

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

**Seventy-Seventh Session
March 11, 2013**

The Senate Committee on Government Affairs was called to order by Chair David R. Parks at 1:38 p.m. on Monday, March 11, 2013, in Room 2135 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412 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

GUEST LEGISLATORS PRESENT:

Senator James A. Settelmeyer, Senatorial District No. 17

STAFF MEMBERS PRESENT:

Patrick Guinan, Policy Analyst
Heidi Chlarson, Counsel
Gwen Barrett, Committee Secretary

OTHERS PRESENT:

Ted J. Olivas, Director, Administrative Services, Office of Administrative Services, City of Las Vegas
Flinn Fagg, Director, Department of Planning, City of Las Vegas
Megan N. Salcido, Office of the City Manager, City of Reno
Steve K. Walker, Douglas County; Lyon County
George A. Ross, Las Vegas Metro Chamber of Commerce
Dan Musgrove, City of North Las Vegas
Carole Vilardo, President, Nevada Taxpayers Association

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J. David Fraser, City Manager, City of Boulder City
Craig B. Mingay, Deputy District Attorney, District Attorney's Office, Churchill County
Carl Erquiaga, Chair, Board of Commissioners, Churchill County
Jeffrey Fontaine, Executive Director, Nevada Association of Counties
Tim Bedwell, Director, Intergovernmental Services, City of North Las Vegas

Chair Parks:

We will start with the work session.

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

Patrick Guinan (Policy Analyst):

Senate Bill (S.B.) 39 is a Committee bill requested on behalf of the Division of Emergency Management ([Exhibit C](#)). The Committee heard the bill on February 18. No amendments have been proposed.

SENATOR GOICOECHEA MOVED TO DO PASS S.B. 39.

SENATOR SPEARMAN SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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Chair Parks:

We will close the hearing on S.B. 39. We will move forward to S.B. 44.

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

Mr. Guinan:

Senate Bill 44 is a Committee bill requested on behalf of the Division of Emergency Management ([Exhibit D](#)). The bill was heard on February 18. There are no amendments proposed to the bill. Christopher Smith, Administrator, Division of Emergency Management, provided further explanation on the bill for the Committee's review, which is found in the work session document.

SENATOR SPEARMAN MOVED TO DO PASS S.B. 44.

SENATOR MANENDO SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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Chair Parks:

This concludes our work session. We will open the hearing on S.B. 55.

SENATE BILL 55: Revises provisions governing master plans. (BDR 22-254)

Ted J. Olivas (Director, Administrative Services, Office of Administrative Services, City of Las Vegas):

Senate Bill 55 proposes to recategorize the elements of a master plan, prompting a change of planning and zoning requirements in *Nevada Revised Statutes* (NRS) 278. There is a presentation ([Exhibit E](#)), Revisions to Provision Governing Master Plans, and a one-page summary ([Exhibit F](#)), Proposed Revisions: Subject Matter of Master Plan (NRS 278). The changes in elements only pertain to the jurisdictions in Clark County.

We would like to consolidate the 19 master plan elements into 8 groupings. This will not change any of the existing elements or their definitions. The bill has been reviewed and is supported by the Southern Nevada Regional Planning Coalition.

Section 3 is the heart of the bill, rearranging the existing 19 elements into 8. The other sections are references to section 3 or changing the term "subject" to "element." We have an amendment ([Exhibit G](#)) from the City of Reno, clarifying section 2, relating to Washoe County.

Flinn Fagg (Director, Department of Planning, City of Las Vegas):

I have a presentation on S.B. 55, [Exhibit E](#). These changes apply to Clark County only. On February 26, the proposed bill was reviewed and recommended for passage by the Southern Nevada Regional Planning Coalition. We want to preserve legislative intent while creating a document that is easier to produce and utilize.

Chair Parks:

We are not deleting anything from the 19 existing elements. Are we repackaging?

Mr. Fagg:

Correct. We are repackaging and consolidating, which will reduce duplication.

Senator Spearman:

Is the master plan available online?

Mr. Fagg:

The master plan is online in its entirety. It is too expensive to reproduce on paper.

Mr. Olivas:

To clarify, everything in statute remains in statute.

Megan N. Salcido (Office of the City Manager, City of Reno):

For clarification purposes, the City of Reno has proposed an amendment, [Exhibit G](#). We are required to adopt the conservation, housing and population plans; we are not required to adopt the other plans that may be grouped into the larger element.

Senator Goicoechea:

Your amendment clarifies that you do not have to comply even though there are more plans in southern Nevada?

Ms. Salcido:

Correct. It does not change the law or requirements right now. The amendment groups all 19 elements into different categories. Our three individual plans, required from cities and counties of our size, are now being subsumed into larger elements. We want to clarify that because of absorption into these larger elements, we are not then required to adopt every plan within that element.

Steve K. Walker (Douglas County; Lyon County):

We applaud the simplification to the master plan recipe.

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George A. Ross (Las Vegas Metro Chamber of Commerce):

Las Vegas Metro Chamber of Commerce supports S.B. 55. It will simplify, make more efficient and streamline the master planning process.

Chair Parks:

Have you had an opportunity to look at the suggested language for the City of Reno?

Mr. Ross:

I briefly reviewed it with Ms. Salcido, and we have no problem with it.

Senator Manendo:

I am looking at an email ([Exhibit H](#)) from Rana Goodman of the Nevada Homeowner Alliance PAC. If a developer wanted to build a master planned community with 1,500 homes, it could break up the homeowners' association into three. Is that correct?

Mr. Guinan:

I briefly discussed this letter with legal counsel. The suggestion in the letter is exactly as you have stated, Senator Manendo. The master plan Ms. Goodman has referred to is completely separate from the type of master plan in this bill. I will contact Ms. Goodman.

Chair Parks:

We will close the hearing on S.B. 55. We will open the hearing on Senate Bill 79, which is my bill. I will hand the gavel over to Senator Spearman.

SENATE BILL 79: Revises provisions governing the use of net profits derived from certain municipal utilities. (BDR 58-449)

Senator David R. Parks (Senatorial District No. 7):

My testimony ([Exhibit I](#)), supports the repeal of NRS 710.600.

Senator Goicoechea:

What does a utility do with its reserves?

Senator Parks:

A municipal utility can do a number of things with its funds. For example, the utility can put the funds into a reserve account and hold them. The utility has retained earnings that can be used for capital improvement projects.

The statute is wide open. I have experience as a chief financial officer, and nothing here says it must be a process done by the governing board of the municipal entity. It only allows for the transfer of these funds to other uses. In a worst-case scenario, a governing board might increase fees for any services and at the end of a fiscal period, knowing it has extra funds, move the funds to any area it wishes. Nothing says who must do it; it just says that at the end of any period, any net profits derived from the municipality may be transferred to any general municipal purpose. A good example might be if the swimming pool had a profit, the board could transfer it to the cemetery or the skating rink or the general fund and use it as desired.

Senator Goicoechea:

What is the mechanism to move the reserves?

Senator Parks:

Assembly Bill No. 471 of the 76th Session, which was thoroughly scrutinized, would take care of any situation. We established restrictions last Session in NRS 354; we did nothing to establish similar restrictions in NRS 710. I have neither found any usage of this statute nor disclosure of its use by any entity since its enactment in 1960.

Senator Goicoechea:

The other chapter clarifies how utility boards could transfer money?

Senator Parks:

Yes, A.B. No. 471 of the 76th Session meets the needs and would satisfy any requirement that would come forward.

Senator Hammond:

Are you asking for flexibility to put the reserve somewhere else or are you trying to stop it from leaving the reserve?

Senator Parks:

If a municipal utility has revenues far in excess of its needs, there is a process and procedure under A.B. No. 471 of the 76th Session on transferring or redistributing funds.

I want to close the door on an area that might not get scrutiny due to the lack of stipulations or requirements. The NRS 354 now has sufficient requirements if a municipal utility has revenues far in excess of operational needs. The NRS 710.600 could allow an entity to circumvent the process established with A.B. No. 471 of the 76th Session.

Senator Hammond:

What door are you trying to close?

Senator Parks:

The NRS 710.600 is permissive; it allows for the transfer of funds from a utility to any other use with no restrictions.

Senator Goicoechea:

What are the chapter or bill numbers from last Session?

Senator Parks:

Assembly Bill No. 471 of the 76th Session pertains to NRS 354, which is the primary NRS chapter that deals with governmental accounting.

Dan Musgrove (City of North Las Vegas):

We have a proposed amendment ([Exhibit J](#)), requesting additional safeguards. Assembly Bill No. 471 of the 76th Session is a good bill. It restricts the usage of funds derived from an enterprise fund, and it allows the funds to be used for general business obligations such as allowing a city attorney working on behalf of an enterprise fund to be paid for services from that fund.

The NRS 710.600, which S.B. 79 deals with specifically, basically addresses profits, which are not addressed in A.B. No. 471 of the 76th Session. Subsection 2 of our proposed amendment would yield to A.B. No. 471 of the 76th Session and anything that is put into NRS 354. Our proposed amendment also says that if a governmental entity wants to use NRS 710.600, it must be done in a certain manner: make the request during a public hearing, ensure there

are sufficient funds, ensure the funds are not restricted and ensure the economic viability of the enterprise fund is not compromised.

It is important to maintain the economic viability of the fund; those funds have been collected for a reason. Let us continue to use the swimming pool example: you want to make sure the swimming pool remains a viable commodity for taxpayer use with sustainable funds. If excess money has been generated from the swimming pool and the local government needs those funds, it should have the ability to make a decision in a public hearing to use those funds in the best manner it deems fit—perhaps even reimbursing the taxpayer.

Senator Parks mentioned that NRS 710.600 is too open; the City of North Las Vegas agrees. Local governments need the ability to take action when needed; they do not want to keep coming to the Legislature asking for permission. This provision of law was put into effect in the 1960s. We do not have direct knowledge of its use or abuse, but there is that potential. We do not want NRS 710.600 repealed; we want additional safeguards in place.

Senator Goicoechea:

Your amendment is broader than that in NRS 354.

Carole Vilardo (President, Nevada Taxpayers Association):

I am speaking in support of S.B. 79.

The 1960s law that can be repealed due to the safeguards set in place in NRS 354 with A.B. No. 471 of the 76th Session. The bill went through a lot of work, including serious amendments.

The advent of A.B. No. 471 of the 76th Session was a result of enterprise fee increases. Utilities are enterprise funds. Enterprise funds are designed to operate as a business. An enterprise fund and the money paid into the enterprise fund is from a specific group of taxpaying citizens who are paying to receive a specific service. An enterprise does not fund general government.

One of our cities increased a landfill fee for a county to raise \$480,000 for that city's general fund. This is not the only case, and this is why we have A.B. No. 471 of the 76th Session

Senator Hammond:

If there is an excess, taxpayers would want rates to go down. Does this bill ensure the safeguards are in place and funds are not being arbitrarily spent elsewhere?

Ms. Vilardo:

Yes. By repealing NRS 710.600, you ensure that we allow for an interfund alone and allow rates to decrease.

Senator Goicoechea:

Can a utility be in place and not be in an enterprise fund?

Ms. Vilardo:

If it is not in an enterprise fund, it would be in the general fund. If it is in the general fund, you would use the applicable tax mechanisms.

Senator Spearman:

The NRS 710.600 was wide enough to drive a Mack truck through, and S.B. 79 closes it so that a Volkswagen cannot get through?

Ms. Vilardo:

Yes—that is why I am supporting it.

J. David Fraser (City Manager, City of Boulder City):

We are a city that would not be in a position to transfer money based on net profits. We have been conscientious about keeping our rates down. I want to be sure that the passage of S.B. 79 would not impair our ability to operate under A.B. No. 471 of the 76th Session.

If legislation is found to be necessary relative to NRS 710.600, rather than repeal this section, a better solution would be to adopt something similar to the proposed amendment by the City of North Las Vegas. This would address the sponsor's concern that NRS 710.600 is too open and specify the manner in which it would be implemented.

Senator Goicoechea:

Is there adequate protection in NRS 354 the way it was addressed with A.B. No. 471 of the 76th Session? If you were comfortable with A.B. No. 471 of the 76th Session, I would think you would be comfortable with this.

Mr. Fraser:

Are you asking if I would be comfortable with S.B. 79 as presented or with the amendment?

Senator Goicoechea:

I refer to NRS 710 as presented; it reflects back to NRS 354.

Mr. Fraser:

I want to be sure that the passage of S.B. 79 will not do anything to undermine what we accomplished in A.B. No. 471 of the 76th Session. I would prefer tightening up the language in NRS 710.600 rather than eliminating it.

Senator Spearman:

We will close the hearing on S.B. 79 and return the gavel to the Chair.

Chair Parks:

We will now open the hearing on Senate Bill 90.

SENATE BILL 90: Revises provisions relating to certain confidential information.
(BDR 19-468)

Senator James A. Settelmeyer (Senatorial District No. 17):

This bill comes forward from Churchill County, stemming from some issues dealing with geothermal and geothermal power. There are two aspects to the bill: one, ensure confidential information remains confidential, and two, allow confidential information to be assigned to another county office to view from a business and industry standpoint in order to facilitate economic development within that community.

This is a simple bill. I would like to walk you through the various sections. I sent the Committee a document ([Exhibit K](#)) covering the various sections of the bill. Section 6 has a technical error; the word "or" is to be replaced with "and" when used after NRS 239.010.

Craig B. Mingay (Deputy District Attorney, District Attorney's Office, Churchill County):

On behalf of Churchill County, we request passage of S.B. 90. The intent of S.B. 90 is to allow local governments to keep documents confidential even

when given to another governmental agency. This change would put a county in the same regulatory footing as State or federal regulatory agencies.

The primary industry in Churchill County is geothermal, which I will use as my example. Geothermal companies make a large financial investment in proving the resource, proving the water is hot enough, proving where the geothermal resource is. By statute, State or federal agencies require monitoring plans and are allowed to keep the documents confidential. The statutes do not extend to counties or local governments.

The monitoring plan's primary purpose is to ensure that the actions of the geothermal companies do not affect other water resources. When residents have problems with their water wells, they automatically blame the geothermal company and call the County to ask us to do something about it. We cannot respond to citizen complaints because we do not have the benefit of reviewing the monitoring plan or the data. If we were allowed to have the confidential information as a condition of the permit and allowed to keep information confidential, we would be able to respond to negative situations.

Currently, if geothermal companies give us information, it becomes public record, making their million-dollar investments toward developing resources available to their competitors—which the competitors would love to see. Geothermal development would end in Churchill County because the investment made by a geothermal company would not be worth it.

With the County participating as a regulatory entity for the protection of the public, it is important that this limited proprietary information remain confidential. This bill does not create a new category of confidentiality. If confidential information can go to a State or federal agency and remain confidential, it can go to a county or local government and remain confidential under the same conditions. The bill also requires a legal review prior to storing the documents as confidential, providing additional protection for the companies, the local government and the public. I am not aware of any other declaration of confidentiality for a governmental agency that requires a legal review.

Senator Spearman:

With respect to the geothermal companies, are you referring to confidential or proprietary information?

Mr. Mingay:

It could be both. Proprietary information can include the temperature of a particular resource and pressures from the wells. The resource might expand past a company's property line, attracting another company to buy right next to that property line.

Senator Goicoechea:

If this proprietary information is deemed and held confidential by the State, you want the ability to do the same thing; there is an additional requirement to bring it before a district court. How do you keep that confidential?

Mr. Mingay:

The bill requires that the geothermal company provide documentation to the County with a legal citation as to what provision provides for its confidentiality. That documentation and the legal citation are provided to the legal counsel for the governmental entity. That legal counsel has 10 days to determine if the documents fit into the exception of public records law. If determined confidential, the County can treat it as such. If determined not confidential, the geothermal company has 10 days to withdraw its application.

Senator Goicoechea:

What agency would make that legal determination?

Mr. Mingay:

The legal counsel for the local government entity would make the determination.

Senator Goicoechea:

Legal counsel to the Board of Churchill County Commissioners would be you or Arthur E. Mallory. If the State agency deems it as confidential, it would make sense for the County to treat it the same way. The additional step of the local government decision could add legal liability.

Mr. Mingay:

We have considered the potential liability. Additional language has been added to address potential objections to the bill. From the County's perspective, we would like to have it removed.

Senator Goicoechea:

I understand your concern about the liability. If you have someone in the middle making the decision and someone says that was not confidential, Churchill County could be sued whether information was leaked or not.

Carl Erquiaga (Chair, Board of Commissioners, Churchill County):

Our primary concerns are to protect our residents and the information we get. I agree with Senator Goicoechea's suggestion of removing the additional step of the local government decision.

Senator Spearman:

There is a difference between confidential and proprietary information. A federal law protects proprietary information. Can that be appropriated for this cause or do you need something that will strengthen it?

Mr. Mingay:

Local governments have difficulty because federal laws that declare certain items confidential generally point to a particular agency. For example, the Freedom of Information Act (FOIA) does not apply to local governments. Under NRS 239, everything the public entity has is confidential unless a specific statute declares that item not protected. For the most part, under federal law, proprietary information is not protected for the local government entity. The passage of S.B. 90 would allow it to be applied to local government entities.

Senator Goicoechea:

Senate Bill 90 applies statewide. I continue to be concerned about a local district attorney (DA) making a determination when that issue has already been classified as confidential by a State or federal agency. As you get deeper in the bill, another department can petition the DA to request information. If deemed confidential by a State or federal agency, then this confidential information should be extended to local government. I am concerned about you reviewing the information and determining which department should see the information. There could be exposure if information was leaked.

Senator Settelmeyer:

The Legal Division determined the best way to word the bill. If it is the direction of the Committee, we could look at deleting certain sections. The biggest issue is addressing the proprietary information.

Senator Spearman:

In Title 5 of U.S. Code section 552, there is an exemption of proprietary information from the FOIA. Can the FOIA keep someone from getting proprietary information?

Mr. Mingay:

I am not an expert on the FOIA. In general, the FOIA applies to federal agencies and what they can keep confidential. All the exemptions under the FOIA have not been applied to the Nevada public records laws. The Bureau of Land Management would refer to the FOIA to determine if an exemption applies. Churchill County would refer to the NRS or the public records law and any other statutes that apply directly to the County.

Senator Spearman:

The federal statutes are fairly strict. Within the parameters of this bill, would it be more effective to have the same or similar language that is in federal statute? Can we make sure that disciplinary action is in place in case someone breaks the law? Can we make the bill parallel or synchronize it?

Mr. Mingay:

It is possible for Nevada to adopt the FOIA. My dilemma is that FOIA allows a local attorney a lot of discretion, meaning a county is still responsible for a poor decision. Under State law, if I inform the County and a geothermal company that information will remain confidential and we receive a public records request, the geothermal company could take it to district court. The County would be liable for attorney fees and damages. The FOIA works for the federal government on the enforcement side. If we just adopted the FOIA exemptions, the County is allowed a lot of discretion, keeping us on the hook for any bad decision by the local attorney. We want to achieve a balance through this legislation.

Senator Goicoechea:

If declared confidential by the State or federal entity, that should extend to local government. You could break a small county if it makes a wrong move.

Chair Parks:

Will this be applicable in others areas, or is this pretty well-confined?

Senator Settlemeyer:

Striking out the word "or" and replacing it with the word "and" immediately after the reference to NRS 239.010 on page 1 of section 6 in [Exhibit K](#) is an area of the bill that we have tailored down. We are trying to protect businesses, corporations and the counties. We want to make sure the counties have the necessary tools to do their planning and businesses do not withhold information due to fear of losing proprietary information.

I understand your concern. Replacing "or" with "and", as just noted, would make the bill much less broad. It would be better if we made it pertain to NRS 239.010. I would like to discuss it further with Mr. Mingay and Mr. Erquiaga.

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

We are here to support the intent of S.B. 90. There are a number of changes needed. Churchill County, like every other county, has an obligation to protect the public health and safety of its citizens. The County should have access to information that is otherwise confidential; it is a needed tool.

Tim Bedwell (Director, Intergovernmental Services, City of North Las Vegas):

We are neutral on this bill. There is a need for this bill to come forward, but we are concerned that it is too broad. The 5-day requirement for the turnaround of a decision is too short; it would be difficult for our staff to comply. We do not know how many companies might want to petition to ask that their information be confidential. The breadth brought forward with the bill is understandable with regard to mining and similar businesses. There should be consideration to other businesses such as a scientific firm, computer firm or another business with proprietary information that becomes part of the licensing process. The language should be narrowed enough that everybody can abide by it, even at the municipal level.

Senator Goicoechea:

There is little chance of material being deemed confidential by a State or federal agency for a scientific firm or a company wanting to relocate. If it were deemed confidential, it would fit this bill.

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Mr. Bedwell:

That is probably true, but I do not know specifically. We do not want to be placed in the position where we will be stressed to make the decision. We prefer it to be a State or federal decision. We do not want the legislation so broad that it puts us in an uncomfortable position.

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Chair Parks:

We will close the hearing for S.B. 90 and this meeting is adjourned at 3:21 p.m.

RESPECTFULLY SUBMITTED:

Gwen Barrett,
Committee Secretary

APPROVED BY:

Senator David R. Parks, Chair

DATE: _____

<u>EXHIBITS</u>				
Bill	Exhibit		Witness / Agency	Description
	A	1		Agenda
	B	7		Attendance Roster
S.B. 39	C	1	Patrick Guinan	Work Session Document
S.B. 44	D	4	Patrick Guinan	Work Session Document
S.B. 55	E	7	City of Las Vegas	SB 55 Revisions to Provisions Governing Master Plans
S.B. 55	F	1	Ted J. Olivas	Proposed Revisions: Subject Matter of Master Plan (NRS 278)
S.B. 55	G	8	City of Reno	Proposed Amendment
S.B. 55	H	1	Nevada Homeowner Alliance PAC	Email from Rana Goodman
S.B. 79	I	2	Senator David R. Parks	Written Testimony
S.B. 79	J	1	City of North Las Vegas	Proposed Amendment
S.B. 90	K	5	Senator James A. Settelmeyer	Senate Bill 90 County Confidentiality