

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

**Seventy-Eighth Session  
April 27, 2015**

The Senate Committee on Government Affairs was called to order by Chair Pete Goicoechea at 1:03 p.m. on Monday, April 27, 2015, in Room 2135 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412E of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

**COMMITTEE MEMBERS PRESENT:**

Senator Pete Goicoechea, Chair  
Senator Mark A. Lipparelli  
Senator David R. Parks  
Senator Kelvin Atkinson

**COMMITTEE MEMBERS ABSENT:**

Senator Joe P. Hardy (Excused)

**GUEST LEGISLATORS PRESENT:**

Assemblywoman Robin L. Titus, Assembly District No. 38

**STAFF MEMBERS PRESENT:**

Jennifer Ruedy, Policy Analyst  
Heidi Chlarson, Counsel  
Darlene Velicki, Committee Secretary

**OTHERS PRESENT:**

Ernest C. Schank, President, Board of Directors, Truckee-Carson Irrigation District  
Norman Frey  
Ed James, General Manager, Carson Water Subconservancy District  
Tara Trovato, Frey Ranch Estate Distillery; Churchill Vineyards

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Wes Henderson, Executive Director, Nevada League of Cities and Municipalities  
Steve Walker, Carson City; Douglas County; Eureka County; Lyon County;  
Storey County  
Adam Mayberry, City of Sparks  
Brian McAnallen, City of Las Vegas  
Tom Grady, City of Fallon  
Dagny Stapleton, Nevada Association of Counties  
Scott Gilles, City of Reno  
Jay Parmer, Nevada Home Builders Association  
Sean Sever, Nevada Department of Transportation  
John Terry, Nevada Department of Transportation  
Richard Daly, Laborers' International Union of America Local 169  
Brian Reeder, Associated General Contractors, Nevada Chapter  
Chris Ferrari, Associated General Contractors of Las Vegas; Nevada Contractors  
Association

**Chair Goicoechea:**

We will take Assembly Bill (A.B.) 415 first.

**ASSEMBLY BILL 415 (1st Reprint)**: Revises provisions relating to the use of water in a federal reclamation project. (BDR 48-928)

**Assemblywoman Robin L. Titus (Assembly District No. 38):**

Assembly Bill 415 is critical for the extreme drought situation in which we find ourselves. I have submitted my testimony ([Exhibit C](#)) and letters from constituents, Nathan Wadsworth and Pete Olsen, in support of A.B. 415 ([Exhibit D](#)) and ([Exhibit E](#)).

**Ernest C. Schank (President, Board of Directors, Truckee-Carson Irrigation District):**

I shall read my testimony ([Exhibit F](#)). A longer version of my testimony with a copy of the Joint Testimony of Truckee-Carson Irrigation District, Pyramid Lake Paiute Tribe, City of Fallon, Churchill County and Sierra Pacific Power Company presented on May 7, 1999, before the Senate Committee on Natural Resources, Agriculture and Mining in support of A.B. No. 380 of the 70th Session ([Exhibit G](#)) is attached.

**Chair Goicoechea:**

For the record, this only pertains to a federal reclamation project.

**Mr. Schank:**

That is correct.

**Chair Goicoechea:**

Is the reflection on June 12, 2003, tied to A.B. No. 380 of the 70th Session?

**Mr. Schank:**

Yes.

**Chair Goicoechea:**

Assembly Bill 415 says that it shall not impair any vested right established before June 12, 2003.

**Mr. Schank:**

That is correct.

**Chair Goicoechea:**

I want to establish that on the record.

**Norman Frey:**

I am a third-generation farmer in the Newlands Reclamation Project. It helps to sustain the City of Fallon and Churchill County. I support A.B. 415 because it will help farmers, like myself, to use irrigation water wherever they see fit for the best, most efficient economic benefit. The Bureau of Reclamation's interpretation of the law forces a farmer to apply water during drought to fields of lesser potential because water rights on the parcels are not contiguous. This leads to inefficiency in the use of water during crop rotations. This circumstance should not be tolerated nor promoted by statute. Water is a precious resource for a farmer. It is an extremely precious property right.

The farmer knows how to use his or her water for the highest and best economic benefit. It should not matter under the law whether a farmer's parcels of land are contiguous. Parcels and their associated water should be under the total lawful control of the farmer, who is the closest to the land.

**Ed James (General Manager, Carson Water Subconservancy District):**

We support A.B. 415. Churchill County is a member of the Subconservancy District. One of County's main concerns over the years is keeping agriculture a healthy, strong, viable part of the County. The Subconservancy District and the County have been working hand in hand to accomplish this. The bill would support this goal.

**Tara Trovato (Frey Ranch Estate Distillery; Churchill Vineyards):**

We support A.B. 415. We see this as an emergency bill during this historic drought. Our client, Frey Ranch Estate Distillery, operates 2,500 acres of both leased and owned property in Churchill County.

**Assemblywoman Titus:**

In the history of our Legislature, during very few years have we talked so much about water. We need to do everything we can to be proactive in this situation.

**Chair Goicoechea:**

We are not talking so much about water, but the lack of it. We have letters of support from two citizens, Nathan Wadsworth and Pete Olsen. I am comfortable as long as the bill pertains to the Bureau of Reclamation only, and we do not extend it beyond. The Subconservancy District has the mechanisms to control those waters. It would be extremely difficult to do this statewide.

We will now hear A.B. 19.

**ASSEMBLY BILL 19 (1st Reprint)**: Revises provisions governing the timing of the adoption of tentative budgets by certain local governments. (BDR 31-456)

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

Assembly Bill 19 was submitted to allow local governments the flexibility to hold required public hearings on their tentative budgets at a regularly scheduled meeting of each governing body. I have submitted my testimony ([Exhibit H](#)).

**Chair Goicoechea:**

This seems reasonable in a short bill.

**Mr. James:**

The Carson Water Subconservancy supports A.B. 19 but proposes a change ([Exhibit I](#)). We now have to conduct a special meeting after we do our final budget. Our proposed change to begin the hearing on the second Monday of the month would help us every time versus 5 out of 7 days in a month.

**Chair Goicoechea:**

The bill says "not sooner than the third Monday in May." Are you saying that a deadline of a week earlier would help you?

**Mr. James:**

The situation now is that if the month starts on a Tuesday or a Wednesday in May, we would then require a special meeting afterward just to meet the deadline because of the way the days in the month fit.

**Chair Goicoechea:**

With more testimony, maybe we can find out why they have the tight window. That week or 10 days does not seem reasonable since you have 30 days after you have filed your tentative budget.

**Steve Walker (Carson City; Douglas County; Eureka County; Lyon County; Storey County):**

We support A.B. 19.

**Adam Mayberry (City of Sparks):**

The City of Sparks supports A.B. 19. It would help us improve the efficiency of our budgeting process.

**Chair Goicoechea:**

Do you see a reason why the date should be the third Monday rather than the second Monday? What would the impact of that be?

**Mr. Mayberry:**

Our meetings in the City of Sparks are on the second and fourth Mondays of the month, so having a budget meeting during the final 2-week window of the month would benefit us. It would provide far more efficiency in scheduling the meeting in which we would only adopt the tentative budget.

**Chair Goicoechea:**

If we said the second Monday rather than the third Monday and not later than the last day in May, would there be no impact for you?

**Mr. Mayberry:**

There would be no impact to the City of Sparks.

**Brian McAnallen (City of Las Vegas):**

We are able to follow the process under current statute. Assembly Bill 19 gives us flexibility in case there is a challenge.

**Tom Grady (City of Fallon):**

We support A.B. 19.

**Dagny Stapleton (Nevada Association of Counties):**

This bill would also benefit county governments in their budgeting process. We support A.B. 19.

**Scott Gilles (City of Reno):**

We support A.B. 19. It would allow the City of Reno to have these hearings on a regularly scheduled Wednesday. The public would then be more aware of these scheduled meetings. We have no problem with the amendment proposed by Carson City.

**Senator Parks:**

I had to comply with this statute in the 1970s, 1980s and 1990s. At that time, the significance was in creating a specific day for local governments to have public hearings. The statute quite elaborately designates the requirement for cities, counties and special districts. We always complied. The statute allows an individual who wants to cover the proceedings of several local governments—cities, counties and/or special districts—on separate days. I do not know of any overwhelming significance in retaining the current statute. The other requirements, namely posting notices, appear to be consistent with the past.

**Chair Goicoechea:**

I complied with this for 16 years as a county commissioner. I understand your point. I still struggle with the possibility of adverse impact given the amendment

to extend the period. I cannot think of any reason that it would have an adverse impact.

**Mr. Henderson:**

The original bill included the words "or before" the specified day in statute. The Department of Taxation took issue with this because it reviews all tentative budgets and either issues a certificate of compliance or a letter of noncompliance to the local governments. We worked with the Department to come up with the third Monday in May. The Nevada League of Cities and Municipalities has no problem changing it to the second Monday in May. However, we may want input from the Department of Taxation to make sure that does not restrict its ability to review the budgets and issue the certifications of compliance or letters of noncompliance.

**Chair Goicoechea:**

If they snooze, they lose. We will contact someone from the Department to make sure that it does not have a problem. I am sure staff members would want to close the window down so they are not working on budgets for a month or 6 weeks. It would be realistic to talk about another week. I will close the hearing on A.B. 19 and open the hearing on A.B. 25.

**ASSEMBLY BILL 25 (1st Reprint)**: Revises provisions governing the residential construction tax. (BDR 22-454)

**Mr. Henderson:**

Assembly Bill 25 proposes that the improvement of existing parks and park facilities is an authorized use of revenue derived from the residential construction tax (RCT). I have submitted my testimony ([Exhibit J](#)).

**Chair Goicoechea:**

It sounds like you have vetted this since I know there were some concerns. Does what you have today have the agreement of all sides?

**Mr. Henderson:**

We have been working with representatives of both the southern and northern chapters of the Nevada Home Builders Association to ensure their concerns are addressed.

**Jay Parmer (Nevada Home Builders Association):**

We support A.B. 25.

**Mr. Gilles:**

We support A.B. 25. It removes any doubt that the RCT may be used for the improvement of existing facilities with certain limitations. The language also clarifies that the City of Reno may improve park facilities as the monies are collected for infill projects but not new parks. This benefits the City of Reno.

**Mr. Walker (Carson City; Douglas County; Lyon County):**

We support A.B. 25 for the reasons presented.

**Mr. McAnallen:**

We also support A.B. 25 for the previously stated reasons. We appreciate the parties working together to come up with the language in the first reprint.

**Chair Goicoechea:**

I will close the hearing on A.B. 25 and open the hearing on A.B. 43.

**ASSEMBLY BILL 43 (1st Reprint)**: Clarifies confidentiality provisions governing certain documents. (BDR 35-377)

**Sean Sever (Nevada Department of Transportation):**

Assembly Bill 43 clarifies confidentiality provisions concerning certain bidding documents. I have submitted written testimony ([Exhibit K](#)).

**John Terry (Nevada Department of Transportation):**

The Nevada Department of Transportation (NDOT) has three methods of procurement: the design-bid-build process, which is the normal low-bid process; the design-build process; and the construction manager at risk (CMAR) process.

This bill would protect the confidentiality of the contractor team-submitted documents in the design-build procurement process and the CMAR process. We have had cases where we received public information requests to access proposals during the evaluation time. We ask that they be confidential during this period. We are not asking that NDOT information be confidential, only that the extensive proposal information submitted by the contractor teams be confidential until the notice of intent to award is released to the teams.



This bill would modify *Nevada Revised Statutes* (NRS) 408 under which the NDOT design-build process is defined and NRS 338 under which the CMAR process is defined. Friendly amendments are incorporated that add provisions to the selection process and the time when information is released.

**Senator Lipparelli:**

Why do we have to have this protection?

**Mr. Terry:**

An advantage could be gained by one team or another during the procurement process by having access to the other proposals. You may say that the teams have already submitted proposals, so what advantage could they gain? In the case of the design-build projects, we always have the opportunity for a best and final offer, although we do not use it, and we may conduct interviews. We ask that proposals submitted by contractor teams not be available to third parties or other contractor teams until the selection is complete to protect the selection process.

**Senator Lipparelli:**

What about the argument that more eyes are better than fewer eyes on these proposals?

**Mr. Terry:**

Those eyes can view the proposals after selection and notice of intent to award.

**Senator Lipparelli:**

Is that not too late?

**Mr. Terry:**

People could protest the selection at that point, but the intent is to have a fair selection process. Not allowing proprietary information submitted by one team to be available to another team until the process is completed is what we aim to protect. I will point out that certain confidential proprietary financial information submitted by these teams is never made public. That information is already protected. We intend to make public access to other information confidential until after the selection process is complete.

**Senator Lipparelli:**

How can you give me assurance that whatever selection chosen is optimized?

**Mr. Terry:**

The selection is made with extensive internal documentation in compliance with *Nevada Revised Statutes*. Teams thoroughly evaluate proposals and then make the selection. All of the process documentation, including the recommendation and scoring, is made available after the selection.

**Senator Lipparelli:**

Have there been occasions in the past that prompted disclosures, or has this recently become an issue?

**Mr. Terry:**

Yes. We have had public information requests for proposal (RFP) documents during the selection process.

**Senator Lipparelli:**

Have those disclosures been made?

**Mr. Terry:**

Yes, they have been made—with a lot of redactions.

**Senator Lipparelli:**

What was the outcome of those disclosures?

**Mr. Terry:**

I do not believe it affected the particular selection process. The process continued through the selection.

**Chair Goicoechea:**

I see where you are headed. I would be concerned if you had to release those documents, especially before the determination or the notice of intent to award issuance. It is possible that you did not award. Then every other contractor, knowing the capability of all the subcontractors, may have an advantage in the recompetes process. Sometimes you would not want to show your hole card. It seems reasonable. When you released the information by issuing the notice of intent to award, would you then make all information available, even about

those who were unsuccessful? Would their bid documents and subcontractor lists all become public record?

**Mr. Terry:**

Yes. We would make all of it available, even the documents pertaining to unsuccessful bids.

**Mr. Severs:**

We worked with the Associated General Contractors in the north and the south, the Nevada Press Association and former Assemblyman Skip Daly on the amendment. It clarifies the timing after the notice of intent to award, specifies which documents are confidential and allows the public to see the scoring.

**Chair Goicoechea:**

Will this be offered as an amendment, or was this done in the Assembly?

**Mr. Severs:**

It was done in the Assembly.

**Chair Goicoechea:**

Is it already in the bill?

**Mr. Severs:**

Correct.

**Richard Daly (Laborers' International Union of America Local 169):**

We worked with NDOT when the bill was in the Assembly. The design-build and CMAR processes are a little bit different. First, there is a request for qualifications, then a second request for proposals. Information that comes back to the department or public agency is to be confidential until the notice of intent to award is made.

Some of this proprietary information is already protected. Competitors should not see this information, especially in a design-build contract when more than one design may solve the building problem. The approach to the design problem would be explained in some of those documents. Contractors would not want competitors to have this information until after the selection. I have made information requests concerning Project Neon. Subsequent information was not useful because most of it was redacted. This bill clearly spells out what is

confidential and when it becomes confidential. The Assembly compromise we agreed upon is fair, especially in regard to the scoring matrices for the CMAR process and the clarifications the Legislative Counsel Bureau added about open documents. The bill will accomplish the NDOT goal and it is a fair compromise. I worked with the Press Association. Executive Director Barry Smith is satisfied.

**Chair Goicoechea:**

At what point may you to challenge the score? You say that after the notice of intent to award is issued, then all scores become public record. Would an unsuccessful bidder have the ability to challenge the score?

**Mr. Daly:**

The intent is not to allow a challenge to the score. In the CMAR process, you put out a request for qualifications, then a request for proposal. In the RFP by statute, the scoring criteria are listed with the relative weight of each. A panel, generally made up of five people, will score the proposals using a matrix. I do not think one may challenge this. The scoring in each category for the short listing will be made public.

All proposal information the contractors submit remains confidential until the notice of intent to award is made. Then you are allowed to see if there was a scoring anomaly. It keeps the system honest if the documents are made public at that point. When the RFP is made in the next phase, proposals are kept confidential. The first and the final scores are all made public. There is a short time between this and the notice of intent to award listing, which is public information.

**Chair Goicoechea:**

In my experience, a lot of complaints typically come from the No. 2 or No. 3 bidders who always think he or she has been wronged. I wondered if a challenge mechanism is in the bill but evidently not.

**Mr. Daly:**

We are not changing any of the challenge processes. We are adding more eyes, as Senator Lipparelli said, rather than fewer. I am comfortable with the actual submittals by the contractor staying confidential until the notice of intent to award is issued. We made that trade.

**Brian Reeder (Nevada Chapter Associated General Contractors):**

We continue to support A.B. 43 with the amendment brought by Mr. Daly in the Assembly.

**Chris Ferrari (Associated General Contractors of Las Vegas; Nevada Contractors Association):**

We support A.B. 43.

**Mr. Walker:**

All of the public works directors from Carson City, Douglas, Lyon, Storey and Eureka Counties support A.B. 43.

**Senator Lipparelli:**

Section 7.7, subsection 5 is unclear to me. It is an incredibly complex sentence starting at line 30 on page 6 of the bill.

**Heidi Chlarson (Legal Counsel):**

Section 7.7 pertains to NRS 239.001, which is in the public records law and applies to all public records, not just to the records described in other sections of this bill. The intent is to clarify since various provisions of NRS relate to agency records. The statutes are worded differently. Some are clear that something is a public book or record, open to the public. Some may be silent on that issue. The intent is to acknowledge that just because something in one place is declared open to the public does not mean in other places that lack the declaration something is not open to the public. It was trying to clarify that it does not mean something by including the declaration in one section and not in another section.

**Senator Lipparelli:**

Are you saying that this is used in other places of the statute as well? Is it well-used or is this new to this section of the law?

**Ms. Chlarson:**

The language in section 7.7, subsection 5 starting at line 30 on page 6 is something new, but many places in statute have something declared a public book or record. It may or may not further identify something as confidential or open to the public. The A.B. 43 language addresses the issue of whether its use in one section and lack thereof in another implies that the nonuse means it is confidential.

**Chair Goicoechea:**

I hear that if no law that says the book or record is open to the public, that is okay; if no law says it is closed, that is okay. Then this language fits in the middle.

**Mr. Daly:**

This language was drafted to address the concern that you explained. In section 7.5, subsection 10, paragraphs (a) and (b), specifically say that these things are open to the public. Our concern is that specifically saying these documents are open to the public, may imply that the Legislature means those not specified are to be confidential. That is not what NRS 239, the public records law, says. It says that documents are public record unless declared by law to be confidential. Just because the law says these documents are open does not imply that others are confidential because the Legislature did not say they were public. Section 7.7, subsection 5 says this. We called out those things to be open, which satisfied our concern. It is open if we say it is open. Unless we say it is confidential, it is still open.

**Senator Lipparelli:**

Thank you for that, Mr. Daly.

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**Chair Goicoechea:**

I now close the hearing on A.B. 43. As there is no further business to discuss, the meeting is adjourned at 1:54 p.m.

RESPECTFULLY SUBMITTED:

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Darlene Velicki,  
Committee Secretary

APPROVED BY:

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Senator Pete Goicoechea, Chair

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

<b>EXHIBIT SUMMARY</b>				
<b>Bill</b>	<b>Exhibit</b>		<b>Witness or Agency</b>	<b>Description</b>
	A	1		Agenda
	B	4		Attendance Roster
A.B. 415	C	1	Assemblywoman Robin L. Titus	Testimony
A.B. 415	D	1	Nathan Wadsworth	Letter of Support
A.B. 415	E	1	Pete Olsen	Letter of Support
A.B. 415	F	4	Ernest C. Schank	Written Testimony
A.B. 415	G	14	Truckee-Carson Irrigation District, et al.	Written Testimony
A.B. 19	H	2	Nevada League of Cities and Municipalities	Written Testimony
A.B. 19	I	1	Carson Water Subconservancy District	Written Testimony
A.B. 25	J	2	Nevada League of Cities and Municipalities	Written Testimony
A.B. 43	K	1	Nevada Department of Transportation	Written Testimony