MINUTES OF THE
SENATE COMMITTEE ON GOVERNMENT AFFAIRS

Seventy-Eighth Session
March 16, 2015

The Senate Committee on Government Affairs was called to order by Chair Pete Goicoechea at 1:33 p.m. on Monday, March 16, 2015, in Room 2135 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Pete Goicoechea, Chair
Senator Joe P. Hardy, Vice Chair
Senator Mark Lipparelli
Senator David R. Parks
Senator Kelvin Atkinson

STAFF MEMBERS PRESENT:

Jennifer Ruedy, Policy Analyst
Darlene Velicki, Committee Secretary

OTHERS PRESENT:

J.J. Goicoechea, Chair, Eureka County Commission
Jake Tibbitts, Natural Resources Manager, Department of Natural Resources, Eureka County
Steve Walker, Lyon County; Storey County
Steve Bradhurst, Central Nevada Regional Water Authority
Justin Harrison, Las Vegas Metro Chamber of Commerce
Jeff Fontaine, Executive Director, Nevada Association of Counties
Jack Mallory, Southern Nevada Building and Construction Trades Council
Kay Scherer, Deputy Director, State Department of Conservation and Natural Resources
Patrick Sanderson, Laborers' International Union Local 872 AFL-CIO
Jim Solide

Chair Goicoechea:
I will introduce Bill Draft Request (BDR) 20-710.

BILL DRAFT REQUEST (BDR) 20-710: Makes various changes relating to the relocation of certain facilities that provide telecommunications. (Later introduced as Senate Bill 335.)

SENATOR HARDY MOVED TO INTRODUCE BDR 20-710.

SENATOR LIPPARELLI SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR PARKS WAS ABSENT FOR THE VOTE.)

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We will hear one bill, Senate Bill (S.B.) 157.

SENATE BILL 157: Enacts the State and Local Government Cooperation Act. (BDR 22-706)

J. J. Goicoechea (Chair, Eureka County Commission):
The Eureka County Commission supports S.B. 157. *Nevada Revised Statutes* (NRS) 277 granted cities and counties the authority to represent their interests and to consult and coordinate with State and local governments. Federal agencies are required through the Federal Land Policy and Management Act of 1976 to coordinate with local government. It seems strange that Nevada would not mandate coordination between its agencies and local government.

As an example of coordinated planning, the 2014 Nevada Greater Sage-grouse Conservation Plan, adopted in October 2014, in section 5 on page 36, indicates the specific duties of the Sagebrush Ecosystem Council (SEC). They include, "Coordinate and facilitate discussion among persons, federal and state agencies, and local governments concerning the maintenance of sagebrush ecosystems and the conservation of the sage-grouse." The plan continues on page 41:

> Thirteen of Nevada's seventeen counties, as well as several cities are located within the [Sage-grouse Management Area] SGMA. The [Sagebrush Ecosystem Program] SEP will work with local

> governments to address any potential urbanization conflicts with sage-grouse habitat … when a county or city considers a change to its master plan for a land use of higher intensity affecting a SGMA.

We have heard that federal agencies see a lack of assurances in Nevada's plan. This is one area where we think that coordination would be beneficial. I chair the SEC. If we want to show the federal government that our plan will work, we need to indicate that we are all in this together. State agencies and local governments need to move in the same direction to make sure that State and local plans and policies do not contradict each other.

We have had discussions with the State Department of Conservation of Natural Resources Director, Leo Drozdoff. He has representatives here today. I gave him my word that I would tell this Committee that we have worked together. We are still committed to work with his Department and others to resolve any concerns. To that end, we are offering Proposed Amendment 9753 (Exhibit C). This amendment limits the applicability of S.B. 157 to county government. That notwithstanding, we would like to work with incorporated towns and tribes. We have good working relationships with many State agencies, but I know this will not continue forever. I will not always be in my role; directors come and go; state and local government leadership changes. The purpose, intent and hope of S.B. 157 is to create a pathway, a framework, upon which to build cooperation and coordination for the future.

Jake Tibbitts (Natural Resources Manager, Department of Natural Resources, Eureka County):

Originally, we proposed various talking points. Some of the language in S.B. 157 is not what we intended. Section 2 of the proposed amendment changes the name of the act from State and Local Government Cooperation Act to State and County Coordination Act. We stand behind the term "coordination" in that it is different from the term "cooperation." Coordination means working in partnership on the same level toward common goals, which is the best for both entities. The antonym of "coordination" is "subordination." The intent of this bill is to move forward on a coordinated level toward a common vision.

Sections 3, 4 and 5 of the bill have all been deleted in the amendment. Section 4, specifically, had defined an "interpretive ruling" which was further referred to throughout the bill. We did not originally propose this idea, and the definition was unclear. We have had many questions on its definition and its

application. We felt it would be cleaner to eliminate it, as it did not convey what we originally anticipated.

Section 5 defined "local government," casting a large net to include: fire protection districts, irrigation districts, water districts, school districts and more. We thought this wide application was too comprehensive and cumbersome. We pared it down to just counties, as most of the planning and policy statutes apply to county government. *Nevada Revised Statutes* 277 describes State planning processes for both cities and counties. Tribal interests may also like to be included as some incorporated cities have indicated. The intent is to include other entities that should be at the table beyond the county.

Chair Goicoechea:
Is your intent to define that counties, cities and tribes are included rather than broad-based "local government"?

Mr. Tibbitts:
Yes, we propose to pare it to counties; but including incorporated cities makes sense because the statutes speak about counties and incorporated cities. There has been interest from tribal governments as well.

Senator Hardy:
That would change the title of the bill.

Mr. Tibbitts:
Yes, the title changes with the amendment. Section 6 of the amendment concerns mostly conforming language. Section 7 is important as it reflects our intent. We have no ulterior motives. The intent is to facilitate cooperation and coordination. The goal is to provide consistency between county plans, policies and controls and the same at the State level. Statutes in many places, specifically NRS 277, indicate that the authorities granted to counties and cities are duplicated at the State level. Therefore, it makes sense that coordination is necessary.

Section 7, subsection 2 says, "Encourage communication and foster coordinated working relationships … ." This is the intent. It is not the intent to abrogate the authority of any State agency. It is to work together, to find consistency. It is knowing that there will be disagreements but also finding a way to work together to do what is best for the State and its communities.

Senator Lipparelli:
I am confused. You opened your statement by saying that the term "coordination" has a defined meaning requiring an obligation on the part of the State. You just said this does not abrogate any responsibility of the State. Now you say the opposite. Which one of those do you want to pick?

Mr. Tibbitts:
It does not abrogate any of the State agencies' authorities under statute. This would add a layer of responsibility to coordinate with counties. It does not abrogate State law. Plans and policies at the county level do not trump State law. It provides consistency, where possible, as addressed in section 8.

Senator Lipparelli:
When a State agency position is adverse because you do not believe it is "coordinated," are the counties and cities free to do whatever they want?

Mr. Tibbitts:
No, all entities must comply as long as State law was applied at the departmental level. State law always trumps local government.

Senator Lipparelli:
Thank you.

Chair Goicoechea:
To clarify, you are talking about a meeting of the minds at the table. For the record, the bottom line is that in a difference of opinion between a local government or tribe and a State agency, the State agency would prevail.

Mr. Tibbitts:
That is the intent. Section 9 of S.B. 157 in the proposed amendment says that nothing in the Act shall be interpreted to "limit the power of a state agency to carry out its statutory duties and responsibilities." The name of the bill must also be changed in section 9 of the amendment. The intent is not to abrogate any authority from any State agencies. If clarifying language is needed, we would be happy to work toward including it.

Chair Goicoechea:
Does that clarify it for you, Senator Lipparelli?

Senator Lipparelli:
I will continue to listen.

Mr. Tibbitts:
Section 8 of S.B. 157 and Proposed Amendment 9753 speak to the responsibilities of State agencies. The amendment says, "Before a state agency implements, enforces, expands or extends the applicability of a rule, plan or policy within the boundaries of a county, the state agency must to the extent possible … "; then it lists the specific actions. All these actions under section 8 are only applicable, according to the added language, to the extent possible.

When State law does not allow an action or a State agency cannot accomplish a task, then it will not be possible to do what section 8, subsection 1 of the proposed amendment requires. Section 8, subsection 1 lists the following required State government actions: "(a) Make itself aware of any relevant plan, policy or control of the county; and (b) Make the rule, plan or policy of the state agency consistent with the rule, plan or policy of the county." I reiterate, this is "to the extent possible."

Chair Goicoechea:
How do you see this operating? If a State agency brings forward a proposal, regulation or a plan to deal with an issue, would the next step be the county receives notification, then it contacts the agency to ask for a meeting? I can see the opposition from the State agencies if they have to meet with local government every time they take an action. We will be bogged down. How do you see that process working?

Mr. Tibbits:
Much of this language comes from current obligations of federal agencies. We suggest that State agencies be at least aware of the counties' plans, policies and controls and develop their actions consistent with these. *Nevada Revised Statute* 278.655 outlines the purposes and controls of comprehensive physical planning. Subsection 1 says, "Comprehensive physical planning shall to the extent feasible," and subsection 1, paragraph (d) continues, "Set a pattern upon which state agencies and local government may base their programs and local area plans." Therefore, there is language in statute about the intent for State agencies to develop plans and programs based on the locally developed plans.

Senate Bill 157 is intended to meld together these two aspects of planning. These obligations are in statute. In section 8 of the proposed amendment to S.B. 157, we outline some ways the State agencies may help local governments in their planning processes. In the original bill, there were obligations to which State agencies would have to adhere without flexibility. Now the amendment, section 8, subsection 2, says that State agencies "may" and, changing the original bill language,

> (a) Inform and solicit comments from each county that may be affected; (b) Allow a reasonable amount of time for each county informed pursuant to paragraph (a) to submit comments; (c) Consider any comments received from an affected county.

Therefore, if a State agency believes it needs more information before making a plan or taking an action consistent with a county's planning, it may do the listed actions, but S.B. 157 does not require these actions. Agencies can just be aware of county plans and policies and do the best they can to develop their actions consistently. Our intent is to have that open conversation, to be at the table together, to work together. It is not our intent to make this an overly cumbersome process.

Chair Goicoechea:
When a State agency comes forward with a rule, plan or policy—a county, tribe or incorporated city would have to point out an inconsistency to the State agency. Would it be up to the State agency to respond if it chose?

Mr. Tibbitts:
Yes, that is correct. We are hoping that the process will find consistency, but it may not. Section 8, subsection 3 of the amendment speaks to the last-ditch effort if consistency is not reached. A request may be submitted to the Governor, or his or her designee, to consider the inconsistency—who may accept the request or not. If the request is accepted, he or she may recommend a course of action to the State agency or county to address the inconsistency. The overall intent is to arrive at consistency, reserving the opportunity to run it up the flagpole if expectations are not met.

Nevada Revised Statute 278.670 allows the Governor to step in when the county has not created comprehensive land use planning and zoning. It outlines what the Governor may do and recognizes the importance of county and local

plans. *Nevada Revised Statute* 278.655 lists what shall be addressed in the plan: physical development, human resource development, natural resource development, attainment of optimum living environment and in subsection 1, paragraph (d), "Set a pattern upon which state agencies and local government may base their programs and local area plans." This is our goal.

We have received comments from some who are uneasy with the Governor's review process. They speculate that this would inundate the Governor with requests to review inconsistencies. The intent is to work together to find a common vision and to move forward with what is workable for everybody. If the process inundates the Governor, it will become an issue, as there is enough on the Governor's plate.

Provisions in NRS 321 address inconsistencies between adjacent counties or overlapping issues. There is an opportunity to run issues up the flagpole when the parties cannot reach consistency among themselves. This raises issues higher in order to move forward.

Senator Hardy:
In southern Nevada, we had the same problem. By statute, we instituted the Southern Nevada Regional Planning Coalition. You are trying to do the same thing. We did not attempt to take away the ultimate power of the State. We kept the appeal process. Long before the appeal process, everybody sat at the same table. Do you envision having meetings on a regular basis to obtain input before the plan is written?

Mr. Goicoechea:
As counties become aware of State agency regulatory or statutory plans or changes, counties should take responsibility to ask the State agency to discuss concerns and work through them. We continually do this with Director Drozdoff and the divisions of the State Department of Conservation and Natural Resources. It works well for Eureka County. I would like to have the appeal option going forward for the benefit of all local government.

Steve Walker (Lyon County; Storey County):
We support S.B. 157. We agree with Mr. Goicoechea that it enables counties. It is their choice to participate. Both Lyon and Storey Counties want to make sure this is implied.

Steve Bradhurst (Central Nevada Regional Water Authority):
The Central Nevada Regional Water Authority is an eight-county unit of local government. We support S.B. 157 as amended by Eureka County. It is a step in the right direction to enhance State and local government cooperation and coordination. One possible complaint is that it may take the State's time, but cooperation and coordination at the front end actually save time. If it is not done at the front end, local governments may be surprised and upset at the back end. Before you know it, the process may bog down with hearings and complaints to the Governor. State and local governments are responsible for providing services to our citizens, protecting our environment and quality of life, and for economic development. These two levels of government have so much in common, it makes sense to enhance the partnership.

Justin Harrison (Las Vegas Metro Chamber of Commerce):
We support S.B. 157. We appreciate the increase in transparency and coordination between State and local governments that would be brought because of this bill.

Jeff Fontaine (Executive Director, Nevada Association of Counties):
We also support S.B. 157. I echo many of Mr. Bradhurst's comments with regard to making the processes smoother so local government concerns are addressed up front. During my career, I managed programs in two State agencies, and I can attest to the fact that there were instances where these concepts would have been helpful. We went forward with policy changes and proposed rules but later found out that concerns at the local level had not been considered. While the agencies are well-intentioned, issues at the local level may not necessarily be considered up front.

A few years ago, this body authorized an Interim Technical Advisory Committee for Intergovernmental Relations which sunsetted. There were State agency heads, county elected officials, city council members and mayors on the Committee. The working group was an eye-opener for both local officials and State agencies. Members were committed to understanding the issues. This was and still is a good process. We definitely support S.B. 157.

Chair Goicoechea:
The State agency must determine the applicability of a plan to a particular jurisdiction. Since you have been on both sides, do you think there should be

more emphasis on the city or county response to the State or vice versa? I want to figure out how the process connects.

Mr. Fontaine;
At the federal level, there are requirements for federal agencies to notify county governments that I represent. Frankly, several counties are simply unable to respond. Seven counties do not have county managers. It is up to the county commission to respond, but in many cases in Nevada, the counties lack adequate resources to do that. Our organization, the Nevada Association of Counties, can help counties participate in this process.

Chair Goicoechea:
My concern is that we do not have a publication like the *Federal Register* on the state level. We are not trying to create one. We want to make sure we avoid that. A key piece of this legislation is how to deal with the direction of notification: whose responsibility it is to notify and which way it flows. That will have a big bearing on whatever fiscal note might be presented in the future.

Jack Mallory (Southern Nevada Building and Construction Trades Council):
We appreciate the underlying functional concepts of S.B. 157, but we are concerned that it is too broadly drafted. As for the proposed amendment, a State agency engaged in rule-making would have to notify all 17 counties that it may affect regional or county plans in order to give the counties an opportunity to comment. According to the language in S.B. 157, State agencies may have to review county plans before making determinations, which may prove to be cumbersome. Furthermore, in rule-making or in developing plans at the county, there is always notification and transparency. Notification goes to the general public for input and the opportunity to participate. We are concerned that S.B. 157 will interfere inadvertently with this historic policy.

Chair Goicoechea:
Your last statement intrigues me. Processes are transparent regarding ordinances or any decisions on the local government level, city or county. Typically, at the State level, we go through the workshop process to establish regulations. The process is fairly open and transparent. The only place where I could see there might not be a level of transparency might be if an agency, in the normal process of doing business, issues a plan, policy or a decision that solves an issue. I believe the process described in S.B. 157, however cumbersome, definitely offers more transparency because the agencies would

have to go to another level of coordination. I am afraid that it would be hard to work, but it would be a more open process.

Mr. Mallory:
I do not disagree with you.

Senator Lipparelli:
I am concerned but perhaps just not well enough informed. I understand the intention as stated, but there seems to be tension inherent to the proposition. On one side, the State agency is charged with enforcing law, rules, plans and policies. The agencies have a good faith understanding of the obligation, but requiring that before they act on that obligation—which many of them are sworn to uphold, they would have to check with the county to see if the action is okay. That is problematic.

Mr. Goicoechea:
We send an annual letter to federal agencies that Eureka County wishes to be a cooperating agency. Perhaps we should have included in the amendment that the provisions apply when a State agency receives a written notification from the county about a policy or procedure being considered. This written notice would trigger consultation. It would not be that the State agency could not go forward because of inconsistency, but rather, the county would be responsible to be the watchdog of its own backyard. If we recognize a problem, that would trigger the process from the county level.

Senator Lipparelli:
I am reading the proposed amendment, section 8, subsection 1 of S.B. 157, which is fairly clearly worded: "Before a state agency implements, enforces, expands or extends a rule, plan or policy within the boundaries of a county, the State agency must to the extent possible, (a) Make itself aware of any relevant plan, policy … ." This is where the tension comes from, as we are obligating the State agency to do something beyond that which they have an obligation to do.

Mr. Tibbitts:
I can understand the confusion. I would like to point out that the Nevada Legislature has already mandated local planning and policy development. *Nevada Revised Statutes* 321 speaks to the State lands side. *Nevada Revised Statutes* 278 breaks it down extensively by population levels and mandates what shall be in the local plan. Eureka County and others have

heeded that mandate and developed local plans. The purpose of Eureka County's plan is to have a say in the management of the lands and resources within our boundaries for the future. We would hope that the State agencies would be aware of plans, policies and controls in land use regulation developed at the local level. The amendment says that the agencies must make themselves aware. On one hand the Legislature has said that the local counties must develop plans and policies; on the other hand, we want to place these in front of the State agencies to engender consistency. It melds the statutory responsibilities of the State agencies and those of the counties for land use planning. Through S.B. 157, the two parties are brought together. Since the authority has been given to the counties for planning, the language in S.B. 157 says that the State agencies "must" make themselves aware based on that authority.

Chair Goicoechea:
I want to make sure that the Committee gives guidance regarding changes members wish to see in S.B. 157.

Kay Scherer (Deputy Director, State Department of Conservation and Natural Resources):
Both representatives are accurate to say that they have been working closely with the Department of Conservation and Natural Resources about concerns we have with S.B. 157. Regarding Senator Lipparelli's concerns, there is a difference between planning, enforcement and regulation. We have the State Engineer's Office and the Division of Environmental Protection which has much delegated authority from the federal government. This is good for Nevada. We want delegated authority to handle U.S. Environmental Protection Agency related issues.

The ability to serve as regulators, to enforce and accomplish related tasks versus engaging with the counties in the planning activities, is the area we would like to continue to discuss. Section 8 of S.B. 157 indicates that a State agency must carry out certain tasks "to the extent possible." The interpretation of this point, in a regulatory setting, may lead to litigation. The question may be did the State do what it was supposed to do to the extent possible? We are neutral on the bill.

We understand what Mr. Goicoechea and Mr. Tibbitts are attempting to do, and it is what we try to do in the Department. We really believe in working with the

counties. You heard Mr. Goicoechea say that the same players will not always be there. The agency would like to move forward so that S.B. 157 encourages cooperation and collaboration but does not stand in the way of other Department obligations. The simple statement in section 9 shows the intent of S.B. 157, but the mechanisms established in section 8 cause us concern.

Senator Hardy:
Do I hear that you have reticence about the "to the extent possible" language in section 8 because it could lead to law suits or that you like that language because it gives flexibility?

Ms. Scherer:
Our concern is that the language could cause litigation. We are worried about the flexibility. Individuals in hot debate about regulation may say that the agency did not take all the steps it was supposed to take. It is another possible avenue to dispute.

Senator Hardy:
You do not like the words, "to the extent possible."

Ms. Scherer:
I am here in the neutral position, but those words give us concern.

Senator Hardy:
I get the message, thank you.

Chair Goicoechea:
I would prefer that you air your concerns. Perhaps you would rather do it off-line with the group. Come up with the language that gives you comfort. We all agree, including Mr. Mallory, that S.B. 157 could be a good tool if we word it right. If you work through it and bring language upon which you agree back to us, we probably can also agree.

Patrick Sanderson (Laborers' International Union Local 872 AFL-CIO):
I do not see a fiscal note. What would it cost to implement this? I am completely neutral. I would like to understand how it is going to work.

Chair Goicoechea:
I will let staff explain several pages. The original bill had a significant fiscal note.

Ms. Ruedy:
There were pages and pages of fiscal notes attached to S.B. 157. Most of them indicated zero impact. The State Board of Pharmacy reflected $25,000 in the first year, $55,000 in the second year and $55,000 in future biennia. The State Department of Conservation and Natural Resources indicated the more significant fiscal cost in FY 2015, $73,000; FY 2016, $77,000; and in future biennia, $150,000. Out of all of them, only two indicated more than zero.

Chair Goicoechea:
Did those figures refer to the amended bill?

Ms. Ruedy:
Those figures reflect as requested.

Chair Goicoechea:
If those figures were as requested, then the figures significantly softened up since then.

Jim Solide:
I am not sure I understand all of this bill. I am not a lawyer. Clark County and Washoe County belong to the International Council on Local Environmental Initiatives (ICLEI) which helps counties with planning rules and laws. I am concerned that S.B. 157 would determine this relationship in other counties. I would not want this to spread to other places where it is not wanted.

Chair Goicoechea:
Was there a question you wanted to ask?

Mr. Solide:
Does this law or rule make it easier for equity to be spread around to other counties through this cooperation agreement, or would it stay centralized in Clark County and Washoe County?

Chair Goicoechea:
I assume that your group is free to go to any county or jurisdiction at this time. Your group is not regulated by statute, right?

Mr. Solide:
These two counties belong to ICLEI, and I was concerned that it would be spread around the State.

Chair Goicoechea:
You are concerned about it being spread?

Mr. Solide:
Yes, I was concerned about the rules and regulations concerning environmental rules and regulations being pushed onto other counties through this cooperative agreement if they did not want it. Perhaps I am picking up something that really is not there.

Chair Goicoechea:
If this organization is available to Clark County and Washoe County, other jurisdictions definitely could also access the organization should they choose to do so. I do not know if they could be forced into this. I do not even know if Clark County and Washoe County are statutorily forced into this relationship. I would have to talk to some of the experts in Clark County or Washoe County. Perhaps you could answer this for me. Are they forced to be part of this?

Mr. Solide:
No.

Chair Goicoechea:
Therefore, it is an option for counties, incorporated cities and tribes rather than a mandate.

I will close the hearing on S.B. 157. The meeting is adjourned at 2:24 pm.

RESPECTFULLY SUBMITTED:

Darlene Velicki,
Committee Secretary

APPROVED BY:

Senator Pete Goicoechea, Chair

DATE:

EXHIBIT SUMMARY				
Bill	**Exhibit**		**Witness or Agency**	**Description**
	A	1		Agenda
	B	4		Attendance Roster
S.B. 157	C	3	J.J. Goicoechea	Proposed Amendment 9753