have been involved in one capacity or another. We dealt with this issue when I was a freshman in the Nevada Assembly in 1991. It has been heard in the Government

Affairs Committee every Session I was honored to Chair the Committee. The issue we grappled with is functional Home Rule versus full Home Rule. Full Home Rule contemplates the ability to perform full taxation and other issues, which are problematic the way things are set up in Nevada. The functional Home Rule is directed more to day-to-day operations.

The legislation indicates anything that is not expressly prohibited by the NRS or the Nevada Constitution is an authority that goes to the local governments. It provides the significant ability for local governments to deal with issues at the local level. The discussion has always been about how much should be at the local level and how much should be at the State level. The State always has the ability to come back and expressly prohibit anything it thinks the local governments are doing beyond the scope of legislative intent. The issues that have been brought up seem absurd to talk about at the level of the Legislature. Senate Bill 2 provides power to local governments to address their own issues.

Ms. March:

When Nevada became a State in 1864, the population of the State was 14,400 people. Clark County and the City of Reno did not exist. Virginia City was the largest community, so the State and local government issues were the same. We are dealing with more complex issues because Clark County has approximately 2.5 million people in southern Nevada. The complexity of the issues being addressed is very different than in 1864. The issues require immediate attention, so to wait for 2 years for the Legislature to meet makes it more difficult for local government.

John J. Slaughter, AICP (Director, Management Services, Washoe County): Washoe County supports <u>S.B. 2</u>.

Paul McKenzie (Executive Secretary-Treasurer, Building and Construction Trades Council of Northern Nevada):

The discussion about the powers <u>S.B. 2</u> will give to local governments seems mundane. None of the issues discussed would cause opposition to the bill. Under existing statutes, counties and city governments say they can do anything not expressly forbidden by the NRS. The only way those local government officials are prevented from proceeding is when they must have the power granted to them through the Legislature.

For example, Storey County entered into a development agreement where the developer is paid for infrastructure, but the agreement is not based on the provisions of the NRS. When Storey County was questioned, officials said they were not forbidden by NRS, so they could proceed as outlined.

A couple of years later, Storey County proposed a bill through the Legislature to give County officials the authority they were already utilizing. The bill was not passed out of the legislative committee, but Storey County is proceeding as usual. Under <u>S.B. 2</u>, Storey County would have the authority to proceed as usual. The law does not expressly prohibit counties from entering into a development agreement. No one has come to the Legislature to ask for the proper authority.

Another incident occurred in Sparks where a public works contract was bid under NRS 332. The city claimed it had authority under the law. We are not concerned about the counties or cities wanting to perform daily operations, but we are concerned local governments can find ways to circumvent Nevada law.

We believe the mundane issues such as removing graffiti and towing abandoned vehicles out of a parking garage are issues that should be handled at the local level. The Legislature should determine development, tax reimbursements, public works projects and public purchasing. We want to ensure fair competition during the bidding process. We oppose <u>S.B. 2</u>, but if the language could be rewritten wherein local government authority is restricted to the mundane daily operations only, we could support the bill.

Senator Goicoechea:

Many of the examples you have given are clearly prohibited by the NRS. Bid requirements and prevailing wage requirements are presently covered by statute. I am unaware of the issue in Storey County you say was ignored, but apparently the County tried to make it right by requesting a change to the statute. Having served as a county commissioner, I understand that many of the concerns you presented are already protected by NRS. I do not see where S.B. 2 gives the local governments any more authority than they already have other than in the gray areas. If a problem arises, we can come back in 2 years and the Legislature can discuss it.

Mr. McKenzie:

I understand many of the issues the county commissioners and city council representatives deal with, but there are times when people think they can do things that are not expressly prohibited by law until they are caught. If you pass <u>S.B. 2</u>, you are giving them open authority. If I make a challenge in a court of law, the judge is going to decide if the local government has the proper authority under the law. Unless I can find a law that expressly prohibits the authority of the local government, then S.B. 2 provides that authority.

The examples of things done were not expressly prohibited under the law, but nothing provides the authority. In order for the cities and counties to function, they must have a mechanism passed by the Legislature granting the authority. Under <u>S.B. 2</u>, they can pass whatever they want. In the meantime, I have 300 workers on a job for 2 or 3 years who did not receive the proper wages. I had contractors who did not receive an opportunity to bid the job. These people can never be made whole for the losses they incurred.

Senator Hammond:

Prior testimony explained the State of Nevada is growing and things have changed since Nevada became a State. The Legislature deals with large and complex issues, so we can ask others such as local governments to assist us on a day-to-day basis. You seem to be saying we are giving all of this power to these local entities and they have no one to answer to. The local governments will have to answer to the Legislature every 2 years and to the voters. These people would have to tell the voters they acted within the best interest of their duties. How would you respond to that?

Mr. McKenzie:

The voters in a city or county do not have information concerning the effect of many of the actions taken by local governments unless they are directly impacted by them. When folks know what is going on and lobby their local government, those individual voices are not heard as loudly as the developer who says he is going to pump money into the county economy.

In the Reno-Sparks area we have seen developers say they are going to pump money into the economy, and they end up diminishing the local government's general fund. Following the restrictions set forth by NRS, the developers would have to come to the Legislature for permission to begin a project. A good example: when a local government takes general fund money to bail out a

redevelopment agreement, it has exceeded its authority. This is one of the gray areas within the NRS. The redevelopment agency is supposed to be independent and not burden the general fund. These issues arise when actions are not specifically prohibited, but the damage is done. We have to come back to the Legislature to fix it for future events.

Senator Hammond:

You used the words "tax" and "bail out" during your testimony, but I do not agree we are giving too much power to local governments. The representatives will be judicious in how they conduct themselves and address only the mundane issues.

Senator Spearman:

Is this a civil issue or are you inferring criminal activity? If someone breaks the law, it can be addressed using existing laws. If someone breaks the law intentionally, there are laws to address it.

Mr. McKenzie:

The NRS does not expressly prohibit you from exceeding the speed limit of 55 miles per hour on an icy road, but if you have an accident, you have exceeded the recommended speed for the conditions and can be ticketed. The gray areas are channeled by existing statutes. If you give the local governments the ability to make decisions about the gray areas, you have given them too much power. Right now, local governments are making decisions regarding the gray areas until they get caught. If you pass $\underline{S.B. 2}$, local governments will have the ability to circumvent the law.

Senator Spearman:

If the mitigation to your concern is that the Legislature can always come back and rescind the empowerment, it appears there are mechanisms in place to address the issue. If activity is premeditated and designed to break the law, laws exist to address that as well. How would <u>S.B. 2</u> remove the mitigating authority of this body to correct something because the directions were not implicit?

Mr. McKenzie:

The redevelopment agencies, formed within the cities and State, were authorized by the Legislature regarding their operating procedures. When local governments operate under the redevelopment rules, they are in compliance

with the law. If I object to rules established under <u>S.B. 2</u>, I would have to petition the Legislature to change the law. In the meantime, anything started under the ordinance would continue until a law could be passed to stop it.

While the local governments may have to wait 2 years to get a statute passed, under <u>S.B. 2</u> they could move forward the day they developed a plan. If the redevelopment agencies had authority under <u>S.B. 2</u> instead of through the Legislature, we would have a mess in this State. Provisions and protections for the taxpayers may not be instilled at the local level. We do not have an issue with public bodies performing mundane operations, but a large portion of city government issues are not mundane. The decisions will affect cities, counties and the regions surrounding them.

Chair Parks:

Just as the Legislature is required to pass statutes to allow for the State or the subdivisions to function, a local government has to adopt an ordinance through the hearing process before it can take an action. There is a safeguard already in place. However, I understand we are opening the barn door and do not know how far the horse might stray.

Rusty McAllister (Professional Firefighters of Nevada):

I signed up in opposition of the bill. Section 9 states: "It is expressly declared as the intent of the Legislature to grant a city council the powers necessary for the effective operation of city government."

Section 12 states: A city council may exercise any power it has to the extent that the power is not expressly: 1. Denied by the Constitution of the State of Nevada; 2. Denied by the Constitution of the United States; 3. Denied by the laws of the State of Nevada; or 4. Granted to another entity.

Under NRS, local governments may set aside contracts in the event of a disaster. *Nevada Revised Statutes* does not list every type of disaster, but it defines flood, fire and tornado as types of natural disasters. Through the history of the law, a disaster was meant to be a natural disaster. One of the local governments in the State decided it had a financial disaster. Officials set aside the contracts for the public safety—police and fire employees—but not for everyone in the local government. Based on S.B. 2, since it is not expressly

denied in the statute, do the local governments have the power to determine a financial disaster?

I understand the concerns of trying to handle the daily operations within local governments. The overwhelming majority of the local governments making decisions are above board, but there are a few bad actors. It has been said the rules are based on the behavior of the worst actor in the bunch. The statute could be based on the behavior of the poorest paramedic in the State. We are opening the barn door, so how far will the horse stick his nose out and press those gray areas?

Patrick T. Sanderson (Laborers' International Union of North America, Local 872):

I am neutral on the bill. By opening this up, you will have 17 district attorneys and city councils deciding how they will handle daily operations. There will be no regulations for consistency. Every time there is a different person in office, there will be a different ego and rule of law. Nothing ever runs the same, because one district attorney says this can be done and another one says it cannot be done. There will be 17 district attorneys making decisions in a vacuum and when it comes time for reelection, there will be another 17. It will work the same way for the city councils. For the mundane functions this is a good bill, but overall it is scary to think what could happen. Please think before you open that barn door.

Senator Hammond:

Your testimony was enlightening; however, this is what we have in the United States with 50 individual states who each make their own laws and approach problems from different angles. Often we look at other states and determine a best practice, so we follow a model that works. We as humans like to stay within our comfort zone because we are creatures of habit. This is not how we normally perceive government functions, so we will think outside of the box to determine what works best.

Chair Parks:

I will close the hearing on S.B. 2 and open the hearing on S.B. 66.

SENATE BILL 66: Revises provisions governing the powers and duties of counties. (BDR 20-225)

Ms. Boland:

I will introduce the bill using my prepared testimony (<u>Exhibit E</u>) and explain the proposed amendment (<u>Exhibit F</u>). It is difficult to provide assistance to county property owners given the language proposed to be deleted in section 2 of S.B. 66.

Senator Spearman:

What you just delineated are common sense issues you would like to have under your purview. By making these changes, will the county government have an opportunity to change other aspects—such as a hospital—in such a way that might harm people who are already employed?

Ms. Boland:

The bill addresses specific portions of existing NRS and deletes the detailed language regarding what the ordinance must contain. It should not affect anything other than nuisances and the ability for the board of county commissioners to allow county employees to work on private roads while utilizing county equipment.

Senator Goicoechea:

You can declare the concern a health and safety issue before allowing county equipment and manpower to plow the roads. You should be able to collect the rental rates from the private landowner, but you deleted the language that says the equipment must be operated by a county employee.

If you have a grader parked somewhere and a landowner needs his or her road bladed, chances are he or she is going to use the grader. You need some type of recourse to get a return from the use of the equipment.

There are some nuisance properties with abandoned vehicles in the rural areas that have been cited for years. Once all the notifications are complete, the properties still do not get cleaned up. This is an ongoing problem.

Senator Spearman:

Could there be legal exposure if a county employee operates county equipment on a private road? Could the county or the State be sued?

Ms. Boland:

If the service is requested by the owner of the private property, we should not have any financial exposure. The statute allows this flexibility under certain instances. I did not mean to delete the county employee language from the bill.

Senator Goicoechea:

If the employee is employed to run the county equipment, he would be covered by the insurance of Esmeralda County.

Chair Parks:

It appears we also have a proposed amendment. Could you explain the changes?

Ms. Boland:

I realize the language is unclear if the county wants to recover costs of abatement and assess civil penalties. I want to ensure the language is included in each portion of the nuisance sections of the bill.

Senator Goicoechea:

Will it be under ordinance when the board declares an emergency? Will snow removal and emergency activities also be under ordinance if the board of county commissioners deems it is in the best interest of the county? I would be more comfortable if abating a nuisance was also established by ordinance.

Ms. Boland:

I followed existing language when drafting the amendment, avoiding more restrictive language. Senate Bill 66 is the other side of the coin with Home Rule.

Mr. Sanderson:

With the shortage of staff in the counties, county employees would have to work overtime. Would the private entities pay for straight time and overtime of a county employee?

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Chair Parks:

I will close the hearing on <u>S.B. 66</u>. We have completed our work for today so I will adjourn the Senate Government Affairs meeting at 3:12 p.m.

	RESPECTFULLY SUBMITTED:	
	Martha Barnes, Committee Secretary	
APPROVED BY:		
Senator David R. Parks, Chair	_	
DATE:		

EXHIBITS					
Bill	Bill Exhibit		Witness / Agency	Description	
	Α	1		Agenda	
	В	5		Attendance Roster	
S.B. 2	С	2	Jeff Fontaine	Written Testimony	
S.B. 2	D	2	Nevada League of Cities and Municipalities	Written Testimony	
S.B. 66	Е	2	Nancy Boland	Written Testimony	
S.B. 66	F	14	Nancy Boland	Proposed Amendment	