MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON GOVERNMENT AFFAIRS

Eighty-First Session
April 2, 2021

The Committee on Government Affairs was called to order by Chair Edgar Flores at 9:02 a.m. on Friday, April 2, 2021, Online. Copies of the minutes, including the Agenda (Exhibit A), the Attendance Roster (Exhibit B), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/App/NELIS/REL/81st2021.

COMMITTEE MEMBERS PRESENT:

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

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Assemblyman Jason Frierson, Assembly District No. 8
Assemblywoman Lisa Krasner, Assembly District No. 26
Assemblywoman Teresa Benitez-Thompson, Assembly District No. 27

STAFF MEMBERS PRESENT:

Jered McDonald, Committee Policy Analyst
Erin Sturdivant, Committee Counsel
Judith Bishop, Committee Manager
Lindsey Howell, Committee Secretary
Cheryl Williams, Committee Assistant

OTHERS PRESENT:

Eric Spratley, Executive Director, Nevada Sheriffs' and Chiefs' Association
Kendra G. Bertschy, Deputy Public Defender, Washoe County Public Defender's Office
Christopher Ries, representing Las Vegas Metropolitan Police Department
John J. Piro, Chief Deputy Public Defender, Legislative Liaison, Clark County Public Defender's Office
Michael Pagni, representing Heinz Ranch Land Company
Don Pattalock, General Manager, Heinz Ranch Land Company
Lindsay Knox, representing Nevada Home Builders Association
Aaron West, CEO, Nevada Builders Alliance
Jamie Rodriguez, Government Affairs Manager, Washoe County
Dan Morgan, CEO, Builders Association of Northern Nevada
Steve Walker, representing Eureka County
Calli Wilsey, representing City of Reno
Christopher Thorson, Deputy Administrator, Division of Water Resources, State Department of Conservation and Natural Resources
Mary Pierczynski, representing Nevada Association of School Superintendents
Joanna Jacob, Government Affairs Manager, Clark County
Mary Walker, representing Carson City; Douglas County; Lyon County; and Storey County
Vinson Guthreau, Deputy Director, Nevada Association of Counties
Annemarie Grant, Private Citizen, Quincy, Massachusetts

Chair Flores:
[The meeting was called to order. Committee protocol was discussed.] We have three items on the agenda. We intend to take them in the order they appear. We will take Assembly Bill 304 first, Assembly Bill 333 second, and lastly, Assembly Bill 385. With that, we will go ahead and open up the hearing on Assembly Bill 304. We have Speaker Frierson joining us.

Assembly Bill 304: Revises provisions governing peace officers. (BDR 23-918)

Assemblyman Jason Frierson, Assembly District No. 8:
I am here to present A.B. 304. I run the risk of jinxing myself when I say a bill is simple, but A.B. 304 is a rather simple bill. It expands the mental health continuing education that peace officers complete yearly to also include crisis intervention. This bill was originally an effort

to make sure that law enforcement was trained on dealing with mental health issues, and it became obvious to me in speaking with other law enforcement organizations that they were already implementing some form of this, but there are terms of art in law enforcement communities that need to be taken into account. It is not a one-size-fits-all type of issue. A larger law enforcement agency may have a more extensive program. They may also provide that education to smaller law enforcement agencies. In speaking with law enforcement communities and the Commission on Peace Officers' Standards and Training (P.O.S.T.), it became apparent that a better way to do it would be to incorporate into law what some are already doing and is currently in regulation. That is the background of how we got here today.

Assembly Bill 304, again, deals specifically with crisis intervention. According to data from the National Conference of State Legislatures, at least 27 states and the District of Columbia have laws requiring officers to be trained to respond to mental health, substance use, and behavioral disorder issues. In theory, the role of our criminal justice system seems simple enough on the surface: enforce our approved laws and penalize those who break them. However, in practice, the responsibilities that we have placed on our criminal justice system, and in particular our peace officers, have only expanded.

Individuals experiencing mental health crises are more likely to encounter law enforcement than receive medical assistance. When someone is experiencing a mental health crisis, family, friends, and Good Samaritans typically call 911 first. This means that many of our law enforcement officers, by no fault of their own, are responding to calls they frankly lack the knowledge, support, and resources to effectively handle. Peace officers are trained law enforcement, not mental health providers. However, as first responders, it is critical that we give peace officers the tools that they need to help our vulnerable and at-risk populations.

Crisis intervention training can vary, but in general, the overall goals of crisis intervention training are to improve peace officers' understanding of mental illness and available community resources, increase an officer's confidence in managing incidents involving a person with a mental illness, and develop skills related to verbal de-escalation to defuse a mental health crisis and reduce use of force. This training criteria promotes diversion to mental health services rather than arrests.

Again, Assembly Bill 304 is rather short. The Commission on Peace Officers' Standards and Training already establishes minimum standards for continuing education requirements for peace officers to be completed annually. Currently, training related to mental health is already required. Section 1, subsection 1, paragraph (c), subparagraph (2), sub-subparagraph (II) of this bill expands the continuing education requirement of mental health to include crisis intervention specifically.

I want to be clear that currently in regulation, in *Nevada Administrative Code* Chapter 289, crisis intervention training is already listed. Assembly Bill 304 will ensure that the intent of the Legislature is clear, that crisis intervention should be a priority for our law enforcement officers and part of their continual education.

That concludes my introductory remarks. I had originally prepared to have Taylor Allison speak. She serves in many roles but is the chair of the Douglas County Behavioral Health Task Force and the Northern Regional Behavioral Health Policy Board; she actually has a couple of other titles. She was unable to be here today, but I have coordinated with law enforcement, both the Las Vegas Metropolitan Police Department and P.O.S.T., on this issue. Really, what brought this home to me was that I saw a story of a mental health call where law enforcement showed up and there was someone having a mental health crisis. They were sitting down—I believe it was in a store—and remarkably, the officer sat down about ten feet away and completely de-escalated the situation. There was no violence, and that individual was able to get the mental health assistance that they needed. I think that is what we are trying to do; we are trying to think outside the box and make sure that our officers are trained to deal with this situation and de-escalation or intervention otherwise is a better way.

That is Assembly Bill 304, and I would welcome any questions.

Chair Flores:
Members, at this time, we will open it up for questions. [There were none.] I do believe Speaker Frierson did a good job summarizing the genesis and purpose of the bill and reading through the language rather quickly for us. I do not think you jinxed yourself when you said it would be a quick hearing. At this time, I would like to invite those wishing to testify in support of Assembly Bill 304.

Eric Spratley, Executive Director, Nevada Sheriffs' and Chiefs' Association:
I am here in support of Assembly Bill 304. We appreciate Speaker Frierson's bringing this forward.

Kendra G. Bertschy, Deputy Public Defender, Washoe County Public Defender's Office:
We want to thank Speaker Frierson for bringing this important legislation forward. Unfortunately, mental health crises are treated not as a public health issue, but instead as a police issue. We just want to make sure that the police officers who are asked to serve at a scene where there is someone in the middle of a mental health crisis have the proper training to know how to appropriately handle that situation. We appreciate all the hard work that has been done already by our law enforcement officers involving this issue, and we hope to continue that progress.

Christopher Ries, representing Las Vegas Metropolitan Police Department:
I would first like to thank Speaker Frierson for bringing forth Assembly Bill 304 and offer our support. The Las Vegas Metropolitan Police Department has been at the forefront regarding crisis intervention training, and each new officer receives Crisis Intervention Team training during their academy experience. Crisis intervention techniques continue to be an important part of de-escalation strategies. This continuing training is a significant portion of being able to identify a person in crisis quickly and effectively and getting that person the resources they need safely and efficiently. We agree with this training being codified into law. We extend our support of A.B. 304.

John J. Piro, Chief Deputy Public Defender, Legislative Liaison, Clark County Public Defender's Office:
After watching many hours of body cam footage, I have seen officers respond very well to mental health crises, and I have seen officers respond not so well to mental health crises. I think codifying some training is going to help all of us because a large portion of what we are seeing down south relates to mental health and the inadequacies in our mental health system, which is forcing police to have to respond to things that perhaps they should not be forced to respond to. But that is the nature of where we are at. Requiring appropriate training will result in better outcomes, so we are grateful to the Speaker for bringing this bill forward.

Chair Flores:
Is there anyone else wishing to testify in support of Assembly Bill 304? [There was no one.] At this time, we will invite those wishing to testify in opposition to Assembly Bill 304 to call in. [There was no one.] Lastly, we will go to those wishing to testify in the neutral position on Assembly Bill 304. [There was no one.] Speaker Frierson, do you have any closing remarks?

Assemblyman Frierson:
I think I will count my blessing before [unintelligible] happens. I thank you all for your time, attention, and interest in this very important issue.

Chair Flores:
I really do believe that is the fastest hearing we have had in this Committee this entire session. We appreciate that. At this time, we will close out the hearing on Assembly Bill 304. Next, we will open up the hearing on Assembly Bill 333. Assemblywoman Krasner, whenever you are ready.

Assembly Bill 333: Makes changes to provisions relating to land use planning. (BDR 22-357)

Assemblywoman Lisa Krasner, Assembly District No. 26:
I am here today to introduce Assembly Bill 333. I have with me two copresenters, Michael Pagni and Don Pattalock, to present Assembly Bill 333 to the Committee and answer any questions you may have.

Michael Pagni, representing Heinz Ranch Land Company:
Assembly Bill 333 involves local government land use planning matters and essentially has two components. The first, section 1, addresses the procedures for seeking judicial review of local government land use decisions and seeks to improve the efficiency and timeliness of judicial review. Under current law, an aggrieved person may seek judicial review by filing a petition within 25 days of the final decision. These actions are in the nature of an appeal and are decided by submission of briefs. However, nothing in the current law addresses when those briefs must be filed, which in practice, has led to considerable delay in ensuring the important constitutional property rights at issue are submitted to courts in a timely fashion.

In fact, it is not uncommon for it to take one or more years for judicial decisions, leaving the development status of land in limbo and creating an opportunity for abuse by opponents seeking to delay a project.

Section 1 adds time frames for when briefs must be filed: 40 days for the opening brief, 30 days for the answering brief, and 30 days for a reply. The forms of the briefs must comply with the forms for appellate briefs under Nevada Rules of Appellate Procedure. Within 7 days of completing the briefs, any party may request a hearing. Two items to note about these procedures: First, the proposed briefing schedule is identical to the briefing schedule already codified in the Administrative Procedure Act (APA) under *Nevada Revised Statutes* (NRS) 233B.133, which governs judicial review of state agency decisions. The APA schedule has been in place for over 30 years, works very well in practice, and avoids the delays and abuses seen in the local government review process. Second, as with the APA, the bill also grants courts the ability to extend the time if good cause is shown. This avoids any concerns of interfering with the exercise of judicial discretion. We have all heard the phrase "Justice delayed is justice denied." Section 1 seeks to address that concern, eliminating the opportunity for abuse of the judicial system through delayed prosecution of land use appeals and protecting due process and timely adjudication of constitutional property rights.

The second element of the bill is contained in section 2. The intent of this section is to codify the historic practices of the State Engineer and recognize that when local governments require management of stormwater runoff created by new development, that stormwater management does not require a water right permit. Under existing law, cities and counties are authorized to regulate development of land. Regulation often includes imposing requirements for the retention or detention of nuisance stormwater flows [unintelligible]. A simple example to think of is the development of a parking lot. When it is dirt, some of the rain soaks into the ground, some collects in puddles, and some drains off. Once that lot is paved, the rain that used to puddle or soak into the ground now hits the pavement and all of it runs off to the property next door. It is this increase in stormwater runoff that we are talking about—that nuisance stormwater flow that is created by the construction of new pavement and rooftops.

When development occurs, cities and counties impose engineering requirements on projects to manage these nuisance stormwater flows and ensure that the post-development runoff is not worse than the pre-development runoff. They do this either by retaining, or holding, the nuisance stormwater in basins on the site so that it can soak into the ground or evaporate or by detaining, or slowing down, the stormwater so that when it eventually runs off, the amount of runoff is the same or less than what ran off before.

Currently, the State Engineer does not require a water right permit for this type of nuisance stormwater management. However, with the exception of certain projects in Clark County, the exemption is not explicitly set out in statute. The intent of this bill is to codify that historic practice, allowing local governments to manage nuisance stormwater created by new

development and avoid the administrative burden and unintended consequences of requiring a new water right for nuisance stormwater permits.

While we agree with and support the State Engineer's historic approach to these issues, there is some concern that, without explicitly recognizing the exemption in statute, NRS Chapter 533 could be construed as requiring a water right appropriation, which would have significant unintended consequences. You can imagine the enormous financial burden to the state and local governments if they were required to obtain a water right every time they built a highway or a road, or how development could grind to a halt in over-appropriated basins where no new water rights are available, or the significant administrative burden and cost that would be imposed on the State Engineer if they had to review every single development project in the state. It could also put local governments in basins—where no new water rights are available—in the untenable position of choosing between managing stormwater responsibly or being exposed to takings claims, since their stormwater management plan would necessarily require taking someone else's water right. It could also give rights to speculators filing blanket permits on nuisance stormwater flows to leverage payoffs from developers, unnecessarily increasing the price of housing and other development.

Section 2 recognizes that where retention [unintelligible] of nuisance stormwater is required by a city or a county on new development, that stormwater management does not require a water right permit. It is worth noting that nothing in this bill would affect other stormwater permits that are required for construction, such as Division of Environmental Protection [of the State Department of Conservation and Natural Resources] construction stormwater permits, stormwater pollution prevention plans, or similar permits related to water quality. It would simply allow local governments to continue responsible stormwater management on new development without implicating any new water right appropriations.

We have discussed this bill with the State Engineer and while there was no concern with the intent, the State Engineer believes the language could be narrowed and clarified to avoid unintentionally encompassing other types of waters that are currently regulated by the State Engineer. We intend to continue to work with stakeholders—including the State Engineer, the City of Reno, and Eureka County—and hope to have a consensus amendment soon that addresses their issues, including a population cap that will exclude the rural counties. With that, I will turn it over to Don Pattalock for additional comment.

Don Pattalock, General Manager, Heinz Ranch Land Company:
We are the developers of a 5,000-home master planned community within the City of Reno. I do not intend to retrace Mr. Pagni's testimony; he did a tremendous job. I am just going to provide a little bit of background as to why we are here and why this is coming forward now. Some of the recent history with storm events we had in the winters of 2016–2017 and 2017–2018 created flooding issues within the City of Reno and Washoe County, particularly in the north valleys. The flooding issues really put a spotlight on development, stormwater management, and the creation of these flows, as well as the jurisdictional management of these flows. Given the situation we all experienced, everyone has been working extremely

hard to address situations that occurred and working hard to avoid them in the future. With the uncertainty of climate change, the variability, and the weather patterns, from our perspective as a developer of a large project, we believe that we have one chance to get flood control done correctly and to be able to protect public safety in the future.

Through this effort, the focus turned to the statute and how we manage stormwater in the state—that is where NRS 533.030 can collide for us and the unintended consequences that resulted. *Nevada Revised Statutes* 533.030 exempts Clark County from a water appropriation for any flood control structures, which I believe is good policy for the state. However, the exclusion from the exemption implies that all other jurisdictions would require a water appropriation for the stormwater facilities. Historically and currently, the State Engineer does not require a water appropriation for stormwater management. Assembly Bill 333 simply seeks to close a loophole that was created in NRS 533.030 and codify the existing practice of the State Engineer as it relates to stormwater management facilities resulting from a local government's flood control policy.

Mr. Pagni detailed that the de minimis flows we are talking about here are not water rights created for a beneficial use. I just wanted to make sure to say that these are nuisance stormwater flows and they are managed for public safety. There are lots of nuances in the water law, and we want to be very careful that we are not creating unintended consequences. There have been stakeholders involved in the initial conversations here, and the language is being refined. In closing, I would just like to thank Assemblywoman Krasner for taking leadership on this important issue for public safety within the state, as well as the Division of Water Resources and the State Engineer for their time and help crafting this language and getting it right. The City of Reno was heavily involved in this, as was Washoe County. Truckee Meadows Water Authority has provided input, as well as Eureka County. With that, I will close my initial remarks. We are available for questions.

Chair Flores:
At this time, we will open it up for questions, starting with Assemblywoman Considine.

Assemblywoman Considine:
I am trying to understand this in a practical manner. Is there a way you could walk me through how this happens? I guess I get a little hung up on some of the wording in one of the attachments: stormwater runoff generated by the development. Can you walk me through a scenario where this has happened or what occurs when it does?

Michael Pagni:
There is the parking lot example I gave. Before it gets developed, it is just vacant land. When rain falls or precipitation occurs, that water either soaks into the ground or puddles on-site—or some of it may run off to the neighboring properties. As soon as the lot is improved with something impervious, such as pavement or rooftops, then instead of doing what it used to do, water hits that pavement, gets accelerated, and all flows off-site. When local governments approve a development project, this is one of the things they are looking at; they want to make sure that when that water flows off, it does not harm any of the other

properties. There are engineering techniques where you create basins—you may have seen some of these on the side of the road—to collect that water. They can either slow it down, so it flows off the property, in the same manner it used to before you built the parking lot, or just hold it on-site in a pond and just let it evaporate off or soak into the ground on-site. That way, again, you are not harming the neighboring properties because you are building a parking lot.

This is the question when those local governments, as a matter of public health and safety, are trying to manage these stormwater flows, these nuisance flows, to prevent harm: Do you have to have a water right for actually holding that water in a detention basin or a retention basin? And as Don Pattalock indicated, historically, the State Engineer has not required that water right permit. We are just trying to codify that historic practice because if you were to have to go out and try to secure a water right permit every time you put in a parking lot, you are taking water that should be available for beneficial use—for drinking water and irrigation. Now all of a sudden, you are just capturing and holding it to sit in a detention basin for stormwater, which really does not serve good policy purposes.

Assemblywoman Considine:
Hearing that again contextualizes all of it for me, so I appreciate that example. Just using this example, say that there is, for some reason, a homeowner in the property next to this parking lot development. If that homeowner captured that water and wanted to use it for their own, is this where this issue of litigation comes in? I know that might be a crazy example.

Michael Pagni:
The litigation concern that we have has a number of different aspects. One, there is the litigation aspect of discharging new water onto that neighbor's property and causing damage from the stormwater flooding. That is what the local government engineering requirements avoid. They are managing that stormwater so it does not harm the neighboring property. The second issue is this: Do I have to actually secure a water right permit to hold it? Keep in mind that the type of water we are talking about is not water that you could go get an appropriation on today. This is not like water off of a riverbed or when you drill a well and pull water out of the ground. These are nuisance flows that are only created because we have put pavement down on the land. The concern that I raised with the takings is that if you have a basin where all of the water rights have been appropriated, they are all being used for municipal use or irrigation use. There are none available to just go to the State Engineer and say, Hey, will you give me a new water right? If *Nevada Revised Statutes* 533.030 were to be construed to say, Yeah, every time you put in a parking lot, you need a new water right, there would be none available. By implementing responsible stormwater management practices, the local governments, in essence, would be effectuating a taking because they would be requiring you to take someone else's water right, which might be used for irrigating a farm, just to build that parking lot.

Assemblyman Ellison:
The only question I had was for Michael Pagni. You talked about the amendment by Eureka County. Is that still going to be an amendment to this bill?

Michael Pagni:
Yes. We are working cooperatively with Eureka County. We are looking at a consensual amendment that would put a population cap on the bill, so it would not apply to Eureka County or other small rural counties, at their request.

Chair Flores:
If I could just ask a question and have you walk me through how this normally happens: Say there is a vacant lot. We will call that Lot A. I own the adjacent lot, Lot B. Because the vacant Lot A has been there consistently for X amount of years, there has been a runoff from that vacant Lot A coming on to Lot B. It benefits me in some way because I have some type of irrigation system that is being partially fed from what I consistently see happening in Lot A coming onto Lot B. Is there ever a weird dynamic in that relationship once that new development comes into place? Does there have to be some type of relationship structure so that I can continue to reap the benefit I was getting before? Or because I never had any type of control over Lot A, is there not a requirement for me to try to establish some type of relationship with respect to my ownership of Lot B? Is that a hypothetical that you do not necessarily encounter often?

Michael Pagni:
Great question. If the water coming off Lot A to Lot B is a consistent, perennial source of water—one that is flowing all the time—such that you could go to the State Engineer and ask to get a permit to put that to beneficial use, this bill and that development would not affect that whatsoever. You cannot develop land in a way that would impair your ability to continue to use that permitted water right for a beneficial use. What we are talking about here is a different type of water. It is that nuisance flow—the increase. The development of Lot A is going to increase what is flowing to Lot B right now. The local governments have to manage that; it is basically a do-no-harm approach. They want to make sure that they are not putting more water onto your Lot B than is flowing there right now. We are trying to talk about how local governments regulate that new, additional nuisance water. Do you really need to get a water right permit for intermittent nuisance flow that is not something you could ever put to beneficial use to begin with?

Don Pattalock:
It is a great question, and we deal with this all the time in the development world. This is the way we manage stormwater now: Say that I am the owner of Parcel A, and you are the owner of Parcel B. I come in and I develop, say, a charter school. I have a parking lot, rooftops, and playgrounds. The development of my project is not permitted to increase the amount of runoff that now impacts your property. We handle that through all the jurisdictional codes. We are required to either slow the water down and release it on the normal basis it would flow on or to hold the water that we create, which is what normally happens. Let us say that there was one acre-foot of water that normally flowed off our

property onto yours. With the new project, that becomes two acre-feet of water because of the hard surfaces, which would exit our property. We are required to hold that one acre-foot of water on our property.

That is where it becomes an issue: Do we require water appropriation to hold the water that we have created by our hard surfaces? By code, we are not allowed to impact your property. This is how we manage it. It is not put to a beneficial use; we are not irrigating out of this. We are not serving municipal use out of this. This is not a stock water right. This is purely stormwater management, and that water either infiltrates into the ground or evaporates out of the pond. I hope that helps address your question.

Chair Flores:
That sets the record clear: This is not a scenario where a parcel will in any way get less than what it is already getting. Rather, it is about what happens when there is a nuisance because it is getting more. I think that makes it abundantly clear for everybody. Members, any additional questions? [There were none.] I would like to invite those wishing to testify in support of Assembly Bill 333 to call in.

Lindsay Knox, representing Nevada Home Builders Association:
Nevada Home Builders Association (NVHBA) is a statewide advocacy organization for the home building industry and is governed by the Builders Association of Northern Nevada and the Southern Nevada Home Builders Association. Assembly Bill 333 codifies and clarifies a long-standing unwritten rule that no water right appropriation is necessary for surface stormwater retention and detention as part of a local government's floodwater control policy. This type of diminished retention and detention has no real impact on downstream users but is important to protect the community from significant stormwater events, such as those we experienced in Nevada in 2017. Assembly Bill 333 also provides an established briefing schedule for land use appeals, ensuring that builders and local governments can obtain prompt judicial review, and that much-needed building projects are not unnecessarily delayed in court. Overall, Assembly Bill 333 aligns with NVHBA's goal to promote policy that reduces and controls the cost of building homes. The bill removes any uncertainty over de minimis water issues and creates a more efficient land use appeal process. These types of policies mean homes can be built faster and with less cost. The sale price of a home is always in direct correlation to the cost to build it. Assembly Bill 333 helps our builders' communities bring more affordable homes to market. We thank Assemblywoman Krasner for bringing this bill forward and are proud to stand in support.

Aaron West, CEO, Nevada Builders Alliance:
I am here today in support of A.B. 333. In the interest of brevity, I would say I ditto the comments of Lindsay Knox.

Jamie Rodriguez, Government Affairs Manager, Washoe County:
I wanted to thank the bill's sponsor for bringing it forward. We do support the intent behind the legislation, understanding the concerns of some of the other jurisdictions that were mentioned during the bill hearing. We wanted to direct the Committee to a letter [Exhibit C]

submitted on the Nevada Electronic Legislative Information System from my Director of Engineering in Washoe County stating that we believe this is a good policy that should move forward.

Dan Morgan, CEO, Builders Association of Northern Nevada:
We would like to thank Assemblywoman Krasner for bringing this bill forward. As the presenters and several others have stated, A.B. 333 codifies and clarifies the long-standing rules that no water appropriation is necessary for surface stormwater retention and detention as part of local governments' flood control. In the interest of brevity, I will not state what everybody else stated, but the Builders Association of Nevada is very much in support of A.B. 333. Thank you for your service to our great state.

Chair Flores:
Can we go to the next caller in support of Assembly Bill 333? [There was no one.] At this time, we would like to invite those wishing to testify in opposition to Assembly Bill 333 to call in.

Steve Walker, representing Eureka County:
Eureka County is opposed to A.B. 333 for the following reasons. Allowing stormwater basins to capture and consumptively evaporate water without some analysis of impacts to existing rights, we believe, is inconsistent with existing water law, particularly when capture exceeds 20,000 gallons, recognized as the de minimis for NRS 533.027 for wildlife guzzlers. Additionally, if this occurs in designated basins—for example, hydrographic basins around urban and agricultural areas—where new permits are not allowed, the water evaporation needs to be accounted for via a water right. Eureka County would welcome continued dialogue with the bill's sponsors, to see if our issues can be addressed.

Chair Flores:
Can we go to the next caller in opposition to Assembly Bill 333? [There was no one.] Lastly, we will go to those wishing to testify in the neutral position to Assembly Bill 333.

Calli Wilsey, representing City of Reno:
We are neutral on this bill and appreciate the bill's sponsor reaching out to the City of Reno with their goals and intent in advance of today's hearing. The city's zoning code, which was adopted in January 2021 after a multi-year public engagement process, includes development requirements for areas that are subject to flooding. The purpose of these requirements is to safeguard the public health, safety, and welfare of our neighborhoods. In our closed basins, development plans must include on-site detention and retention basins that are adequately sized to mitigate the increase of stormwater runoff as the result of the development to a minimum mitigation ratio of 1 to 1.3 during the 100-year, 10-day storm. These mitigation measures are directly focused on ensuring we are able to protect the health and safety of our residents as our community grows and evolves. In addition, if additional information is needed, we are happy to follow up with the Committee. We look forward to continuing to work with the bill's sponsor on the amendment that was mentioned.

Christopher Thorson, Deputy Administrator, Division of Water Resources, State Department of Conservation and Natural Resources:
I am here on behalf of the Division of Water Resources to testify in the neutral position on A.B. 333. As you heard from the bill's sponsor, the Division is committed to continuing to work with the bill's sponsors toward language that is mutually acceptable.

Chair Flores:
We will continue with those wishing to testify in the neutral position for Assembly Bill 333. [There was no one.] Assemblywoman Krasner, do you have any closing remarks?

Assemblywoman Krasner:
We are committed to continuing to work with anybody who is in opposition or neutral so that everyone is in the support position. I would appreciate your support of Assembly Bill 333.

Chair Flores:
With that, we will close out the hearing on Assembly Bill 333. Next, we will open up the hearing on Assembly Bill 385. We have our Majority Leader Benitez-Thompson here.

Assembly Bill 385: Revises provisions relating to compensation received by public officers and employees. (BDR 23-52)

Assemblywoman Teresa Benitez-Thompson, Assembly District No. 27:
Thank you for entertaining the notion that I am bringing to you today—the concepts and values of Assembly Bill 385. This bill is being brought forward because of certain trends that I am starting to see in public boards and how they negotiate contracts for employment. When the contracts are negotiated at the beginning of employment, we are seeing a trend where some conversations around fringe benefits and automatic severance pay are negotiated in on the front end. Then on the back end, we see public boards have their hands tied in their ability to talk about the best and highest use of public dollars as people are exiting—but they have already walked themselves into a corner on the front end with some of these contractual obligations. That is the heart of what this bill is looking to get at.

If you look into the conceptual amendment [Exhibit D], I will go ahead and walk you through it. The conceptual amendment to Section 1 is this: The first point says that this bill will only apply "to employees whose contract is approved by a public body, not including contracts subject to collective bargaining." I really am looking to get at specific sets of employees here. These are not people who are classified positions. These are not people who are living within a structure of steps and grades because you have a predictable path to follow that is very transparent to the public in terms of how that pay flows out for employees' groups and classes. Nor are they specific management groups that have collective bargaining for certain management groups in there. These are really individual contracts for individual employees that rise to the level of being presented to the public body for approval.

Second, this would "Apply in instances where the employee resigns upon the initiation of an investigation for wrongdoing or is terminated based upon the findings of an investigation."

In the original bill, what this refers to is in section 1, subsection 1: When employees like this are leaving an organization and happen to be in a process of investigation, then the board cannot award any additional pay or bonuses until the completion of an investigation. This is to prevent, once again, a trend where we see a high-level person exiting and the board committing additional pay past the date of employment to that person—kind of a severance pay. Then we find out that we have the results of an investigation that are unfavorable toward that person, and it has the public wondering why in the world that person got to exit with additional pay when we did not know the outcome of the investigation. It seems best to have public bodies wait to see what the outcome is before they have to award severance pay or bonuses that were negotiated in the beginning of a contract.

The third point says, "Clarify that an employee may receive a retirement buyout or partial buyout." What I am really looking to get at is nothing that is merit-based—nothing that this particular employee might have accrued, earned, or that would otherwise be given. Here is a good example of this: During the recession, we saw some local governments offer buyouts to large employee groups in order to reduce the amount of their payroll, to help balance out their State General Fund obligations. Those kind of packages that are offered to employee groups are not the ones that I am targeting. Again, these are contracts that are negotiated with specific individuals, ones negotiated at the front end of a contract that tie the hands of a public body when that person leaves under certain circumstances.

The fourth point would be, "Clarify that an employee is entitled to payment for any type of accrued leave, in addition to annual, compensatory, or sick leave authorized by law." Once again, this was something that the local governments were asking for more clarity on. Anything that has been earned by the employee during the time of their employment is theirs. This would be when I talk about severance pay or severance bonuses—those are additional pots of money that the employee has not otherwise earned. They were pots of money negotiated in at the front end of a contract. That was trying to draw a better line of distinction for folks about what the intent of this bill was.

Section 2 is deleted, "except to provide that compensation set by a negotiated contract shall not include fringe benefits not otherwise made available to other employees." Once again, this is just to head off at the pass a new trend that we are seeing from the front end of these contracts. You see fringe benefits above and beyond what other public employees might be offered being negotiated in. I personally feel that you have to tell public bodies, Here are things that you will not be allowed to contract and negotiate on; perhaps these kind of things are not the best and highest use of taxpayer money. We should probably just say, You are prohibited from doing this because otherwise, boards will have the pressure—and have been getting the pressure—to negotiate in fringe benefits that you might see in a corporate environment but not typically in a public environment. I think we want to get away from that practice.

Section 3 remains the same, with an enactment date of October 1. All existing contracts that are out there are fine and will continue. This bill is for any new contracts, contract amendments, or renewals after October 1. The way that I think of this is that if you have a

contract that expires in the next year, and you are someone who is subject to this who then has to re-up with a new contract, then that contract would have to be renegotiated with these principles being considered by that public body.

I think that there are many good examples of these trends that we have had play out in our community. However, this is general law, so I did want to steer clear of specific examples because I think that this is a newer trend and the best thing to do is just say, Lesson learned; let us make sure that a public body is not inadvertently tying its hands on dollars that it has to award on the back end of a contract, then move forward.

Chair, I am open for questions.

Chair Flores:
With that, we will open it up for questions. We will start with Assemblywoman Anderson.

Assemblywoman Anderson:
I have a few questions. For the first, I am going to use my world of school districts. Would this only be for a superintendent or would this be for any member of a leadership team that has to be approved by the governing body?

Assemblywoman Benitez-Thompson:
When you say leadership team, I believe you mean people who are not otherwise in a classified group and also not in a management group that is collectively bargained. That, typically, is where you get to your management team. If they have individual contracts that are going to be approved by a board, then I would say yes.

Assemblywoman Anderson:
Just for clarification: Let us say the communications director of the City of Sparks has a separate contract that is not being followed by a collective bargaining agreement because it is such a specific area that it has a different contract. That is kind of what you are referring to—anything at all when it comes to these contracts.

Assemblywoman Benitez-Thompson:
I am. I know you mentioned the City of Sparks just as an example, but the good thing is that there is no specific example from that public body. I just wanted to say that to make sure that no one thought we were pointing a finger at them. But it would be—it is these individual contracts that are negotiated and brought to a public body for contemplation and approval. There are typically just a handful of these within these public bodies; otherwise, you have employment salary and benefit structures that are dictated. You have some boundaries around that, but within these contracted positions, hypothetically, the board can put in almost anything that a person requests. That is where we are trying to put in some boundaries to say, Here are certain things that the board should not be able to entertain.

Assemblywoman Anderson:
I was not trying to go after one city, county, or school district—that was just an example. My second question is, again, trying to make sure that I have a what-if situation. Say that there is a budget cut. All employees have to take a cut of some sort. I know that there are some clauses sometimes where if you are at the executive level, you are basically excused from that. Would that be a part of this as well? Would it still allow that? Is it trying to address that, saying that all employees are equal and if there is a 5 percent cut at the custodial position, there should also be a 5 percent cut at the highest person's position?

Assemblywoman Benitez-Thompson:
I actually think that is a wonderful question. It has been a newer trend to have clauses that prohibit writing pay cuts to be considered by the board into the front end of a contract. Essentially, you have one person who can negotiate a recession-proof contract. I think that is fair to contemplate. As it stands right now, this amendment does not contemplate that. But I think that, within the set of principles and values that I am trying to get at with that, it makes sense to say that you ought not to put in a clause that says that the board could never contemplate or have public deliberation overwriting a reduction of pay into a negotiated contract. I think that makes sense; I guess we will wait and see.

Assemblywoman Anderson:
I am more than happy to work with you on that. I guess you can call this the Three Musketeers: all for one, one for all.

Assemblywoman Benitez-Thompson:
I have had a lot of conversations with a lot of different public boards around this bill, as you can imagine. That really seems to be a very new trend. I do not think there are many contracts out there where the public boards have entertained such an idea. But I think there has been at least one public case more recently that has been discussed; in that case, I think it is reasonable to say that we value not having a public board's hands tied for one person if they have to consider a pay cut for everyone else.

Assemblywoman Anderson:
I am more than happy to work with you on that if you are open to it. I promise this is my last question. I just want to make sure I understand this correctly when it comes to the bonuses that are sometimes mentioned. I believe it is in section 2, subsection 4, paragraph (b), subparagraph (1), sub-subparagraph (III). When there is an "increase in salary based on merit, including, without limitation, bonuses," are you saying that a bonus has to be tied to a goal or metric that is then decided upon in an open meeting? Or is there a goal or metric that has been discussed in private? I guess I am asking for a little bit more clarification on that specific section regarding how bonuses should be awarded when it comes to public bodies and taxpayer money.

Assemblywoman Benitez-Thompson:
I think that is a wonderful question. Right now, as it stands, I struck out most of section 2.

Assemblywoman Anderson:
Oh, that is right.

Assemblywoman Benitez-Thompson:
The conversation around bonuses has been really interesting because many public organizations will tell you that in order to get a really qualified candidate, you have to offer some kind of bonus. I get why that is a reasonable argument to make. I think where it becomes unreasonable, though, or where I think it becomes contrary to good stewardship of our public dollars is when those bonuses are automatic and without any other qualifiers—the public body has not put in place specific goals or metrics to say, Hey, high level leadership person, if you can help us successfully reach these goals for our organization, then we as a public body can have conversations about a bonus for you. But on the front end, we have seen a trend where those bonuses are automatically built into the pay structure without any type of tie to goals or conversations of merits. I think it would make sense to continue to talk about bonuses and how they are written into contracts. I do not think it is anything meant to be contrary to bonuses. It is about bonuses within the context of a board setting public record and dialogue around goals and metrics for those bonuses, which I think most do. I like your question because it highlights a more recent example that we have seen play out in the media where you have a contract without any reference to goals or measures, and it can be a $100,000 bonus. I think most would reasonably think you should tie that to something.

Assemblywoman Anderson:
I think you are getting where my question was coming from. If there is amended language, I am more than happy to work with you on that.

Assemblyman Ellison:
When I looked over the bill, one of the questions I had was the distinction between "cause" and "no cause." I thought that was in section 2. Could you answer that?

Assemblywoman Benitez-Thompson:
I can. Right now, for these kinds of contracts, public boards typically build in language that says that if you were terminated for cause, you are not entitled to this additional severance pay or bonuses. What we see as a trend is that if a person resigns, then they are not being terminated for cause. What I was hoping to capture in my amendment to section 1, and what my legislative intent would be, is if that person resigns, but they are in an investigation process, then that board would have to pause and could not award additional severance pay. When I say "severance," I want to make sure it is clear that I do not mean anything merit-based; I mean an additional chunk of money after the last day worked. That additional severance pay could not be awarded until the outcome of that investigation is known.

Assemblywoman Thomas:
My only concern is that you said that you are deleting all of section 2, but I was looking at section 2, subsection 5, where it looks like you have dentists, physicians, officers, and Nevada System of Higher Education employees exempt. Are you planning on keeping that provision or deleting it?

Assemblywoman Benitez-Thompson:
The piece of section 2 that I am leaving in refers to fringe benefits and how they are negotiated. It would probably not be a great idea if section 2 were to remain in. This is what it is: Within state government, you have a rule that no employee can make more than 95 percent of what the Governor makes. All of our director positions, such as our Director of Health and Human Services, make less than what the Governor makes, so you kind of have an established pay structure within there. In working on this bill for the past year, I was looking for a way to get a better reference to some of the contracts that I was holding in mind. I thought that making a salary reference might work, but this worked differently than I thought. That is why I want to strike section 2 and only keep in the conversations about fringe benefits.

Chair Flores:
Members, do we have any additional questions? [There were none.] At this time, we will go to the phone lines and invite those wishing to testify in support of Assembly Bill 385 to call in.

Jamie Rodriguez, Government Affairs Manager, Washoe County:
I want to thank Assemblywoman Benitez-Thompson for reaching out to us on this bill and working with us. With the bill as originally drafted, we had concerns that it would loop in a multitude of employees unintentionally. We very much appreciate the conceptual amendment for helping address that so we do not include staff who are part of public boards solely because of the position that they have at the county. We do support the conceptual amendment. The one thing that I do want to put on the record is that point four of the conceptual amendment to section 1 does talk about accrued leave as authorized by law. I just want to put on the record that compensatory leave, whether that is paid out to an individual or not, is actually not set by law. That is at the discretion of the jurisdiction. I appreciate that this is a conceptual amendment, and I am sure that the Legal Counsel Bureau will be able to draft the amendment in a way that reflects that. We are very much in support of this measure.

Chair Flores:
We will continue hearing those wishing to testify in support of Assembly Bill 385. [There was no one.] At this time, we will go to those wishing to testify in opposition to Assembly Bill 385.

Mary Pierczynski, representing Nevada Association of School Superintendents:
We are opposed to the bill as it has been originally written. We so much appreciate Assemblywoman Benitez-Thompson's meeting with us to discuss our concerns. We will continue to work with her. We appreciate the amendment, but we still have questions regarding applicability, bonuses, and benefits—some key issues that we need to make sure that we understand fully before we can come forward in support.

Chair Flores:
Can we go to the next caller in opposition to Assembly Bill 385? [There was no one.] At this time, we will go to those wishing to testify in the neutral position for Assembly Bill 385.

Joanna Jacob, Government Affairs Manager, Clark County:
I am in neutral on this bill after the discussion here today. Many of the concerns have been put on the record and clarified. I would like to say that we are working with the Majority Leader on the amendment at this time. We are still waiting to see how the language comes out, which is why I am testifying in neutral. We did have some concerns with the original language; the Majority Leader has worked with us on this conceptual language. Clark County will continue to work with the Majority Leader, just because of the size of our organization and the fact that we have many, many agreements, bargaining units, and managers. During the last year, we did do voluntary separation programs. The original bill would have prevented us from doing that. With the conceptual language, I think that is now out of the bill. The other thing we still need to work on is probably the fringe benefit piece; we do have managers and employees, categories of benefits that are extended to our department heads and beyond just the employees, so we want to continue to work with the Majority Leader on that conceptual language and the actual amendment that will be written up. I wanted to get this on the record. We do thank the Majority Leader for working with us on this bill.

Mary Walker, representing Carson City; Douglas County; Lyon County; and Storey County:
I want to thank Madam Majority Leader for working with the counties on the bill. We sincerely appreciate it. We are happy to continue to work with her on this important legislation for further clarification on the fringe benefits piece and others. I believe this is a good government bill. It is attempting to rein in excesses in manager compensation in cases where there is an investigation of wrongdoing. When these excesses exist, it reflects on everyone. City and county managers are some of the most hardworking people I have ever met, and the compensation excesses in some areas, unfortunately, reflect on them all. We look forward to continuing to work with the Majority Leader.

Vinson Guthreau, Deputy Director, Nevada Association of Counties:
The Nevada Association of Counties wanted to testify in the neutral position today. We appreciate the Majority Leader's intent with this bill. We echo the previous comments of the neutral testimony and thank her for working with the counties to understand our perspectives.

Chair Flores:
We will continue with those wishing to testify in the neutral position for Assembly Bill 385. [There was no one.] Next, we will go back to our Majority Leader for closing remarks.

Assemblywoman Benitez-Thompson:
I appreciate the comments. I think the one area where we have been working with local government is because of some of the trends we have seen emerge around this, which have actually not been coming from the county levels. Mostly, you see that our elected county

boards have very good practices about how they consider fringe benefits, bonuses, and severance pay for their employees. That is why you see that ongoing conversation—this bill is not about penalizing good, solid government practices. It is about reining in some trends that we see playing out in other types of governments. I appreciate their feedback and ultimately, I think this is good policy.

Chair Flores:
With that, we go ahead and close out the hearing on Assembly Bill 385. I trust that our Majority Leader will work with all the stakeholders and get them to a comfortable place. Next on the agenda we have public comment.

Annemarie Grant, Private Citizen, Quincy, Massachusetts:
My brother, Thomas Purdy, was 38 years old, a father of two, and loved by many, including myself, my father, my brothers, and sisters when he was hog-tied by Reno police officers Christopher Good, Robert Maxwell, David Tallman, and Jorge Aparicio, and then dumped at the Washoe County Jail, still hog-tied, and then asphyxiated to death. Today, I would like to talk about 28-year-old Joseph Michael Justin. On August 22, 2007, Joseph Justin was identified as a burglary suspect and apprehended by Las Vegas Metropolitan Police Department (LVMPD) officers Nichole Splinter and Timothy Nicothodes. Within 45 seconds, Joseph Justin was gunned down. Witnesses on the scene stated they never saw Joseph Justin with a firearm in his hand. Officer Splinter, who shot first, claimed that she saw Joseph Justin hold a pistol to his temple and then point the gun at her, prompting her to shoot. Officer Nicothodes followed her and fired. Joseph Justin was shot in the leg and in the back and died from his wounds. Officer Splinter is currently captain and the bureau commander of the Office of Internal Oversight and Constitutional Policing, which oversees internal investigations of police homicide. We believe police should not be able to investigate themselves. But since they do, investigations should not be led by someone who has taken someone from the community.

Las Vegas Metropolitan Police Department has had 13 years to return Joseph Justin's belongings to his family, yet all they have received is an identification card. The family is demanding the immediate return of his belongings so they can have some closure and continued healing. Please do not support bills that protect police further. Please support bills that promote transparency and accountability.

Chair Flores:
We will go to the next caller wishing to testify during public comment. [There was no one.] Members, thank you for powering through this week. I appreciate everybody coming in prepared. Next week, we will proceed in one of two ways and really, how we go about it is up to the Committee. As you all know, we have an incredibly heavy agenda next week where we are hearing three or four bills per day. We will use Monday's start time of 9 a.m. as an indicator of whether or not we can continue to do that. Obviously, I understand the benefit of giving everybody that additional hour; I think we have reaped that benefit. If on Monday, we cannot do the three hearings and the presentation effectively, then starting Tuesday, we will have to move to an 8 a.m. or 7:30 a.m. start time, depending on how slowly

we work through them. I know we will be with family this weekend, but if we do our homework and we prep ahead of time so that our questions are very focused, narrow, and to the point, there is no reason why we cannot have three or four hearings within the allotted time, starting at 9 a.m. But if, for whatever reason, Monday serves as the opposite, and we realize that we cannot do that, then for the rest of the week, we will just move to an 8 a.m. start time, which is completely fine.

I want to remind you that on Monday, we have a presentation by the City of North Las Vegas. They will also be presenting their charter bill, Assembly Bill 55. Then we will have Assembly Bill 271, and lastly, Assembly Bill 437. We will likely take that out of order. We will engage Assembly Bill 271 first, followed by Assembly Bill 437. Then we will do the presentation, followed by the Assembly Bill 55 charter hearing. That way, they can have their presentation, immediately followed by their bill presentation—hopefully, that will be a good segue into why they need to do that. For those of you following us and questioning when we will be doing work sessions, know that we plan to do multiple work sessions next week. Just because you do not see a particular item on a work session does not mean it will not get one. We just have to parse it out, as we have a lot of them that we need to get on there. This meeting is adjourned [at 10:30 a.m.].

RESPECTFULLY SUBMITTED:

_____
Lindsey Howell
Committee Secretary

APPROVED BY:

_____
Assemblyman Edgar Flores, Chair

DATE: _____

EXHIBITS

Exhibit A is the Agenda.

Exhibit B is the Attendance Roster.

Exhibit C is a letter, dated March 31, 2021, submitted by Dwayne Smith, P.E., Director, Engineering and Capital Projects, Washoe County Community Services Department, in support of Assembly Bill 333.

Exhibit D is a conceptual amendment to Assembly Bill 385, dated April 2, 2021, submitted by Assemblywoman Teresa Benitez-Thompson, District No. 27.