

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

**Eightieth Session
March 15, 2019**

The Senate Committee on Government Affairs was called to order by Chair David R. Parks at 1:07 p.m. on Friday, March 15, 2019, in Room 2149 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 David R. Parks, Chair
Senator Melanie Scheible, Vice Chair
Senator Julia Ratti
Senator Ben Kieckhefer
Senator Pete Goicoechea

STAFF MEMBERS PRESENT:

Jennifer Ruedy, Policy Analyst
Becky Archer, Committee Secretary

OTHERS PRESENT:

Jeff Fontaine, Executive Director, Central Nevada Regional Water Authority;
Humboldt River Basin Water Authority
Steve Walker, Lyon County; Storey County; Douglas County; Eureka County
Alex Ortiz, Clark County
Shani Coleman, City of Las Vegas
Patrick Donnelly, Director, Center for Biological Diversity
Kathy Flanagan, Southern Nevada Water Authority
Brian McAnallen, City of North Las Vegas
Tim Wilson, Acting State Engineer, Division of Water Resources, Department of
Conservation and Natural Resources
Micheline Fairbank, Deputy Administrator, Division of Water Resources,
Department of Conservation and Natural Resources
Kyle Roerink, Great Basin Water Network

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Charles Lehman, Deputy Staff Judge Advocate, Nevada National Guard
Tony Yarbrough, Veterans of Foreign Wars; United Veterans Legislative Council
Scott Anderson, Chief Deputy, Office of the Secretary of State
Christopher Jones

CHAIR PARKS:

We have three bills on the agenda today. We will open the hearing on Senate Bill (S.B.) 150.

SENATE BILL 150: Revises provisions relating to land use planning. (BDR 22-775)

SENATOR PETE GOICOECHEA (Senatorial District No. 19):

With me today is Jeff Fontaine, Executive Director, Central Nevada Water Authority, who will be speaking on this bill. I brought the bill forward for the Central Nevada Water Authority as well as the Humboldt River Basin Water Authority and other jurisdictions. I am aware of one amendment being offered by Clark County, and we consider it a friendly amendment.

Senate Bill 150 will give local jurisdictions ten years to create a water resource plan, which has been lacking, especially in some rural areas. The bill's intent gives local jurisdictions ten years to develop a plan, either as part of a larger jurisdiction, such as a county, or a smaller jurisdiction, such as a city or town. The bill provides the capability of a city or town to create its own water resource plan if the county plan does not reflect a city or town's current or long-term needs.

That was the concern coming out of Clark County. Southern Nevada Water Authority has a plan for Clark County. However, our intent is if there is a jurisdiction, such as Mesquite or somewhere near the Virgin River, and the resource plan does not reflect the needs or growth, the smaller community could create a plan of its own. The creation of the plan must be done with the State Engineer's Office that will provide most of the data. A local jurisdiction has 10 years to project future needs for the next 10, 30 or 50 years. This will relieve pressure from the State Engineer's Office. If local jurisdictions have a water resource plan in place, it is easier to justify the amount of water being reserved or banked for that jurisdiction. The plan would require jurisdictions to state the anticipated growth, the service delivery rate and the amount of water needed.

We have jurisdictions holding 50,000 acre-feet of water which may never be needed by that particular jurisdiction.

JEFF FONTAINE (Executive Director, Central Nevada Regional Water Authority; Humboldt River Basin Water Authority):

Thank you for the opportunity to sit with Senator Goicoechea and present S.B. 150. The Central Nevada Regional Water Authority (CNRWA) is an eight-county unit of local government that collaboratively and proactively addresses water resource issues common to the eight counties, which are Churchill, Elko, Esmeralda, Eureka, Lander, Nye, Pershing and White Pine. On behalf of CNRWA, we thank Senator Goicoechea for sponsoring this bill. As a former planning and county commissioner, Senator Goicoechea has a great deal of insight into the need for this measure.

As members of the Legislative Committee on Public Lands this past Interim, Senator Ratti and Senator Goicoechea heard about this concern. The CNRWA has long advocated for linking land use plans to water resource plans. We requested the Public Lands Committee to include a position statement calling for local government land use plans to be based on identified sustainable water resources during the Interim. The Public Lands Committee voted to include a position statement in its January 2019 report. That is the basis for this bill.

When making the recommendation, much of the feedback received was "You mean we don't already do that?" While we may be using water resource plans to some degree, it is time to make it a standard practice for all counties and cities to consider the adequacy and sustainability of water resources as a foundation of its land use and development.

Senate Bill 150 does not delegate the State Engineer's authority to counties and cities, nor does it relieve the State Engineer of his or her duties to prepare a water budget and calculate and maintain an inventory of water for each ground water basin in the State—including an estimate of the amount of ground water that is available for appropriation in the basin—as required by *Nevada Revised Statutes* (NRS) 532.167.

Senate Bill 150 is intended to be a tool for local governments to guide sustainable development.

Referring to the bill, section 1, subsection 1 amends NRS 278 Planning and Zoning. This new section requires a governing body to develop and maintain a water resource plan which must include the following: identification of all known sources of surface water, ground water and effluent that are physically and legally available for use in the community; an analysis of the existing demand for water in the community, expected demand for water in the community caused by projected growth and an analysis of whether the identified sources of water are of sufficient quality and quantity to satisfy the existing and expected demands. If the analysis determines that the sources of identified water are not of sufficient quality or quantity to satisfy the demands, a plan for obtaining additional water is needed.

In section 1, subsection 2, counties and cities have 10 years to develop a new or update an existing water resource plan to include the elements specified in subsection 1 and update the plans at least once every 10 years thereafter.

Per section 1, subsection 3, if a regional plan includes a county and city, the county and city would not need its own plan. Also, if a county plan includes a city, the city would not need its own plan.

Section 4 amends NRS 349.981 by adding a new paragraph under section 4, subsection 1, paragraph (f), making the water resource plans eligible for a grant under the same program that provide grants for water conservation and capital, the AB 198 Grant Program or the Grants Program.

To the extent this bill is an unfunded mandate on counties and cities, it could have a disproportionate impact of some rural counties. Allowing those counties to seek assistance for at least a portion of the cost to develop its water resource plan is helpful.

The provision does not guarantee a county or city would receive a grant. That decision is made by the Board for Financing Water Projects.

I will provide background on the AB 198 Grants Program. The AB 198 Grants Program was enacted in 1991 to help publicly owned water systems in rural parts of our State comply with State and federal drinking water quality regulations. It was subsequently expanded to include improvements to conserve water and irrigation systems and certain costs associated with connecting to municipal water and sewer systems.

The program was established to fill the financial gap between the project cost and what a community can afford. Senate Bill 150 will add to the list of eligible projects. With regard to the Board for Financing Water Projects, which administers the Grants Program, the Board has a long and successful record of working with communities across the State to help prioritize and fund completion of critical water projects. We support having the grant determinations remaining solely with the Board.

Regarding competing priorities for funds, we do not expect the water resource plans will require an extensive amount of funding, and we understand funds are needed for capital projects to protect health and meet environmental compliance. We also understand water plans will be funded after these public health projects are funded and other environmental projects are completed. The Board should continue to use its discretion to balance these considerations as it has done consistently since 1991.

The letter from the Nye County Water District ([Exhibit C](#)) is an example of how S.B. 150 will apply to one of our rural counties, albeit one with an existing plan and in compliance with S.B. 150.

Senator Goicoechea mentioned I am here presenting S.B. 150 on behalf Central Nevada Regional Water Authority. The Humboldt River Basin Water Authority, which I also represent, also supports the bill.

SENATOR KIECKHEFER:

The Central Nevada Regional Water Authority includes eight counties. Is there a plan within each of those counties? How many jurisdictions will be captured by this bill based on those jurisdictions that already have plans and those that do not have plans?

MR. FONTAINE:

All eight counties in the Central Nevada Regional Water Authority have a water resource plan, with some being better than others. Most counties' plans need to be updated to some extent. Within those eight counties are counties with incorporated cities. Under this bill, the incorporated cities will need to develop a plan. However, I will check to see whether the cities' needs are already incorporated into the county plans. If not, the cities will need to work with the county to have the cities' needs incorporated into the county plan or create a separate plan.

SENATOR GOICOECHEA:

The intent of the bill is that a county plan would or could cover the city jurisdictions within the county. We do not want to impose a hardship on every small town advisory board to create a water resource plan. Technically, it would impact all 17 counties to have a water resource plan. Most counties have one already in place.

The rationale for the Grants Program funding for small jurisdictions, such as Esmeralda County or Mineral County, is to be able to request funding for part of the cost in creating water resource plans. This bill is critical for this State and our water resources to have a direction on how much water we have committed and how much water we are going to need in the future.

SENATOR KIECKHEFER:

Do we allow multicounty plans?

SENATOR GOICOECHEA:

We could authorize multicounty plans in the bill. I get apprehensive having a Statewide plan that might not address the true needs.

SENATOR KIECKHEFER:

I understand that. I was considering that hydrological basins do not always follow county lines neatly.

SENATOR RATTI:

You both have significant experience in local government and stated if counties are not covering the needs of a city in the county water resource plan, the city could create its own plan. In this situation, if a county creates a water resource plan and a city creates a separate water resource plan, what happens if the plans do not align?

SENATOR GOICOECHEA:

The creation of the plans must be done in coordination with the State Engineer's Office within the Division of Water Resources. The Division would review both plans. For example, if Sparks brought a water resource plan forward and Washoe County did not agree with it, the State Engineer's Office could look at the plan and sort out any discrepancies.

SENATOR RATTI:

The State Engineer has the final say to accept the plan?

SENATOR GOICOECHEA:

Total endorsement by the State Engineer is not included in the bill. The development of the water resource plans must be done in consultation with the State Engineer.

SENATOR RATTI:

In northern Nevada, there were jurisdictions without a drought plan. A water resource plan covers allocations, and I understand this is the intent of your bill. The plans work well until an extended six- to seven-year drought occurs. In northern Nevada, we found the water authority had a comprehensive drought plan, but it did not trickle down to a city- or county-level drought plan.

An adequate drought plan includes the types of actions to take once water levels hit a certain trigger. The actions may include removing sod from parks or completing additional conservation methodologies—the things a thoughtful government would start because of the drought situation. Does that exist someplace else? Does it make sense in the context of this bill?

SENATOR GOICOECHEA:

The language in the bill states you must have sufficient quantities and quality of water. The planners would consider water availability from the last 50 years when developing the long-term plan and justify having sufficient quantity to factor in the drought scenario. We have to factor in drought conditions in our plans as we are in Nevada.

MR. FONTAINE:

I agree with Senator Goicoechea as drought conditions are part of the normal conditions right now for Nevada. The plans would incorporate drought conditions on a long-term basis. Existing law addresses conservation as part of land use plans. I do not know if counties and cities are already addressing conservation as part of its plan.

SENATOR RATTI:

Would you mind taking another look at the issue for me? I know you have a lot of experience in this area. If we can do something to be more directive of not just having a drought plan but having an action plan to initiate when there is a

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drought. We need to make sure the plan has a trigger that once we hit a certain level, we are going to do something in terms of increasing our level of conservation.

MR. FONTAINE:

Yes. I will look into that issue.

SENATOR GOICOECHEA:

This concern is why having a plan to include a 10 percent reserve in these basins which can be accessed in an emergency is important as proposed in S.B. 140.

SENATE BILL 140: Revises provisions relating to the appropriation of water in certain basins. (BDR 48-541)

CHAIR PARKS:

Refresh my memory on the AB 198 Grants Program; when was it implemented and what was the overall gist of it?

MR. FONTAINE:

The AB 198 Grants Program was enacted in 1991. I was working with the State drinking water program at the time. The federal Safe Drinking Water Act had been amended, and there were several new requirements for community water systems concerning standards. It was clear a lot of our rural communities were going to have a difficult time complying with the drinking water standards.

There were two components of the program. One was a \$25 million grant program—the AB 198 grant program—and I think a \$200 million revolving loan program through bonding. Since that time, the eligible projects under the Grants Program have expanded to include conservation measures, irrigation systems and assistance to domestic well owners in certain circumstances to help pay the costs to connect to municipal water systems; the same for homeowners on individual sewage disposal systems to connect to community sewage systems.

I met with the Division of Environmental Protection and the chair of the Board Financing Water Projects to discuss this bill. The Board will maintain the discretion to determine if these water plans could be funded relative to the other funding needs if this bill is enacted.

SENATOR GOICOECHEA:

I do not know if it still exists, but there used to be an AB 198 advisory board that made recommendations to the Board for Financing Water Projects, on which I sat as a county commissioner.

CHAIR PARKS:

My recollection goes back to water projects using matching funds coming from community development block grants.

STEVE WALKER (Lyon County; Storey County; Douglas County; Eureka County):

The counties of Lyon, Storey, Douglas and Eureka support S.B. 150. I have a background in water resources. Not only have I been a sheepherder, a craps dealer, a cowboy and a lobbyist, I was the water planner for Washoe County for five years and the main author of the regional water plan in Washoe County.

I also served on the AB 198 Board for Financing Water Projects for 10 years. I support this bill in getting the water plans together throughout the State. Some might think it is overcomplex. To develop a plan, one looks at the water resource, land use, amount of private land and future densification of private land. The water resource is then matched to the land use.

Eventually, to address drought situations, the State needs to move to a facility plan. That would involve major costs. This bill does not address a facility plan. In-depth water planning requires going from a water plan to a facility plan with a capitalization.

On the Board for Financing Water Projects, the funding is under the State bonding capacity. Money is only available if there is bonding capacity in the program. During my 10 years on the program, we had \$8 million to \$9 million every year, plus State Revolving Fund loans; during the Great Recession, we had \$0. We need to be aware of that.

ALEX ORTIZ (CLARK COUNTY):

We support S.B. 150 with our proposed amendment ([Exhibit D](#)). We thank the sponsor for working with us and accepting this as a friendly amendment. We had a fiscal note on this bill, but are removing it based on the proposed amendment. We had concerns our water resources were dictated by the Southern Nevada Water Authority and not the Las Vegas Valley Water District, which our board is a part of. Our amendment to the bill clarifies if the

municipality or county is located in an area served by a regional entity formed by a cooperative agreement between local agencies, the municipality or county is not required to develop and maintain the water resource plan as described in this bill.

The regional entity formed in Clark County is the Southern Nevada Water Authority. The Southern Nevada Water Authority created and maintains a water resource plan used in our community.

Looking at the proposed amendment, we are amending section 1, subsection 3, paragraph (b) to include subparagraph (3). Subparagraphs (1) and (2) are "and" paragraphs and work together. We are proposing subparagraph (3) as an "or" subparagraph showing that the municipality or county located within an area served by a regional entity that was formed by a cooperative agreement between local agencies and which develops and maintains a water resource plan for the community is not required to develop and maintain the water resource plan described in the bill.

That is the gist and purpose of the amendment.

SHANI COLEMAN (City of Las Vegas):

We are similarly situated as Clark County. The City of Las Vegas is an entity covered by the Southern Nevada Water Authority. We support this bill with the amendment by Clark County.

We included a fiscal note which we will remove with the acceptance of the amendment.

PATRICK DONNELLY (Director, Center for Biological Diversity):

We support S.B. 150 in general. Rural counties are in a good position to understand their needs and how water might be best utilized to meet their needs and the needs of the environment in those counties.

A note of caution, we have been discussing our water laws, in particular how perennial yield may not be completely applicable and relevant given our changing climatic conditions, changing precipitation and evolving science.

Another bill, S.B. 140, will provide a drought cushion in nonfully appropriated basins. I encourage consideration of how S.B. 140 and S.B. 150 might interact

and how counties could also plan for drought and changing-precipitation conditions while planning for its water resources. In general, we support this bill and the right of counties to determine their water futures.

KATHY FLANAGAN (Southern Nevada Water Authority):
We support Clark County's amendment to this bill.

BRIAN MCANALLEN (City of North Las Vegas):
We support Clark County's amendment to this bill.

TIM WILSON (Acting State Engineer, Division of Water Resources, Department of Conservation and Natural Resources):

The Division of Water Resources is neutral on S.B. 150. The Division supports the intent of the bill. The purpose of my testimony today is to address certain aspects relating to the bill. First, much of this bill is based on subject matter that is within the Division's responsibilities established by NRS 278, NRS 533, NRS 534 and NRS 540. This includes the appropriation and reallocation of water rights; the quantification of existing rights and commitments on a given source of water; monitoring the use of water; maintaining data and records relating to water availability; reviewing and approving new subdivisions, water planning, water rights, and water usage; and providing the public and governmental agencies assistance in each of these areas.

Further, the Division maintains extensive records which are publicly accessible and much of which is available online through our website <water.nv.gov>.

It is important to note a comprehensive analysis of water rights often requires further review of historic records maintained by the Division. The types of records maintained by the Division and necessary for the preparation of a water resource plan include: existing water rights held by government entities or any other entity within the domain of a water resource plan; orders and rulings which may affect dedication rates, availability of water for future development, monitoring requirements, or other considerations that are critical in developing a water resource plan; domestic well locations and well driller reports; water budget studies and other documents utilized to evaluate water supply; streamflow and groundwater level measurements; groundwater pumpage records; basin-scale inventories; water inventories performed pursuant to NRS 533.364; and existing water conservation plans prepared in accordance with NRS 540.

Furthermore, should the Legislature approve the Division's budget request for the development of a Water Planning and Drought Resiliency Program, the existing resources and capacity of the Division to support water planning will greatly improve both on a Statewide and local basis.

It is imperative that the Division is specifically identified for the purpose of reviewing water plans to ensure the best and most reliable data is utilized in the development of any plan pursuant to S.B. 150. Including the Division as the reviewing agency will ensure the use of scientifically supported data and allow for consistent and realistic water plans. Additionally, the Division can provide an appropriate level of support and expertise in this process.

Finally, the Division has a couple questions relating to the bill. First, how is a governing body defined for the purpose of S.B. 150? Second, is it limited to cities and counties, or does it also include general improvement districts, towns and the like?

MICHELINE FAIRBANK (Deputy Administrator, Division of Water Resources, Department of Conservation and Natural Resources):

The Division of Water Resources has requested funding to support the development of a Water Planning and Drought Resiliency Program as a component of our budget. In response to Senator Ratti's question regarding drought response, the Water Planning and Drought Resiliency Program is intended to work toward the development of a Statewide, comprehensive drought-response plan. The plan includes working with local government entities at the request of a local government wanting to develop its own individualized drought-response plan. The Division would then have additional staff and expertise to support the process in doing so.

SENATOR RATTI:

Thank you for that response. This is the language I was looking for on water planning which includes how to appropriate, how much water is in the basin and all of the things we have been talking about. Then there is a drought-response plan, which is different. The drought-response plan does not include how much water is allocated, perennial yield, contiguous use, how much water is in the basin or any of those things. It includes what an entity will do when entering a drought. Is that the distinction you are making?

MS. FAIRBANK:

Yes. The distinction is water planning includes how to use the resources available today and a drought-response plan is what to do in the event of a drought, including the specific steps and measures to take on a Statewide basis. It also includes a comprehensive basis for local governments to follow in terms of conserving available water to survive an extended period of drought.

SENATOR RATTI:

To clarify, a water resource plan includes drought planning, and a water drought-response plan is the action that follows.

MS. FAIRBANK:

Yes.

KYLE ROERINK (Great Basin Water Network)

Great Basin Water Network represents ranchers, farmers, indigenous communities and public lands advocates. I represent folks in eastern Nevada who are opposed to the Southern Nevada Water Authority's proposal to build a 300-mile pipeline from eastern Nevada to Las Vegas. We are neutral on this bill. We support the concept of this bill. Good planning is a way to prevent problems before they happen. The only concern is how to fund this project. There is a concern the Grants Program will not have the means. One suggestion is to use the conservation bond funding proposed in Assembly Bill (A.B.) 84 this Session as means to help provide resources to rural counties that are strapped for cash.

ASSEMBLY BILL 84: Provides for the issuance of state general obligation bonds to protect, preserve and obtain the benefits of the property and natural and cultural resources of the State of Nevada. (BDR S-326)

SENATOR GOICOECHEA:

In response to a couple of queries by the State Engineer, a General Improvement District (GID) could create its own water plan. If a GID felt it was not being treated adequately in the larger jurisdictional water plan, then the GID could submit a plan. The water resource plan is tied to the land use plan. We are not going to require plans get down to every parcel.

CHAIR PARKS:

We will close the hearing on S.B. 150 and open the hearing on A.B. 37.

ASSEMBLY BILL 37: Revises provisions governing punishment of certain members of the Nevada National Guard for minor misconduct. (BDR 36-340)

CHARLES LEHMAN (Deputy Staff Judge Advocate, Nevada National Guard):
I will read my written testimony in support of A.B. 37 ([Exhibit E](#)).

SENATOR SCHEIBLE:
What constitutes minor misconduct?

MR. LEHMAN:
Nevada Revised Statutes 412 contains certain punitive provisions outlining various provisions such as being late, failure to follow an order, assault, driving under the influence and several different things. Minor misconduct is looked at in terms of the Uniform Code of Military Justice, which is something punishable by incarceration of less than a year.

SENATOR SCHEIBLE:
You suggested most service members opt out of going through the nonjudicial punishment (NJP), is that correct?

MR. LEHMAN:
That is somewhat true. The commander initiates the process, which is someone who is in a service member's chain of command. The service member who allegedly committed the misconduct would bring the NJP action. Since the service member currently has the ability to turn it down for a court-martial, which is cost-prohibitive at this time, the NJP action would not move forward. So, the NJP action is turned down for a court-martial and the court-martial may not occur since it is cost-prohibitive, and we end up being unable to do anything.

SENATOR SCHEIBLE:
If given the choice, a service member would choose a court-martial over NJP?

MR. LEHMAN:
Potentially. Even though under the law the punishments are more severe for a court-martial. However, because of the impracticality of conducting a court-martial, service members choose the court-martial.

SENATOR SCHEIBLE:

My concern is you recognize any member subject to discipline would rather have a court-martial than a nonjudicial punishment. The bill is designed to force the service member to go through NJP and remove the member's access to a court-martial, which is what a service member prefers.

MR. LEHMAN:

If we had the ability to conduct a court-martial, people would not tend to go that route because incarceration is on the table. It is a little more complicated.

SENATOR SCHEIBLE:

Are you implying people are choosing the court-martial because they know the court-martial will not actually happen?

MR. LEHMAN:

Yes.

SENATOR SCHEIBLE:

Now I understand.

CHAIR PARKS:

You stated the bill would put things back to exactly as they were prior to the 2015 legislation?

MR. LEHMAN:

Not exactly. We are adding the additional legal review to ensure the evidentiary standard is met. The evidentiary standard is beyond a reasonable doubt. It is a fairly high evidentiary standard, requiring legal review before the notification to the service member.

CHAIR PARKS:

You referenced due process in your statement; could you comment further?

MR. LEHMAN:

The due process built into the NJP includes notification, the opportunity to meet with counsel, a reasonable time period of 30 days to respond, a nonadversarial hearing, a right to have a representative at the hearing and the option to request an open or closed hearing. If a decision comes down and punishment is put into place, an appeals process is built in which allows a service member to challenge

the harshness of the punishment. Additionally, a preliminary inquiry or small investigation is required to determine the matter before notification.

CHAIR PARKS:

Does this bill put the Nevada National Guard in conflict with the Department of Defense and active duty military?

MR. LEHMAN:

It does not. As National Guardsmen, service members fall under three different statuses. One status is Title 32, which is federally funded but controlled by the State and State law, and this is the status service members fall into the majority of the time. The next status is a Title 10 status, which is federalized and under the control of the United States Commander in Chief and U.S. Army or U.S. Air Force. While in Title 10 status, service members fall under federal law and Uniform Code of Military Justice (UCMJ). The final status is State active duty status, which is State funded and controlled by the Governor, and we fall under State law. Under two of the statuses, we fall under State law for military justice purposes. There are always federal regulations we follow as well. Specifically, Military Justice AR 27-10 states nonjudicial punishments fall under UCMJ. With this bill, we would not be in conflict of a regulation.

SENATOR KIECKHEFER:

By going back to the pre-2015 system, will it undermine the intent of the prior change? You were trying to get consistency between active duty and guardsmen; is that goal no longer desired?

MR. LEHMAN:

That was the intent. National Guardsmen are not active duty and the secondary effects of the change were not anticipated. With our limited resources as a part-time force, it does not make sense.

TONY YARBROUGH (Veterans of Foreign Wars; United Veterans Legislative Council):

The United Veterans Legislative Council is comprised of all the veteran's organizations, military and families in the State. We are testifying in the neutral on this bill. We are confused as to the status and do not have a clear understanding of what this bill is intended to do. Therefore, we stand in the neutral.

CHAIR PARKS:

We will close the hearing for A.B. 37 and open the hearing on A.B. 65.

ASSEMBLY BILL 65: Revises provisions relating to notaries public. (BDR 19-472)

SCOTT ANDERSON (Chief Deputy, Office of the Secretary of State):

I am presenting A.B. 65. This bill clarifies and revises certain provisions relating to electronic notarization and provisions which are outdated or conflict with Nevada's notary laws. These revisions allow the Notary Division to better administer Nevada notarial laws and the provisions of A.B. No. 413 of the 79th Session which relate to electronic notarization. We are not aware of any opposition to this bill.

Sections 1 and 4 remove the language "without a signature" from the fee sections of NRS 240.100 and NRS 240.197 for administering an oath or affirmation. This is antiquated language and is inconsistent with Nevada notarial law. We are unaware of circumstances where this would still apply or be appropriate that an oath of affirmation be administered without a signature. This caused confusion for Nevada notaries. We confirmed this with the National Notary Association.

Section 2 clarifies the proper use of signature authentications called certification and apostilles. These authentications are intended for use in a foreign country. In consultation with the United States Department of State, it has been determined these are not to be used within the U.S. or its territories. Apostilles are used to authenticate a Nevada notary or public official signature on a document for use outside the U.S. We have seen certifications used for improper purposes in Nevada. The Secretary of State's office does not issue certifications for use within the United States or its territories. That is because of the full faith and credit clause where a certified copy in a notarized document is to be accepted within the United States.

Section 3 removes the requirement that a person registering as an electronic notary must have four years of experience as a traditional notary. As we went through the regulation process for the implementation of A.B. No. 413 of the 79th Session, electronic notarization and notarization by audio video communication, it was determined the four-year requirement was unnecessary as this was another tool and required training. Additionally, the service providers

have training and safeguards in place to assist the notary in the process. This section also allows a person to register as an electronic notary public at the same time he or she applies for a traditional notary commission. This is not possible with the four-year experience requirement.

Section 5 removes declaratory language of the notary public that is inconsistent with notarial laws and caused the notary to acknowledge his or her own statement. We discussed this with the Guardianship Commission and Chief Justice Hardesty, and they approved this revision.

Additionally, S.B. 121 has similar provisions removing this notarial language and similar notarial language in other declarations within the NRS.

SENATE BILL 121: Revises provisions relating to fiduciaries. (BDR 13-99)

Senate Bill 150 has an effective date of July 1. For the provisions other than section 3, this bill's effective date could be upon passage and approval. The sooner we get these changes in place, the better. We discussed the potential of having the four-year education requirement in section 3 effective upon passage and approval; however, this is problematic because we have a new system going into place. We expect the new system to be completed within the next month or so. It will be completed prior to the July 1 effective date of this bill, and we are open to having it effective when the new system is available for use. Those within the notary community would be grateful if it was earlier than the July 1 effective date.

CHAIR PARKS:

Are you proposing an amendment to the effective date of the bill?

MR. ANDERSON:

The electronic notary proponents would prefer to have this effective upon passage and approval. With the changes in section 3, it is not possible with our current system. We put some changes in place as a stopgap between the old system and the new system that is coming online soon.

While we cannot move forward with our current system, we would be able to move forward with the effective date as soon as the new system is up and functioning.

The other sections in the bill could be upon passage and approval.

CHRISTOPHER JONES:

I am in the process of becoming a notary in Nevada. I am a retired notary from California and Utah. In this bill, it allows the electronic notaries to maintain an electronic journal with a password. However, it does not allow a regular notary to do so. I am against the bill because I see a potential court case due to the discrepancy. I would like an amendment made to allow all notaries to use a bound journal or an electronic journal.

MR. ANDERSON:

This is the first we are hearing of this concern. The bill does not address the notary journal. The law addresses that issue in NRS 240. This is not something we have taken into consideration. One of the parts of A.B. No. 413 of the 79th Session in relation to remote notarization and electronic notarization was that the journal be maintained in electronic form. There was never any discussion about there being an electronic journal for traditional notarization nor a paper journal in relation to electronic notarization. These are two separate types of notarization, at least at this time until we have a chance to look at that issue. We maintain it would be better to keep those issues separate.

MR. JONES:

There are three programs for notaries. The biggest one being NotaryAct. This program is allowed in all but six states. Unfortunately, Nevada is not allowed to use the NotaryAct program. It is a good program. It requires a signature, all the required journal components and allows you take a picture of the client. If there is ever a question when it goes to court, you have the picture and all identifying information. The driver's license is also scanned into the program and automatically filled in into the program. If you come across a fraudulent driver's license, you would know it. The address and/or information would not match.

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CHAIR PARKS:

Thank you for providing the information. The best avenue is to carry on that conversation with the sponsor of the bill, Mr. Anderson. We can see if there is something Mr. Anderson would like to amend or include in his bill. We will close the hearing on A.B. 65. The Senate Committee on Government Affairs is adjourned at 2:17 p.m.

RESPECTFULLY SUBMITTED:

Becky Archer,
Committee Secretary

APPROVED BY:

Senator David R. Parks, Chair

DATE: _____

EXHIBIT SUMMARY				
Bill	Exhibit / # of pages		Witness / Entity	Description
	A	1		Agenda
	B	5		Attendance Roster
S.B. 150	C	2	Jeff Fontaine / Central Nevada Regional Water Authority	Letter of support submitted on behalf of Nye County Water District
S.B. 150	D	2	Alex Ortiz / Clark County	Proposed Amendment
A.B. 37	E	2	Charles Lehman / Nevada National Guard	Testimony in support