MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON GOVERNMENT AFFAIRS

Eighty-First Session
April 29, 2021

The Committee on Government Affairs was called to order by Chair Edgar Flores at 9:05 a.m. on Thursday, April 29, 2021, Online and in Room 3143 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. Copies of the minutes, including the Agenda (Exhibit A), the Attendance Roster (Exhibit B), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/App/NELIS/REL/81st2021.

COMMITTEE MEMBERS PRESENT:

Assemblyman Edgar Flores, Chair
Assemblywoman Selena Torres, Vice Chair
Assemblywoman Natha C. Anderson
Assemblywoman Annie Black
Assemblywoman Tracy Brown-May
Assemblywoman Venicia Considine
Assemblywoman Jill Dickman
Assemblywoman Bea Duran
Assemblyman John Ellison
Assemblywoman Susie Martinez
Assemblyman Andy Matthews
Assemblyman Richard McArthur
Assemblywoman Clara Thomas

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Senator Julia Ratti, Senate District No. 13
Senator Roberta Lange, Senate District No. 7

STAFF MEMBERS PRESENT:

Jered McDonald, Committee Policy Analyst
Erin Sturdivant, Committee Counsel
Judith Bishop, Committee Manager

Zachary Khan, Committee Secretary
Cheryl Williams, Committee Assistant

OTHERS PRESENT:

Bill Brewer, Executive Director, Nevada Rural Housing Authority; Vice Chair, Advisory Committee on Housing
Steve Aichroth, Administrator, Housing Division, Department of Business and Industry
Nick Vander Poel, representing Nevada Rural Housing Authority; and representing the City of Fernley
Nicole Rourke, Director of Government and Public Affairs, City of Henderson
Christine Hess, Executive Director, Nevada Housing Coalition
Waldon Swenson, Vice President, Nevada HAND
Mendy Elliott, representing Nevada Rural Housing Authority; and Nevada Housing Coalition
Calli Wilsey, Senior Management Analyst, Intergovernmental Relations, City Manager's Office, City of Reno
Eric Novak, President, Praxis Consulting, Reno, Nevada
Barbara Paulsen, Leader, Nevadans for the Common Good
Joanna Jacob, Government Affairs Manager, Clark County
Jared Luke, Director of Government Affairs, City of North Las Vegas
Doralee Uchel-Martinez, Private Citizen, Reno, Nevada
David Cherry, Government Affairs Manager, City of Henderson
Michael Tassi, Director of Community Development Services, City of Henderson
Amanda Kern, Assistant City Attorney, City of Henderson
Matthew Walker, representing Southern Nevada Home Builders Association
Wesley Harper, Executive Director, Nevada League of Cities and Municipalities

Chair Flores:
[Roll was called. Rules and procedures were explained.] We will open up the hearing on Senate Bill 12 (1st Reprint).

Senate Bill 12 (1st Reprint): Requires certain notices before the termination, expiration or ending of a restriction relating to the affordability of certain housing. (BDR 25-372)

Senator Julia Ratti, Senate District No. 13:
Today I am here because when we refreshed the Advisory Committee on Housing last session—we had legislation to recreate the Advisory Committee on Housing—I was the lucky one who gets to be on the Advisory Committee on Housing, and I was very honored to be elected the chair. Today I am here representing the Advisory Committee on Housing. I have with me the vice chair, who is Bill Brewer from the Nevada Rural Housing Authority, as well as Steve Aichroth from the Housing Division of the Department of Business and Industry, and, of course, the Housing Division provides the staffing for the committee. The

committee was also privileged with having one bill draft, and this is the bill draft that the committee recommended bringing forward. The committee is composed of one legislator, folks who work in the affordable housing arena, and it has the housing authorities from Washoe County and Clark County, and the Nevada Rural Housing Authority. That is the committee.

We chose to focus our bill draft on a conversation in affordable housing that has not had much conversation, and that is the idea of preserving the affordable housing that we have. When we are using the term "affordable housing," at this point, we are talking about subsidized affordable housing that has primarily been built with federal tax credits or federal programs where a developer takes a tax credit or some other incentive and commits to keeping that unit affordable for a period of time. The whole point of this conversation is talking about preserving the units that we have today. I know this Committee has heard a lot about affordable housing. With your indulgence, I am going to skip most of my slides. I have them in there for the record, for the packet, and to honor the work of the Committee, but I am not going to go through all the pieces about housing affordability because I believe this Committee has heard that before. We all know what affordable housing is.

Let us talk about affordable housing preservation [page 3, Exhibit C]. We have these contracts between the government and private owners. In those contracts, there is a time limit. You as the developer accept this incentive, which is usually in the form of a tax credit, which then gives you this extra money that you can put towards building your project. In exchange for that, you agree to keep those units affordable for a period of time. Once that period of time expires, those units can then go back to market rate. That is the basic concept. This preservation is an action taken to safeguard those units and see if we can extend that timeline using other tools we have available to us. The reason why this is important is it is significantly more cost-effective to save units that have already been built than it is to build new units [page 4]. That just makes sense. If you are talking about keeping a project that has already been affordable for multiple years, we have already invested tax dollars in it, we already have land use restrictions and other safeguards in place, and we already have people living in those units who meet the affordability criteria. By far the most efficient path towards keeping affordable units is by preserving the ones that we have.

I want to pause on this slide [page 9]. Look at the top line; we are going to take 2011. In 2011, through these various programs that helped build affordable housing units, there were 592 units that were built that were brand new. At the same time, there are credits or projects that we can use for renovations. Typically, when we give an affordable unit some renovation dollars, it extends the contract and timeline that they need to stay affordable. If you look at the ones we built new and the ones that we renovated, we either built or saved 755 new units in 2011. Is everybody following that? Unfortunately, the net increase in inventory that year was only 273 units. The reason there was only a net increase of 273 units, even though we built or renovated 755, is because of the units that expired. This Committee has heard we do not have anywhere close to the number of units we need for folks who are living at low income or extremely low income. We are doing everything we can as a state to continue to add more units, but for every unit that we add, we are losing

units at the same time. Since 2011, we have lost 5,000 units. We built 893 and lost 5,000. These are contracts that were approved 30 years ago or 15 years ago. We will continue to have these problems. As we continue to build new contracts, they are going to expire eventually. There is the Greek myth of the man who is rolling the rock up the hill. That is where we are.

Unfortunately, there is an acceleration coming because the committee had the Housing Division do the analysis and we are at risk of losing 7,500 units over the next five years [page 10]. Four hundred of those are 30-year tax credit properties that are expiring naturally. They took the 30-year deal and their 30 years are up. Sixty-five hundred are 30-year tax credits that are exiting through what is known as the qualified contract process. I pride myself in understanding a lot about affordable housing, but I am going to defer the explanation of a qualified contract process to the Housing Division because it is complicated and nuanced. Three hundred units are rental assistance contracts that are not renewing and 400 are deteriorating to the point that we cannot certify them for occupancy anymore.

I am now going to turn it over to Bill Brewer, the vice chair of the committee, and he is going to explain to you some of the preservation strategies that have been working across the country and what we would like to do here.

Bill Brewer, Executive Director, Nevada Rural Housing Authority; Vice Chair, Advisory Committee on Housing:

Affordable housing preservation is a strategy [page 11, Exhibit C]. The development of affordable housing is difficult, and it comes with very little support in terms of large dollars and those kinds of things. We need lots of tools in our toolbox to be able to meet the needs that are out there. Preservation is one of those very important tools. As Senator Ratti demonstrated, we lose almost as many units each year as we build. If we can hang onto those units, we are miles ahead. These are the major tools that are in use in Nevada to help develop and preserve affordable housing, which are low-income housing tax credits [page 12]. That is the major tool and it gets us about 70 to 75 percent of the way there in terms of financing. We have other tools, such as the state housing trust fund, and HOME Investment Partnerships Program dollars have helped fill that 30 percent gap that get us to a project. If we had to depend on those kinds of funds, we would develop very few units of housing. The tax credits help get us over the line, although each year we only get enough tax credits to develop a few hundred units of housing. It is not a big splash at all, but it is very important to us. In terms of what has happened around the country, this kind of preservation activity is already taking place in a number of states [page 13]. Keeping the units we have already invested in and keeping our tenants in those units is easier and less expensive than building new units.

I want to take a moment on what this bill really is [page 14]. What it will do is give us time. The twelve-month notice requirement gives us time to put together financing and the partnerships that are needed to refinance these housing developments and keep them affordable. It allows us to support the overall housing supply and availability in Nevada. It keeps it strong. It keeps those units that we have already developed in service. It gives the

tenants at least a twelve-month notice that the housing may come off of its affordable status and gives them time to find a different housing resource if they need to. That is critically important to those folks who are already struggling to find housing.

What the bill will not do is impact the budget. This has no fiscal impact whatsoever. It does not affect homeowners. This will only affect multifamily properties that have been financed with government resources. It does not provide additional funding for preservation. As I said, there is no funding attached to this bill. It does not mandate that the local governments do anything. It does mandate that we notify the local government, but that is all, and that is on the owner. It does not force an owner to offer rent subsidies or relocate tenants or anything like that. It does not take any property rights. All we are asking for is notification so that we can potentially put together a deal that will keep that housing property affordable. With that, I will turn it over to Mr. Aichroth, who can explain the technicalities of the bill.

Steve Aichroth, Administrator, Housing Division, Department of Business and Industry:

It is my pleasure to walk you all through the bill. Senator Ratti, I do not have access to see what slides you are pulling up. If you could follow along, that would be helpful. Section 2 lists the definitions applicable to the affordability of housing [page 16, Exhibit C]. I would like to focus in on one definition, as it is key to understanding what we are trying to accomplish here, and that is the qualified contract. While it is not expressly defined here, the qualified contract (QC) was established in 1989, three years after the enactment of federal tax credit legislation [page 17]. The original intent of it was to reduce a windfall to the owner, but it has had the opposite effect because it statutorily determines the sales price, which is typically higher than market rate, creating an overinflated sales price. It allows for a property to leave the affordability period before that defined 30 years. It allows the Division a year time frame to locate a purchaser. Once that contract is obtained, the existing residents of that property have a three-year period of affordability before all the affordability restrictions are removed.

To better understand this in its relation to the bill, I would like to go over the high-level timelines related to affordability. That is on the next slide that says "30-year affordability timeline" [page 18]. We look at this as two 15-year buckets. In the first bucket, everybody goes and moves down the same path until you hit that red bar. That is 15 years. After 15 years, some things can happen. What we are really trying to do is, should it follow the path in red with all the red arrows—that means the property is going to leave before the 30 years—we wanted to get all the way through 30 years. You are going to hear two terms: expiration and termination. Expiration represents the fulfillment of the 30-year obligation and is indicated by the green arrows to the right. Termination is going to be that red arrow path. The QC process is eligible any time during the second 15-year period, from that red-white bar on down. It does not just occur at 15 years; it is any time after that. We are able to potentially issue additional tax credits during the second 15-year term, which in turn will extend the affordability another 30 years. That is what we are trying to do with preservation.

In the past five years, to obtain any tax credits through the Division whether for new construction or preservation, when those tax credits are allocated, the owner has to waive their right to exercise this QC process. Should an owner exercise their QC option, the Division is notified by the owner, and the onus is on us as the Division. We have one year to locate a purchaser. Most times, this is extraordinarily difficult due to the difference between the Internal Revenue Service-determined price and the market-rate value of the property. If somehow we can locate a purchaser, the property then can retain the affordability until at least the term of the 30-year period. However, if a buyer cannot be located, existing residents still have their affordable restrictions in place for the next three years. After that, the property can go to market rate, and those residents are at risk of being displaced due to the increase in rent.

With that background, we can turn to section 3 [page 19]. Section 3 provides the requirements when an owner is going to exercise their termination rights. Going back to the timeline, this is the path indicated with the red arrows [page 18]. When an owner submits a request to obtain a QC to the Division, he must also provide written notice to the local jurisdiction and each tenant of the property. In turn, the Division is required to notify our other partners in affordable housing. This must be done by a minimum of 12 months before the owner submits their request to the Division. The balance of section 3 has the requirements of notices and the potential for penalties, which I will cover a little bit later.

Section 4 provides the requirements when an owner is going to exercise their expiration rights [page 20]. Going back to the timeline, this is the path indicated by the green arrows [page 18]. The balance of section 4 effectively mirrors the requirements of the notice that is in section 3, but with some subtle differences, as this is the expiration process, not the termination process. While the Division will receive notice of at least a year from the expiration date, in some cases the affordability restrictions go on longer than what is described in the tax credit process, because there might be an additional funding stream which supports affordability which goes on past that 30-year mark. The language in section 4 contemplates this situation.

Section 5 contemplates the requirements when a property is exercising voluntary affordability [page 21]. Any of our partners, particularly our mission-driven and nonprofit developers, for various reasons may continue to the extent they possibly can the affordable restrictions on property without the federal overlays. Here the notification requirements are very similar to those that have been discussed in previous sections. Because they are doing this voluntarily, both the Division and the affordable housing community are interested in making sure the tenants are notified should those affordability restrictions cease, and the Division is notified so we can hopefully find another partner and keep our affordable housing intact.

The next slide demonstrates the requirements of the local notifications, local jurisdictions, and the tenants in sections 3, 4, and 5 [page 22]. It requires the notification to local governments to include details about the property, expiration of affordability restrictions, and contact information of the owner. To the tenants, it describes the timeline and protections for

the tenants and a description of housing resources available to them. In the penalties, which only occur in sections 3 and 4 [page 23], both the termination and expiration sections, in both cases the Division can impose up to a $10,000 administrative fine for failure to notice in addition to what is shown here in section 3. With termination, which can go out through the QC, those folks will not be able to apply for any tax credit program for five years. There are two notes I want to make here. The Division intends to work with our partners in the adoption of regulations for the administrative fines, as $10,000 would seem a bit excessive for someone who inadvertently misses the notification and time frames, and it might be their first offense. Secondly, we did not include these penalties in section 5. For those who are providing voluntary affordability, we felt it would be punitive to those who are really good actors in this space. Lastly, section 6 establishes the timelines for these provisions [page 24, Exhibit C].

That was a lot, and that was a lot to unpack. In the simplest terms, with the most convenient definitions, I would like to have you think of this timeline as an affordable housing freeway. It is 30 miles long, and it goes from Carson City to Reno-Tahoe International Airport. You are all familiar with that. Each mile represents a year in the timeline. This affordable housing freeway is full of developers, local jurisdictions, property managers, estates, housing stakeholders, and residents. When we issue tax credits, we want every development to get to the Reno-Tahoe airport, to go the full 30 miles. However, the Internal Revenue Service allows an off-ramp after 15 miles—right up there at the north end of Washoe Valley. When the developer takes that exit, the second they are on the off-ramp, they have to hit their turn signal. Effectively, what Senate Bill 12 (1st Reprint) does is make the developer hit the turn signal before they take the off-ramp, to say to everybody on this affordable housing freeway, It is my intent to leave, which in turn gives everyone traveling down that freeway the ability to adjust to the situation. With that, I will turn it over to Senator Ratti for some final words.

Senator Ratti:
It is complex because there are these QCs, or they go to full expiration, or they are a nonprofit who stays affordable forever. This bill does a very simple thing. It just requires that they give notification 12 months before those units expire, whatever the situation is. We think that is a very light ask for a developer who has accepted tax dollars in order to achieve affordability. There are no property rights taken away. If at the end of those 12 months they want to go back to market rate, they are still eligible to go back to market rate. The only thing is if they are not a good actor and do not work with us, then they may not be able to get new tax credits in the future. That is the big stick, if we have a stick at all. Where this is really important is, it gives us the time to lean in and try to save that property by putting together another package, finding a nonprofit developer who might want to buy it, those kinds of things, and critically important, it gives tenants who are in subsidized units 12 months' notice. If you are a senior citizen who is living on $850 from your social security and you are in a unit where you are paying $450 or $500 a month, when you go to market rate and it is $1,200, you cannot do that overnight. Those two things are critically important.

Chair Flores, I am being called to the Assembly Committee on Judiciary, so I am going to leave you in the very capable hands of Bill Brewer and Steve Aichroth, and thank you for the discussion.

Chair Flores:
Thank you, Senator, for always working within this realm of a very difficult conversation and very important things. Members, we will open it up for questions.

Assemblywoman Anderson:
My question has to do with section 3, subsection 6, page 4, line 39. In particular, it is the permissive language where it says the Division "may." That does not mean that it will necessarily happen. Is this going to be lined out for somebody? Will it be consistent? The word "may" has me a little bit concerned.

Steve Aichroth:
Yes, the "may" allows us a little bit of flexibility. Looking at section 3, subsection 6, paragraph (a), prohibiting an owner who has terminated affordability, that person will not be able to apply for tax credits for five years. It has to go with section 3, subsection 6, paragraph (b) and the penalties, because we know, as we implement this, there are probably going to be some misusage and missed opportunities, but we are going to create regulations regarding exactly how those administrative fines will be handled.

Assemblywoman Anderson:
Those regulations are incredibly important to have; that way they are consistent. I want to make it clear, I really appreciate this because you are seeing a problem that could occur soon, and having this notice is very important. You mentioned that the owner shall also hold at least one meeting for tenants to discuss it. It is not just the written notice, because there are some people who are much more comfortable asking the questions one-on-one. Is that also open to a fine if that meeting does not take place? I only saw the written notice being something that would be fined.

Bill Brewer:
I will defer to Steve Aichroth. It is my understanding that each of those steps need to be completed or that could result in some punitive action.

Steve Aichroth:
Mr. Brewer is spot-on. As I read it, that could be something that could be addressed through regulation, exactly what those administrative penalties would be.

Assemblywoman Brown-May:
I have two questions. Senator Ratti noted that we have lost 5,000 units since 2011. I want to confirm that is statewide. My second question would be relative to the number of affordable units. Do we currently have or are we at capacity in each of the 17 counties? The document

that we have in front of us is Clark and Washoe Counties, but I am curious to know, are there available units in certain areas of the state or other municipalities that are not being used but perhaps need to be upgraded? Do we need to pay attention to a specific area in the state?

Bill Brewer:
To answer your first question, it is statewide. Of course, the lion's share of that number is in Clark County, where most of our residents are. There are units in some areas of the state that are not completely utilized. I say that advisedly because most of them are completely full with a waiting list. Occasionally there is a unit in one of our frontier communities, such as Tonopah, for example, that might have a vacancy or two, but that is about it. For someone to even consider moving to a place like Tonopah for an affordable unit, it is very difficult for most of those low-income households.

Assemblywoman Considine:
Senator Ratti said this is a light ask, and I think this is an incredibly light ask considering the situation that we are in in this state. I have a few questions, and some of them are for me to get numbers on the record. My first question is going to jump off where Assemblywoman Anderson asked about section 3, subsection 6, "The Division may." My question is specifically about section 3, subsection 6, paragraph (a). Is there a reason why it says that you can prohibit an owner from applying to the Division for a period not to exceed 5 years as opposed to 10 years or 15 years? Is that a federal requirement or is that something that came up for a reason? I am wondering why it may not exceed 5 years when these projects are a minimum of 15 to 30 years.

Bill Brewer:
The prohibition is not a federal requirement but one that was written into the bill to be enforced by the Division. I defer to Mr. Aichroth for any further details on that.

Steve Aichroth:
As Mr. Brewer explained, that is not federal statute, regulation, or anything. That is something that the Advisory Committee on Housing deemed as an appropriate response.

Bill Brewer:
You have to look at the whole timeline. As Mr. Aichroth's slides pointed out, the 15 to 30 years, once we are down that highway, 15 years or 20 years, another 5-year penalty on that effectively takes the developer out of the loop for any further affordable housing development in Nevada.

Assemblywoman Considine:
Is there a pool of developers or could this be any developer? I am wondering if one of the reasons is that there are only a finite amount of developers who will build these types of buildings.

Bill Brewer:
There is a finite number of developers who do these because it is a difficult process. A lot of brain damage occurs to get all of these financing sources lined up. As Mr. Aichroth has explained, in other occasions it is a financing lasagna, and each one of those financing resources has different requirements in terms of keeping those units affordable. It is difficult and most developers do not mess with it. That is why it is so important for us to hang onto those units when we can.

Assemblywoman Considine:
I understand there are 7,500 that are at risk over the next 5 years, 6,500 are 30-year tax credit properties potentially exiting. Of those 6,500, are they all at the 30-year or are some of these at that 15-year QC?

Bill Brewer:
There would be some of both portions of that spectrum that could potentially exit the program. It would comprise that whole number of 6,500.

Assemblywoman Considine:
Is there a breakdown that the Committee can see as to which numbers on both sides?

Steve Aichroth:
We do have that. To answer that question, 6,500 units are somewhere between that 15-year period and that 30-year period where they are eligible to exit through the QC process. I do not have the information at hand, but that is something that we can provide the Committee.

Assemblywoman Considine:
I was trying to read the chart that shows the new construction and renovations [page 9, Exhibit C], and I might be misreading it, but what I am not sure of is, how many units do we have right now? I know that we need 96,000 more, I know that we are potentially losing 7,500, but how many do we have in 2021?

Steve Aichroth:
I do not have that right at my fingertips. I can get that and provide that to the Committee.

Assemblywoman Considine:
I would appreciate having these numbers in the record. My last question is, how many are currently being built right now?

Steve Aichroth:
We have the better part of about 600 to 1,000 currently under construction, but again, I can get that number to you.

Bill Brewer:
There are a number of units in the application process somewhere between that and completing construction. There would probably be somewhere over 1,000 that are in that process.

Assemblyman Matthews:
My only question on this would have to do with potential compliance costs to owners. Do we know what, if any, expected compliance costs there may be?

Steve Aichroth:
We already do compliance. We have a compliance team in these properties. They annually visit these properties. There really should not be any additional compliance. The notifications that we have to do to our stakeholders can all be done via email. We do not anticipate any significant additional costs in this.

Chair Flores:
Are there any additional questions? [There were none.] At this time, we will invite those wishing to testify in support of S.B. 12 (R1).

Nick Vander Poel, representing Nevada Rural Housing Authority:
Nevada Rural Housing Authority would like to thank Senator Julia Ratti for sponsoring S.B. 12 (R1). Nevada Rural Housing Authority's mission is to work together as one cohesive team with a shared goal of enhancing the quality of life in rural Nevada. As a member of the housing task force, Nevada Rural Housing Authority appreciated our ability to share the unique challenges that rural Nevada has. Senate Bill 12 (1st Reprint) will provide a housing preservation strategy that will enable the state of Nevada to plan for the future as we work together on the affordable housing crisis. We thank you and urge your support. Chair Flores, this is my first time testifying in person in the Committee. I would like to thank you, the Committee, and committee manager Judith Bishop, and your staff. They are great. I appreciate everyone.

Chair Flores:
Thank you for recognizing the hard work of the staff. I appreciate you.

Nicole Rourke, Director of Government and Public Affairs, City of Henderson:
We echo the comments of my colleague from Fernley. The City of Henderson is here to support the concept of affordable housing and the tools, light as they might be. We certainly think this is progress in the right direction.

Christine Hess, Executive Director, Nevada Housing Coalition:
This is also my opportunity to thank you so much for your commitment and service. I appreciate you all so much and wish to express our strong support of S.B. 12 (R1) today. The Nevada Housing Coalition is a statewide nonprofit established to advance and promote affordable housing for all Nevadans. Our members represent the public and private sectors, urban and rural, across Nevada. We are all reading about housing in some of our largest

markets being out of reach for so many right now. Whether you are a homeowner or a renter, there are record-high home prices and record-high rents. However, this morning I want to dig deeper into our affordability crisis and speak to the housing that is built with affordability restrictions for our most vulnerable Nevadans and those in the workforce who are not making a housing wage. We have an extreme shortage of affordable housing in Nevada. Although we are fortunate to have mission-driven developers who are adding new affordable units every year, we are losing them as quickly. From 2014 to 2020, our affordable housing stock remained flat. There were 29,000 units in 2014 and 29,000 units in 2020. Senate Bill 12 (1st Reprint) is a critical, proactive policy solution to support efforts to preserve our existing affordable housing stock so we can begin to build our inventory.

In Nevada, we have 7,500 units that are at high risk of going to market rate in the next five years. Rising property values may increase the likelihood of these affordable units exiting in the near term. It takes significant capital investment and committed buyers to preserve the properties' affordability, and the 12-month notification requirements of S.B. 12 (R1) allow time for collaboration among communities and stakeholders.

Senate Bill 12 (1st Reprint) puts Nevada on the map with many other states that are using best practices and a comprehensive strategy to mitigate the losses of their current inventory. I want to thank the Nevada Advisory Committee on Housing, including Senator Ratti, Bill Brewer, and Steve Aichroth, for their leadership and stewardship of this bill. Senate Bill 12 (1st Reprint) is practical in its implementation, not overly burdensome, and yet respectful of our existing public investment and our private investment from the development community. The bill establishes a road map, which provides a balanced approach to our ability to address our affordable inventory issues.

[Exhibit D and Exhibit E were submitted but not discussed.]

Waldon Swenson, Vice President, Nevada HAND:
Nevada HAND is the state's largest nonprofit developer of affordable housing. We operate 34 communities in southern Nevada, offering high-quality homes and supportive services to over 7,900 residents, including working families and seniors on a fixed income. Nevada HAND has over 4,600 units in our housing portfolio and another 700 currently under construction. I would like to thank Senator Ratti for her advocacy and hard work on Senate Bill 12 (1st Reprint) and leading the Advisory Committee on Housing. Nevada HAND proudly serves on the advisory committee, which recommended this legislation. Affordable housing is a key component for our community, and we are happy to provide guidance on best practices. Nevada HAND supports S.B. 12 (R1), which provides residents with sufficient and proper notice if their home will no longer be subject to affordability standards. Like many affordable housing developers, we rely on a federal low-income housing tax credit and other governmental services to finance our projects. However, our nonprofit mission is dedicated to providing clean, affordable housing even after these

affordability terms expire. Senate Bill 12 (1st Reprint) proactively engages with owners to preserve affordable housing communities when possible. This bill will give the state critical data on the volume and availability of affordable units and will allow the planning of future development needs.

[Exhibit F was submitted but not discussed.]

Chair Flores:
I do see Ms. Elliott on Zoom. Were you hoping to also testify in support of S.B. 12 (R1)?

Mendy Elliott, representing Nevada Rural Housing Authority; and Nevada Housing Coalition:
Thank you, Chair Flores. Mr. Vander Poel testified on behalf of Nevada Rural Housing Authority, so I am fine. Thank you very much, sir. I was also here for support in case there were questions about the bill and if I could provide any kind of technical expertise.

Calli Wilsey, Senior Management Analyst, Intergovernmental Relations, City Manager's Office, City of Reno:
We are here today in support of S.B. 12 (R1). Affordable housing is a critical issue in our community, and supporting the creation and maintenance of affordable units is one of our highest priorities. Preserving existing affordable housing units is a key component for this strategy, and we thank Senator Ratti and the bill's sponsor for bringing forward this bill that will help us monitor those units and work proactively with property owners and other stakeholders prior to losing them to see if we can find solutions to save those units and/or support tenants. We urge the Committee's support of this bill.

Eric Novak, President, Praxis Consulting, Reno, Nevada:
I am speaking in strong support of S.B. 12 (R1), which we believe is a great first step towards the preservation of our valuable affordable housing stock in Nevada. It takes us several years and lots of public subsidy to plan and construct new affordable properties. However, over the last several years, we have been losing units almost as fast as we are creating new units due to properties expiring under their affordability restrictions or owners exercising a loophole in the regulations to opt out early in a process called QC. The notification provisions in S.B. 12 (R1) will give the Nevada Housing Division and local governments advance notice of properties exiting the affordable housing program. It will buy us some time to connect properties for sale with good affordable housing stewards and assemble the resources to preserve some of these developments.

Just yesterday we went before the Reno City Council for private activity bonding authority in order to renovate and preserve Southwest Village Apartments, a 330-unit family development next to the Peppermill Resort Spa Casino. The project will go before the State Board of Finance in a couple of weeks. Apart from the tax-exempt bonding authority, all the financing to purchase and rehabilitate this property, almost $60 million, is coming from private sources, including equity from the sale of 4 percent federal tax credits and private mortgage debt—all new funds to Nevada. This is one of the success stories of a local

government and the State working in partnership with a private developer to maintain desperately needed workforce housing. I want to thank the Advisory Committee on Housing and its chair, Senator Ratti, for their extraordinary work on this bill as well as the working group that made a number of suggestions for improving the original bill language.

Barbara Paulsen, Leader, Nevadans for the Common Good:
You have read the data showing the negative effect of regularly losing existing affordable housing units. It is essential to preserve these existing units to make headway in Nevada's huge housing deficit. Senate Bill 12 (1st Reprint) is an important step forward in meeting the affordable housing needs and provides immediate help to individuals living in those housing units. We thank Senator Ratti for her work on this issue, and Nevadans for the Common Good stand in strong support of S.B. 12 (R1). [Exhibit G was also submitted.]

Joanna Jacob, Government Affairs Manager, Clark County:
We are here in support this morning to S.B. 12 (R1) as amended. We also supported the original bill. Clark County Board of Commissioners supports efforts to improve access to affordable housing, and the central intent of this bill, the longer notice period, will allow our county to be proactive in trying to preserve the units that we have in Clark County and to preserve them to the fullest extent that we can. We thank Senator Ratti for her work on the Advisory Committee on Housing, for their work on this legislation, and we are here in support.

Jared Luke, Director of Government Affairs, City of North Las Vegas:
I am calling in support of S.B. 12 (R1) and would like to thank Senator Ratti and the other presenters for bringing this bill forward. Affordability in housing is a priority for the City of North Las Vegas, and we hope that this bill and the conversation it starts and other programs that may come from it down the road further the ability to ensure affordable housing for our more vulnerable residents. We urge passage of S.B. 12 (R1).

Chair Flores:
We will go to the next caller in support of S.B. 12 (R1). [There was no one.] At this time, we will go to those wishing to testify in opposition to S.B. 12 (R1).

Doralee Uchel-Martinez, Private Citizen, Reno, Nevada:
Good morning, Chair Flores, Vice Chair Torres, and the esteemed Assembly Committee on Government Affairs. I was trying to call in support. May I proceed?

Chair Flores:
Yes, thank you, ma'am.

Doralee Uchel-Martinez:
I support the Nevada Disability Action Coalition. Mr. Brewer and Mr. Aichroth, I want to thank you for the compliance team of the housing authority here in Reno. They were able to help our friend who lives in one of the apartments to make it comply for her wheelchair. It is pretty accessible for her. I want to thank Senator Ratti for pushing forward S.B. 12 (R1).

[Exhibit H, Exhibit I, and Exhibit J were letters in support of S.B. 12 (R1), submitted but not presented.]

Chair Flores:
We understand that there are issues with technology. Thank you for joining us this morning. At this point, we will go back to those wishing to testify in opposition to S.B. 12 (R1). [There was no one.] At this time, we will go to those wishing to testify in the neutral position for S.B. 12 (R1). [There was no one.] Are there any closing remarks?

Bill Brewer:
We want to thank the Committee for hearing the testimony today on S.B. 12 (R1). We look forward to the opportunity of increasing the availability of affordable housing units in Nevada with your help.

Chair Flores:
With that, we will go ahead and close out the hearing on S.B. 12 (R1). At this point, we will open up the hearing on Senate Bill 138 (1st Reprint).

Senate Bill 138 (1st Reprint): Revises provisions relating to planned development. (BDR 22-566)

Senator Roberta Lange, Senate District No. 7:
Thank you for the opportunity to present Senate Bill 138 (1st Reprint), which allows cities and counties to create a more streamlined process for approving and making minor modifications to planned unit developments, more commonly known as PUDs. I have been working with the City of Henderson on S.B. 138 (R1), and staff from the city will help me present the bill and assist in answering any questions you may have about my legislation. The City of Henderson, which includes parts of Senate District 7, has approximately 2,000 PUDs of various sizes and ages. A few of those that may be familiar are The District at Green Valley Ranch, Nevada State College, the M Resort Spa Casino, Aston Monte Lago Village Resort at Lake Las Vegas, and the Tuscany Residential Village. Many of these PUDs are decades old and have undergone significant changes since they were first created, including in ownership. This is not unusual. Cities and counties throughout Nevada encounter requests for changes to be made to PUDs all the time. My bill would give the needed flexibilities to cities and counties when it comes to approving minor modifications. It will help modernize a section of the *Nevada Revised Statutes* (NRS) that is nearly 50 years old by also offering local governments the option to approve new PUDs in a single step while requiring a public hearing.

Let me give you a very easy example that I use when I talk about minor modifications. This is not a process that you would use if you were a landowner building a new restaurant in a commercial PUD. It is a process you would use when you already have a restaurant open and you need to request the okay for making small changes to the building, such as painting it a new color, adding a picture window, or adding a roll-up door.

I feel it is also important to point out what my bill does not do. Senate Bill 138 (1st Reprint) is permissive. It does not require a city or a county to use the tools my bill provides. It merely gives them the option. In addition, S.B. 138 (R1) does not create the new ability to seek minor modifications to PUDs. That ability already exists. My bill only offers the option for the city or the county to use a more streamlined process in evaluating whether or not to approve minor modification requests. Senate Bill 138 (1st Reprint) does not apply to any residential PUD or mixed-use PUD that contains residential housing when it comes to minor modifications. Since the bill's introduction, we have met with numerous stakeholders and appreciate the time they have taken in providing valuable feedback on this proposed legislation. The version of the bill that you have before you today reflects that stakeholder input and substantial changes that were made to S.B. 138 (R1) via an amendment to narrow its scope. It is my pleasure to introduce to you the City of Henderson Government Affairs Manager, David Cherry, who will continue the bill presentation.

David Cherry, Government Affairs Manager, City of Henderson:
I am grateful for the opportunity to join Senator Lange in presenting S.B. 138 (R1) to you today and for the ability to do so in person. My thanks are also to the Chair, Vice Chair, and members of this Committee who were very generous in providing their time so we could meet and discuss the bill prior to this morning's hearing. Senate Bill 138 (1st Reprint) is permissive and would clarify the ability for a city or county to approve a minor modification to a commercial, non-residential PUD using an administrative process.

Nevada Revised Statutes Chapter 278A is the chapter in NRS that sets out provisions related to PUDs. *Nevada Revised Statutes* 278A.065 defines a PUD as "an area of land controlled by a landowner, which is to be developed as a single entity for one or more planned unit residential developments, one or more public, quasi-public, commercial or industrial areas, or both." A city or county does not require a landowner to use a PUD when developing a property. Rather, it is a tool that the landowner selects to utilize on their own. Development in a PUD is guided by a plan that must be approved by a local government through a public hearing process. Modifying a PUD plan to allow for changes within a PUD requires a property owner to request approval from a city or county, and this is what I will be referring to when I reference a modification in the context of the bill before you today.

There are three different types of PUDs: residential, mixed-use, which contain a combination of commercial and residential, and commercial. As you heard from Senator Lange, S.B. 138 (R1) offers the option for a local government to streamline its current PUD modification process by ordinance, which can save time and money for a commercial property owner seeking approval for a minor modification. This streamlining would mirror the process for how minor modifications are generally handled outside a PUD, where they are already done administratively in most cases.

For the purposes of our discussion today about S.B. 138 (R1), examples of a minor modification include but are not limited to: applying a new color of paint or using new building materials on an existing commercial building; adding a new roll-up door to an existing commercial building; increasing the size or height of an existing commercial

building by a minimal amount; or refreshing the exterior of a commercial building to reflect a new tenant's aesthetic preferences such as when an old Sears or KMart becomes a new retailer such as a Home Depot or Best Buy. What these examples demonstrate is that requesting even small changes in a PUD most often involves a large process because of the way that NRS Chapter 278A is currently written. That means a hearing before a planning commission, city council, or county commission, or a combination of the two, which requires a significant commitment of time and can also mean a significant expense to an applicant and a delay in his or her project. For this reason, S.B. 138 (R1) proposes to allow a city or county the option to pass an ordinance that defines what a minor modification is and establishes a process for approving or denying a minor modification request. The ordinance adoption process would require one or more public hearings, and a minor modification allowed by ordinance would be subject to appeal to a governing body, such as a city council or county commission, and could also involve an initial review by a local planning commission.

Since S.B. 138 (R1) is permissive, cities and counties would not be required to change the current process they use for improving a minor modification in a PUD if they did not want to use the new tool included in the bill. The bill also restricts the types of modern modifications that can be improved using the administrative process. If the existing PUD plan includes residential development or the proposed modification to the existing PUD plan would add residential development, it does not qualify under S.B. 138 (R1), which only applies to commercial PUDs. Senate Bill 138 (1st Reprint) does not apply to a vacation or abandonment or a modification that would necessitate a vacation or abandonment of any street, public sidewalk, pedestrian right-of-way, or drainage easement. Both of these restrictions were added via amendment to the bill to reflect stakeholder input.

In addition, the bill contains two more provisions in section 13 that act to narrow its application. The first is that the proposed modification must be considered minor, as defined in the city or county's PUD ordinance, and the second is that the proposed modification must substantially comply with the original PUD plan. If either of these requirements is not met, then an application for a minor modification using the S.B. 138 (R1) tool cannot proceed.

There is one other element of the bill that I want to highlight that is not related to the PUD modification process. Senate Bill 138 (1st Reprint) also provides a city or county the option to use a single approval step for new PUDs only, and a public hearing will still be required. Existing statute requires that cities or counties provide only a tentative approval of a PUD after the public hearing, and that developers then submit a final plan later for staff-level approval. The option available under S.B. 138 (R1) would eliminate the use of a tentative approval step so that final approval could be granted immediately after the public hearing if a city or county elects to use the authority that would be granted under the bill. Because S.B. 138 (R1) is permissive, this change to a one-step approval process is not required but would be at the discretion of a local government. With that, Chair Flores, I would like to now provide the members of the Committee with a brief section-by-section description of the bill.

Section 1 of S.B. 138 (R1) deletes provisions of the plan because the current definition is unclear. In section 2, the bill adds the word "only" to NRS 278A.080 at the request of a stakeholder so that it now reads, "The powers granted under the provisions of this chapter may only be exercised by the city or county which enacts an ordinance conforming to the provisions of this chapter." Section 3 of the bill sets out requirements for what must be contained in an ordinance addressing PUDs enacted by a city or county, and requires modification provisions of any ordinance to comply with NRS 278A.410, which I will cover in detail when we reach section 13 of the bill.

Section 4 adds clarifying language in section 4, subsection 3 regarding the tentative final PUD plan approval process. Section 5 was deleted by amendment. Section 6 contains one small change to NRS 278A.130 which was added by the Legislative Counsel Bureau (LCB). This new language reads, "To dedicate the common open space." Section 7 strikes through the word "work" in section 1. This deletion to NRS 278A.220 was also made by LCB, not at the request of the City of Henderson. Section 8 says that under existing law, governing entities have the right to waive a five-acre minimum site requirement. This change preserves this right but allows it to be done now by ordinance.

Section 9 allows a city or county to modify an existing standard for the minimum number of required parking spaces if it is done so by ordinance. Sections 8 and 9 contain changes that are both in keeping with the intent of the bill to allow jurisdictions more flexibility. Section 10 makes clear that the enforcement and modification of any PUD plan is subject to an ordinance adopted by a city and various sections of NRS Chapter 278A. It also provides that clear standards must be met when it comes to protecting the public interest. Sections 11 and 12 were both deleted by amendment.

Now, we arrive at section 13, which is really the heart of the bill. This establishes the ability for a city or county to create its own minor modification process through ordinance with some specific exceptions. These limitations on applicability include that PUD plans containing residential development or one that seeks to add any type of residential developments such as new homes do not qualify as a minor modification. Two, a plan that necessitates a vacation or abandonment of any street, public sidewalk, pedestrian right-of-way, or drainage easement does not qualify as a minor modification. Three, section 13, subsection 3, paragraph (a) also requires that a minor modification is minor in nature as defined in the ordinance and substantially complies with the approved PUD plan in order to be eligible for the process that S.B. 138 (R1) clarifies. This section also removes confusing language regarding the criteria cities and counties must use to evaluate all modification requests.

Section 14 makes clear that if a city or county passes an ordinance laying out how a PUD is approved, it does not need to include the tentative approval step. However, if the ordinance does include both tentative and final approval requirements, it must be done in accordance with existing procedures set forth in this chapter for tentative approval. Section 15 adds the words "or final" in order to clarify that both applications for tentative and for final approval have to be filed by or on behalf of the landowner. In section 16, subsection 1, the bill sets

out certain requirements related to applications that must be followed under this chapter, and section 16, subsection 2 modifies an existing requirement to allow for an established PUD to be included in an ordinance or for it to be published and made publicly available by the city or county. I would ask that the members of the Committee please note that this section is not authorizing the establishment of a new fee. Finally, section 16, subsection 3 adds language to conform with the option to allow a city or county to use the one-step approval process.

Section 17 was a clarifying change made to the bill by LCB and adds the word "additional" in section 17, subsection 10, and strikes the word "final." Section 18 makes changes regarding the tentative final approval process to make it clear we are preserving the option to use a two-step process for cities or counties. Section 19 adds new language by stakeholder request in subsection 1 that reads, "In what respects the plan is or is not consistent with (a) The statement of objectives of a planned unit development; and (b) the master plan adopted pursuant to NRS 278.150." In section 20, the new language being added in subsection 3 modifies existing language in NRS regarding conditions for revocation to allow it to happen at different times, depending on whether the city uses the tentative approval step or not, and makes this subsection permissive and subject to a city or county ordinance in keeping with the bill's overall intent.

The new language in section 21, subsection 3 deals with consent for modifications to uncompleted PUDs. The city's intent specific to this section will be to slightly revise statute so that a modification to a PUD that is not fully completed would require consent only from those landowners in the PUD affected by the modification. Current statute is unclear as to whom a landowner refers to in this context. This change would not affect whether a modification is eligible for an administrative approval or requires a public hearing, but simply whose consent is required in order for the approval to be granted. This subsection also states this must be done in compliance with NRS 278A.410, which is in section 13 of the bill and references provisions I spoke about earlier specific to residential development and certain vacations and abandonments.

Finally, sections 22 through 25 were all deleted by amendment. With that, I would like to finally say that I am joined virtually at today's hearing by several of my colleagues from the City of Henderson: Michael Tassi, our director of community development and services; Eddie Dichter, our planning manager; and Amanda Kern, who is an assistant city attorney with the City of Henderson. Thank you for your time, Chair Flores, and we stand open for any questions that you or the Committee may have.

Assemblywoman Considine:
Thank you, Mr. Cherry, for meeting with me yesterday to talk through this and for the emails that followed up. I still have some concerns. My concerns are just about the broad nature of every city and county being able to draft their own ordinance and defining some of these terms. To start off, could you walk me through a hypothetical if this were to pass and an entity under a PUD wanted to do a minor modification? Could you walk me through that process of how it would go at each step so that I understand what it would look like?

David Cherry:
I would like to ask our staff at city hall in the City of Henderson if they could please help in providing Assemblywoman Considine with that example. Director Tassi, would you like to take that question?

Michael Tassi, Director of Community Development Services, City of Henderson:
A simple example we have used in the past is a car wash. It is a smaller PUD that is a convenience store and a car wash; the car wash was approved 20 years ago, and they wanted to increase the size of the car wash and bring in more modern technology. If this were approved, they would submit an application to amend that PUD with a minor modification and we would look at that against an ordinance identifying what those minor things would be. In this example, if they proposed to increase the size of that building by less than 10 percent so that it was not exceeding any of our current code standards, then we would approve that as a minor modification. From a staff-level perspective, we would write a letter of approval for that minor modification, we would post it with our city clerk's office, and then there is a nine-day appeal period. If somebody did not agree with that approval, they would have nine days to appeal that to our planning commission. The next step would be filing the appeal to our planning commission, the planning commission would conduct a public hearing, we would send out notices and determined radius, we would post that on the property as well, and then we would hold that public hearing. If there was still not satisfaction on behalf of the opponent, they would have an opportunity then to appeal that decision of the planning commission to the city council using those same steps.

Assemblywoman Considine:
When you said that after the letter of approval it would be posted—and I know this is difficult to answer because I am asking in a larger context of any city and county in the state—but since this will be driven by individual ordinances, where would that posting be? It does not say it in here. My question would be to every city or county that wants this ordinance, correct?

Michael Tassi:
That is correct. For the City of Henderson, we post that with our city clerk's office. We could post that online as well since that is the new wave.

Assemblywoman Considine:
One of the things that you mentioned in that hypothetical was related to another question that I had. It was mentioned today that size and height would be a "minimal amount." What you expressed in this situation was 10 percent of what the building is. Again, this goes back to every ordinance that every city or county that does this will be drafting what that minimal amount is. Is there any rule of thumb? Are there any guidelines? Because 10 percent of a car wash is significantly different than 10 percent of a WinCo. I am trying to find a place where this would all come together, if you understand my question.

David Cherry:
I would preface this by saying, to go back to what the premise of the bill is, it is to give that flexibility to the local communities to customize their ordinance to reflect what works best for their practices. We have professionals on staff at the City of Henderson, like Director Tassi, whose job it is day in and day out to make decisions about planning and what is best in our community when it comes to making those decisions about land use and other things that fall under the purview of his department.

When you talk about things that are size and height, you can quantify those, and yes, an ordinance could contemplate adding something like a percentage that would say, Yes, the percentage in the case of a height increase or the increase in the size of a building could be quantifiable in that case. However, you often get into things like aesthetics where you cannot really quantify those. That is one of the reasons we wanted to leave it up to the individual ordinance to define what a modern modification is, so that you get into situations where you have things like building materials, color palettes, signage, other things that are not as easy to be quantified.

The answer to your question is, yes, you could include a percentage in an ordinance, but you would not have to include a percentage. You could simply say that a minor modification would qualify at the discretion of the director of the department to determine whether or not it meets that threshold. I would invite Director Tassi or a member of his staff, or our city attorney, Amanda Kern, if she would like to add anything to that answer, to go ahead and provide that to Assemblywoman Considine.

Michael Tassi:
To add to that, we are also guided by our local ordinances. Any modification increase that would go beyond a setback, beyond a building height, or beyond the building envelope, whatever is established in that ordinance, would not be minor in nature. If it were a convenience store versus a WinCo, those both have specific guidelines in terms of their height and in terms of their setback requirements in code. If the increase in the PUD still allows them to conform with code, then that could be minor in nature. If an increase exceeded those, then it would not be minor in nature.

Assemblywoman Considine:
I appreciate your answers. What I am uncomfortable with is that we have so many different cities and counties and if each one of them writes an ordinance and each one of them has a definition of what minor is or if all of the things in the ordinance would be defined without any caps in statute on amounts or a list that is not exclusive in the statutes. That is where my uncomfortableness with this bill is. I am not saying I am against it, but I am uncomfortable with it. But I appreciate your answers and I appreciate your time.

David Cherry:
First, I would say that right now, if a modification is made outside of a PUD, we do the administrative process, and statute does not put into NRS, or there is not a list in NRS of all the things that qualify as a minor modification. We have a great deal of experience with this, as would other planning departments around the state, as would other public bodies who would have to come up with these ordinances. There is already a parallel where there is not a statutory definition of minor modification per se.

The second thing I would say is that an ordinance could list a certain number of things, but at some point it is impossible to list every single idea that somebody may come forward with, and we would not want to have to come to the Legislature every two years and say, Well, we had a situation where an applicant came to the City of Henderson, they asked for a minor modification, the statute did not say it could have met that test, therefore can we ask you to please amend this chapter of NRS to include that. And, of course, somebody would have to wait every two years for that to happen to be able to use the minor modification process.

Finally, right now, any of these modifications can be requested; it is that the process for determining whether or not they would be allowed to go forward would be at the staff level rather than done through a public hearing. What you are doing is shifting the burden to the staff to make that determination as opposed to having a planning commission or mayor and city council do so. We think that in the case where there are minor modifications, something as small as adding a roll-up door or changing the color of the building, it is more efficient to have the staff make that decision than it is to have it go to a full public hearing. Again, as I mentioned in my testimony, that can incur a cost, it can definitely delay a project, and that can mean a significant step back for an applicant who comes forward and wants to change a retail location to reflect the new tenant that comes in.

Assemblywoman Considine:
I appreciate your response, and I do not disagree for the minor things that you have mentioned. Those are great examples of minor things. The bigger thing that this bill is doing is taking it out of a public body review, which can be longer for minor things, and I completely understand that, and again, your examples are nonexhaustive and right on point, but there is nothing in statute that lists those.

Assemblywoman Torres:
Mr. Cherry, I know we were able to have a pretty good conversation in my office a couple of days ago. I want to have some clarification about whether or not there is language in here that allows for the public body to engage with whatever this minor infraction might be. My concern is, as I look through the bill again, there is nothing in the administrative process once it is approved. The business can then immediately go and make those changes the next day, but then the public body would not be able to respond to that until, in some cases, after that change has been made. Let us say it is something as simple as a paint color. Once that change has been made, there may not be an appeal for that until after the fact. If there is something that delays it so that the public still has that chance to engage, even if it is a short time frame requiring that there is that public hearing, even if it is as simple as reading the

decisions of this administrative body into the record so the public has that opportunity to engage, I am not seeing it in the legislation, and I am wondering if there have been conversations about how we can add that in, requiring that the public can have some type of notice before those changes can be made.

David Cherry:
I appreciate your question and also your time in our meeting earlier this week. Mr. Tassi did speak to that in his first response, and I know it was a lot of information he provided in his response to Assemblywoman Considine's question, but at the City of Henderson, our practice is that there would be a period of time. Once an application was either approved or denied and somebody wanted to avail themselves of the appeal process, notification would be given. During the time period in which an individual would have the right to make that appeal, there would be a prohibition on the property owner being able to make the minor modification that had been approved. In other words, if you were the applicant and we gave you the approval to change the color of the building, you could not go out the next day and do it. You would have to wait until the number of specified days elapsed before you could go ahead and make that modification. That is in order to ensure that an individual could avail themselves of the opportunity to exercise their right to undertake an appeal.

Of course, if there is a denial, an applicant can also appeal that denial. The appeal goes both ways. It is for somebody who feels an approval might not have been in keeping with what they believe is the best decision, or an applicant may have had a decision denied and they feel as though it was unfair that application was denied and, therefore, they would be able to avail themselves of that. I cannot speak to the process that every city or county uses statewide, but I would offer my colleagues the opportunity to expand upon my answer if any of the folks back at city hall have anything more that might help illuminate this question for Assemblywoman Torres.

Michael Tassi:
Mr. Cherry's explanation is spot-on. For every letter that we issue for administrative approval, it currently states they have a nine-day appeal period and it is not effective until that nine-day appeal period is up and nobody has appealed that particular decision. That is not in our code, it is reflected code for other processes, but we do include it in all of our letters that we write.

Assemblywoman Torres:
Is that something required in the NRS or is that going to be different for every county and municipal government?

Amanda Kern, Assistant City Attorney, City of Henderson:
I am not aware of anything in the NRS that specifically prescribes that waiting period in terms of the effective date of a decision pending the appeal period. The NRS does require an appeal of an administrative decision to the governing body, but I do not believe it has that effective date language. That is in NRS Chapter 278.

David Cherry:
I have one more thought to offer. I do not think we want to add a third step to what is already a two-step process. The current status quo would be that you would have a two-step process for evaluating a modification request. If we were to go back and place a requirement for a public hearing for these appeal processes in addition to the first decision being made at the administrative level, then you created what is more like a three-step process in some ways. If every time somebody exercised that right, it would seem like it would take away from the flexibility that we are seeking in the bill. We are seeking to do this administratively without having to have the requirement for the public hearing every single time unless there is the appeal. Let me make sure I was clear in the way I was trying to state that. We would not want to add the requirement that there would be a public hearing every single time there is a minor modification request, because then we are at the status quo. What we want to make sure is that the minor modification, authorized under S.B. 138 (R1), could happen at the administrative level, at the staff level, and if there was an appeal, it would then go through the public hearing process. I hope that is clear and I am sorry if that was confusing.

Assemblywoman Torres:
I am wondering if our legal counsel could chime in whether or not we know the appeals process is already in our NRS?

Erin Sturdivant, Committee Counsel:
Nevada Revised Statutes Chapter 278 does not prescribe any sort of appeals process, and I do not believe the Administrative Procedure Act specifically requires the cities or counties to take this step. I would have to double-check that.

Assemblywoman Torres:
My concern is that if there is no process, while the City of Henderson might have that in code already, that might not necessarily be true for other local governments. My discomfort right now is that there should be something in this legislation requiring that there is that appeals process, so that if the public does have an issue with it, they can respond to it to ensure consistency for all public bodies.

Amanda Kern:
In NRS Chapter 278.3195, it does require an appeal to the governing body for decisions on land use made by an administrator.

David Cherry:
With the indulgence of the Committee and Chair Flores, if I may offer up the perspective that we are doing the vast majority of the administrative modifications outside of PUDs through this process, and people are able to avail themselves of the appeal if they choose. We do have a very good example of how this would work in practice because it happens all the time at the City of Henderson if you are making a minor modification outside a PUD. We have to think if we have a parallel process, we will basically adopt that process to mirror what we do outside of the PUD now. We have experience. I think the public is comfortable with the way we do it outside the PUD process. I do not want to speak for every member of the

public, but Director Tassi, you deal with this on a daily basis. Mr. Tassi or Mr. Dichter, would you be comfortable in saying you feel the process works now as we utilize it outside the PUD context for the minor modification done at the administrative level that we are seeking to mirror in the bill?

Michael Tassi:
I am biased, but yes, I think our process works quite well. On occasion, we have had appeals that have gone through both the planning commission and city council on administrative decisions. We advise our applicants of their ability to do that when we deny something, and as part of the planning profession, we feel that that engagement and that level of community engagement and looking out for what is best for the city is engrained in our profession. That is something that is important to us. From the City of Henderson, I know that. I understand that as well from most jurisdictions that we work with.

Assemblywoman Torres:
I am looking at NRS 278.3195 right now, and I see that there is an appeal process in place, but it does not require that there be a wait time between the change and the appeal. My understanding from this conversation is that there is a nine-day period in the City of Henderson between when the landowner would be able to make that change. I am saying there should be something is statute that says there must be at least ten business days or ten days, whatever it is, for there to be an appeal. I think that is the disagreement that I am having. I understand that maybe the current process for properties that are not inside a PUD is different, but I think that would be a healthy change to this legislation that would still allow for the administrative process to be a little bit more streamlined and more accessible for business owners.

Assemblyman Ellison:
I like this bill. I think it has been a long time coming. A code book and ordinances are something to work with. Everything is different in construction. Not everything in the book is going to go together in the puzzle correctly. You need this. When we went back and changed from Dillon's Rule to Home Rule, it was to give these cities and counties the latitude to get in there and do some of this stuff. It was so important to go in and say, We need to add three more parking spaces in here, but according to code you might not be able to do it, yet there is not that much traffic. It gives those cities and counties the right to go in and work with this. I think that is so important, and you still have a building department that has to go through the permit process no matter what they do. If they are putting in a garage door or whatever, the building department is still going to see that; they would have to take out a permit and they would build it according to what the county or the city wants. I think that is a good deal. The other thing that I had was, the permitting process is still one of the biggest things that you guys are going to do, no matter what it is, and this is just another tool in the toolbox. You still have the city council and the county commissioners to rely on if there is a problem, issue, or complaint. This is another hammer in the toolbox to make these processes go together well. If you want business to expand, this is a way to do it.

David Cherry:
Thank you, Assemblyman Ellison, for those comments, and we know you have experience at the local government level as well as here at the state government level. We appreciate your insight. I would defer to the staff back at city hall if they would like to talk a little bit about how the permit process interacts with the minor modification process that is envisioned in the bill, and how the two would work side by side when you were evaluating or requesting, or more importantly, if a project were given the right to go forward, what permits would be required and all those different things that your department deals with on a daily basis.

Michael Tassi:
Our current process is different depending on the type of change that was made. For example, the car wash would take some time. They could not do it the next day after the approval. They could submit for permits and that can start the review process. Oftentimes with construction permits, we have a 3-2-1 process here in the City of Henderson, which is fairly quick; the first few get done in three weeks. That being said, there are other permits that are over the counter and there are permits a little bit quicker than the three-week process. There is the potential for there to be something done next day if they were just to apply a paint color. However, that applicant would have to come into the city, and they would have to submit their permit, and that permit would then have to be reviewed by staff at the counter. If the letter that they would review to make sure the modification was approved would have that nine-day appeal period, at least in the City of Henderson, that would prevent it from happening the next day.

Assemblyman Ellison:
I do not know how you guys do it, but during the permit process, they still have to bring a plan or a drawing in of what they are going to do. If it is a commercial building, it still has to be stamped by the contractor, is that correct?

Michael Tassi:
That is correct.

Assemblywoman Anderson:
I do echo the concerns expressed by Assemblywoman Considine about the lack of a definition for "minor." I understand, with the information being brought forward, I am comfortable with the paint color and a few other items, but it is all relative. I also understand the difficulty with those items, but I think you have heard that pretty clearly. My question has to do with what I talked with you about on the way in. I spoke with some of Senator Lange's colleagues. Has the golf course concern been fixed? There were some individuals who expressed concern that this could be utilized for a golf course to be changed. I want to make sure that concern has been fixed.

David Cherry:
I am going to begin by answering, but then I will ask my colleagues to chime in once I am done. With regard to a golf course, I know in the City of Henderson we do not approve golf courses through the PUD process, but I suppose there could be a golf course out there that is

a part of a PUD. Because the bill restricts it from anything that has to do with residential, if that golf course community had any residential component, it would not be eligible for the minor modification process. Beyond that, it would have to be subject to what the ordinance would define "minor" as. I would envision it to be something like if you had a golf course and the golf course had a clubhouse. If you wanted to do some kind of change to the clubhouse, that would probably be a minor modification. If you were redecorating the clubhouse—maybe you wanted to add some thematic golf elements—and you asked for that permission as part of the PUD modification. What you could not do is take the entire golf course and turn it into a shopping center. That in no way would meet the minor modification definition. That would be a major modification. It would not ever qualify under this process. It would have to go through the normal modification process with a public hearing before a planning commission and a city council or a county commission. We feel as though, by narrowing the bill through the amendments that were done in the Senate, we addressed the issues. I think what some people brought forward really had to do more with the golf course communities where they had a residential component. I do not think anybody came to us and said, We are concerned somebody will take a golf course and turn it into something else that did not have a residential element to it. With that being my response, Director Tassi or any of the folks at city hall, do you have anything that you would like to add that will help with answering Assemblywoman Anderson's question?

Michael Tassi:
That was a fairly complete answer, Mr. Cherry. That is correct. When we were going through the drafting of this bill through the Senate, with the various stakeholders we engaged with, the concern regarding the golf courses in their minds and our minds were addressed through the prohibition of doing this with any residential component. We believe that has addressed that concern.

Assemblywoman Black:
For clarification, if a city or a county commission wanted to adopt this, they would have to sit down and lay out the exact procedures of how it would happen, what the recourse would be if there was no objection, correct?

David Cherry:
Yes, that is correct. I probably should have emphasized this earlier in the hearing, and thank you for bringing this question back again, because I think it is very important to let everybody know that if a city or county exercised the authority that was granted under S.B. 138 (R1), the first thing they would have to do would be to create a new ordinance. That would be done with public input. That is done through a public hearing process. Before we got any further into the question of what a minor modification would be under the ordinance, the public would have the right to come forward and participate in that process. They would be able to review what that ordinance would look like, to say to the elected body, Yes, we think that is comprehensive; or no, we think there are elements lacking.

To your point, Assemblywoman Black, it would set out in the ordinance itself a process if there were a denial and how that appeal would be handled per se, and other elements that we think would be important. Yes, there would be public input on that, and it would be done at the public hearing level.

Assemblywoman Black:
I obviously knew the answer, but I want to ditto what Assemblyman Ellison said. There are people who are elected in cities and counties to make these calls, and if we want to micromanage every little thing in every little city and county, maybe you should run for county commission or city council. That would be my comment to that.

Assemblywoman Anderson:
Although I respect my peer, I disagree. If information is being brought forward to us, it is for a reason. It is because we are not dealing only with one county and/or one city, we are dealing with an entire area, and I believe the questions asked earlier were attempting to explain that. Although I respect the line of questioning that my peer stated, this is our job—to ask questions. Although it is being brought forward from the City of Henderson, this is something that could impact all of our communities, so we are trying to get this information as clearly as possible.

Chair Flores:
At this time, we will go to those wishing to testify in support of S.B. 138 (R1).

Matthew Walker, representing Southern Nevada Home Builders Association:
We are in full support of S.B. 138 (R1). That may sound odd to you, because residential development has been excluded from this bill, but we support it for three main reasons: one, it will increase the amount of overall applications per planning staff at local jurisdictions that choose to take advantage of this bill. As with some other bills before this body this session, we were in full support of that concept where it makes sense. Two, it does match the existing process. The American Planning Association recommends minor deviations, like a 5 percent deviation, and we think this is in line with that, where you have a business changing out its sign and it is within the already approved overall square footage, if it just has different colors and shapes. That happens all the time. Because PUDs are so specific in statute, we are locked in and need this change for that flexibility to keep folks working in the construction industry. Lastly, we think that it strikes the balance and frees up space for public input on public hearing items they have that are of interest. As we have communities going forward, waiting in line for those planning spots before the planning commission, this will clear out some of those minor administrative items and keep the economy churning. We think that is really important right now, and we would appreciate your support.

Nick Vander Poel, representing the City of Fernley:
The City of Fernley is one of the fastest-growing cities outside of Clark and Washoe County. As the city council looks at the tools in the toolbox, as Assemblyman Ellison hit the nail on the head with, this is a great tool to look at, especially as we look at commercial expansion. As Mr. Cherry from the City of Henderson pointed out, we do have to go through a public

process to adopt the ordinance of what we can do, and the public is involved. We appreciate that. To Assemblywoman Anderson's point, if we took the golf course in Fernley, it would bring out the Hatfields and McCoys. We are not going to touch that. To Assemblywoman Considine, in Fernley we have to work closely with the North Lyon County Fire Department, and we have to take into consideration height restrictions because of the fire trucks they have. We try to limit the height that we go into in Fernley, and we take that into consideration. Again, every jurisdiction is different, but this is a tool in our toolbox and we support this bill. We appreciate working with the City of Henderson, and we urge your support.

Chair Flores:
We will go to the phone lines for those wishing to testify in support of S.B. 138 (R1).

Wesley Harper, Executive Director, Nevada League of Cities and Municipalities:
The Nevada League of Cities and Municipalities is in support of S.B. 138 (R1), and we appreciate the work of the sponsors to bring this bill forward and the distinguished members of the Assembly Committee on Government Affairs for hearing it. This bill is a thoughtful and permissive adjustment to existing law. The City of Henderson and other Nevada jurisdictions have many existing and old PUDs that are often amended with relatively minor changes, but the current statute can make the process burdensome, both for the applicants and for the municipal planning departments. Under S.B. 138 (R1), each jurisdiction would be empowered to set their own standards for amending PUDs, but basic requirements are left intact. If approved, jurisdictions would be able to outline their own approval processes through ordinance and it would not have the statute outline the approval process, particularly for amendments to PUDs.

Jared Luke, Director of Government Affairs, City of North Las Vegas:
In the interest of time for the Committee members, I want to throw our support behind S.B. 138 (R1) and echo the comments that have been made before me.

Chair Flores:
We will go to the next caller in support of S.B. 138 (R1). [There was no one.] At this time, we will go to those wishing to testify in opposition to S.B. 138 (R1). [There was no one.] At this time, we will go to those wishing to testify in the neutral position for S.B. 138 (R1). Seeing no one, Senator Lange, do you have any closing remarks?

Senator Lange:
Chair Flores, Vice Chair Torres, and members of the Committee, thank you so much for having us here today and listening to S.B. 138 (R1). Thank you for your questions. We always like hard questions because they make a better bill, and we appreciate the support. This bill simply gives us an opportunity to update a 50-year-old regulation to make a more streamlined process to help cities and counties as we make modifications to PUDs. I urge your support. We are happy to work with you after Committee if you have any further questions. I invite you to the second floor, and I would love to come to the third or fourth floor.

Chair Flores:
Thank you again for the presentation and thank you all who called in to testify in support and copresent to help us have a better understanding of the purpose and intent of this bill. With that, we will close out the hearing on S.B. 138 (R1). At this time, we will go to public comment. [Rules were explained.] [There was no public comment.]

Members, as you know, tomorrow some of you may want to be at the service, so we will not be meeting. I believe an email has gone out with all the information for those of you who wish to attend in person. With that, we will not be meeting until Tuesday of next week. Give yourself an opportunity to utilize the weekend to take care of yourselves and see your families and friends. Before we adjourn, Madam Vice Chair has a comment.

Assemblywoman Torres:
Today is such a special day because it is our colleague from Assembly District 4's birthday. Not only is he a veteran, not only is he an ex-FBI agent, but he is also a viral TikTok sensation. I think he dances a lot better than most of us knew. With that, we wish you a happy birthday, Assemblyman McArthur.

Chair Flores:
Assemblyman McArthur, do you have any remarks?

Assemblyman McArthur:
No, I am trying to stay out of the limelight.

Chair Flores:
Let the record reflect that Assemblyman McArthur is acknowledging that he in fact is a viral TikTok sensation. Happy birthday, sir. With that, this meeting is adjourned [at 11 a.m.].

RESPECTFULLY SUBMITTED:

_____
Zachary Khan
Committee Secretary

APPROVED BY:

_____
Assemblyman Edgar Flores, Chair

DATE: _____

EXHIBITS

Exhibit A is the Agenda.

Exhibit B is the Attendance Roster.

Exhibit C is a copy of a PowerPoint presentation titled "Affordable Housing Preservation," dated April 29, 2021, submitted by Senator Julia Ratti, Senate District No. 13.

Exhibit D is a fact sheet titled "Did You Know?" regarding Senate Bill 12 (1st Reprint), submitted by Christine Hess, Executive Director, Nevada Housing Coalition.

Exhibit E is a fact sheet dated April 29, 2021, regarding Senate Bill 12 (1st Reprint), submitted by Christine Hess, Executive Director, Nevada Housing Coalition.

Exhibit F is a letter dated April 29, 2021, submitted by Audra Hamernik, President and CEO, Nevada HAND, in support of Senate Bill 12 (1st Reprint).

Exhibit G is a letter dated March 8, 2021, submitted by Barbara Paulsen on behalf of Nevadans for the Common Good, in support of Senate Bill 12 (1st Reprint).

Exhibit H is a letter dated April 29, 2021, submitted by Christine Saunders, Policy Director, Progressive Leadership Alliance of Nevada, in support of Senate Bill 12 (1st Reprint).

Exhibit I is a letter dated April 27, 2021, submitted by Jean M. Diaz, Executive Director, Saint Joseph Community Land Trust, in support of Senate Bill 12 (1st Reprint).

Exhibit J is a letter dated April 28, 2021, submitted by David Ferrier, Director, Housing Programs, Rural Community Assistance Corporation, in support of Senate Bill 12 (1st Reprint).