

**MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON GOVERNMENT AFFAIRS**

**Seventy-Eighth Session
April 17, 2015**

The Committee on Government Affairs was called to order by Chairman John Ellison at 9:02 a.m. on Friday, April 17, 2015, in Room 4100 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4404B of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/App/NELIS/REL/78th2015. In addition, copies of the audio or video of the meeting may be purchased, for personal use only, through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblyman John Ellison, Chairman
Assemblyman John Moore, Vice Chairman
Assemblyman Richard Carrillo
Assemblywoman Victoria A. Dooling
Assemblyman Edgar Flores
Assemblywoman Amber Joiner
Assemblyman Harvey J. Munford
Assemblywoman Dina Neal
Assemblywoman Shelly M. Shelton
Assemblyman Stephen H. Silberkraus
Assemblywoman Ellen B. Spiegel
Assemblyman Lynn D. Stewart
Assemblyman Jim Wheeler

COMMITTEE MEMBERS ABSENT:

Assemblywoman Melissa Woodbury (excused)



GUEST LEGISLATORS PRESENT:

None

STAFF MEMBERS PRESENT:

Jered McDonald, Committee Policy Analyst
Eileen O'Grady, Committee Counsel
Erin Barlow, Committee Secretary
Cheryl Williams, Committee Assistant

OTHERS PRESENT:

Mike Cathcart, Business Operations Manager, City of Henderson
Brent Gunson, Assistant City Attorney, City of Henderson
David Goldwater, representing KB Home, Incorporated
Joshua Hicks, representing Southern Nevada Home Builders Association
Steven Polikalas, representing KB Home, Incorporated
Scott Carter, President, Redevelopment Association of Nevada

Chairman Ellison:

[Roll was called. Committee rules and protocol were explained.] I will open the hearing on Senate Bill 66 (1st Reprint).

Senate Bill 66 (1st Reprint): Revises provisions governing local governmental agreements for the development of land. (BDR 22-422)

Mike Cathcart, Business Operations Manager, City of Henderson:

Our assistant city attorney is in a briefing of one of the members of this Committee, so he is on his way right now.

Brent Gunson, Assistant City Attorney, City of Henderson:

I am here to present Senate Bill 66 (1st Reprint) on behalf of the City of Henderson. This bill amends the *Nevada Revised Statutes* (NRS) Chapter 278, which deals with development agreements. Development agreements are basically bilateral agreements that are agreed to by a county or municipality and a master developer. They typically involve parcels of land for development. Both developers and cities benefit from these agreements in numerous ways, primarily when developers get development rights that they can secure and rely on for years to come. In the meantime, residents and businesses within communities can ensure that they will receive orderly construction of infrastructure.

The amendments to NRS Chapter 278 seek to accomplish three objectives for development agreements. First, we seek to provide flexibility for communities and developers to enter into development agreements. Currently, NRS 278.0201 contains a list of mandatory items that must be included within every development agreement, regardless of whether that particular item is applicable to the property. This bill would require that only a few basic contract provisions are mandatory. It additionally provides a nonexclusive list of other provisions that may be included in a development agreement, depending on the needs of the master developer and the local governmental entity.

Our second objective is to provide a process for unilaterally cancelling or amending development agreements. Under current law, parties to a development agreement can modify or cancel the agreement by mutual consent. We are not changing that, nor are we changing when or under what circumstances a community or local government can unilaterally cancel a development agreement, but we want to provide a process for how that works. We have worked with numerous developer interests, including master developers, homebuilders, and homebuilder associations throughout the last several months, beginning as early as last summer, to discuss these issues and try to create a bill that would serve both sides effectively.

Our third objective is to eliminate language we feel is no longer needed, that deals mainly with development agreements that include terms involving the construction or use of renewable energy projects that may not be able to find financing. It allows developers of these projects to apply for an extension of time if they apply prior to July 1, 2013. Because that date has long passed, we feel the language is no longer needed, so we are deleting it.

I would like to go over these objectives in a little more detail in the bill itself. One of our objectives is to provide a process for unilaterally cancelling or amending a development agreement. That is found in section 4 of S.B. 66 (R1). In the existing language of NRS 278.0205, the City of Henderson already has the ability to unilaterally terminate or cancel a development agreement if the terms or conditions of the agreement are not being complied with. Although that provides plenty of authority for a city to amend a development agreement unilaterally, it is extremely vague about the process. That makes attorneys for cities a little uneasy.

From the beginning, we wanted to provide a process for how we would accomplish that objective. Since meeting with developers and builders, we have added several processes to this bill that would provide a better scenario for exercising this power. First, we are introducing a public hearing. There must be a public hearing with the governing body before the city decides to

unilaterally amend or terminate a development agreement. Second, we are introducing a 60-day notice period, where the city or county provides a 60-day written notice to each owner of record within the development agreement area. We are also adding a default cure provision, so if there is not a cure provision in the existing agreement, the developer would have at least 30 days to cure whatever default there is. We feel this process not only benefits the city but also developers and builders. It especially benefits master developers, who are a signatory to the agreement.

In section 8, there is a reference to that first objective I discussed. Current law does not provide much flexibility as far as what can go in a development agreement. I like to think of it as a prix fixe menu: there are just a few items. We want to turn it into a buffet so that cities, builders, and developers have several more options they can include in these development agreements. These agreements not only affect cities, builders, and developers, but they affect residents and businesses for years to come. We want to make sure that everything the residents and businesses can benefit from, and also what the builders and developers can benefit from, can get into this agreement. We have added a long list of items that may be included in the bill. They do not have to be included, but they may. We also believe that this will benefit rural towns and counties because they face different circumstances than larger cities and communities in Washoe County or in southern Nevada. We believe this flexibility will provide them the opportunities they need to enter into development agreements as well, especially with the developments that may come with Tesla.

Section 3 has the language that we have omitted. We believe this language is no longer necessary. According to that language, you have to have applied for an extension by 2013. We feel the language is no longer necessary and convolutes the statute, so we decided to remove it.

Assemblyman Carrillo:

What is the reasoning for this bill? Obviously, something needs to be changed to make sure whatever development we are looking at in the future goes forward. This can pertain throughout Nevada. In section 6, it seems that the bill is adding lots of different types of infrastructure that are not currently in statute. The way I am reading this, it would allow someone to, for example, put a radio transmission facility in a person's backyard. I understand that you might have different zoning, but I think this bill opens up a lot more than people would anticipate if they were living in a community and suddenly there is a big building being built in their backyard.

Brent Gunson:

The main reason behind this bill is because we have been working a lot with property owners at a development in Henderson known as Inspirada Town Center [referred to map ([Exhibit C](#))]. That development was originally designed and approved in 2005. In the past ten years, nothing has happened there. As Nevada went through the economic recession and the real estate market crash, the property went through several foreclosures. Several pieces of property were sold off. Where we previously had a single developer, we now have close to 20 separate property owners. Not all the property owners like the original development agreement; in fact, most of them do not. For several years, we have attempted to bilaterally amend the agreement. But with so many different owners and interests, we have not been able to accomplish that. That leaves us having to unilaterally amend it. We did not feel that process sufficiently protected our needs or the needs of the property owners. That is one of the reasons we wanted to add that process.

We also have always felt that the language regarding what should be included in a development agreement is too narrow, and that there should be more flexibility. The issues we have with Inspirada Town Center are not just in Henderson but are similar to what is going on in numerous communities throughout the state. We saw an opportunity to amend the statute, so we wanted to get the flexibility as well. That is the main reason we are approaching you with this bill.

In defining infrastructure, we wanted to get flexibility. We wanted to make sure developers and the community had the ability to include a broad range of infrastructure. Right now, the definition of infrastructure as it would pertain to development agreements does not even include sidewalks. Every development agreement has some reference to sidewalks. We wanted to have a broader definition of "development agreement." These are not items that necessarily will be in every development agreement. It is just a list of what may be in a development agreement. There are numerous protections that a property owner may have down the road. In the City of Henderson, development agreements no longer apply to property owners once they move into their homes. They only apply to master developers who are the signatories to the agreement. Once residents move into their homes, they are no longer subject to the terms of the development agreement. I do not believe this term would apply to them. In addition, there are numerous other safeties in place. In a homeowners' association community, there are covenants, conditions, and restrictions, zoning ordinances within the city, or development rights. I do not think that any city wants a radio transmission facility in anyone's backyard. I think that is something we would be looking to protect through a development agreement. Our objective is to provide flexibility.

Assemblyman Stewart:

There are three purposes to this bill. One is flexibility by having a broader list of things you can put into agreement, and you do not have to put them all in, but you can pick and choose so that you have more flexibility.

Brent Gunson:

That is correct.

Assemblyman Stewart:

Right now, you can unilaterally break an agreement, but sometimes that is not fair to the developer. The second objective is to have the power to break the agreement but still take care of the developers by giving a 60-day notice so that they are not left high and dry even though the project might not have been worked on for a number of years. This would give them a warning, and if things have changed, some time to reapply. Is that right?

Brent Gunson:

Absolutely. In the current statute, all we have to do is post notice of a meeting, and we could unilaterally cancel the development agreement.

Assemblyman Stewart:

You are actually trying to be fair and give them warning that things have changed so they would know the agreement is going to be canceled?

Brent Gunson:

Is our objective to be fair? Yes, I think the mayor would say that.

Assemblyman Stewart:

Well, the mayor is a fair guy.

Brent Gunson:

We have been working with the different industries now for many months. These are things that they wanted. We have no objection to putting them in. Policywise, we think it is a good policy to have these items in there. We have no problem including them. We also feel it allows the city council to know exactly what the issues are prior to the meeting. The biggest fear our city council may have is taking this drastic step and not knowing who might pop up several weeks later. With these terms and provisions in place, the city council will know exactly what the issues are days in advance so they can make an informed decision, and the public can be informed on the decision.

Assemblyman Stewart:

The last objective is getting rid of obsolete language like they tried to do in the Sunset Subcommittee of the Legislative Commission.

Brent Gunson:

Yes. Right now that language is in NRS 278.0201, which is the same provision as what can be in a development agreement. It is extremely convoluted. It takes several readings to understand how it works. I think it is clearer and more user-friendly if we remove that language. That language does not serve the same purpose that it used to.

Chairman Ellison:

It looked like there was an amendment from KB Home, Inc., according to the Nevada Electronic Legislative Information System (NELIS), but I do not see it in the bill. Was that an amendment that was not accepted?

Brent Gunson:

As far as I am aware, there are no amendments to the bill that left the work session with the Senate.

Chairman Ellison:

On NELIS it looks like there was a proposed amendment for sections 7, 2, and 3. I will talk to you about it later.

Assemblywoman Neal:

Yesterday, we had a conversation. I was reading the current NRS 278.0205, which is the agreement with the governing body that allows an amendment or cancellation and hold on a part by mutual consent. There are a couple of differences. Mutual consent is struck from section 9, subsection 1(b), because you replaced it with "without consent." In NRS 278.0205, the exception to cancel upon review without consent kicked in every 24 months. You shortened the time. Talk to me about why we are shortening the time.

I was also curious why we feel the need to take out the mutual consent language which was initially in NRS 278.0205, even though you already had the ability through mutual consent with the successors in interest in line 11 on page 2. "Without consent" now applies to the successors and interests as well, rather than mutual consent. Under NRS 278.0201, that language is not there. It describes the manner, and NRS 278.0205 describes and discusses the consent and the manner and time in which that may occur.

Brent Gunson:

With your first question, are you asking if we are removing the language that allows for mutual consent prior to termination?

Assemblywoman Neal:

Yes, because it is not in section 4, which references lines 8 through 14. The existing language under NRS 278.0205 says:

The agreement for development of land may be amended or cancelled, in whole or in part, by mutual consent of the parties to the agreement or their successors in interest, except that if the governing body determines, upon a review of the development of the land held at least once every 24 months, that the terms or conditions of the agreement are not being complied with, it may cancel or amend the agreement without the consent of the breaching party.

In there, "without consent" kicks in every 24 months, and the bill changes it to every 60 days.

Brent Gunson:

I think the original language read "at least every 24 months," which sets a maximum of 24 months that the review can actually occur. It does not provide when the review can occur, and it could occur much sooner than every 24 months the way I read it.

Assemblywoman Neal:

Right, because the current statute says "at least once every 24 months," and when we had the conversation, you had never done your provision. So now, the bill says "not less than 60 days," and your notice provision in section 4, subsection 4, is also slightly adjusted because it says that if a person does not bring their issue within 3 days, it will be automatically cancelled according to the language in section 4, subsection 4, paragraph (c).

Brent Gunson:

The process for review and the unilateral termination are two separate processes. We cannot terminate without the review. We have had reviews; we have just never unilaterally terminated because of them. Under current statute, the review must occur at least every 24 months, but it can occur at a time far less than that. We do hold those reviews, and we would hold a review prior to terminating any development agreement.

Whether a development agreement can be mutually terminated is in section 9 of the bill. Where NRS 278.0205 is amended, section 9, subsection 1, says:

An agreement for development of land entered into pursuant to NRS 278.0201 may be amended or cancelled, in whole or in part, by (a) Mutual consent of the parties to the agreement or their successors in interest; or (b) Subject to the requirements....

Those are the new requirements that we have provided. We can do it unilaterally.

Assemblywoman Neal:

The reason I had a question is because in section 9, you cite line 12 but added the "or," which gives you an additional capacity "subject to the requirements of this section and section 4" that it can happen "without the consent of the other parties to the agreement or their successors in interest...." I thought, upon the reading, that you allowed two ways: mutual consent or without consent. I understand that you are very versed in your own work. The reason I thought it could be an issue is because when you relate the sections of the bill and read it in whole, in section 4, subsection 4(c), it says that before the date of the hearing, whatever is being waived here will be, unless a protest is "presented at the hearing or received in writing by the clerk of the governing body at least three business days before the date of the hearing." I am assuming they are waiving "any complaint, protest, or objection to the proposed amendment or to the cancellation of the agreement." Is three days sufficient notice for someone to express that he does not want to do this anymore, and that he is in agreement with someone taking away or canceling without his consent? It can be mutual or without consent in three days.

Brent Gunson:

I think the three-day language is from terms that govern the actual hearing to unilaterally terminate the agreement. This bill is meant to protect the city. This is consistent with what is currently found in NRS Chapter 271 for a similar type of hearing. If you are an owner of property within the land governed by the development agreement, you will get a notice that there will be a hearing 60 days in advance. You will have until the third day before the meeting to present a written protest or objection to what the city intends to accomplish. You will get a 60-day written notice, and then have up to three days before the hearing to provide your own written notice as to why you object. But that is not your last chance. You can still appear at the meeting and personally provide your verbal objection on the record. If you are going to send your objection in writing, we need it to be sent prior to the meeting so we have it, and the city council will know exactly what the objections are and can act with

full knowledge. The public can also be aware of what the objections are. If we get objections two weeks later, it will not help. We want to have everything either at the meeting or in writing three days prior. That is the intent of that language.

Assemblywoman Spiegel:

Are master development agreements transferrable? If there is a development agreement in place, is the master developer allowed to sell it or transfer it to another entity?

Brent Gunson:

Yes. It also may depend on the terms of the development agreement. But there are typically terms to allow for successors in interest in development agreements. By no means does the city expect that one developer will always be the developer. That is just not the way the development community works. If someone wants to purchase the developer and take on those developer rights, they can do that.

Assemblyman Silberkraus:

I know Inspirada has turned over, and now you have multiple owners of the property. If the project is taken over as a whole, it is very easy to transition. What about when you have 10 or 20 new interests and have to deal through one agreement?

Brent Gunson:

It becomes very difficult, which is one of the main reasons I am sitting before you today. There are a few issues involved. One is that you have numerous property owners. The other is the question of who is the master developer. In the case of Inspirada Town Center, the developer went through a bankruptcy. There are different opinions about who the master developer is that may have to be resolved in bankruptcy court. But we are not solely concerned about the master developer, we are also concerned about the property owners who wish to develop. That is one of the main reasons for this bill; we want to include them in the conversation.

Chairman Ellison:

I see no other questions, so I will ask for those in favor to come forward. Mr. Goldwater, maybe you can answer our questions about that amendment. I think we found out from the Senate that there were pieces taken out of it.

David Goldwater, representing KB Home, Incorporated:

You are correct. That amendment was proposed on the Senate side after many negotiations with the City of Henderson, and their ability to accommodate

many of the concepts in our amendment were proposed in a more comprehensive amendment that is the first reprint of the bill before you.

KB Home is one of the largest and most recognized homebuilding companies in the country. It has built more than half-a-million homes since 1957. KB Home has built a variety of communities throughout Nevada, including Inspirada in Henderson. This bill became challenging. It pops up on the radar screen anytime someone says, Here is an agreement that you have signed and we are going to introduce a bill in the Legislature that allows us to change that agreement unilaterally. Henderson has been more than accommodating in assuring that any amendment to this agreement will follow the due process outlined in this bill. It is certainly not their intent to "pick winners" as they move through these. They also have the monumental challenge of trying to deal with the aftermath of the recession, where parties are bankrupt or no longer financially solvent, where people no longer trust that parties are going to do what they say they are going to do in the master planning agreement. We look forward to the favorable consideration of this measure.

Joshua Hicks, representing Southern Nevada Home Builders Association:

The Association did have some concerns with this bill before the reprint. We worked with the City of Henderson and got those concerns resolved. Those are all in the first reprint as the comprehensive amendment Mr. Goldwater mentioned. The Association is now supportive of this bill. We think it is a good thing for Nevada and Henderson and are happy to be supporting it.

Steven Polikalas, representing KB Home, Incorporated:

On behalf of KB Home, I want to reiterate what Mr. Goldwater stated. We are happy to work with the City of Henderson. They were very accommodating in assuring our client that there is not an attempt to carve out anyone from this particular agreement. As they move forward, they will seek a comprehensive plan with new signatories and parties.

Scott Carter, President, Redevelopment Association of Nevada:

I represent redevelopment agencies across the state of Nevada. We simply wanted to speak in support of this bill.

Chairman Ellison:

Are there any questions from the Committee? [There were none.] Is there anyone else to speak in favor? [There was no one.] Is there anyone in opposition to this bill? [There was no one.] Is there anyone neutral? [There was no one.] Would the bill sponsor like to make a closing statement?

Brent Gunson:

Thank you for taking the time to address this bill and to meet with us over the previous two days and hear us out.

Chairman Ellison:

Are there any questions from the Committee? [There were none.] I will close the hearing on S.B. 66 (R1). Is anyone here for public comment? [There was no one.] Meeting adjourned [at 9:41 a.m.].

RESPECTFULLY SUBMITTED:

Erin Barlow
Committee Secretary

APPROVED BY:

Assemblyman John Ellison, Chairman

DATE: _____

EXHIBITS

Committee Name: Assembly Committee on Government Affairs

Date: April 17, 2015

Time of Meeting: 9:02 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
S.B. 66 (R1)	C	Brent Gunson / City of Henderson	Map of Inspirada Town Center