

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

**Eighty-First Session
May 4, 2021**

The Committee on Government Affairs was called to order by Chair Edgar Flores at 9:11 a.m. on Tuesday, May 4, 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 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 Chris Brooks, Senate District No. 3

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:

Julian Joseph "J.J." Goicoechea, Chair, Eureka County Board of Commissioners
Jacob Tibbitts, Natural Resources Manager, Eureka County
Steve Walker, representing Douglas County
Colby Prout, Natural Resources Manager, Nevada Association of Counties
Marla McDade Williams, representing Churchill County
Richard Karpel, Executive Director, Nevada Press Association
Patrick Donnelly, State Director, Center for Biological Diversity
Michael Yaki, Senior Vice President and Senior Counsel, Policy and Programs,
Petros PACE Finance
Nick Vander Poel, representing Petros PACE Finance
Chaunsey Chau-Duong, representing Southern Nevada Water Authority
David Cherry, Government Affairs Manager, City of Henderson
Calli Wilsey, Senior Management Analyst, Intergovernmental Relations, City
Manager's Office, City of Reno
Peter Guzman, President, Latin Chamber of Commerce of Nevada
Ryan Bellows, Director of Labor and External Relations, NV Energy
Andy Donahue, representing Southern Nevada Laborers-Employers Cooperation and
Education Trust
Kelly Crompton, Government Affairs Manager, City of Las Vegas
Aaron West, Chief Executive Officer, Nevada Builders Alliance
Connor Cain, representing Nevada Bankers Association
Robert Wilson, representing the Nevada Credit Union League
Joanna Jacob, Government Affairs Manager, Clark County
Vinson Guthreau, Deputy Director, Nevada Association of Counties
Annemarie Grant, Private Citizen, Quincy, Massachusetts

Chair Flores:

[Roll was called.] We have two items today. For the presenters, May the Fourth be with you, as we anticipate a lot of questions from the Committee. We will take the items in the order they appear. We have Senate Bill 77 (1st Reprint) and Senate Bill 283 (1st Reprint). [Rules and procedures are explained.] With that, we will go ahead and open the hearing for Senate Bill 77 (1st Reprint).

Senate Bill 77 (1st Reprint): Revises provisions relating to public bodies. (BDR 19-466)

Julian Joseph "J.J." Goicoechea, Chair, Eureka County Board of Commissioners:

There in Carson City with you this morning is Jacob Tibbitts, Eureka County's natural resources manager. I am going to provide a few introductory remarks, and then I will turn it over to Mr. Tibbitts. I will remain on Zoom to answer any questions you may have. Senate Bill 77 (1st Reprint) is a bill that was brought forward through the interim Legislative Committee on Public Lands. The reason for it is, as you are all aware, Nevada has a vast majority of federally managed lands, in excess of 87 percent.

Our intent with this bill is not to somehow undermine or skirt a government and sunshine policy. It is to do the opposite. Where we currently are at with the process of any county or state public body that wants to participate in a National Environmental Policy Act (NEPA) process, you are unable to do so as a complete body. You sign a memorandum of understanding (MOU) with the federal agency, and it is usually a nonelected or appointed staff member, and maybe one elected official from that elected body, who is able to sit down in discussions with our federal partners. We share information, we talk about what our county policy is, and as that document is turned into a public document—it goes from administrative draft to public—it comes across the dais, the entire body acts upon it, and it becomes public. This is unfair to your elected officials, to our elected officials, and to the constituents we represent. I have been fortunate enough to represent Eureka County for the last nine years, and most of the NEPA processes we do, but that is unfortunate and unfair to the other two county commissioners who share that governing board with me. It is also unfair to individuals like Mr. Tibbitts. There are many natural resources managers and staff like him in the state of Nevada that are often put in a situation where they must be carrying out these acts with our federal partners, sharing what our policy is, and sharing that information back and forth. What we want to do with this bill is be able to go into a closed session where that elected body can sit down amongst the entire elected body with staff who will still be participating, with our federal partners, and discuss what information we are sharing, what obstacles we may see, because in the end, we want the best possible product that alleviates as many of the concerns and conflicts we have with our county master plan and those of the federal agencies.

You probably are going to hear, They are trying to pull something shady. Members of the Committee, I can tell you right now, that is the furthest from our intent. We want to be open and transparent, and we think that Nevada's Open Meeting Law in this regard is having an opposite effect from what it was intended to do. You are going to wonder, Why a closed session? Again, that is mandated by the MOU that you sign with the federal agency. You are not able to disclose any of that information publicly, per federal regulation, until it becomes a public draft. With that, I will turn it over to Mr. Tibbitts. He will walk through some more nuances of the language in the bill, he will have a lot more information, and then we will stand for questions. Thank you, Chair Flores.

Jacob Tibbitts, Natural Resources Manager, Eureka County:

[He read from [Exhibit C](#).] Thank you for the opportunity to travel from a galaxy far, far away. Chair Goicoechea covered the high points of S.B. 77 (R1) very well. I want to step back and let the Committee know the federal agencies require an MOU or a memorandum of agreement (MOA) for any state, local, or tribal entity to enter into a NEPA process to be a cooperating agency. That is allowed through federal law and regulation, and it mandates federal agencies to have those state and local agencies with special expertise or jurisdiction by law at the table. With the federal Freedom of Information Act (FOIA), there is an exemption, Exemption 5. It allows federal agencies to withhold information that is considered predecisional or deliberative. With that, various federal agencies, Department of Defense agencies, Bureau of Land Management agencies, and others have moved forward with regulations to clarify their specific regulations in adopting that FOIA Exemption 5. As

we sit here right now, federal regulations require counties—it could be any state agency as well—to sign an MOU to even be at the table. In that MOU, there is a requirement that the cooperating agency does not discuss in public venues and does not disclose that predecisional and deliberative information. As Chair Goicoechea mentioned, it means our public bodies cannot meet with the federal agencies as a body. You end up selecting one county commissioner or a staff person, and it diminishes the ability of Nevada to participate. We are a public lands state, we have a huge amount of federal land, and to diminish our ability to participate in federal processes hamstringing representation of those citizens that our elected officials are meant to represent.

Again, we are not trying to undermine government in the sunshine. It does, at face value—I will fully agree—seem inconsistent. It seems very inconsistent—a knee-jerk reaction—to call a new NEPA Open Meeting Law exemption an improvement to transparent government. We believe that is exactly what this does. As it stands right now, what happens if this bill does not go through? The National Environmental Policy Act has been around for a long time. I have been in Eureka County for 13 years. I can tell you the county has been very engaged in these processes, and you will ask, Why now? I do not know why now, other than bringing forward that we have been very hamstrung. The whole time that I have been in Eureka County, it has been a very difficult process, because our public bodies are often not the same person. We elect multiple people to represent multiple constituencies. Having one county commissioner or one person there, they are not necessarily representing the full interests of the public. I find myself, as a staff member trying to work, having a hard time often advocating for the interests of the public because the members of that public body may be on different sides of a certain issue.

An unelected staff member or one member of the public body can be actively engaged as it is right now, but there is no assurance that they are representing the interests of the constituents in the processes. I also want to point out that there are checks and balances in place. As I mentioned, the federal government agencies are required by law to include state and local agencies and tribal governments that have special expertise or jurisdiction by law—that is the specific language of NEPA. Every single NEPA process that I have been involved in for at least the last 13 years has had a broad array of other state and federal agencies that are also cooperating agencies. These processes are not being done in a vacuum. They are not secretive. All the cooperating agencies are at the table. On every single NEPA process that I have been involved in, the United States Environmental Protection Agency has been a cooperating agency and the Nevada Department of Wildlife has been a cooperating agency. On many of those, you will have the Sagebrush Ecosystem Technical Team that is also at the table, the National Parks Service, and other federal agencies as well if there is something with the United States Forest Service. There are many people involved in this behind the scenes, and that is going on right now. Again, those agencies are having these non-open meetings regardless of the public body being there because they are not there without breaking the Open Meeting Law.

I also want to note, the final NEPA product is an environmental impact statement (EIS) or an environmental assessment (EA). As they become available for the public, they are put out in

draft form, the public is able to review those documents, and then they are able to provide comment. The federal agencies then weigh that public comment and make changes to the document according to that before they put out a final document and sign a decision. When they sign a decision, they put out what is called an administrative record. The federal agencies put in that administrative record for the public to see everything they considered in making their decision. Any influence a public body would have in that decision is put out in the administrative record. It is open for everybody to see; it is public record. Again, our intent is not for boards to make final decisions behind closed doors. We are advocating to be able to meet and exchange information. If you look at the bill, it talks about the public body meeting to hold discussions. Chair Flores, this is a good time to quickly step through the bill.

It is a fairly simple bill. Section 1 is the meat of the bill, and it says the public body that has entered into an MOU or MOA with a federal agency under NEPA may hold a closed meeting to engage in predecisional and deliberative discussions. It is on the subject defined within that MOU or MOA. I will note that the MOU and MOA are approved by the public body in a public meeting, the contents of that are available both through public records law and by being placed on an agenda. There are restrictions of when this can take place under the bill. The public body can only have those closed meetings during the truly predecisional and deliberative period before the federal agency releases the product. Once the document is released in draft form to the public and it starts that comment period—they are at a minimum 30-day comment period, they can be more—there is no authority under this bill to have any more of those closed meetings. These closed meetings could only occur if the federal agency requires those discussions be kept confidential. If you do not have an MOU that says it is required to be confidential, this would not kick in. We want to make sure our public bodies are informed and they can have the necessary conversations with their constituents so they have an understanding of what is going on, especially when that document becomes available. When the public gets the document and they are coming to their elected officials and saying, I am concerned about this, what is going on here? That public body will have been informed and know exactly what went into that process. We will note that, if you look back at the record of this bill, in the previous draft, there was section about the public records law. We heard a lot of testimony related to public records. After the hearing and before the passage on the other side, we worked with various constituency groups that came out in opposition, and we came up with an amendment. I will note that, even with this bill in the first reprint, it is much tighter than the amendment that the committee passed. The amendment the committee passed talked about the public body being able to have these nonpublic meetings right up until the day the federal agency signs the decision. This has tightened that up so that it is now right up until it becomes a publicly released document, and at that point, these non-open meetings cannot occur anymore.

Many in opposition will point out various other states that have not implemented a similar exemption under the Open Meeting Law for NEPA. I will point out that I have done research into some of the other states as well, and I do not find a specific NEPA Open Meeting Law requirement. I will point out to the Committee that we are a public lands state with 85 percent federal land, and NEPA applies much more in Nevada than any other states. I will also point out that many other states, including some of those that neighbor us, do have

clarity within their public records law about their being able to have executive sessions, closed meetings, whatever their specific term is, to discuss documents that are otherwise protected under federal law, and I can point you to some of those states. In a way, they are able to do something I think is even more open to allow those documents to be distributed between the county commission. They can then have a closed meeting to discuss that specific document. We heard loud and clear that folks did not want to implicate and touch the public records law in this bill. We did not go that route that many of the other states have gone. We thought the best way to do it was through having discussions under an exemption under the Open Meeting Law.

On the Nevada Electronic Legislative Information System (NELIS) I will point out that there is some written testimony [[Exhibit C](#)]. I will note that, towards the middle to the end of the testimony, I have cut and pasted, word for word, language from various federal regulations to show you how these federal agencies require these MOUs. You have to sign one before you can even be at the table, and they require you to not disclose this information. There are the United States Department of Interior regulations that would cover everything from the Bureau of Land Management, the United States Fish and Wildlife Service, and the National Parks Service. There is the U.S. Forest Service handbook and Council on Environmental Quality, which is the lead that is over NEPA at the national level [page 2, [Exhibit C](#)]. If you have any questions on that, you can see those. Then, I have also put screenshots, word for word, from various MOUs we have had with various agencies over the years, so you can see what type of language the federal agencies are requiring in these MOUs, including stuff in there from the Department of Defense [page 3]. Finally, there is a letter at the very end of the packet where, years ago, in an open meeting, our county commission discussed concerns about a mining project that was being put forward and some of the water concerns of that. It was picked up and placed in a local newspaper, and we received this letter from the Bureau of Land Management admonishing us for discussing that information and basically saying, You are breaking federal law and the MOU [page 5]. With that, thank you for your time, and I am happy to stand for any questions you may have.

Chair Flores:

Thank you, both, for your presentation. Mr. Tibbitts, you have the courage to say this bill is fairly simple, but if you only knew the power of the Dark Side, I think you would realize it is going to be tough. I wish you good luck. Then again, in my experience, there is no such thing as luck.

Assemblyman Matthews:

This is a broad question. My colleagues on the Committee will know that I am a very passionate proponent of open, transparent government. The force behind the open government always has been the Open Meeting Law in conjunction with the Nevada Public Records Act. Of course, in government, there are always competing objectives and competing considerations and things that are in tension with each other. Government transparency is no exception—light, darkness, the balance. My question and concern would be about precedent. If you make one exemption or an additional exemption, perhaps it opens the door to others. How did you approach this bill from that perspective? What do you think

the standard ought to be in general, in terms of deciding whether facets of government are going to be open versus conducted in secrecy?

Jake Tibbitts:

First, I am very glad that today is the day that I attended in person. Second, thank you for the questions, Assemblyman Matthews. In weighing those interests, I want to lay it out to the Committee that there are very few exemptions under the Open Meeting Law. There is one to meet with legal counsel about pending litigation that you are in or pending litigation matters. In this case, there is a knee-jerk about considering this exemption, but I want to lay it out to the Committee that the alternative is the status quo. If the Legislature feels that is the public policy we want to live under, we need to do that with eyes wide open. That policy is that those we elect to represent us as a body cannot participate in these processes without running afoul of Open Meeting Law. That is the interest we are trying to weigh, where those that are elected to represent the people have a seat to have that firsthand conversation, without it being the telephone game and having it filtered through multiple people before it finally gets to them. We believe that is in the public interest. In Eureka County, I can tell you we are proponents of open government and transparency. As I said, it is odd to cast this bill as a government transparency bill, but it allows more eyeballs to be on the process that is going to be taking place and is taking place on our federal estate, the federally administered lands. We believe that these limited exemptions should be when the interest for the general good of Nevada and the public interest is outweighed by any other type of non-open meeting.

Assemblyman Matthews:

Were there alternatives to accomplish the same objectives without going the route of this exemption, or were those exhausted and there was no conceivable way to accomplish what you wanted to, absent this approach?

Jake Tibbitts:

We want to acknowledge that we do not have the market cornered on ideas to address this. This is a real issue that we are bringing forward. That is the way we cast it in front of the public lands committee as well. This is a real issue, and this is the way we feel we could address it. As I said, with other states—and I can use Idaho as an example—I can quote you their public records law that allows them to have executive sessions to discuss documents that are withheld by state or federal law. We did not go down the public records side. We felt this was better here. Another option—and it is a very heavy lift—is to get things changed at the federal level. It is the FOIA Exemption 5 that puts us in this position we are in. We cannot affect those changes from our little neck of the galaxy. If that is the policy the Legislature would like to move forward with, we can go down that route. We are looking from the constraints we have right now, and it is in state and local law that we are trying to find that ability.

Assemblywoman Dickman:

I have a bad feeling about this, but women always figure out the truth. I want to get this straight. The way things are right now, you cannot participate in these meetings because you would be violating the Open Meeting Law because you are elected, is that correct?

J.J. Goicoechea:

Yes, I can participate as a single county commissioner, or likewise, one of my other commissioners could participate, but any conversations that I have, I am not able to share with those other board members in a public meeting. We are a three-member board. Therefore, every time two of us are together discussing this, it would be a violation.

Assemblywoman Brown-May:

First, I want to say what a pleasure it is to see you in person. I appreciate that you have traveled from a galaxy far, far away. It is nice to have these meetings in such a way that we get to interact. I have a question relative to this, many of our constituents will say, If only you knew the power of the Dark Side, when we start to close doors and have meetings without including them, or, You have failed me for the last time, as we talk about the importance of open communication. My question is relative to this. You stated 85 percent of Nevada is public lands. How many meetings do you anticipate we would utilize under a MOU like this? What is the frequency you anticipate?

Jake Tibbitts:

You are digging deep on many of those references. I will note that 85 percent of Nevada's lands are federally owned. That includes Department of Defense lands which are not cast as public lands. Public lands are bit less than that. Regardless, all federal agencies have to follow NEPA. As an example, it was the Naval Air Station Fallon Range Training Complex, the expansion, which was all done through a NEPA process when they were proposing to do that with various cooperating agencies. It is not just the land management agencies; it applies across the board. Many counties do not have a staff member like me. They have county managers or people that can be involved, but I spend a very large amount of my time dealing with NEPA. I do not want to guess how many meetings any other county or other public body has had, but I can tell you I have one or two meetings every single week as a cooperating agency. Those are not the types of meetings; these are check-in meetings where it is checking in on the process. It is a conference call, and it is to see where things are moving along on the EIS. The substantive meetings are once or twice a month at most. The types of meetings the county commission would need to be involved in and to have discussions with the board and a federal agency would be at the beginning as the process is kicking off and check-ins along the way. At least in Eureka County, I cannot see our public bodies having these meetings more than once a month. That is only when a NEPA process is moving forward. There are times when there are no NEPA processes happening whatsoever.

Assemblywoman Brown-May:

I sincerely appreciate that, and I think that it is important to get on the record what is it that you are anticipating. There is one other piece that I think is important that we get on the record, and not to give into hate. The MOU is officially approved through a public meeting that would then give you the authority to have these types of conversations off the public record, is that correct?

Jake Tibbitts:

Yes, the MOU or MOA is deliberated on and approved in a public meeting by the entire body. It is part of the record. It is available for anybody to see. Under the bill, it is only if the federal agency requires the discussions to be held predecisionally or deliberatively. It is only if they require that. I want to point out there are regulations where it says they "shall" require that of state and counties. I do want to point out again that this does not allow any public body, county commissioners, or otherwise, to engage in a nonpublic meeting willy-nilly. It has to be for a specific project in which there is a memorandum signed. The memorandum of understanding or agreement usually outlines the schedule and what kind of documents will be shared.

Assemblywoman Torres:

Dr. Goicoechea, I think I speak for everyone when I say, we do know who your father is, and it is always a pleasure to have you speaking in this legislative body in your role as well. Obviously, we are concerned with the possible unintended consequences, or maybe better said, we are careful not to choke on our aspirations. I understand that this bill seems to give counties and public bodies a new hope, but I am wondering if you could walk us through what happens right now that prevents these public bodies from having an open meeting to have the deliberation. Why could that not be done in an open meeting?

J.J. Goicoechea:

As Mr. Tibbitts alluded to, in our written testimony that is on NELIS, you will see multiple examples of the language in an MOU, and actual language from the regulations that prohibit us from discussing any of this material in an open meeting. As Mr. Tibbitts pointed out, back in 2009, the county received a letter from the Bureau of Land Management after they had a public meeting discussing information which was in a draft EIS document. That letter is attached there as well, in which it clearly says that the county violated that MOU, federal law, and federal regulation by discussing that. We are unable to. If we wish to continue to participate as a cooperating agency and share that information and our expertise, we must do so privately. We cannot do so in a public meeting under federal regulation.

Assemblywoman Torres:

I do not think I had scrolled far enough in that document so that I could find those additional remarks regarding the confidentiality for what has already been done and the statement from the United States Department of Interior, which is super helpful. Right now, is there a need for the entirety of the public body to be present? Obviously, a lot of that work is done with the officials and some of those individuals are not public officials. A lot of the staff, I imagine, is doing that. Can you explain the need for that to be done by the public officials?

J.J. Goicoechea:

Again, we are a three-member board. Part of the concern is—and I will speak for Eureka County at this time—you have one of your board members that is sitting at the table if you choose to make that. Some counties will not have any of their elected board members there. When this document goes from administrative draft to public draft for consideration, your phone starts ringing. As an elected official, your constituents want to know, I am looking at

this EA, I am looking at this EIS, why is the county not pushing back on this section? Why is the county supporting a new mining road over here or a new solar project over here that is going to have direct impacts on our wildlife? If you are not aware of those conversations because you have not been able to participate in a meeting, you are not doing your job as an elected official. But again, we cannot all collectively be at the table and know what that document says until it becomes public. I do want to say that at no time is public money ever expended on anything like this until it comes before a public meeting. I think that is one other concern. While we may know what is going on, we are not going to be able to challenge any of this or do anything that way until it comes across that desk and it has been made a public document. This is strictly for early deliberation and to allow everyone to be on the same page. Quite frankly, with term limits, when a county commissioner leaves, I would hope that those others that are coming up would have a more active role in the process so that they can continue to carry out the work of that county.

Assemblywoman Torres:

As I read the legislation, there is nothing limiting the public body from engaging in any additional discussion during that meeting that maybe is not pertaining to NEPA. Is there something specific in the bill that makes it very clear that the public body can only engage in that conversation and that there could not be additional items on that agenda?

Jake Tibbitts:

The terms in the bill when it talks about "engaging in predecisional and deliberative discussions," are defined in various ways through FOIA as well as case law related to Nevada Public Records Law. Those terms mean specific things. Yes, having an open meeting and having general discussions about a project or something that is under NEPA, a board can do that today, but they cannot talk about any of the details because that would then be disclosing. In general, they can say, There is a project over here, x, y, z, and we are participating in it, but sorry, public, we cannot tell you. We do not even know because the three or five commissioners are not all briefed on it. I also want to say that there is what is often termed as a serial quorum. We cannot do that either. For each county commissioner, there is some point when they are breaking Open Meeting Law if they are doing this kind of serial quorum. That is not allowed either. Right now, one issue that really concerns me is if I have county commissioners that are on opposite ends of an issue. They do not agree. How do I, as an unelected staff member, advocate for that public body's interest when they may be divided and are not of the same mind on something?

Assemblywoman Torres:

I think there should be some clarification in the legislation saying this would be limited to the conversations related to NEPA because, as I read the bill, there would be nothing preventing that closed meeting from then having additional agenda items that have nothing to do with NEPA. That is more of my concern. I understand what we are trying to do, but is there something in the bill that makes it clear that the public body can only engage in conversation and deliberation regarding NEPA? I understand engaging in predecisional and deliberative discussion, but there is nothing that prevents it or sets parameters saying that meeting that is now closed cannot have 20 other agenda items.

Jake Tibbitts:

If it needs to be clarified, of course, that is our intent. I want to point out that it is when you have entered into an MOU or MOA with a federal agency for the purpose of engaging in an action under NEPA. You may hold the closed meeting on the subject of the MOU or MOA. It is to engage in just those discussions. Absolutely, if we need to make that clear, I would be very happy to move forward with that.

Assemblyman Ellison:

Assemblyman Ellison? No, I am your father. Laugh it up, fuzz ball. You could not have picked a better time in the world to be here, you guys. This is perfect for you. I want you to know that this is a great bill. Has the Nevada Association of Counties (NACO) come out and made a stand on this with you guys? Did they take any stand on this at all? The other question I have is, we do not have this problem in other states, is that correct?

Jake Tibbitts:

I will start with your second question first. I do not want to speak on behalf of other states. I do have colleagues in other states that do things similar to what I do. I would say they do have a similar issue. There are a couple of states, not every state, that have better clarity in their public records laws related to this issue. As for your first question about NACO's involvement, I believe they may testify today, so I do not want to step on their toes, but NACO did support this bill when it was in the Senate. We have somewhat of an alliance with NACO.

Assemblyman Ellison:

So, you are saying, If you only knew the power on the Dark Side, they are going to talk about that. I cannot believe we are having so much fun on this. You have failed me for the last time on these kinds of things. I am going to make sure I get out and support this bill a lot. This passed 100 percent on the Senate side, and I did get a text from the Senate side asking about how it was going because it is such an important bill. I put in a couple of bills that pertained to the Open Meeting Law, and I can understand where we are having problems here. I think this is a time we can maybe adjust this. We are doomed if we do not. I want Dr. Goicoechea to know, Help me, Obi-Wan Kenobi, you are the only hope. I would rather kiss a Wookiee than see this bill die. We are having fun with this, but it is a great bill, and I am so happy you guys brought this forward because we have issues in this. I do not want to see this go to the Dark Side.

Chair Flores:

Seldom have we ever seen someone so subtle with their references. It flowed so well. These minutes are going to make absolute sense. They will, I promise.

Assemblywoman Anderson:

I am trying to stay optimistic, but I also have to be realistic. I have a little bit of a bad feeling about this as well. One reason is because of the letter that was sent into the Senate Committee from February 10, 2021 [Senate Committee on Government Affairs]. It is similar to Assemblywoman Torres' question. At one point, the letter references that the bill is

expansive enough that any mention of a project—a mine, a highway improvement, or a toxic waste cleanup—would be exempt. You have made it very clear that is not the intent. Dr. Goicoechea or Mr. Tibbitts, walk me through if you are in this small conversation and there are the two commissioners, another member from the agency is there, two agencies that are there, there is somebody with the MOU or MOA who has not entered, and you are talking about a mine. All of a sudden, somebody from the federal government says, Let us talk about this because we are all going to be involved in this as well, and yet, there is no MOU or MOA that has been entered. Who is responsible to say, This is not appropriate, and we are going to find ourselves in a dark place if we continue to do this?

Jake Tibbitts:

I want to note that testimony was on the first draft of the bill. I think you will hear opposition testimony today, so I do not want to cast that everybody came to support, but the bill was substantially amended. It did clarify that it is an action under NEPA rather than a decision. You have to have somewhat of an understanding of NEPA and how that takes place. The National Environmental Policy Act is something that federal agencies use to weigh the environmental effects of any federal action. It can be a private party proposing to do something on the federal estate, and then the federal agencies have to analyze it. They disclose the impacts and they select from an alternative or a range of alternatives on what they want to move forward with. It is a very structured thing. It is very formal. There is a process on how it is done. It is a well-oiled machine. On your question about if you are sitting in a room with other agencies and the Bureau of Land Management says, Hey, while we are all here. It is very similar to how we know when a public body is having discussions with their legal counsel outside of a public meeting. It is on a case-by-case basis. They have signed an oath to follow the laws as well. It is up to them to uphold themselves to that oath that they signed.

Assemblywoman Anderson:

Once you start down that dark path, it will continue to dominate both your destiny but also, unfortunately, sometimes the conversations. I appreciate the answer.

Assemblywoman Thomas:

I have a comment. I would like to comment on behalf of the community of Eureka because we are taking away transparency. We are taking away their right to a public forum. My fear is that this leads to the path of the Dark Side. We know that fear leads to anger, anger leads to hate, and hate leads to suffering. I believe that the public will look at this and feel that they are being sidetracked and that the government is not being forthright. My issue or comment is for the community that you serve. Everything that we do as far as government should be public.

Jake Tibbitts:

I totally understand that context. I will note, without this bill, these NEPA processes are happening. There are people at the table, and we are cutting out our citizens in Nevada by limiting the ability for their elected officials to participate. I think our local community members and citizens are not advocated for. Their interests are not being put forward in a

necessary way because of the current restrictions we have. This allows for more engagement of our communities through those our people have elected to represent them. That is what we are trying to get at.

Assemblywoman Thomas:

I appreciate that, but I still see that transparency is not there. When we close doors and make decisions for the public, you could imagine if this body did the same thing.

Assemblywoman Black:

I have experience with this from the city council. Rather than exempt another meeting, would it not be easier to brief each commissioner or councilperson individually and let them give their feedback at that point? There were times on the city council when we would have two-by-twos. It would depend how many were on your board. Rather than exempting another meeting from Open Meeting Law, why not brief each of the commissioners independently?

Jake Tibbitts:

That is the way it happens right now. The result is the same, but it does create a lot of work and it causes issues for entities that do not have the capacity or the staff. I can tell you many rural counties do not have the ability or staff members to stay dedicated to this stuff. They do not have a county commissioner that can go to each meeting every time. While I work for Eureka County, I believe I work for a lot of rural Nevada. I draw my paycheck from Eureka County, but I try to advocate for the needs of rural Nevada as well. I have been to many cooperating agency meetings where other counties have signed the MOU, but they do not have somebody to be there. They do not have a staff person to send. They do not have somebody dedicated to that. If this bill does not move forward, that is the way we do it. But again, each county commissioner cannot talk amongst themselves. What if there are differing perspectives? Am I a mediator between the county commissioners to try and have discussions with both? If we are doing all of these circular things without putting this exemption forward, are those discussions proper? It is best to hear it directly from the federal agencies. Those elected people are doing it face-to-face and firsthand rather than being passed through multiple avenues. If the bill does not pass, that is the way it works right now. We can continue to do that, but we need to understand that it does cut out some rural communities that do not have that capacity, and it does not ensure that each voice of a public body is heard by the federal agencies.

Assemblywoman Black:

I understand that it is more work. I have been there and done that, but in the name of transparency, maybe that is what it requires.

Assemblyman Ellison:

Mr. Tibbitts, what is strange about some small boards, sitting on city council and the county commission and here, is if you look at some of these boards, they are small. Each individual brings something different to the board. It is not like we are all in agriculture. Everybody brings something different to the board, and that is what is the biggest thing about this bill.

They are there, they can ask their questions, and under the Open Meeting Law, if they went back and there is a three-man or five-man board, you can only talk to a couple of them unless you agendized it and talk that way. It is a good deal to have the bill the way it is. This bill addresses that problem, and NACO can get this better than I can, but most of these boards are so different, just as this board, everybody here is different. Take a look at it. Where three men might have differences of opinion, they bring expertise. It is good to have that out there and be able to speak and ask their questions individually. That is a great thing and that is why I support this bill.

Chair Flores:

Thank you, Assemblyman Ellison, for your insight on boards. Thank you, both, for your presentation and indulging us in that light humor for today. With that, I would like to go to those wishing to testify in support of S.B. 77 (R1).

Steve Walker, representing Douglas County:

Douglas County supports S.B. 77 (R1) for all the reasons presented by Commissioner Goicoechea and Mr. Tibbitts.

Colby Prout, Natural Resources Manager, Nevada Association of Counties:

The Nevada Association of Counties would like to express its support for S.B. 77 (R1). This law will encourage and enable full and transparent cooperation between counties and federal land management agencies and give county governments and the residents full and fair representation regarding major plans and projects affecting their counties. While it may seem as though this bill encourages secrecy or lack of transparency, in fact, it does the opposite. That is because currently, federal agencies engaged in the planning process under NEPA do not engage in deliberation with the county board of commissioners. Instead, they are forced to engage with unelected, appointed county staff out of view of the public and without accountability to voters. With the passage of S.B. 77 (R1), federal agencies will be able to deliberate with a fully entailed board of county commissioners with their varied perspectives, questions, and each representing each county's region. The underlying importance of the exemption in S.B. 77 (R1) is to ensure county governments and their constituents are properly represented and protected when an agency is engaged in a large-scale project within a county by allowing agencies to deliberate with the full elected board of county commissioners. Just as the Open Meeting Law was amended in recognition of the attorney-client privilege to permit a closed session during county commission meetings, this law would amend the Open Meeting Law in recognition of the federal agency's predecisional and deliberative communications privilege to allow a closed session during county commission meetings. Without S.B. 77 (R1), federal agencies will continue to avoid and deliberate in private with unelected staff or single county commissioners without the questions, deliberation, or perspectives of a fully impaneled county commission because Nevada's Open Meeting Law requires such discussions be open to the public, which is in contravention of that federal privilege. Senate Bill 77 (1st Reprint) will simply reconcile a tension between federal and state sunshine laws. For the reasons described, NACO urges this Committee's support of S.B. 77 (R1).

Marla McDade Williams, representing Churchill County:

The bill presenters explained the issue well. Churchill County has three commissioners, and only one member could attend at a time under an MOU because of Nevada's requirements for when a quorum is present. If two or more attended, it could be a violation of the Open Meeting Law. The member who attends carries issues forward to the best of their ability, but the integrity of the process can lose some value if that member is not able to carry forward the concerns of other members of the commission, which they should not if they are complying with Nevada law and not having serial meetings. Having the ability to have a discussion with the full members of the commission and get direction would be beneficial to the process. As noted in previous testimony, the MOU is entered into public meetings after the commission and [unintelligible] remaining discussions are done in a public meeting. Also, I concur with Mr. Tibbitts about the information that comes forward in a public meeting after an MOU has been entered into. It is very general, and due to the limitations of the MOU, commissioners cannot share the deliberation. They can only generally announce that the meetings are occurring and discuss only the publicly available information available at that time. I also want to extend our appreciation to the opponents of this bill in the Senate. Mr. Tibbitts and the bill sponsors worked with them to amend the bill and get it to this point. We recognize the objection to the federal process, and as we worked through this, we have appreciated the understanding of those barriers for Nevada's local elected officials, and more importantly, the constituents in Nevada who are not represented under the current system. We urge your support for S.B. 77 (R1).

Chair Flores:

We will go to the next caller in support of S.B. 77 (R1). [There was no one.] At this time, we will go to those wishing to testify in opposition to S.B. 77 (R1).

Richard Karpel, Executive Director, Nevada Press Association:

I am testifying on behalf of both the Nevada Press Association and the Nevada Open Government Coalition, whose members include the American Civil Liberties Union of Nevada, the Nevada Policy Research Institute, and the National Association for the Advancement of Colored People of Las Vegas. I should also say that I am pretty sure I am testifying on behalf of the light but must confess that I have not seen the last few movies in the Star Wars series. I am not completely certain about that. Let me begin by saying we appreciate the efforts of Mr. Tibbitts and NACO to listen to our concerns and engage with us in good faith, but we do oppose S.B. 77 (R1). We recognize that the NEPA proceedings are vitally important and have the potential to have a significant impact in the counties where they are held, but they are entirely secret. They are not secret to the federal and state government employees who participate in the proceedings, but secret to the citizens of the community in which they are held. Citizens of those counties are left completely in the dark until it is too late and until the die has been cast on the underlying project. Senate Bill 77 (1st Reprint) asks us and you to join that conspiracy of secrecy to sign our agreement on the dotted line. We think it is a bad idea for the Nevada Legislature to pass a law sanctioning the federal government's demand for enhanced secrecy. We know that other states such as Idaho, New Mexico, Washington, and Wyoming have not passed laws exempting their counties from the requirements of their own open meeting laws. At the very

least, we think this Committee should ask why it is that Nevada appears to be the only state where passing a law like this is necessary. I should also add that I appreciate Mr. Tibbitts' research of the statutes, but I have spoken to colleagues in those states who dispute his analysis. I am not sure who is correct, but I think it would be prudent for the Committee to find out.

Patrick Donnelly, State Director, Center for Biological Diversity:

I am speaking to you today in opposition to S.B. 77 (R1). We have made our opposition known in the past, and on NELIS, you will find the letter signed by environmental, social justice, open government, and journalism organizations opposing this bill [Senate Committee on Government Affairs, February 10, 2021]. While there has been an amendment made which removed parts of the bill pertaining to the Public Records Act, the heart of this bill is a carve-out from the Nevada Open Meeting Law, a carve-out which discourages transparency and could encourage cronyism, leaving the door open to conflicts of interest. States and counties are not merely passive observers in these processes. They frequently have a vested interest in the outcome of the NEPA proceeding. Counties have strong economic incentives to get projects permitted. We talk about this like it is just rural counties, but there are major projects in the urban counties of Nevada that have a NEPA nexus: highway expansions, flood control projects, it goes on and on. This affects all Nevadans, not just people in Eureka County. Ultimately, we hear a story from these bill proponents pleading about how onerous it is to comply with transparency laws. Yes, governments often find transparency inconvenient. Bill proponents are saying there is a deficiency in federal law, so we need to roll back state law to also have the same deficiency. That does not make any sense. Furthermore, this bill is not happening in a vacuum. Some of the bill supporters have a long record of fighting against NEPA. One of the bill proponents was at a signing ceremony at Donald Trump's White House on a number of executive orders stripping away NEPA protections. There is an anti-NEPA agenda in some corners of Nevada. This bill comes from the same place. The Open Meeting Law and NEPA are designed to promote transparency and democracy so that government is held accountable for their actions. This does not change when a public body is working with the federal government. The public has a right to know what state and local agencies and other public bodies are doing, and the proposed legislation would be an affront to the principles of transparency and open government, which are the foundation of both NEPA and the Nevada Open Meeting Law.

Chair Flores:

We will go to the next caller in opposition to S.B. 77 (R1). [There was no one.] Next, we will go to those wishing to testify in the neutral position to S.B. 77 (R1). [There was no one.] To either one of our copresenters, you may give any closing remarks you may have.

J.J. Goicoechea:

Thank you, Committee, for hearing this bill this morning. To reiterate, we understand the knee-jerk response, and we are all about transparency. To remind everyone, if this bill does not move forward, we will continue to engage the way we have for the last decade, behind closed doors, one member or staff member meeting with our federal agencies, and conducting the business we have in that manner. To the Vice Chair, we stand ready to work

with you on an amendment, and I do agree that some language that would tighten this down to only be discussed according to what was discussed in the MOU would be better. I have an idea for one simple insertion of a word that may get to the end. We look forward to working with you on that.

Chair Flores:

With that, we will close the hearing on S.B. 77 (R1). I am sure members will continue to reach out, should they have any additional questions. Next on the agenda, and patiently waiting, is Senator Brooks. We will open up the hearing on Senate Bill 283 (1st Reprint).

Senate Bill 283 (1st Reprint): Revises provisions relating to local improvements. (BDR 22-792)

Senator Chris Brooks, Senate District No. 3:

Today I am here to present Senate Bill 283 (1st Reprint). The intent of S.B. 283 (R1) is to revitalize our economy, create jobs, and help us meet our urgent energy and water conservation needs. In 2017, the Legislature approved Assembly Bill 5 of the 79th Session, an act that provided for the creation of local improvement districts for energy efficiency or renewable energy improvements. I worked on it with members of this Committee when I sat on the Assembly Committee on Government Affairs under Chair Flores. This was Nevada's version of Commercial Property Assessed Clean Energy (C-PACE) legislation. At present, in the four years since passage, only two projects have been financed using A.B. 5 of the 79th Session's provisions. By contrast, across the country, over \$1.4 billion's worth of C-PACE projects were funded since A.B. 5 of the 79th Session was passed. Nebraska financed over \$31 million and Utah financed over \$64 million worth of projects in that same time period. We have willing property owners throughout the state as a result of our current C-PACE statutes. What we do not have are willing capital providers—financiers willing to do business in Nevada. We need to change that, and S.B. 283 (R1) will make that change. Like the wise words once uttered a long time ago, in a galaxy far, far away, "You cannot stop the change any more than you can stop the suns from setting."

Senate Bill 283 (1st Reprint) is a bill that is consistent with the best practices and legislation that was used to activate C-PACE in 26 states across the country. Senate Bill 283 (1st Reprint) removes the unintentional impediments to finance and simplifies the structure of C-PACE to allow direct financing between capital providers and property owners. Secured by the imposition by local government of an assessment and lien on the property assigned by the capital provider, S.B. 283 (R1) expands the range of eligibility consistent with nationwide trends, including water conservation measures and resiliency improvements like seismic reinforcements and fire hardening. Senate Bill 283 (1st Reprint) gets rid of the complicated maximum benefit formula we originally opposed to limit how much could be financed. Committee members, this is not residential PACE; this is commercial PACE, where millions of dollars are at stake, lawyers are involved, it is an arm's length deal, and most importantly, any bank that has a stake in the property has to consent to the deal for it to happen. I repeat, this legislation maintains the requirement to lender consent—the most important safeguard to ensure that use of C-PACE makes financial and business sense to a

property owner. Expanding the PACE program is part of Governor Steve Sisolak's Nevada Climate Initiative plan. Committee members, the end result is legislation that tries to put us on the right track to attract the millions of dollars in investment that are waiting to come to Nevada, all the while, doing so in a manner that conserves our resources. As a famous philosopher from Dagobah once said, "Do or do not. There is no try." That is why I introduce this bill. If it pleases the Committee, I would like to hand it off to Mr. Michael Yaki, the senior vice president and senior counsel to explain the importance of this bill. In front of you, you have a proposed amendment that incorporates some of the comments we have gotten since this passed out of the Senate and came over to the Assembly [[Exhibit D](#)]. I believe that is on the Nevada Electronic Legislative Information System, and I believe all of the Committee members have that. If it pleases the Chair, Mr. Yaki could walk through the bill, the concept, and he even has some slides. [Senator Brooks also submitted [Exhibit E](#) and [Exhibit F](#).]

Chair Flores:

I see the force is strong within you, Senator Brooks. Mr. Yaki, good morning.

Michael Yaki, Senior Vice President and Senior Counsel, Policy and Programs, Petros PACE Finance:

[He read from [Exhibit G](#).] With the Committee's indulgence, I would like to share a PowerPoint presentation. You will have this in your packets, and you do not need to go too much into it. This is about S.B. 283 (R1). I want to thank Senator Brooks for his leadership and stewardship of this legislation. It has been a fun ride through the Kessel Run getting to this place right now.

I am representing Petros PACE Finance. We are one of the nation's largest capital providers of C-PACE financing [page 2, [Exhibit G](#)]. I am also joined by four other capital providers, Dividend Finance, Twain Financial, PACE Equity, and Greenworks Lending, all of whom want to be lenders in Nevada. We represent a large share of the C-PACE finance community. Since 2017, when this statute was enacted, over 1,500 projects in 26 states, totaling over \$1.7 billion have been financed, and we think Nevada could be a hundred million dollar investment market within two years and could make Nevada part of the top tier of C-PACE states. As a preface, I want to apologize for the fact I am appearing remotely. My hyperdrive is in the shop; the droids just cannot get it to work, and I am forced to appear on this rather rudimentary holograph.

As a quick primer on C-PACE—you saw that Senator Brooks talked about it as a form of financing [page 3]. Eligible improvements are repaid and secured by an assessment that has been placed on the property. In 26 states, there are 2,500 projects since 2010, \$2.4 billion in financing, and incredibly, over 25,000 direct jobs created by it. In 2017, you passed A.B. 5 of the 79th Session, a PACE program for commercial properties. It is found in *Nevada Revised Statutes* Chapter 271, but only two projects have been financed during that entire period of time. As Senator Brooks was saying, places like Nebraska and Utah are now well over \$1.5 billion since that time period. Why are there so few projects despite the attractive markets in Las Vegas, Clark County, Reno, Tahoe, and elsewhere in the state of

Nevada? As was stated, in C-PACE, there is do or do not; there is not try. Unfortunately, with A.B. 5 of the 79th Session, the Legislature did try to do PACE but did not quite pull it off. It is not that easy. It is like trying to bull's eye a womp rat on Tatooine in a T-16, it is not that easy to do, but we are doing it in this legislative amendment that we have before you.

We are conforming your C-PACE statute to the national standards and best practices required by rating agencies and securitization standards [page 4]. Why is that important? It creates low interest rates and long terms that serve as a magic bullet for how C-PACE works for property owners because it enables them to get low-cost money, manage cash flow, and we do this by reforming the statute to conform to these national standards. It is important to remember this is a voluntary program for property owners. You are not conscripted into the Imperial Stormtroopers; you can only do this if you consent. It is the same with local governments. It is not like the Empire is going to dictate it to you. You are Alderaan, Mandalore, or Coruscant; you can choose to offer C-PACE or not. The other thing is, we want to conform the C-PACE statute to national standards and best practices for eligible and qualified improvements. Right now, you only allow energy efficiency and renewable energy, which is great. If you want to create a better HVAC [heating, ventilating, and air conditioning] system on your Death Star, that might be eligible, but if you want to do water efficiency, put a new vaporator and deal with the desert climate in Tatooine, that would be eligible under this new statute, as well as resiliency, seismic, fire, and indoor air quality. Someone asked me on my way in, Would this include blast shields against Imperial Death Stars? I said, probably not. It has to be fixed to the land. The key to all of this is lender consent. Lender consent means the preexisting lenders on the property have an absolute veto on this. It also makes for rigorous underwriting because not only do they do the underwriting on the property when they first put a lien on, then we as capital providers underwrite it, and then they underwrite it a third time based on what we are doing. There are a lot of checks and balances involved here.

Finally, we want to make it easier for the C-PACE statute to conform to the national standards and best practices to make it easier for municipalities to offer C-PACE [page 6]. There would be less guesswork, easier guidelines, better rules to follow, and liability protection, basically giving local governments a little beskar steel for the Mandalorian armor. In case something goes wrong, the risk is on the capital providers, not on municipal governments. You will see in the amendments how we have done that and worked with counties like Clark County, the Nevada Association of Counties (NACO), Las Vegas, Reno, and others to make that happen.

The amendment that you have before you contains the concerns we have already addressed from the Nevada Bankers Association, Credit Union League, and the Cities of Las Vegas and Reno [page 7]. The proposed amendment includes more work with Clark County, NACO, and Nevada Energy. We have worked with them together to ensure we did things to provide better clarity and protection for local governments first and foremost, more flexibility, and more control. I know it is a lot of green, red, blue, and purple. Quite frankly, it was very confusing to me, but I remember this as I was negotiating with all of them, a simple mantra I learned as a young man on Dagobah, "PACE is a path to the light side of the Force. PACE

leads to investment, investment leads to jobs, and jobs lead to prosperity." I sense much PACE in all of you on the Committee.

Senate Bill 283 (1st Reprint) will conform the Nevada C-PACE statute to national standards and best practices for financing, for improvements, and for municipalities [page 8]. It will create jobs, environmental benefits, and disaster resiliency. Thank you, members of the Committee. You are my only hope.

Chair Flores:

You are by far the most powerful Jedi. You did that so seamlessly. We are impressed. I wish you were in the room with us. Senator Brooks, do you have any further remarks?

Senator Brooks:

That is our presentation. I would be open to questions from the Committee. Mr. Yaki is available as well.

Assemblyman Matthews:

If you could, walk me through a practical example. I am anticipating talking to a constituent and I need someone showing my place in all this. If someone comes into my district, wants to build a hotel, and wants to go through C-PACE to do it, how would that work, in a simplified manner?

Senator Brooks:

I am glad you asked that question because when you can walk through the process, that helps the light bulb go off. Mr. Yaki, will you give us an example of a project that you worked on that might be an example relevant to Assemblyman Matthews' district?

Michael Yaki:

Let me shed a little Light Side on your example. If a constituent wanted to build a hotel in your area, what they would be able to do is put together a financing package. That financing package will probably consist of a major senior construction lender, a big bank in Nevada, but also they would be looking at other forms of financing because every lender has a limit as to how much they are willing to go on the property. Commercial property assessed clean energy becomes a part of that because C-PACE can not only fill that gap but fill the gap for the specific improvements in that property. If they are going to put in an energy-efficient HVAC, heat-resistant windows, solar on the roof, or energy-efficient fixtures in the hotel, all of those are eligible for C-PACE financing. What would have to happen is the local government in your area would have to enact a C-PACE district for the purposes of your property owner being able to qualify and apply under this statute. They would set up the program and would need to go through a process set up by the local government. We think this would be a much more streamlined and simplified way of doing it. They are going to need professional engineers, an energy auditor, and people who do water studies or renewable energy feasibility studies. Together, they can put together a package, submit it to the local government, and they will say, Yes, this all fits within the statute. It is fine. They will receive financing from a company such as ourselves. In return, what we will do is

receive the assessment and lien the local government imposed on the property through written agreement with the property owner, and we will bill, collect, and enforce it ourselves, so the local government has only a very light touch on this entire thing. That is essentially the ecosystem by which C-PACE would work. We do this on a national scale. We work with national hotel operators and national hotel developers across the country, and I can tell you with great certainty, we would not be here today if there were not a large number of these individuals who are ready to contract with us and other companies wanting to come in. Unfortunately, because the C-PACE statute here is not up to the same standard as other national programs, we all hesitate to come in, and that is why only two have been financed over the past four years.

Assemblyman Matthews:

If you would explain from the perspective of local governments, what happens if a project fails? How would they protect it? How would they make sure resources that may be lost are recuperated from a taxpayer perspective as well?

Michael Yaki:

One of the key things in C-PACE is what I just said, the risk is on the capital provider, not the local government. The local government's function is confined to approving the application, executing the voluntary written assessment agreement between the property owner and the county, assigning that to us, and once that occurs, their responsibility is gone. Anything that goes wrong with the property is our responsibility. For example, if it goes into default and foreclosure, the bill as it has been amended and written—and this was worked out with Clark County and other local governments—makes it very clear that the assessment and lien that we have is junior to the lien for general taxes imposed by local governments, which means they get first dibs on any monies obtained from any foreclosure sale before we get a penny. The likelihood is they will be made whole, and we probably will be made whole as well, but this is meant to provide financial insulation for them in that situation. In addition, there is very strong prescriptive language that says local governments are not responsible for the actions of any employees, nor are they financially responsible for these assessments they impose on the property. No public funds or full faith and credit are at risk. Their credit rating is not at risk. Lastly, any time and effort they spend administering the program may be recuperated through the imposition of a reasonable fee imposed on the property owner and capital provider for processing the application. Fiscally, they are made whole, held harmless, and in the end, they have priority over us in case there is any default or foreclosure.

Assemblyman Matthews:

My understanding in reading this bill would be that jurisdictions would be eligible regardless of population. Is that the case? Are there population requirements, or is it the case that size matters not?

Michael Yaki:

Commercial property assessed clean energy will occur where it occurs. Where a property owner wants to go, whether it is a small or large community, we have found in a lot of states, like Nebraska, which has very low population density, you will find a lot of people wanted to

use this along the interstate with hotels, strip malls, and what have you that are along the way. Population density does not matter. We have found C-PACE can flourish wherever property owners who are willing and able to do this are. No, the population size and density does not matter at all.

Senator Brooks:

The language here, conforming with national standards and setting forth a lot of the guidelines, makes it far more likely that smaller counties which might have smaller resources from a staff standpoint will be able to adopt it because it lays out the playbook for them.

Assemblywoman Considine:

I want to make sure I have this straight in my head, and then I will ask a simple question afterwards. If I have this process correct, this is private investment money which is used for portions of a project, a certain layer of a project. In exchange for the low interest rates, that loan is paid back over a long period of time, and the loan survives whether or not the property is transferred or sold to someone else because that loan is not only secured to the property but also through the county because the county, in a way, is the servicer of the loan because they pay those assessments. Some of my confusion came from where the county is involved. I also see if the property goes into default, the investment is a junior priority to taxes or anything the county would require, but is it in a superior priority list than other loans because of this connection to the county?

Senator Brooks:

I was tracking with you right to the very end, and that is where I deviated.

Michael Yaki:

This specifies that the C-PACE assessment lien is junior to any liens for general taxes by the local government. That means any collection, payment, sale, or any proceeds must go to the satisfaction of the local government first before it goes to us. The other liens and encumbrances are referencing mortgage liens via trust liens on the property which is why and is the only way we have superior position in that case, by operation of law and following the statute. That means we need to have the consent of any person who has a secured interest, a lien, a mortgage, or a deed of trust on that property in order for the application to be approved. The county does not collect or do anything other than execute the agreement, place a lien on the property, and assign it to a capital provider like us. They are out except in the unlikely situation of foreclosure. There have been 2,500 C-PACE assessments across this country and not a single one has gone to foreclosure. As I explained earlier, the reason is that these properties are very tightly underwritten, three times, in order for us to get consent. There is no county role other than the initial role of putting the assessment on the property, and thereafter, if anything goes wrong, if they have liens on the property because they do not pay property taxes either, they get their money first, then us, then a person who holds a mortgage or deed of trust on the property.

Assemblywoman Considine:

This lien is superior. I apologize. I think I was misinformed. I thought the assessment or loan was paid back from the county to the investors, but it is not, you are saying it is paid back by the developers or whoever owns the property. Thank you for clearing that up.

Assemblywoman Dickman:

What would be the minimum-sized project you could do this with?

Senator Brooks:

I do not believe there is a statutory minimum but there is a functional minimum. Mr. Yaki could speak to that.

Michael Yaki:

It depends on the type of C-PACE capital providers that are out there. We, as an industry, have worked with projects as low as \$100,000 and as high as \$54 million and above. It all depends on two things. One is, can the property sustain a C-PACE assessment? In that analysis, anyone who holds a mortgage on that property must consent to it if they believe the benefits and cash flow of the C-PACE will outweigh any risk to them on the property. What we have seen a lot of times are smaller banks and credit unions have gotten into the smaller, lower-level C-PACE lending—five or ten thousand and below. Frequently what they are going to do is use their own customer base and work with them to do it. It is up to the lender on the low side; and on the high side, the sky is the limit. We have already had interest from some properties in Nevada to the tune of \$85 to \$100 million in C-PACE, which means they are talking about a fairly significant reconstruction or new construction of a property. That is why we are excited to be here, and this is something where we appreciate the time and effort of everyone, of the stakeholders who worked with us to get us where we are today under Senator Brooks' leadership.

Assemblywoman Black:

Why do I feel like you are going to be the death of me? I had to get one. I have a good friend who has experience with this C-PACE program being implemented in Las Vegas. He was telling me in order to get it to work, they had to expand the program out of the casino corridor into the individual property part of Las Vegas. For some reason, it was opposed by the individual businesses, even though the program does not require participation. Can you offer any insight into why the private business owners did not want to take advantage of the program or were apprehensive about it?

Senator Brooks:

The way the C-PACE statutes were, they had a tremendous number of hurdles and impediments based on how it was passed in 2017. In 2017, there were only a handful of examples of PACE, and they were mostly residential. There were a tremendous number of protections and hurdles in place that a property owner would have to clear to even be able to take advantage of it, which scared financing and capital out of the market and made it not worthwhile. As the industry has advanced, and there are far more projects and examples out there, there are still some issues surrounding residential PACE, but as it moved into the

commercial space, it has evolved into what we are trying to do right here. It was difficult to make a program which was worthwhile under the current existing statutes. Mr. Yaki could speak to that because he is in the business every day, but that was my understanding while dealing with the cities, the counties, and some business owners who tried to take advantage of this over the last couple of years, which is why I thought it was important to work with them to bring the bill forward.

Michael Yaki:

To paraphrase someone, I found their lack of faith very disturbing. The fact is, it is a voluntary program. There were a lot of impediments in the original bill that put friction and requirements on the property owners that properly belonged in residential PACE but not with someone who understands how to work with contractors and how to negotiate with their bank. I cannot quite say other than people have a hard time understanding PACE. It is like looking at the plan of a Death Star and trying to find that one ventilation shaft to drop something in and blow it all up. It is exceedingly complex. Once you get the machinery going, it is like an X-Wing Fighter zooming over Tatooine—it makes it a lot easier to work. That is what these amendments by Senator Brooks will do, and I believe property owners who were hesitant and resistant will understand, as Senator Brooks said, it is voluntary, easy, there are steps you will have to take, it will require the consent of any lender they have, but in the end, there are a lot of improvements they can benefit from which will help them and their businesses expand, grow, and create jobs in Nevada.

Assemblywoman Black:

Everybody, do not all thank me for that question at once.

Chair Flores:

Thank you, Senator Brooks, for the voluminous number of revisions. I had an opportunity to speak to some of the stakeholders leading up to this hearing, and they told me you all put in a lot of work. I appreciate that. Thank you for getting it where we are now. With that, we will start off with those wishing to testify in support who are here in person.

Senator Brooks:

My apologies. I wanted to bring up Mr. Vander Poel who worked on this and has some insight into all the parties involved to get to this amendment.

Nick Vander Poel, representing Petros PACE Finance:

When they say the Force needs to be with you, I want to take the opportunity to appreciate the following entities who provided feedback, input, and suggestions as it related to S.B. 283 (R1). We probably went through eight versions of S.B. 283 (R1) behind the scenes to get here today, including working yesterday with Ms. Sturdivant, who provided some questions and feedback, which we truly appreciate being able to answer. We worked with Director Bobzien and his team in the Office of Energy in the Office of the Governor; the City of Reno; the City of Las Vegas; the City of Henderson; Clark County; John Swendseid; Chairman Howard and his team; Washoe County; NACO; Southern Nevada Water Authority; Nevada Bankers Association; Nevada Credit Union League; and last but not least,

NV Energy. Help me Obi-Wan Kenobi, but never tell me the odds. We were committed from the beginning to work with all these stakeholders to help Senator Brooks get Senate Bill 283 (1st Reprint) over the finish line. I guess you can call me the R2-D2 of S.B. 283 (R1).

Chair Flores:

The biggest problem in the universe is that nobody helps each other, but you, sir, brought them all together. With that, we will go to those wishing to testify in support.

Chaunsey Chau-Duong, representing Southern Nevada Water Authority:

First and foremost, it is very good to see all your faces in person versus on Zoom or Teams. We are in support of S.B. 283 (R1). We appreciate the sponsor's bringing this bill forward. Anything that deals with water efficiency and enhancing conservation in the state we wholeheartedly support. I appreciate your time in letting me testify, and May the Fourth be with you.

Chair Flores:

We will go to those wishing to testify via phone in support of S.B. 283 (R1).

David Cherry, Government Affairs Manager, City of Henderson:

Thank you for the opportunity to testify in support of S.B. 283 (R1). We appreciate Senator Brooks' bringing forward this valuable legislation. The City of Henderson has made great strides in our use of clean energy and improving energy efficiency at city facilities, which has not only resulted in a reduction of conventional pollutants but also in slashing our carbon footprint and, most importantly, in creating cost savings. We also have an active C-PACE program already in place which was created in 2020, and S.B. 283 (R1) will only enhance this important opportunity for qualifying properties so they can invest more easily in projects which will enable them to rely on the benefits of clean energy, water efficiency, energy efficiency, or resiliency. This will offer significant advantages in terms of increasing potential savings, decreasing the intensity of resource use, curbing pollution, and enhancing resiliency, all of which are good for communities in the Silver State such as Henderson. We also appreciate the amendment allowing local governments to adopt changes the bill will require via resolution then by ordinance. In the words of Master Yoda, "Always in motion is the future." It is my hope this legislation will receive the support from the Committee it deserves.

Calli Wilsey, Senior Management Analyst, Intergovernmental Relations, City Manager's Office, City of Reno:

We are here in support of S.B. 283 (R1) today. We would like to thank the bill's sponsor for all of the outreach which occurred prior to today's hearing. There were numerous discussions, as you have heard, and we appreciate the sponsor's working with us to understand our existing C-PACE program and how to improve the existing language.

Peter Guzman, President, Latin Chamber of Commerce of Nevada:

We want to thank Senator Brooks for sponsoring this legislation. Most importantly, this bill will aid in Nevada's recovery and foster much-needed job growth throughout the state. The financing mechanism this program provides supports numerous small businesses who have been hit the hardest over the last year. Thank you, Chair and Committee members, for your time today.

Ryan Bellows, Director of Labor and External Relations, NV Energy:

NV Energy would like to testify in support of S.B. 283 (R1). We would like to thank Senator Brooks and the bill's proponents for working with NV Energy to address the concerns we had and to address the concerns of the other stakeholders. The revised version of the bill presented today addresses the concerns we had. NV Energy supports energy efficiency as one of the solutions which will allow Nevada to meet its decarbonization goals. We offer an array of energy efficiency products and services, many of which are referenced in this bill, to help all customers, including municipalities, conserve energy and lower their utility bills. We are hopeful this bill will lead to additional investment in the state and promote energy efficiency.

Andy Donahue, representing Southern Nevada Laborers-Employers Cooperation and Education Trust:

I want to start by thanking the sponsors [unintelligible] force behind this great concept. There is still work to do on R2-zoning. Respectively, this bill can bring a new hope to much needed development. It will also improve the project's offerings (POs). As the presenter indicated, there were two projects offered. With this bill, we can even see three POs or more.

Kelly Crompton, Government Affairs Manager, City of Las Vegas:

We would like to thank Senator Brooks for bringing this bill forward and believe it is a good piece of legislation which works with the previous bills in the previous session. The City of Las Vegas has one project of the two which were mentioned within our jurisdiction, and we are currently in the works on a second project. We would also like to thank Mr. Vander Poel for giving us the opportunity to provide a lot of feedback on the many iterations of the amendment. As a sidenote, it has been very entertaining to watch this hearing from my little office while you all have a wonderful May the Fourth.

Aaron West, Chief Executive Officer, Nevada Builders Alliance:

I am here today in support of the bill. I hope the Committee will help facilitate this bill's jump to lightspeed on its way to the Governor's desk.

[[Exhibit H](#) was submitted in support of S.B. 283 (R1) but not discussed.]

Chair Flores:

We will go to the next caller in support of S.B. 283 (R1). [There was no one.] Is there anyone wishing to speak in opposition to the bill. [There was no one.] Next, we will go to those wishing to testify in neutral to the bill.

Connor Cain, representing Nevada Bankers Association:

Anytime you have a financing mechanism which creates a super priority lien, it will be met with a healthy amount of skepticism from lenders, which includes the Nevada Bankers Association and others. Assemblywoman Considine, you touched on this from a consumer protection standpoint, which is why the lender's consent in this bill is so critical. That is also why it is so important to limit this to commercial properties. If we look back at 2017, when we last worked on this, there were a number of concerns about residential properties, and there were programs in other states which dealt with residential properties and did not have the best outcomes. That is the reason for part of that skepticism and concern. I will say, we are still reviewing the latest amendment, but Senator Brooks, Mr. Yaki, and Mr. Vander Poel have put in an unbelievable amount of work and spoken with various stakeholders, including us. We have met with them a number of times. They have done everything they can to try to alleviate concerns we had, and we are very grateful for that. As Mr. Vander Poel said, they are on their eighth iteration, but they have managed to create a great bill. If another concern were to arise from us, we are confident we would be able to work and communicate with them. In conclusion, I want to be clear, we are in neutral. I will not punt as Mr. Guzman did. I will say the Force is certainly strong with Mr. Yaki, Senator Brooks, and Mr. Vander Poel. If Mr. Vander Poel would like to be referred to as R2-D2 moving forward, I would be more than happy to satisfy that request. There is no problem for me or the Nevada Bankers Association. We are happy to do that.

Chair Flores:

As a fun fact, I have an uncle named Arturito. If you say it slow enough, you may think they are saying R2-D2. That is his real name, shout-out to my uncle. We will continue with those wishing to speak in the neutral position.

Robert Wilson, representing the Nevada Credit Union League:

We are here in neutral on this bill. We want to align our comments with the Nevada Bankers Association and offer sincere gratitude to the sponsor and author of the bill, as well as the contracted lobbyist of the bill; they have been more than great to work with, and we appreciate it a great deal. We are looking forward to the final iteration of the bill, but we believe we will be neutral when that comes out. As my friend said, I do not want to punt it, but I can say my Midi-chlorian count is far lower than that of Mr. Yaki and some of the members on the Committee. I have no more Star Wars puns for you all, but I do appreciate the healthy discussions offered on this bill.

Joanna Jacob, Government Affairs Manager, Clark County:

Chair Flores, we have worked to move our opposition to neutral today. We are very happy to be neutral. We want to thank the proponents for working through the county concerns we conveyed in the Senate, key amendments for the county, including the protections for the county credit rating discussed today, the ability for the local government to define eligibility for their own programs, the program guide, and in section 18, the ability for local government to provide for other matters, including any requirement related to estimated benefit on the property. We think this is a good move towards transparency, and it was important for us not to oppose the bill, but to work on it and provide solutions to

Senator Brooks. We made Mr. Yaki crazy with all the color-coding. I can personally attest to that fact. It was important for us to work on it because earlier this year, the Clark County Board of Commissioners approved a key sustainability climate action plan under the initiative in Clark County. We see the potential for using this program to help further environmental and sustainable measures in our community, and the framework it created in this bill from Senator Brooks as amended in the guidelines will allow us to work on creating programs. We intend to take this to our board for approval. We want to thank everybody. This has been a ton of work. May the Fourth be with you and the important work you do, as it is every day.

Chair Flores:

To be angry is to be human. We appreciate your working on that and working with our bill sponsor to get to a neutral position on this bill.

Vinson Guthreau, Deputy Director, Nevada Association of Counties:

We are testifying in neutral on S.B. 283 (R1). We share the thanks and appreciation for all of the work of the proponents put into this bill to ensure Nevada's counties who may use C-PACE have the provisions they need to make the program safe and workable, specifically making sure counties are protected from risk but also providing them more flexibility and ensuring the program is easy to administer.

Chair Flores:

We will go to the next caller wishing to testify in neutral to S.B. 283 (R1). [There was no one.] Senator Brooks, do you have any closing remarks?

Senator Brooks:

I do not want to beat a dead Tauntaun. I will go on to thank the Committee and thank you, for having the best Committee hearing of the session.

Chair Flores:

In all sincerity, thank you, all, for working on this bill and multiple revisions. We will close the hearing on S.B. 283 (R1). At this time, we will go to public comment. [Rules were explained.]

Annemarie Grant, Private Citizen, Quincy, Massachusetts:

My brother was murdered by the Reno Police Department and the Washoe County Sheriff's Office. I think it is important for elected officials to know about bad police. Washoe County Sheriff's Office Sergeant Jason Wood is on administrative leave after his second DUI. Sergeant Wood was arrested for a DUI on Friday, April 30, 2021. He was booked in Washoe County jail shortly before midnight on Friday and charged with DUI. Sergeant Wood was arrested for a DUI previously in March 2016. He was sentenced to complete nine hours of DUI school and attend a victim impact panel. He faced no apparent repercussions from the Washoe County Sheriff's Office. In August of the same year, Sergeant Wood initiated a traffic stop of Kyle Zimbelman which resulted in his death. He was shot by multiple agencies. In 2017, Sergeant Woods released his canine on a man after he surrendered to

police. The video of the attack on the community member went viral, and the taxpayers of Washoe County had to foot the bill for the lawsuit. Sergeant Wood also shot and killed Robert Hampton III on November 5, 2014. Again, another death of a community member which Washoe County District Attorney Chris Hicks dragged his feet on releasing his report. The report was released May 26, 2016, 568 days later. Sheriff Balaam knew of Sergeant Wood's past when he took office in 2018, but what was one of his first acts in office? Promoting a bad cop to sergeant. Washoe Sheriff Balaam recently said it is past time we hold law enforcement who tarnish the profession and oath accountable for deplorable actions. It is time for him to do that within his own department. Please, support bills which promote transparency and accountability from law enforcement. I also personally believe *Nevada Revised Statutes* Chapter 289 needs a complete overhaul.

Chair Flores:

We will go to the next caller wishing to testify in public comment. [There was no one.] With that, we will go ahead and close public comment. Members, tomorrow we will be hearing Senate Bill 253 (1st Reprint) and Senate Bill 294 (2nd Reprint). Please give yourselves an opportunity to review those ahead of time, reach out to some of the stakeholders, and familiarize yourselves with that. I know we were originally scheduled to do our Committee photo. I apologize for the last-minute change. The photographer will not be doing the photo today. That was not at the direction of any particular member, it was a broader decision made external to the Committee. Members, I do not know when we will be rescheduling that. Please, be on the lookout. We will send an email out to everybody.

With that, I would like to close out with this: At this time in session, we find ourselves in a dark place, but with a little more knowledge, that is going to light our way. With that, members, May the Fourth be with you. [The meeting was adjourned at 11:17 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 written testimony submitted by Jacob Tibbitts, Natural Resources Manager, Eureka County, Nevada, regarding background and justification for [Senate Bill 77 \(1st Reprint\)](#).

[Exhibit D](#) is a proposed amendment to [Senate Bill 283 \(1st Reprint\)](#), dated May 4, 2021, submitted by Senator Chris Brooks, Senate District No. 3.

[Exhibit E](#) is a fact sheet titled "Fact Sheet for [Senate Bill 283 \(1st Reprint\)](#)," dated May 4, 2021, submitted by Senator Chris Brooks, Senate District No. 3, in support of [Senate Bill 283 \(1st Reprint\)](#).

[Exhibit F](#) is a document titled "Summary and Amendments to Senate Version of [Senate Bill 283 \(1st Reprint\)](#)," submitted by Senator Chris Brooks, Senate District No. 3.

[Exhibit G](#) is a copy of a PowerPoint presentation titled "[Senate Bill 283 \(1st Reprint\)](#): Amending current C-PACE Statute," dated May 4, 2021, submitted by Michael Yaki, Senior Vice President and Senior Counsel, Policy and Programs, Petros PACE Finance.

[Exhibit H](#) was written testimony dated May 4, 2021, submitted by Cliff Kellogg on behalf of C-PACE Alliance, in support of [Senate Bill 283 \(1st Reprint\)](#).