

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

**Seventy-Eighth Session  
April 24, 2015**

The Committee on Government Affairs was called to order by Chairman John Ellison at 8:36 a.m. on Friday, April 24, 2015, in Room 4100 of the Legislative Building, 401 South Carson Street, Carson City, 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](http://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](mailto: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  
Assemblywoman Melissa Woodbury

**COMMITTEE MEMBERS ABSENT:**

None

**GUEST LEGISLATORS PRESENT:**

None



**STAFF MEMBERS PRESENT:**

Jered McDonald, Committee Policy Analyst  
Kevin Powers, Committee Counsel  
Aubrie Bates, Committee Secretary  
Cheryl Williams, Committee Assistant

**OTHERS PRESENT:**

Jeff Fontaine, Executive Director, Nevada Association of Counties  
Laurie Carson, County Commissioner, White Pine County; and  
President-elect and Vice Chairwoman, Nevada Association of  
Counties  
Marsha Berkbighler, County Commissioner, Washoe County; and Board  
Member, Nevada Association of Counties  
Paul J. Moradkhan, Vice President, Government Affairs, Las Vegas Metro  
Chamber of Commerce  
Tray Abney, Director, Government Relations, The Chamber of Commerce  
of Reno, Sparks, and Northern Nevada  
Mary C. Walker, representing Carson City, Douglas County, Lyon County,  
and Storey County  
Bob Hastings, County Commissioner, Lyon County; and Board Member,  
Nevada Association of Counties  
Paul J. Enos, Chief Executive Officer, Nevada Trucking Association

**Chairman Ellison:**

[Roll was called and rules and protocol were explained.] We will now open the hearing on Senate Bill 29 (1st Reprint). Mr. Fontaine, please proceed with your presentation of the bill, then we will ask our legal counsel for clarification of the language of the bill. The issues of Dillon's Rule and home rule will be very important in the future of this bill.

**Senate Bill 29 (1st Reprint): Grants power to a board of county commissioners to perform certain acts which are not prohibited or limited by statute. (BDR 20-465)**

**Jeff Fontaine, Executive Director, Nevada Association of Counties:**

On behalf of the Nevada Association of Counties (NACO), I would like to thank you for the opportunity to present Senate Bill 29 (1st Reprint) this morning. With me are Marsha Berkbighler, the Chairwoman of the Washoe County Commission, and Laurie Carson, White Pine County Commissioner. Both are members of the NACO executive committee.

It is often said that government is best closest to the people, but here in Nevada, local governments do not always have the authority they need to govern best. By its very nature, the *U.S. Constitution* remains silent and does not specifically mention the powers of local government. The question has been left to each individual state to determine the inherent powers of the local governments in the state. Over time, there have been two divergent views that have emerged: a judicial doctrine entitled Dillon's Rule and a concept of self-directed local governing entitled "home rule." It has been the subject of great debate in this body for decades.

Dillon's Rule is a judicial doctrine named after John Dillon who was an Iowa Supreme Court justice back in the 1860s. He issued an opinion in 1868, which basically states that local governments can possess and exercise only those powers expressly granted to them by the Legislature. In essence, this means that Nevada's counties may not take any action unless there is a statute specifically authorizing that action, no matter how mundane or trivial that matter may be.

On the other hand, home rule refers to the concept of local self-government and the powers granted to the citizens of those local areas. Judge Cooley of Michigan defined home rule as a doctrine that localities have the inherent right for self-governance. Generally, this means that a locality has an important role in managing its own affairs and avoiding interference by the state. There are four elements of home rule: fiscal home rule, which deals with issues such as imposing taxes; structural home rule, the ability to choose the form of government; personnel home rule, the ability to set employment rules and remuneration; and functional home rule, the day-to-day administrative activities performed by a local government.

Senate Bill 29 (1st Reprint) would provide counties with limited functional home rule. It is limited because the bill includes language that would require the counties to comply with any existing statutes or constitutional language while also prohibiting counties from taking certain actions, including enacting new taxes or regulating businesses that are already substantially regulated by another level of government.

What is functional home rule and what are the types of issues we are talking about? There are many examples that have been considered by this body in previous sessions as well as the current one. I will give you just three examples. Last session, Senate Bill No. 342 of the 77th Session was enacted. It authorized a county to establish a streamlined or simplified procedure for the vacation or abandonment of a street. This is really for the purpose of being able to conform that abandonment to the legal description of a property to record its

survey or map. This is a process, a streamlined process as a result of S.B. No. 342 of the 77th Session, that is really for the benefit of those property owners that need to have those surveys recorded. In the 74th Legislative Session, the Legislature enacted Senate Bill No. 419 of the 74th Session, which authorized the filing of marriage certificates with county clerks so that persons could obtain and file a marriage license at the same county office. Prior to that, people had to obtain a marriage license from the county clerk and file it with the county recorder. Again, that was another bill to streamline a government process and make it easier for the constituents of our state. Finally, the most famous is Assembly Bill No. 489 of the 74th Session, which authorized a county to tow abandoned vehicles from public property.

Why is functional home rule good policy for Nevada's counties and for the state? We all know of the diversity in our counties. They range in population from fewer than a thousand people in Esmeralda County, to over 2 million people in Clark County. Our counties have different needs, and functional home rule would allow local officials and citizens to solve their own problems in their own fashion, which we believe fosters local innovation and provides the flexibility to be responsive to the needs of their constituents. Home rule also reduces the amount of time this body devotes to local affairs. Given the workload and, quite frankly, the gravity of the issues that you face every session, to me it seems obvious that it would be beneficial to the Legislature if issues related to functional home rule were handled at the local level. Lastly, the Legislative process can essentially amount to a two-year delay. Of the 13 states that do not have some form of home rule for counties, only Nevada and Texas do not have annual legislative sessions. The other states without home rule at least have annual legislative sessions where counties can bring issues forward.

Senate Bill 29 (1st Reprint) is really the same concept and very similar language to that of Senate Bill No. 385 of the 76th Session, which was recommended in 2010 by the Legislative Commission's Committee to Study Powers Delegated to Local Governments. This session, we worked very hard and spent many hours with representatives of the business community to address their concerns and find language that we can all agree on. Senate Bill 29 (R1) will not reduce the Legislature's rightful oversight of county governments or prohibit the Legislature from enacting statutes to control any actions taken by local government that are inconsistent with the will of the Legislature.

Again, counties are the government closest to the people. They serve everyone in our state, and we believe they are well positioned to move their communities forward. The bottom line is S.B. 29 (R1) provides counties with the ability to better manage their operations, be more responsive, and help their constituents.

Again, S.B. 29 (R1) pertains to counties only and does not enable them to increase taxes or fees.

**Chairman Ellison:**

Thank you, Mr. Fontaine. I think you hit the nail on the head. This bill has divided a lot of people. It is an important bill. It is pertinent that we all understand the bill. There were a lot of people involved in this bill in the Senate and other bills came up afterward that did not make it. The task now is to determine where Dillon's Rule and home rule come into play with this bill. We have asked for legal opinion on this bill. We need to look at the legal status of this bill, and that will be the determining factor. I have had more meetings on this bill than any bill this session. We will now ask our Committee Counsel to give light to this issue.

**Kevin Powers, Committee Counsel:**

As a starting point, we have to look at the derivation of the doctrine of home rule. There are two possible sources of home rule: constitutional home rule and statutory home rule. In some states, like California, there is constitutional home rule. In their state constitution, counties and other local governments are given constitutional home rule. That means when local governments exercise powers governing local concerns, those local powers can actually preempt state law under the state constitution. Nevada does not have constitutional home rule. This bill would create a certain level of statutory home rule. That gives the Nevada Legislature ongoing power to ultimately determine how much home rule to grant to local governments. This particular bill only applies to the boards of county commissioners. It does not apply to any other political subdivision of the state, whether it be a city or another type of political subdivision such as a general improvement district, water district, or sewer district. It only applies to the boards of county commissioners.

Under the terms of S.B. 29 (R1), the statutory delegation of home rule has several particular limitations. It is not a broad grant of statutory home rule; in fact, as Mr. Fontaine mentioned, it is a limited or functional grant of home rule that deals only with particular areas of local government power within the boards of county commissioners. Mr. Chairman, to the extent that this grants that limited statutory home rule, it does change Dillon's Rule with regard to the boards of county commissioners, but only to the limited extent provided by the bill. Outside of these areas that the power is delegated to the local government—the boards of county commissioners—Dillon's Rule would still apply. Dillon's Rule will apply to all political subdivisions other than counties and, with regard to counties, Dillon's Rule will still apply outside of these limited areas of statutory home rule given to the boards of county commissioners.

**Chairman Ellison:**

Mr. Fontaine, would you like to comment on Mr. Powers' presentation?

**Jeff Fontaine:**

Mr. Chairman, I think what Mr. Powers indicated is exactly what our intent has been all along and is in line with the discussion that the interim study had on this issue, and I think the legislative record would reflect this. That is clearly what the intent of this bill is, and nothing more.

**Chairman Ellison:**

Are there any questions from the Committee?

**Assemblyman Carrillo:**

What exactly does the language in section 7, subsection 2 mean?

**Jeff Fontaine:**

Those are the provisions put into the bill when it was initially recommended by the interim committee and refined through the discussions with the business community during this session to make it absolutely crystal clear that this bill, in no way, shape, or form, would allow a county to impose a service charge or user fee that it does not already have the authority to charge. This does not give a county any new authority to charge a new fee. The language in section 7, subsection 2, paragraph (b) was negotiated and took a lot of time and discussion to make sure that it does not give the counties any authority to usurp or preempt regulations or do anything different than what they can do today because we have businesses or transactions that are regulated by the federal government and state agencies. We did not want to be in a situation where businesses would be regulated by both the state and/or federal government and then the county.

**Assemblyman Carrillo:**

You have been working with the business community as a whole, the chambers of commerce. Is that correct?

**Jeff Fontaine:**

Yes, early in the session, we did work with representatives of the business sector which did include members of the chambers of commerce. I know they will come up later to testify about some of their issues. We thought there was agreement on this language when it was presented to the Senate.

**Kevin Powers:**

Section 7, subsection 2 is an example of where Dillon's Rule would still apply to the boards of county commissioners. In the areas of imposing a service charge

or user fee, or regulating businesses, the boards of county commissioners could only do so where expressly authorized by statute or necessarily implied from an express statutory authorization. Dillon's Rule still applies to these areas of the boards of county commissioners.

[Assemblyman Moore assumed the Chair.]

**Vice Chairman Moore:**

Are there questions from the Committee?

**Assemblyman Wheeler:**

I have a question for legal counsel. In section 7, subsection 2 paragraph (b), where it says, "subject to substantial regulation," what is the definition of "substantial"?

**Kevin Powers:**

In this case, "substantial" is a typical legal term. It means at a level of regulation that is more than incidental or minor. It has to be where the area of regulation involves a substantial amount of federal or state regulation. For example, areas of substantial federal regulation are interstate commerce, railroads, and airlines. Areas of substantial state regulation would involve many of the regulatory boards in Title 54 of *Nevada Revised Statutes* (NRS). There are provisions in Title 54 dealing with some of the regulatory boards, such as the Board of Massage Therapists, that expressly preempt local law, where state regulation preempts local law. Another example would be gaming, which is an area of substantial state regulation. I know that the state shares some of that power with the local governments, but ultimately, gaming is an area of substantial state regulation. Those are some examples of where that regulation rises above incidental and is substantial in degree.

**Assemblywoman Joiner:**

I love this discussion because I think we are all trying to get at the same thing, which is to serve our constituents the best way we can, and there is always a balance there. My question is about the need for this. I would like some real world examples about how this would help counties act more quickly. I am assuming there were some real policies or real world examples that prompted you to pursue this, and I would like to know what some of those are.

**Jeff Fontaine:**

I mentioned a few early in my testimony, and I have a list of other examples. I can read through the list and give you more examples. There are times when counties feel like there is a way they can deliver services better, more efficiently, be more effective, or be more responsive to their constituents.

They decide to proceed to do that and are told that they do not have the authority to provide that service and must go to the Legislature to get the authority.

One example I could use is that through the National Association of Counties, there is a discount prescription drug card program. It is a national program with a national vendor that negotiates discounted rates for individuals to be able to walk into many, if not most, of the chain pharmacies and get a discount on prescription drugs. We were able to work with that program and 15 or 16 of our 17 counties joined that program and handed the cards out to their residents. It was a quantifiable benefit that we can track. In Clark County at that time, the district attorney said it was not certain if the county could do that because the county would basically be doing a sole source contract, even though there was no money changing hands and there was no obligation on behalf of the county other than to distribute the cards. Clark County had to come to the Legislature to get authorization to distribute the cards to its residents. That is one example of not being able to take advantage of an opportunity to provide a valuable service to the residents of our largest county because they did not have the express authority to do that.

**Assemblyman Wheeler:**

I would like to go back to the issue of regulating business activities that are subject to substantial regulation. The way that I read this is if Storey County wants to regulate a certain type of business in a certain way, and then Lyon County wants to regulate it in a different way, and Churchill County wants to regulate it in a little different way, according to this bill, as long as it is not a substantial regulation, the counties would be able to do that. The business owner who is in Lyon County is going to have to follow a different set of rules in Storey County, and maybe different rules in Washoe County. How do we keep uniformity of business if we do this and not cost our businesses more money to operate in our state?

**Jeff Fontaine:**

There is an entire chapter of statutes that deals with the regulation of business at the county level. That is already in place. The Legislature already has oversight with regard to how counties can regulate businesses.

**Assemblyman Wheeler:**

I think what we are saying here is that those business regulations do not seem to rise to the level of "substantial" per legal definition. With this law, different boards of county commissioners could make different regulations. I do not understand the answer you provided.



**Jeff Fontaine:**

Again, what this bill does not do is take away your authority or existing statutes that already regulate business. There is a chapter that addresses how business is regulated at the county level. The counties, even if this bill were to pass, would still have to adhere to the provisions in that chapter.

**Assemblyman Wheeler:**

With the examples you gave us, I see 14 examples from four legislative sessions; I am sure there are more than that. How many bill draft requests (BDR) have you put in that have been turned down by this body because the body felt they were not correct over those same four sessions?

**Jeff Fontaine:**

I did not count up the number of BDRs. We typically have 5 BDRs each session, so about 20 BDRs over four sessions. I cannot tell you how many of those were related to functional home rule. Even if we try to go back and look at all of those bills, I think the answer to the question is this: we know there are bills brought forward on behalf of counties that deal with these types of issues and ultimately do not pass. We also know that the success rate of getting a bill passed by the Legislature in any area is about 50 percent. Bills fail for a number of reasons, not the least of which is related to policy. I would say that one of the reasons bills may fail is there is not a good fit or a particular need for functional home rule in every county. Our counties are diverse.

We talked about an example in this session of the dogs in bars bill [Senate Bill 105]. This is something that may work in a rural county like Storey County, but it probably does not work in an urban county like Clark County. We believe that enabling counties to have the flexibility to make those kinds of determinations on their own is a better fit. If it works in Storey County, why should they not be allowed to have dogs in bars? If it does not work in Clark County, it is their prerogative to decide not to allow that in their county.

**Assemblywoman Spiegel:**

Thank you for your explanation. It seems that section 3 very clearly states that if there is any doubt as to the existence of a power of the boards of county commissioners, it must be resolved in the favor that they have that power. When I look at section 7 and the things the boards of county commissioners cannot do, that seems to be where we would have some of these discussions of interpretation. When you have things such as imposing a tax, service charge, or user fee, I can see where there could very often be the instance that someone wants to increase an existing tax, service charge, or user fee because property taxes have not been bringing in the revenue they should and the

county is facing a shortfall. They say we have this tax rate and it is not a new tax, and section 3 says that if there is a debate, then we have the power. I really think the intent might be that the power should not be there. I find it problematic to have it read such that in the event of a dispute, it favors the counties having that power. Could you please speak to that, Mr. Fontaine?

**Jeff Fontaine:**

Again, the intent is not to raise any fees or enact any taxes that the counties do not already have authority to do. Let us use the example of property taxes. Counties, and all local entities that can enact property tax rates for that matter, have the ability today to increase their property tax rates by a certain amount as long as it is within the cap established by NRS Chapter 361. That does not change through this bill. This bill does not give them any additional authority. If today we have a county with a property tax rate of a \$1 per \$100 of assessed value, even without this bill, they could raise it to \$1.10. That does not change under this bill, nor does this bill give a county the authority to enact any new tax or any new fee. I understand what you are saying. We have worked very closely with Legislative Counsel Bureau (LCB) staff and interested parties to make sure this language is as tight as it can possibly be. There is clearly a legislative record that says there is nothing in this bill that would authorize a county to increase a tax that it does not already have the authority to increase or to enact a new tax or fee.

**Assemblywoman Spiegel:**

It is good to get that intent on the record. What if a county decided that it wanted to change the methodology it uses to determine the assessed value of a house? I know that a house's assessed value is much less than the current market rate by statute. However, the county could say it wants to increase it by 50 percent or 75 percent, which may still be below the market rate. It is not changing the tax rate, but it would absolutely cause a very large increase in the tax. That is not an imposition of a new tax, service fee, or otherwise, but it is changing a methodology that, again in section 3, because of an element of doubt, it would have the ability to do.

**Jeff Fontaine:**

Assemblywoman Spiegel, my understanding of how assessments are done is that there is state oversight of how counties assess property; there are state regulations that address that. That is already well within the power of the Legislature to establish parameters, to put into law those requirements and oversight, which are in place today. This bill would not allow a county to do something different than what it is allowed to do under existing law.

**Assemblywoman Spiegel:**

I appreciate that clarification as well. What is the point of having section 3? That is what I find very problematic.

**Vice Chairman Moore:**

Assemblywoman Spiegel, I think legal counsel can clear that up for us.

**Kevin Powers:**

Looking at the structure of the bill, you have to read sections 3 and 7 harmoniously. Section 7 creates a list of prohibited categories. Those are areas the boards of county commissioners cannot act in unless there is express statutory authority. You start with that; you look for express statutory authority for the county to do that. At that stage, if there is express statutory authority, you might have to revert to section 3 of this bill if there is any doubt or ambiguity. In your example, Assemblywoman Spiegel, with regard to the assessment of property values for property taxes, the provisions of NRS Chapter 360 set a statutory formula of how property is assessed and the rate of assessment. That statute is clear. There is no doubt that it gives no power to the boards of county commissioners to change that statute. Section 7 would kick in; there is no express statutory authority for the boards of county commissioners to change assessment levels. The issue is nullified. You never get to section 3.

**Vice Chairman Moore:**

Mr. Fontaine, section 4, subsection 2, paragraph (b) states that a board of county commissioners has "all other powers necessary or desirable in the conduct of county affairs even though not granted by statute." Please explain that language.

**Jeff Fontaine:**

This language basically removes the language of Dillon's Rule, which says that the only powers that local governments have are those that are delegated by the Legislature or necessarily by statute. It allows counties to exercise their powers absent any overriding statute or constitutional prohibition. With respect to that specific language, it says the powers are necessary to do whatever the counties need to do, or desirable to carry out the conduct of county affairs even though they are not granted in statute. Again, under Dillon's Rule, unless those powers are expressly allowed or necessarily implied, the county cannot take that action. It is basically flipping that language from Dillon's Rule around.

**Vice Chairman Moore:**

Thank you, we will now defer to legal counsel.

**Kevin Powers:**

To a certain extent, Mr. Fontaine is correct; it is just the reversed statement of Dillon's Rule. Dillon's Rule creates a level of prohibition on counties; this removes that prohibition. However, there are two important limitations within the text of the language. First, it only deals with county affairs. It is saying that we are going to give the boards of county commissioners general police powers over local or county affairs. That means they can take whatever measures are necessary to protect the public's health, safety, or welfare within the realm of county affairs, and they do not have to refer to a specific statute to take the action. If there is a specific statute that prohibits them from taking the action, they would be prohibited from taking that action. All this is saying is that we are giving them local police powers to do what is necessary to protect the health, safety, and welfare so long as there is not a statute that expressly prohibits it.

**Assemblyman Stewart:**

I have been involved in this for a number of sessions, from the dogs in bars bill from this session, to sewer laterals a few sessions ago, and all kinds of issues like this. I have sympathy for your plight. I would like to know how this would affect the counties' relationships with the cities within the counties.

**Jeff Fontaine:**

I cannot foresee any change in that relationship or any impact as a result of this bill on the working relationships between counties and cities. I do not know that there would be an impact.

**Assemblyman Stewart:**

Would this give counties the power to give more authority to cities, or anything of that nature?

**Jeff Fontaine;**

Assemblyman Stewart, that is certainly not the intent of this bill. I do not believe that could happen were this bill enacted.

**Assemblyman Stewart:**

Mr. Vice Chairman, could we please hear from Mr. Powers on that?

**Kevin Powers:**

That is correct, Assemblyman Stewart. There is nothing in the bill that allows the boards of county commissioners to grant additional powers to cities. Cities are governed by their charters if they are special charter cities, or they are governed by general law if they are general law cities. Cities are limited by those statutory provisions. There is nothing within the context of this bill that

allows a board of county commissioners to grant additional powers to local governments. The only entity in this state that can grant additional powers to local governments is the State Legislature.

**Assemblywoman Neal:**

Under NRS 244.195, it says of other powers of the boards of county commissioners that they "shall have power and jurisdiction in their respective counties to do and perform all such other acts and things as may be lawful and strictly necessary to the full discharge of the powers and jurisdiction conferred on the board." Section 4, subsection 1 of S.B. 29 (R1) states, "The rule of law that a board of county commissioners can exercise only powers," that according to paragraph (b) are, "Necessarily or fairly implied in or incident to powers expressly granted." Give me an example of when a statute may "fairly imply" that a board of county commissioners has the authority to do something. I would like a real life example.

**Jeff Fontaine:**

Assemblywoman Neal, the language in section 4 of the bill is taken from Dillon's Rule. I do not know that I can come up with a real life example of something that a county would be able to do under the language "fairly implied."

**Assemblywoman Neal:**

You can leave that question. I will go to the next one, which may help you build that example. Section 6, subsection 1 of the bill states, "If there is a constitutional or statutory provision requiring a specific manner for exercising a power, a board of county commissioners that wishes to exercise the power shall do so in that manner." This section seems to slightly flip on section 5. The language "wishes to exercise the power" has caught my attention. In what situations would a county "wish" to do something where a constitutional or statutory provision specifically expresses how it should be performed?

**Jeff Fontaine:**

I am not an attorney, but my understanding of this language is that "wish" is really a legal term here. I think all section 6, subsection 1 is saying is that whatever a county government, whether you say "wishes to do," "elects to do," or "does," it has to do it in the manner prescribed by any existing statute or constitutional provision.

**Vice Chairman Moore:**

We will defer again to legal counsel.

**Kevin Powers:**

Regarding the language of "fairly implied," this arose a lot in the late 1800s and early 1900s when local governments were given the powers by state legislatures to run municipal utilities. They were authorized to run electric plants. That grant of power does not tell you how they can specifically exercise operating, creating, manufacturing, or establishing electrical plants and utilities. Regarding the fairly implied powers, you take what they can do—operate those utilities—and then give them powers to carry that out: spending money to build a facility or using public streets to lay utility lines. Those are the fairly implied powers—what is necessary to carry out that express power, anything that would be fairly implied from that to make it happen. Most statutes do not go into the level of detail to specify every action that you can do to carry out the main objective of the statute.

**Assemblywoman Neal:**

In your example of "necessarily implied" when the manner and prescription is not clear, and the county could choose the manner, which may involve money and spending, what is the relationship if the county takes action under this bill and it says that it realized it must spend money in order to exercise the constitutional or statutory provision and decided the manner in which it should raise money is to raise fees or otherwise? I heard your explanation of section 7. However, to me the scope is not clear when you have the term "wish" related to the manner of how you are going to do something, regardless of whether or not there is a statutory or constitutional provision, which is in section 6. There is an either/or situation.

**Kevin Powers:**

Section 6 of the bill establishes that if there is a constitutional or statutory provision that lays out a power that a county may exercise and if the county chooses to exercise it, then it has to follow the constitutional or statutory provision. If there is another power and the constitution or statute does not expressly state how it can exercise that power, and it chooses to exercise that power, then the board of county commissioners has to come up with the procedure for exercising that power. The bottom line is that even when it is a necessarily or fairly implied power, it still cannot exercise that power if it is contrary to a statute or constitutional provision. It is still limited by all express constitutional and statutory provisions.

**Assemblywoman Neal:**

Regarding section 3, subsection 2 in your example, how does it work when this rule applies even though the statute granting the power has been repealed? What do we do in the vacuum of law within the implied power example?

**Kevin Powers:**

The provision of section 3, subsection 2 where it states, "This rule applies even though a statute granting the power has been repealed," means that if the Legislature were to repeal an express statute granting a power to the board of county commissioners, the repeal of that statute does not take away the local power. The county would still have what this bill is granting on a police power level. In other words, if the statute is gone, the county can still exercise local police powers to protect the public health, safety, and welfare in the absence of that statute. However, if there is an actual prohibition in another statute, the county could not go beyond that prohibition. This ensures that if there is a statute that is taken away and the Legislature does not want to express that power and does not expressly prohibit it, the county can still exercise it on a local level to protect the public health, safety, and welfare.

**Assemblywoman Neal:**

In the *Nevada Constitution*, we are required to have uniformity of state laws and general application. You should be able to go and find whatever it is from which someone is operating. There is some sort of uniformity or certainty. That is why that language was an issue for me in the other version of this bill that did not pass. How do you deal with the uniformity of general law in those instances? We are here to protect citizens and, as the Legislature, we engage in public policy that serves the benefit for the protection and general welfare of citizens in the state, all of them. When a bill like this says that a county has a rule or ordinance that the Legislature is not aware of because of the fairly implied or incidental powers, which says they can do whatever, because it is very liberal authority granted by this bill, how do we address the issue of the uniformity of law?

**Kevin Powers:**

The requirement in the state constitution for uniform laws is regarding uniform laws of statewide application. No board of county commissioners can enact an ordinance that has statewide application; it is an ordinance that applies only to the county. Right now, across each county, there is not uniformity in zoning regulations, because those are local regulations so they are not subject to the state constitutional provision for uniform laws of statewide application. If a county were to enact local regulations that the Legislature disagreed with, then during the legislative session, the Legislature could pass a statute to preempt those ordinances in the future. The Legislature ultimately has the power to control what the county does in a subsequent legislative session. This bill does not take away that legislative power.

[Assemblyman Ellison reassumed the Chair.]

**Chairman Ellison:**

That is correct. It does not give them that much more regulatory authority than they have now other than the day-to-day, small stuff. They cannot implement any kind of a tax whatsoever. Is that correct?

**Kevin Powers:**

That is correct, Mr. Chairman. It only gives them local police powers to protect the health, safety, and welfare so long as those local police powers are not expressly prohibited by a constitutional or statutory provision. This statute has certain levels of prohibited categories where the county cannot act, one of which is imposing or changing tax bases. This is a limitation on that; it does not open up broad powers to the county with regard to tax bases. It, in fact, restricts those powers and keeps them curtailed within existing statutory provisions.

**Assemblyman Wheeler:**

This is probably more of a question for Mr. Powers. The language in section 3, subsection 2 of the bill states, "Any doubt as to the existence of the power of a board of county commissioners must be resolved in favor of its existence." It seems as though if a citizen were to sue a county for some perceived wrongdoing, since we are stating that any existing doubt as to the existence of power, the counties cannot lose, can they?

**Kevin Powers:**

It would depend on the nature of the lawsuit. If the underlying basis of the lawsuit is that the county did not have the power to enact an ordinance and there was some doubt as to its power, then that doubt would have to be resolved in favor of the county under this rule of law that would be enacted in section 3 of the bill. If it is dealing with the power of a county to enact an ordinance, this in fact would give the county the advantage of having doubts resolved in its favor.

However, there are lawsuits for many different things well outside of whether or not the county had the power to issue an ordinance. In those lawsuits dealing with liability for torts, this would not change anything; the county would still be subject to the same liability for torts under the waiver of sovereign immunity in NRS Chapter 41. In other constitutional issues, this would not change anything. If a county ordinance were challenged on constitutional grounds, this bill would have no impact on that. They would still be subject to the same constitutional restrictions. If there was an express statutory provision and a county ordinance was challenged on express statutory provisions, section 3 of this bill would not come into play because that express statute would take control over the rule of construction in section 3.



**Assemblyman Wheeler:**

I want to make sure, if there is any doubt, the tie goes to the runner, and the county is the runner.

**Kevin Powers:**

In those circumstances where it is a local police power matter and the county adopts an ordinance and there is any doubt as to whether it had the power to adopt that ordinance, then yes, that doubt would be resolved in favor of the county under section 3 of this bill.

**Assemblywoman Neal:**

The way Mr. Powers explained the example on uniformity, it was mentioned that counties could be different. Each county can be different; they would not have to be uniform.

**Kevin Powers:**

Assemblywoman Neal, that is true: counties do not have to be uniform with other counties with regard to matters of local concern. That is the case now. One county's zoning ordinances are not the same as another county's zoning ordinances.

**Assemblywoman Neal:**

In this case you are talking about police powers. Some of the examples Mr. Fontaine cited were bills involving prisoners' rights and different things that run into other judicial concerns. If I go to another county, will I not know what rules are being applied to me because of the incidental or fairly implied or wishes language from this bill? It reminds me of back in the day when you went to one place and you did not know the regulations that applied in that location. We have a bill this session that requires that motorcycle handlebar height be the same regardless of the county [Assembly Bill 422]. How does this bill affect that type of bill if county one says they do not want to follow that rule, county two says they want a different rule, and so on?

**Kevin Powers:**

Assemblywoman Neal, if the Legislature wants a uniform rule of law that applies across all counties, all the Legislature needs to do is enact a statute and every county would have to follow it. Where the Legislature has not enacted a statute, then each county would have the local police power to adopt those regulations. However, they would have to adopt them in an ordinance and that ordinance provides the notice to each individual of what the law is in that local jurisdiction. That is the situation now. Where the Legislature has granted counties power—and the Legislature clearly has granted the counties power to adopt local ordinances—if people want to know the local ordinances in

a county, they have to look at the county code. The county codes are different across the counties in those areas in which counties can act. I used zoning as an easy illustration because we all know that zoning varies from jurisdiction to jurisdiction. If you want to know the zoning law in that jurisdiction, you have to look at that county code. This bill does not change that situation. If the Legislature wants uniform rule, the Legislature can make one through statute. Where the Legislature does not make that uniform rule, then the county has the power to adopt local regulations that only apply to that county dealing with local matters.

**Chairman Ellison:**

I think this is a very important issue. If we have to extend the time for this bill, we will do so. Mr. Fontaine, you have other testifiers with you. We will now hear their testimonies.

**Laurie Carson, County Commissioner, White Pine County; and President-elect and Vice Chairwoman, Nevada Association of Counties:**

I support S.B. 29 (R1). White Pine County is a small rural community and this would give us additional authority for performing our day-to-day administrative functions. We meet twice a month, and we regularly interact with our small community. In 10,000 square miles, we have just over 10,000 people. White Pine County is very interested in bringing economic diversification. We do not have a rail line, and we also are off the beaten path. We are in an area where the nearest hub is 250 miles away from us.

I am going to use the example of Mineral County, that had an opportunity when the military gave them a small airport. We have a small airport. Mineral County, based on law, had to have two appraisals. They had someone who was interested in purchasing the property. This would add economic development and diversification and give their community opportunities for employment. They did not have an appraiser living in the community and they could not get anyone from either Washoe County or Clark County to do the appraisal. If they could, the cost of getting the appraisal was more than the value of the property. White Pine County used to have an appraiser; we do not any more. I think this is important to realize, and I am speaking from a rural point of view as to how this would help us. Giving us that flexibility is minor. All of the other laws and statutes govern what we are able to do.

I do support S.B. 29 (R1). If you have any questions, I appreciate them. Thank you for the opportunity to testify.

**Assemblywoman Neal:**

I was listening to our legal counsel, but one thing he said in response to my questions about police power was that counties can already do these things through ordinance unless the Legislature says otherwise. I am trying to understand, if you can already do a whole lot because there is already the "other powers" provision that covers other things that are necessary for your needs in NRS 244.195, why do you need this liberal amount of authority?

We have been debating this for a long time. When I talked to my father about it, he said you do not come back here for something the dog catcher needs to do. That is not an issue for us; that is local. However, when it comes to other types of things, such as the encroachment upon police powers, it gives me pause for concern because police powers are so broad that for you to walk in and out of that door with ordinances that I am not aware of or clear on, would drive me nuts. That is my personal perspective. Help me understand why you need more than what you already have; that is the part I do not understand. You could narrow this language in such a way as to get at what you really need.

**Laurie Carson:**

First and foremost, any county commissioner takes an oath. When I gave that example, I was in error. What happened was, those two appraisals that were required in order for the county to sell the property were cost-prohibitive. They ended up having to get a bill passed, with the help of NACO, to go ahead with it. There was a two-year process where they had to wait to get the powers to do what they needed to do to be able to sell the property. By that time, the interested party had moved on. That is more what we are looking for. We will follow, we plan on following, we take an oath to follow everything that is provided by the Legislature, the State, and the *U.S. Constitution*. I speak here from the perspective of the rural communities.

**Marsha Berkbigler, County Commissioner, Washoe County; and Board Member, Nevada Association of Counties:**

I am here today in support of S.B. 29 (R1). Assemblywoman Neal, I think I can give you an example of one of the issues we are talking about here. In Washoe County, our district attorney has made it very clear that if it is not written specifically in the statutes, we cannot do it. That is what we are looking for, a little flexibility to do some things we need to do in our county as it is beginning to grow. We have had a huge influx of business, a very active economic development program. We are growing quickly, and there are some things we need to be able to do.

I will give you an example of one thing that actually happened to us during the economic downturn and resulted in us having to come to the Legislature to pass a piece of legislation. This is something so obscure. It was when a contractor or developer submitted a final map and needed an extension of time because the economy turned and it could not be completed in the allotted time. The county was not allowed to give him an extension. We had to go to the Legislature and ask for a law to be put in place to allow us to do the extension. That is the kind of thing we are talking about. These are just day-to-day, little business things that really do not have a great impact on the whole rule of law or police powers. They are just the little business decisions we should be able to make. That is what we are looking for.

Another issue we have dealt with is the topic of Assemblyman Kirner's bill, Assembly Bill 333 on fire protection districts. Washoe County has two separate fire departments. They operate as one; from a management perspective, they are one. However, we are still required to audit them separately and file separate reports. If we were allowed to merge those together—we have been trying to make this change for six years, three legislative sessions—we would save \$100,000 to \$120,000 per year in fire dollars. Those are taxes we collect from our citizens that we could then apply to expanding our area of brush dangers—we have a lot of brush fires in northern Nevada—or wildfire dangers or adding a new truck or more firefighters. Those are the kinds of things on which we, as a county, need to be able to make business decisions. That is the type of stuff we are looking for. Thank you.

**Assemblywoman Neal:**

Some of the examples you gave are things that come to the Legislature, and you talked about how the district attorney will not let the county do things. I think he is trying to protect you; if it is not in law, do not do it. For example, when we examined A.B. 333 in Committee, we found huge liability issues. There were other issues that needed to be discussed as far as county interrelationships that I think should be brought to this body. In other instances, we have had other bills come before this Committee where they were trying to unilaterally impair a contract and they wanted the ability to say, I have the statutory authority, but it is not clear how that process should be worked out. Not wanting to fall on the side of doing something that would get them in more trouble, and they would have to come back anyway, I understand what you are saying.

However, there are issues, whether they are police powers or business decisions, that affect the rights of more than 20 people. They affect the rights of all of the constituents that may reside inside of that county. If it was Clark County, where you have 1 million people, there are decisions that affect

those individuals. To me, that authority or that relationship to the Legislature and to the county is incredibly important if the county said I am going to abrogate contracts, I am going to do things that change rights, change penalties, put someone in prison. Assembly Bill No. 212 of the 77th Session basically penalized inmates additional years for having cell phones in prison, yet we were trying to put computers in our prisons.

**Assemblyman Wheeler:**

Ms. Berkbigler, I understand that your intent is to gain flexibility in performing day-to-day operations, and I do not see a problem with that. However, that is not what I see in this law when I read it. I read it as giving sweeping powers, especially when we look at section 3. The tie goes to the horse on the rail, and the county is always the horse on the rail when it gets to court. That gives you pretty sweeping powers. This bill needs a lot of work.

**Marsha Berkbigler:**

Assemblyman Wheeler, I appreciate your comments. I know there are concerns and there are people who will come up after us who have concerns regarding the bill. I agree with what legal counsel has said that section 3 of the bill never comes into play when you are talking about the provisions of section 7 of the bill. Everything that we do, and we have a fiduciary responsibility to the constituents who live in our counties, which are certainly not as broad as yours because you are looking at the entire state, but we do have a responsibility to make sure our constituents are taken care of well also. Because we have a biennial session, we may face a problem in August of this year, and we are 18 months away from coming back to the Legislature to fix that problem. That is the kind of thing we are looking at. Clearly, if there needs to be some tweaking to this bill to get us to that point, I do not think any of us are opposed to that. However, we are definitely looking for some way to resolve these ongoing problems that seem to happen every single year when you are not in session.

**Chairman Ellison:**

We had to deal with a bill from last session. We had to fix it because it was not clear. It is being heard right now in the Senate. That goes to show you that things can be added into bills, and it can take a long time to address the issues. However, the boards of county commissioners meet every two weeks, and the rooms are usually full with people from those counties. If you come to the Legislature, you might get one-third of those people because they cannot travel that far and it is every two years. The county commissions are the closest to the people to hear the people voice their concerns every two weeks.

I have been to the Clark County Board of Commissioners meetings several times. Looking at their agendas, I do not know how they get through them in a day, let alone a week. The people read their agendas. To me, it is close to the people; you can address the concerns every other week with the county commissions, or every other year with the Legislature. That is the problem we have. This bill is not asking to take control, it is asking to be able to operate. If we have to tweak the language, we can do that.

**Assemblyman Stewart:**

This is kind of a family relationship. The Legislature is the supposedly all-wise parent and the counties are the children. We might be gone and you are left to take care of yourself, and while we are gone you realize that things change and you try to adapt to those changes. If we see something that you have done unwisely, then we can correct it. I have been here for five sessions and I have seen us deal with all kinds of what I call "Mickey Mouse issues" that you should have been able to deal with. I agree with the Chairman, though I do not always agree with the Chairman. I think this is giving the counties the power to do the things they need to do, and if we see that the counties have overreached their bounds, then the next session we can put laws into effect that would restrict you in that specific area. Am I seeing this bill in the same way you are?

**Jeff Fontaine:**

Assemblyman Stewart, we totally agree with your analogy, and that is basically what we are asking for here: a little bit of leeway and flexibility to do the things the counties have to deal with on a daily basis. As was mentioned earlier, boards of county commissioners meet at least twice per month. They interact with their constituents on a daily basis. They have to respond to issues, and it is not always clear. Remember, we have 17 different, independently elected district attorneys in this state. It is not always clear across the state and in each county what is fairly implied or necessary. I think most district attorneys in this state want to protect their clients, their counties and their boards of county commissioners from any liability and are going to be extremely conservative, and in some cases that means it is pretty restrictive and prohibitive. Again, the example I gave to Assemblywoman Joiner where we had 17 counties that felt that they could distribute the prescription drug discount cards to their residents, we had one that said it was not expressly authorized in statute so we need to get the authority to do that. Those are the kinds of things we are looking to do here.

**Assemblyman Stewart:**

I think you have been trying to get this power for decades. I think you will be careful in how you administer it because you do not want that authority taken

back. You want to show the Legislature that you can function responsibly as the counties of 37 other states now do. Is that correct?

**Jeff Fontaine:**

The last thing I want to do, and I think any of our member counties want to do, is be back before this body in two years or in the interim to have to answer a question about something they did or undertook as a result of this bill that would be viewed as an abuse of power. We do not want to have a failed experiment here. We are looking for a little bit of leeway to demonstrate that this will work and will actually result in better government at the local level.

**Chairman Ellison:**

Mr. Fontaine, you mentioned that you have 17 district attorneys and several different answers that come from them. A friend of mine just said that they had 100 attorneys. You cannot get 2 to agree on one thing, let alone 100 of them.

**Assemblyman Wheeler:**

Is the reverse not also true? If this bill is passed and the counties do something in between sessions, we are going to have to wait up to 20 months to correct it.

**Jeff Fontaine:**

Technically, the answer is yes. However, I do not think we want to be in a position where we incur the wrath of this body. Sure, waiting two years to get a legal fix to this and having to pass a statute to undo something a county did is the correct time frame. We are here before various interim committees. We meet with you on a regular basis. You know how to get ahold of me and your constituents in your counties that are members of the boards of county commissions. I do not think any county officials want to be in the position to have to explain to you individually, or as a body, why they did something that is against the will of this body.

**Assemblywoman Joiner:**

I first read this over the holidays when it was prefiled. I thought that at that time the wording was specific to health and safety. I thought that was a wise choice to narrow it quite a bit because I think a lot of this discussion is concerned with the broadness of powers. What was the discussion in the Senate, whose idea was it to broaden it, and what was the reasoning?

**Jeff Fontaine:**

There were three bills related to home rule this session. This was a prefiled bill. Since it was prefiled, we had Senate Bill 11, which was Senator Goicoechea's

bill. That bill was basically this bill, but it included the cities as well. We decided to hold onto our bill, S.B. 29 (R1), because we wanted to work on S.B. 11 with Senator Goicoechea and our colleagues in the Nevada League of Cities and Municipalities. That is the bill where we worked through a number of the issues with the business community and others to come to an agreement on language. Senate Bill 11 was broader than our original version of S.B. 29 (R1). We could not reach agreement with the cities on the language, but we did reach agreement with the business community. We decided, instead of trying to work on S.B. 11 because we were up against the deadline for first house passage, to take the concepts we agreed to in S.B. 11 for the counties and put it in S.B. 29 (R1) and basically broaden the scope.

**Assemblywoman Joiner:**

In the logic of broadening the provisions of the bill, what are the real world applications or policies that would then allow you to do that which the health and safety specification would not?

**Jeff Fontaine:**

It would cover other areas of responsibilities that the counties have, including planning and zoning and health and safety. It would broaden it to include all of the responsibilities that counties currently have under statute.

**Chairman Ellison:**

Are there any more questions from the Committee? [There were none.] To ensure that we hear testimony from both sides, we will alternate between testimony in opposition and support. Those in opposition, please come to the table.

**Paul J. Moradkhan, Vice President, Government Affairs, Las Vegas Metro Chamber of Commerce:**

I appreciate the dialogue we have had today; however, regarding S.B. 29 (R1), the Las Vegas Metro Chamber of Commerce expresses opposition on the premise that it will repeal Dillon's Rule. As we have developed our understanding of this bill, the Metro Chamber cannot support the repeal of Dillon's Rule because we believe it would overturn 130 years of common law in our state. We are concerned about the significant and unknown results that would occur by statutorily repealing this fundamental principal in Nevada law. It would also be a major policy change for the state. However, the Metro Chamber is in discussions with NACO, and our hope is to develop an amendment that provides the counties the delegated authority to deal with local concerns, which we believe will give them greater ability to adopt laws, create programs, and function in an efficient manner. Thank you for your time



regarding this important policy matter that we believe will significantly impact Nevada's businesses.

**Tray Abney, Director, Government Relations, The Chamber of Commerce of Reno, Sparks, and Northern Nevada:**

I am reluctantly here in opposition. I say that because we agree with everything the proponents are trying to do here with true functional home rule. I owe them an apology because on an earlier bill in this Committee, I said I would try to stay out of this issue, and I had. It was relayed to me that this bill was okay coming out of the Senate. However, in just the last couple of days there have been some new concerns brought to my attention. I apologize to NACO and Commissioner Berkgigler that I was not engaged sooner.

As Mr. Moradkhan indicated, there still seem to be legal concerns as to how far this bill goes. I think it centers around section 3 of the bill, which was Assemblywoman Spiegel's concern earlier. I have no doubt that the local governments you have heard from are sincere and want to do the right thing and just have functional home rule. The Chamber has great relationships with all of our local governments, and we work very well with them. However, we also know that we cannot write binding law based on the personalities of the present. We are going to write binding law for people who are here now and for people who will be here when we are gone. We all want the same thing: functional home rule. I know we can work this out; I am sure we can. Thank you for your time.

**Chairman Ellison:**

You both represent the business community. Next week in this Committee we will be hearing two bills that pertain to the business community regarding redevelopment areas and the room tax. Those are important things about which the business community cannot wait two years to reach a decision. It makes it really rough for you all to operate especially when there is no certainty that it will be decided in your favor. You are back here every two years trying to get these types of things done. Is that right?

**Tray Abney:**

I do not disagree. The members of The Chamber of Commerce of Reno, Sparks, and Northern Nevada live far away from where two-thirds of this body resides. We certainly would appreciate more functional control in Washoe County and other areas of the state so we do not have to come here and bother Clark County-based people with our problems. We have no problem with functional control. It was relayed to me that this bill may go far beyond what the proponents are actually trying to do. I do not disagree with anything you have said.

**Chairman Ellison:**

I sat on the Blue Ribbon Task Force to Evaluate Nevada Department of Transportation Long-Range Projects with former Governors Kenny Guinn and Jim Gibbons. We talked about trying to get some of the roadways in southern Nevada changed. It was decided that we had to go back to the state even though that commission could have made the recommendation to the board of county commissioners. We could have gotten those roads fixed, but now it is back here for us to deal with. That is something that should have been dealt with locally in Las Vegas. I think that is what the counties are trying to do.

**Paul Moradkhan:**

I think that is where our intent is with working with NACO and other stakeholders, clarifying their ability with delegated authority to address local concerns. We understand the intent, but again, our concern is with repealing Dillon's Rule. I know there has been very good dialogue today about that, but I think we want to get the same end goal with delegated authority to address those local concerns.

**Chairman Ellison:**

I strongly recommend that you do work with the sponsors of the bill to see if we can come up with some sort of agreement in the end. Thank you.

**Assemblywoman Spiegel:**

My question is for legal counsel regarding the Chairman's example with Senate Bill 312, raising the room tax from \$2 to \$3 and increasing the scope of application. It sounded as though if S.B. 29 (R1) were to pass, that tax increase would still not be allowed under home rule. Is that correct?

**Chairman Ellison:**

I think you are correct, but they could put the process in place. Right now, it is going to be fought out in this Committee. I think regarding the room tax, it could be done by the city as of now.

**Kevin Powers:**

I would have to examine that bill more closely. From a general perspective, if the Legislature authorizes a local government to impose a tax and set the rate, it would have the ability to adjust it on an ongoing basis without Legislative approval. However, if the statute sets the tax and the rate and does not allow the local government to adjust it, then this bill would not give it the power to adjust it. This bill restricts it where a statute expressly provides a controlling authority. It would depend on a case-by-case basis as to what the taxing statute provides.

**Assemblywoman Spiegel:**

Even if there was no tax in Sparks, as there is now, if they did have the ability to impose a tax, that would still be okay?

**Kevin Powers:**

If the existing statute allowed Sparks to impose a tax but it had not exercised the authority, this bill would not change that; it could still exercise that authority under existing statute. However, if there was no statutory authority to impose a tax, this bill would not give the local government the ability to impose that tax. Remember, this bill does not apply to cities, only counties.

**Chairman Ellison:**

Another example is the fuel tax. There is a certain amount of fuel tax that is allotted to each county. It is up to the counties to determine how much of that tax they want to impose. The Legislature does provide a cap. Also, the Las Vegas Convention Center was allowed under the room tax, but it still had to go to a vote of the people. Those processes are in place.

**Assemblyman Flores:**

I have been on the fence on this issue for a while now. I understand the need to give people the authority to operate in as functional a manner as possible. There is a concern that if we give this authority to the boards of county commissioners, there may be unintended consequences. We are afraid they will use this power in a way they should not.

In all sincerity, I think there are people in this building who do crazy things. I think there are people in this building who use power in a way that they should not. I think we can never avoid that; we will not. Those personalities and the ideology that lead people to act in certain ways, we cannot avoid. Some people may say that of me; I say that of other people. Keeping that in mind, I am trying to get to the bottom line of this bill. Realistically, crazy people will always come to the table and do crazy things, anywhere. Looking at this bill, what is the single most discernible thing that we can project will happen in a year that will obligate us to wait a year before we can act upon it? We have all agreed that the intent makes sense. We need the counties to be functional and the way we have it now is not necessarily working. What is one thing that you could say might happen in the interim where you would have to wait up to two years to correct it?

**Paul Moradkhan:**

I think when you have this policy discussion, from the Metro Chamber's perspective, it has two components: the repeal of Dillon's Rule and the common law the state has based its operation on for 130 years. I cannot tell you that

there is one specific aspect. However, I can tell you that we are significantly departing from how we have operated the state to the county to local governments. That is where our concern is. When you are talking about functional delegated authority, that is where you will find more conversation about what needs to be addressed. That is why the Metro Chamber is saying we do not support the repeal, but we want the counties to be able to function in an efficient matter to address those local concerns they have cited today. That is why there are two specific policy arguments.

I cannot say that a certain thing will happen in two months. However, I can say that if we change our entire structure, we will probably have to come back to the Legislature. I think that is a legitimate concern. We have had good conversations with NACO, and I think we are both trying to get to the same end result, for them to efficiently address local concerns. We do go to county commission meetings every two weeks. Before I served in this role, I was the Metro Chamber's local government director, and I was at county commission, city council, water district, and school board meetings. Yes, there was definitely connection there. We want to see them function effectively.

However, there are concerns about repealing Dillon's Rule because it is how our state has operated for 130 years. No operation is perfect; I will admit that. We want to make sure that this policy debate is well vetted, that our concerns as a broad-based business community are addressed, and that NACO is able to go back to our members and tell them they will be able to operate efficiently. That is the policy debate. We have to remember that we are talking about repealing a common law process that we have had in place for 130 years; that is a significant policy debate.

**Tray Abney:**

First of all, everyone on this Committee is great; all of the craziness happens elsewhere. I will associate myself with the comments of my colleague from the Metro Chamber. I do not have a direct answer to your question as to what could happen in a year or 60 days. We are worried about our members who operate across county lines and have multiple locations in multiple jurisdictions being subject to such various rules and regulations that make it difficult to do business. We recognize that each county can be very different from even the county next to it. That is not a direct answer to your question, but that is our concern, particularly the broadness of the language in section 3 of the bill.

**Chairman Ellison:**

I think you hit that nail on the head: each county is different by nature, regulation, and ordinance. Thank you. Those in favor of the bill, please come to the table.

**Mary C. Walker, representing Carson City, Douglas County, Lyon County, and Storey County:**

Yes, Dillon's Rule was put in place 130 years ago, and for 130 years this body has written laws to restrict local governments. This bill does not change any of those laws that you have already put in place to restrict counties. We were quite different 130 years ago, and now we are modern, we are growing, and we need to move forward. This bill did pass the Senate on a 21-to-0 vote, and it did because NACO and all of the counties have done a good job working with the business community, and we did believe we had agreement on the language. We worked for months with the business community in order to address their concerns. If they have concerns now, we are all willing to work with them again. It would not have passed the Senate 21-to-0 if everyone was not okay with this.

Personally, I think this bill is important because I have worked for local governments for 30 years. I was Carson City's Finance Director for 12 years. I have seen situations where we have citizens' rabid complaints about public nuisances, blight, abandoned cars in their neighborhoods, and we have had to say sorry, by law we do not have the authority to clean that up. You have these people who are so angry and all of the neighbors come to the board meetings so that we can tell them we do not have the legal authority, sorry, we will see you in two years, we have to go to the Legislature and get permission to do this. That is literally what happened. It took us two years to get the legal authority, then we were able to clean up the abandoned cars. These people were looking at them for two years. It decreased their property values.

All we are asking for is a very limited operational flexibility so that when we get these complaints, 100 people in the audience screaming about certain things, we have the ability to help them. That is what we are trying to get to.

**Chairman Ellison:**

Thank you for mentioning that. For three sessions, we have been trying to get the right to dispose of abandoned motor vehicles. Under the law, you cannot do that. These things are filled with garbage, rat infested, and stink, but you cannot dispose of them. This is the third session, and finally Senator Goicoechea picked up that bill. The other issue is these areas that are filling up with garbage and abandoned vehicles. There might be 20 or

30 vehicles there, turning it into a junkyard. You cannot address it, you have to come to the Legislature. That is what operating on a day-to-day basis means.

**Bob Hastings, County Commissioner, Lyon County; and Board Member, Nevada Association of Counties:**

To speak to what Assemblyman Flores mentioned about personalities: personalities come in, yes, but it is the public that decides what personalities and whose decision making will be here every year. They can take any one of us out of office when the time comes.

I will not point to a specific item that we would or would not do as a county commission, but I can give you a situation. Six months ago, Lyon County did not have a mine that was approved. Finally, Congress approved the expansion of the land in Yerington. We are going to have a mine in operation [Pumpkin Hollow Project] that will increase jobs by 800. Six months ago, Lyon County knew nothing about Tesla coming in to Storey County, which is just on the other side of our border. We knew nothing of Switch coming in. We now have a road [USA Parkway] coming from the Tahoe Reno Industrial Center (TRIC) down into Lyon County. Those changes are going to make significant changes to Lyon County.

If we are in a situation as a county where we have to wait until possibly mid-2017 to ask for your approval to make changes that are going to allow our government to function properly or to get things done, it is going to put a big burden on us. We are the ones the citizens are going to come to for the next two years and ask how we are going to handle our fire situations and zoning. We are the ones who are going to have to answer that over the next two years. I think we need to have the ability within the counties to make those changes.

[Assemblyman Moore assumed the Chair.]

**Vice Chairman Moore:**

Are there any questions from the Committee?

**Assemblyman Wheeler:**

You stated that Lyon County did not know that the rules were going to change and that the Pumpkin Hollow Project was going to be approved. How could you not know? For five years, that has been in Congress. You, as a commissioner, have been fighting for it. Most of us, as your representatives, have been fighting for it. How could you not know it was going to happen? To say you did not know about Tesla, honestly, until the 28th Special Session (2014), none of us knew about it. I think you are giving examples that really do not hold much water.

**Bob Hastings:**

Assemblyman Wheeler, I respectfully disagree. We did not know Congress was going to pull through. That particular bill had to go through two sessions of Congress before it was approved. There was a lot of fighting. The committee that handled that bill in Congress, led by Congressman Hastings, held the bill up for a long time. Yes, we thought it would pass; we hoped it would pass, but we had no guarantees. We had heard on the news for a long time that Tesla was looking at Nevada, but we had no idea if it was going to happen, they were looking at other places.

That is the point I am trying to make: when these things happen, we need to be able to react as a county to make the changes necessary to keep our government flowing, make sure our economies are protected, not go outside what is given to us by the Legislature as to what we can or cannot do. We are not looking at that, but rather making those changes that are allowed because they are not specifically spelled out in statute so that we can address these issues.

**Assemblyman Wheeler:**

I have to take exception to that because, obviously, you must have been preparing for Pumpkin Hollow since you were fighting for it for five years. Obviously, you have been preparing for USA Parkway to come over from TRIC to Silver Springs. I know you guys do a good job on that commission and you were prepared for Pumpkin Hollow to come in and you are prepared for USA Parkway to come over. I am not quite understanding your point here because you have actually done a very good job and you are ready for all of those things. If you did not know about them, how could you be ready?

**Bob Hastings:**

I would like to clarify: I do not want to say that we did not know they were coming; we were not assured they were coming. Until those things actually happened, we could not react. We are not going to change the rules based on the population or the situations now. We need to do what is necessary when those changes are made. We do not know who the next Tesla will be; we do not know who the next Switch will be. Yes, we do plan ahead. We do look at what we will do if something happens, but we do not make those changes until those particular things happen, and under the current law, we cannot make some of those changes until we are given authority by the Legislature. That is my point. When these things do actually happen, that is when we are going to have to make the changes necessary, and if we are put in a position where we are going to have to wait two years for the Legislature to make a decision to make a change, that could significantly affect our ability to move ahead quickly and get things done.

**Chairman Ellison:**

We did also get a letter that I would like Mr. McDonald to enter into the record.

**Jered McDonald, Committee Policy Analyst:**

The Committee did receive a letter from the assistant county manager of Nye County, Joni Eastley ([Exhibit C](#)). I will read it:

The thing that legislators and others in opposition are missing is that the counties will still be obligated to follow the advice and guidance of their district attorneys in all matters. My experience has been that they always err on the side of caution.

**Chairman Ellison:**

I totally agree with that statement. Thank you, Ms. Eastley, for submitting that. Are there any questions from the Committee? [There were none.] Is anyone else wishing to testify in opposition to the bill? [There was no one.] Does anyone wish to testify as neutral to S.B. 29 (R1)?

**Paul J. Enos, Chief Executive Officer, Nevada Trucking Association:**

I am here to testify as neutral to S.B. 29 (R1). We were initially in opposition to S.B. 11 in the Senate and Assembly Bill 413 in this Committee because we had some of the same concerns that we have talked about regarding uniformity and how we apply this patchwork of laws across jurisdictions. For the industry I represent that is doing business in multiple jurisdictions on a daily basis, we like to have that uniformity.

We have been able to work with NACO and the counties, and we believe we have come up with something that allays some of our concerns. That is the language that is contained in section 7, subsection 2 of the bill, which talks about fees and commerce. We went back and forth on the "substantial" language quite a bit. We have had so many iterations of this bill and this language that it causes my head to spin. We talked about "comprehensive"; we want that a county cannot regulate business if it is comprehensively regulated by the state or federal government. To me, "comprehensive" is a huge hurdle, that means everything. There are various things you can look at in statute. We talked about hydraulic fracturing in the Assembly Committee on Natural Resources, Agriculture, and Mining. There are tremendous numbers of regulations on fracking, but some people will say that is not comprehensive. Incidental or minor is probably a very low bar that the counties would probably not sign on to, so we came up with the language of "substantial" as a middle ground. If there is substantial regulation by the state or the federal government, we do not want to have that compounded by the cities or counties.



We do not want to see Dillon's Rule abrogated; that is the last thing we want to see. We want to have that conversation in a broader context, especially when it concerns business and commerce. That is why we did negotiate and come up with the language that is in section 7, subsection 2 of the bill. We do think it provides us with some adequate protection. After listening to Mr. Powers' statements today, I do still believe that we have that adequate protection.

Regarding the commerce piece, that we are going to be subject to different regulations, we will continue working with the counties and everyone to make sure they are still able to do those functional things that they want to do. I frankly think they should do those things in terms of their planning developments or being able to audit a public administrator. Those are some of the examples they have brought up. Those are things we do think they should be able to do. However, when it comes to business, we want to come back here and have that conversation in a broader context.

We talked about the crazy things that happen. Here at the Assembly we have 63 people; there are 63 people who are going to make a decision. In some of these jurisdictions you have five people making that decision. It is not hard to point to three people who may be a little off-kilter who could pass an ordinance that is going to have a far-reaching impact. It may not just impact that county, but could impact the entire state and business across the country. We have seen that example in other places. We saw it in Spokane County, Washington, where they were dealing with a local problem with phosphorous in their river. They decided they were going to ban phosphate. What happens when you ban phosphate in soap? That means all of the dish soap companies stop putting phosphate in their soap, and I am sitting here in my kitchen in Reno, Nevada and my wife is saying we need a new dishwasher because ours is not working right. The factories did not have the time to retool.

The language in section 7 of the bill does give us some pause that we may have to come back here when we are talking about commerce. We are going to come back here to have that discussion about what the impact on business is going to be before we give the county that ability to pass an ordinance or law that is going to have a broader impact than just on that local jurisdiction.

**Chairman Ellison:**

You all worked a lot on this bill. Would I rather face five of the lobbyists from the Retail Association of Nevada (RAN) or 10,000 of the members of the commercial industry they represent at a meeting of county commissioners? I would rather meet them here. However, they have a day-to-day contact with the county commissioners, do they not? They have a lot of power when

counties are trying to make ordinances and RAN does not like it. The business people have a lot of power to voice their opinions.

**Paul Enos:**

I have three people on my staff. We deal with 17 counties. We have 18 different jurisdictions. When you look at the charter cities and general law cities, that is 35 different jurisdictions. The business folks, my truckers in those communities, they are driving. If they are sitting in a city council meeting or a county commission meeting, they are not making money. They pay me to be here at the State Legislature to watch these things and how they are going to affect them. I do think having that language that talks about those things that are substantially regulated by the state to remain with the state is good. We are limiting the counties from being able to compound those rules and regulations in those particular areas. I think that is a good protection for them so that you do not have to have my truckers sitting in a county commission meeting asking how is this going to impact me from Lander County to Nye County to Storey County?

**Chairman Ellison:**

I have sat on a city council, a board of county commissioners, and this Committee, and I will tell you the upset business people will fill up the rooms because it affects them on a day-to-day basis. I think this is where it gives them the power to do that because they are one-on-one; it is right in their home base.

**Paul Enos:**

I want to be clear that with the language that is in section 7, subsection 2, we are not talking about impacting business. We are not talking about passing ordinances that are going to have an impact on businesses. If we are talking about granting them more than that and having the ability to start regulating business and regulating commerce where it is today, my position on this bill is going to be very different. However, I do not think that is where we are. I think we are trying to talk about functional home rule. I think we are trying to talk about those issues that impact counties' own management. If we start talking about regulating business at these various local government levels, I want to come here and have that conversation in a broader context. That is why we are neutral on this bill instead of opposing it. We feel okay with the language that is in section 7 of this bill. However, if we are talking about doing more than that, we are going to have issues.

**Chairman Ellison:**

You are reading more into this bill than I am. I am telling you that on a day-to-day basis, the people who have the most power are the people who are

at home and have direct contact with that business. Whatever the county does, the city does. The people in those cities and counties are going to respond. Consider the meeting we just had on fracking and the response we had from all of the small towns.

**Paul Enos:**

Again, Mr. Chairman, we are talking about something that was substantially regulated by the state. If we were talking about an individual county regulating that type of activity and we are going to potentially have 35 different rules with all of the different jurisdictions across the state, we are going to have some issues with that. Now, if we are talking about functional home rule for these counties, if we are talking about giving them the ability to manage their own affairs, amen. I want them to be able to do that. That is efficient and effective government. When we talk about getting into some of those other areas that you just brought up, I think you are going to have a lot of issues.

**Chairman Ellison:**

I do not think so. I think the closest government to the people is the counties and the commissioners who meet every two weeks.

**Paul Enos:**

Another benefit of handling it at the state level is that we do have technical expertise. Since you did bring up fracking, we have people at the Division of Minerals who are experts in borehole integrity. We have people at the Department of Environmental Protection, State Department of Conservation and Natural Resources who are experts in water quality and air quality.

**Chairman Ellison:**

Are you saying the county commissioners are not experts? Are they not elected?

**Paul Enos:**

They are elected, but no, they are not experts. They do not have that technical expertise.

**Chairman Ellison:**

I wish you would have said that two months ago in front of Elko County.

**Paul Enos:**

I will tell you that Elko County Commissioners are wise enough. The folks from Elko County do not want to be the ones who are regulating fracking. They do think that is a good place for the state to be regulating it because they do have that technical expertise. That is where we want to have those things regulated.

**Chairman Ellison:**

We have a question from Assemblyman Wheeler.

**Assemblyman Wheeler:**

If someone has an electrical contracting business in Elko, and it says "Ellison Electric" on the side of his truck in 3.5-inch letters, that is okay in Elko County because their ordinance says you can go up to 4 inches. Then he drives down to Lander County and their ordinance says that "Ellison Electric" can only be in 2-inch letters, so we are going to give you a \$100 ticket for breaking our county ordinance. Does that seem fair to you?

**Paul Enos:**

Absolutely not. I think those are the exact kinds of things we are trying to address with section 7, subsection 2 of this bill.

**Assemblyman Wheeler:**

However, that particular example is not substantially regulated by the state, is it?

**Paul Enos:**

In that case, you are probably correct.

**Chairman Ellison:**

Are there any other questions from the Committee? [There were none.] Mr. McDonald, you did say there was another letter submitted for the record.

**Jered McDonald:**

Yes, sir. We did receive another letter from Mr. Kenny Bent ([Exhibit D](#)).

**Chairman Ellison:**

Thank you. I did talk with him and he had some good concerns. Thank you, Mr. Enos. We will keep this discussion open because there is a lot to talk about.

**Paul Enos;**

Mr. Chairman, I would like to reiterate that we are in favor of functional home rule. We do want to have that limitation on commerce. I do want to make that clear.

**Assemblywoman Dooling:**

I am happy to hear that all of this discussion is going on to make this more clear. On one hand, we are talking about the language and binding law that is in here. On the other hand, we are hearing that is not really the intent when we

hear examples. That is all going on in here and we cannot clear it up. I think it would be wonderful if everyone can get together and make this much more succinct.

**Chairman Ellison:**

Are there any other questions? [There were none.] Is anyone else wishing to testify as neutral to the bill? [There was no one.] Mr. Fontaine, please provide closing comments.

**Jeff Fontaine:**

I feel like I have been through the wringer this morning. I will say that this is now my fifth session with NACO. When I first started with the Association, reversing Dillon's Rule, getting home rule, getting functional home rule were all issues we brought forward. I would like to thank this Committee for the time you have given us this morning. In my opinion, this is the most in-depth and comprehensive discussion we have had about our interest in getting functional home rule, and that is all we are talking about here, that has taken place. I am also encouraged by those who are concerned and their interest in understanding why we are here trying to get additional flexibility through functional home rule for counties. Quite frankly, one of the reasons we feel this is important is to help the business community, to help the people the counties serve. I gave you a number of examples where that is the case.

The specific language that is in this bill stems back to an in-depth study by an interim committee in 2010, which determined with help from LCB and testimony from individuals like myself and experts in the field of Dillon's Rule, home rule, and local government, that the way to address what we are trying to accomplish today is by changing Dillon's Rule, but also adding in very specific parameters to make sure that the kinds of concerns about what reversing Dillon's Rule would mean are addressed. I believe we have a very clear legislative record. We have statements of intent. We have had a very good analysis, and I would like to thank Mr. Powers for his in-depth understanding of what we are trying to do. I know what it means from a practical standpoint for our counties, but from a legal perspective, I really appreciate his analysis. We have all of that.

A concern that has been raised is that we are changing 130 years of what the rule of law has been in this state. Goldfield was the largest city in our state 130 years ago. We are not the same state as we were 130 years ago. I understand that change is difficult; sometimes it is scary. We can all conjure up what might happen. Ultimately, you have the authority and responsibility to make sure we do what we say we are going to do. Once again, I do not want to be back here in two years, I do not even want to have to take a phone call in

the interim about anything a county might want to do. That is not what we want to do. We want to be able to respond to our constituents in the most effective manner possible.

Assemblyman Flores, thank you for your comment about what is the difference between what we do here and what the counties do at the local level. They meet with their constituents every two weeks. They see them all the time at the grocery stores. They see them at the ball fields. They interact with these people. If they screw up, they will not be reelected. They are going to hear about it. You are going to hear about it.

Commissioner Hastings mentioned this: sure, they were anticipating Tesla and Pumpkin Hollow and USA Parkway. However, you do not know what is going to happen in your county, you do not know there is a problem you need to address until it happens. We need to be nimble. We are back to being one of the fastest growing states in the nation. Yet, we operate under an archaic principle that says we have to come back here every two years to address the needs of our dynamic state. That is what we want to be, a growing dynamic state.

I want to thank all of you for taking the time to listen to this issue. It is not an easy one to understand. It has taken me a very long time to grasp the concepts here. That is what they are: concepts. There is no constitutional or statutory provision that talks about home rule or Dillon's Rule; they are constructs. We are encouraged that there seems to be some sort of interest in helping us do what we need to do. If we need to tweak the language to do that, we will be happy to work with those who are opposed as well as this Committee.

**Chairman Ellison:**

Thank you, Mr. Fontaine. One thing I have always been is pro-business. The business community is the backbone of this country. The business community should have a voice in almost everything. They cannot always be here every two years to fight an issue when they can do it at home every two weeks. It could be anything, it could be the abandoned vehicles. I do not know how many times they have shown up at the meetings of county commissioners and city hall to say, get rid of these dang cars.

I bought a house for \$1 once to rip it down because the city could not legally tear the house down. I bought the house for \$1, and we brought in tons of equipment to tear this house down because it was filled with hypodermic needles and teddy bears. We ripped the house down, and on Monday morning we handed them back the deed. The city could not do it, but we did it.

They were bound by law. That is what it comes down to: being able to operate on a day-to-day basis.

**Jeff Fontaine:**

I forgot to mention one more item related to Assemblyman Wheeler's question about the lettering on trucks. Counties can do that today. Counties have that authority under their zoning laws.

**Assemblyman Wheeler:**

We can fix that.

**Jeff Fontaine:**

That is what I was afraid of. The point is, if the counties have the authority to do things today that are unique to their counties, they are not doing it because they recognize what the impact would be. There is no county out there that I know of that wants to impede business or slow progress in its community and hurt business. When we have our meetings, when I speak to our representatives in the counties, they are very much interested in working with business and doing the right thing. It is always a concern and you could say that it could happen, but it is just not happening.

**Chairman Ellison:**

Are there any other questions? [There were none.] We have had a good discussion today. Keep the communication open. We will now close the hearing on S.B. 29 (R1). Is anyone here for public comment? [There was no one.] This meeting is adjourned [at 10:52 a.m.].

RESPECTFULLY SUBMITTED:

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Aubrie Bates  
Committee Secretary

APPROVED BY:

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Assemblyman John Ellison, Chairman

DATE: \_\_\_\_\_



**EXHIBITS**

**Committee Name:** Assembly Committee on Government Affairs

**Date:** April 24, 2015

**Time of Meeting:** 8:36 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
S.B. 29 (R1)	C	Joni Eastley, Nye County	Letter
S.B. 29 (R1)	D	Kenny Bent, Private Citizen, Pahrump, Nevada	Letter in Opposition