

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

**Eighty-first Session  
May 7, 2021**

The Senate Committee on Government Affairs was called to order by Chair Marilyn Dondero Loop at 3:31 p.m. on Friday, May 7, 2021, Online and in Room 2149 of the Legislative Building, Carson City, Nevada. [Exhibit A](#) is the Agenda. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

**COMMITTEE MEMBERS PRESENT:**

Senator Marilyn Dondero Loop, Chair  
Senator James Ohrenschall, Vice Chair  
Senator Dina Neal  
Senator Pete Goicoechea  
Senator Ira Hansen

**GUEST LEGISLATORS PRESENT:**

Assemblywoman Venicia Considine, Assembly District No. 18  
Assemblywoman Sandra Jauregui, Assembly District No. 41

**STAFF MEMBERS PRESENT:**

Alysa Keller, Policy Analyst  
Heidi Chlarson, Counsel  
Suzanne Efford, Committee Secretary

**OTHERS PRESENT:**

Kyle Davis, Nevada Conservation League  
Calli Wilsey, City of Reno; Urban Consortium  
Rachael Hamby, Western Resource Advocates  
William Pregman, Battle Born Progress  
Larry Johnson  
Patrick Bruce, Friends of Nevada Wilderness  
Matthew Walker, Southern Nevada Home Builders Association  
Jamie Rodriguez, Washoe County  
Alan Jenne, Administrator, Habitat Division, Department of Wildlife

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Jake Tibbitts, Natural Resource Manager, Eureka County  
Marla McDade Williams, Churchill County  
Dagny Stapleton, Nevada Association of Counties  
Victoria Carreon, Administrator, Division of Industrial Relations, Department of  
Business and Industry  
Kelly Gaines, President, Nevada Subcontractors Association  
Cyrus Hojjaty  
Rosalie Bordelove, Chief Deputy Attorney General, Boards and Open  
Government Division, Office of the Attorney General  
Vinson Guthreau, Nevada Association of Counties  
Tonja Brown, Advocates for the Inmates and the Innocent  
Annemarie Grant  
Victoria Gonzalez, Executive Director, Department of Sentencing Policy

CHAIR DONDERO LOOP:

We will open the hearing on Assembly Bill (A.B.) 211.

**ASSEMBLY BILL 211 (1st Reprint)**: Establishes provisions relating to a plan to  
address impacts to wildlife. (BDR 22-795)

ASSEMBLYWOMAN SANDRA JAUREGUI (Assembly District No. 41):

Nevada has some incredibly unique and diverse wildlife habitats. Because of the State's abundance of public lands, Nevada is the seventh most biodiverse state in the Country. That is something we can all be proud of and something we should all want to protect.

With the growing popularity of Nevada becoming a place to call home, comes growth and development. Assembly Bill 211 amends land use planning statutes to require local governments to consider wildlife and wildlife habitat in their land development review process.

Law requires numerous State and local agencies to review tentative development maps, including agencies like the Division of Water Resources and the Division of Environmental Protection in the State Department of Conservation and Natural Resources. In addition to water and environmental reviews, tentative map reviews must also consider access to utilities and schools. They must consider the impact on traffic, flood potential and recreation.

As development pushes further into previously undeveloped land, this bill will ensure that the effects of development on wildlife are addressed prior to the approval of a development proposal.

KYLE DAVIS (Nevada Conservation League):

Assembly Bill 211 is a priority bill of the Nevada Collaborative Conservation Network, a coalition of 21 organizations from across the State that work on conservation issues. Assembly Bill 211 attempts to bring more information to light for decision makers as the State continues to grow.

Assembly Bill 211 does not create a new permitting authority for the Nevada Department of Wildlife (NDOW); it simply ensures that when local governments are making decisions on new development, they are doing so with the benefit of knowing the potential impacts on Nevada's wildlife populations.

It is appropriate that the developer pays a fee for the time NDOW would take to review these maps. The bill as drafted gave fee authority to NDOW, but the provision was removed by amendment in the Assembly due to concerns about costs. That is why you see the revised fiscal note on the bill submitted by NDOW. The context of this fiscal note is important to understand. The NDOW's budget is largely composed of sportsmen's dollars—fees and taxes paid by hunters, anglers and trappers. These are license dollars and associated federal taxes which come from a federal excise tax on firearms, ammunition and fishing equipment. The license dollars leverage these federal funds on a three-to-one basis.

Since the time of the Assembly amendment, we have been able to find more information about existing fee authority. Under *Nevada Revised Statutes* (NRS) 278.335, a copy of the tentative map must be forwarded to the Division of Water Resources, the Division of Environmental Protection and the Public Utilities Commission if the subdivision is subject to NRS 704.6672. Under NRS 704.6672, the Public Utilities Commission has authority to charge a fee for its review of the map not to exceed \$200.

Under NRS 278.3295, the State Environmental Commission has the authority to set fees by regulation for map review by the Division of Water Resources and the Division of Environmental Protection. These fees are outlined in *Nevada Administrative Code* (NAC) 278.490. They are \$400 for each tentative map, plus \$3 for each building lot on the map.

The amendment before you today ([Exhibit B](#)) would give NDOW the same ability as the Division of Water Resources and the Division of Environmental Protection. Setting the amount of the fee would have to go through a public rulemaking process at the Board of Wildlife Commissioners and would ultimately be approved by the Legislative Commission. To be clear, this fee would only be assessed if NDOW reviews a map. The provision in this bill that provides an exception for counties with multiple species habitat conservation plans would still exist. They would not need to pay the fee if NDOW is not reviewing the map.

This is a simple matter of fairness. State agencies provide a service to the developer by reviewing these maps. It should also be noted that absent this fee authority, map review by NDOW would be funded by sportsmen's dollars. This is money that otherwise would be going to efforts like habitat restoration that benefits the State's wildlife. That is happening now on a scattered basis when maps are provided to NDOW, although there is no provision that requires it.

Why should the State's sportsmen and sportswomen and the State's wildlife resources subsidize developers? The proposed amendment presented today strikes the right balance as the authority for other State agencies.

ASSEMBLYWOMAN JAUREGUI:

I would like to note that some stakeholders reached out to me today to talk about the bill and the amendment we presented. I have not had the opportunity to get back to them.

CHAIR DONDERO LOOP:

The bill seems straightforward. It is just the review of maps when property is purchased. Is that correct?

ASSEMBLYWOMAN JAUREGUI:

Not when property is purchased. The review of maps occurs when a developer is in the planning phases of a new development.

SENATOR NEAL:

The amendment creates a new fee. Does that trigger a two-thirds majority?

ASSEMBLYWOMAN JAUREGUI:

Yes, that would make this a two-thirds bill.

SENATOR HANSEN:

What is the estimated cost with the amendment? What does the developer have to pay?

MR. DAVIS:

The amendment provides that the Board of Wildlife Commissioners would go through a regulatory process to set the level of the fee. The amendment does not specify what the fee would be. However, I will provide some context for fees paid to other state agencies that also review maps. The Public Utilities Commission charges \$200 to review a map. The State Department of Conservation and Natural Resources charges \$400, plus \$3 dollars for every buildable lot included in the subdivision map. That gives you some idea of what to expect.

You can also review the fiscal note provided by NDOW on the bill. That gives you an idea of what developers might expect in terms of the costs they might incur. The goal of this bill is cost recovery. It is not designed as a moneymaker. It is designed to cover NDOW's costs for reviewing maps for the impact to wildlife.

SENATOR HANSEN:

Nevada has incredible amounts of biodiversity. There are thousands of different species of lizards, snakes and scorpions, especially in Clark County. Does this bill allow veto ability?

The desert tortoise has been a disaster in many respects. I am worried about something similar happening. There are many unique species in Nevada because of the isolated valleys and the limited genetic pools that create subspecies. I am wondering if this will open a giant can of worms when we start finding 20 million different species in every area as they seem to do in California. Some kind of fly or gnat stopped some projects.

MR. DAVIS:

This does not create any kind of regulatory authority for NDOW. It is just an information seeking exercise. The NDOW will be charged with providing information to the planning commission or local government depending on the county. The ultimate decision-making authority still rests with the local government. All NDOW will be doing is provide information to the local

government when it makes its decision. It has nothing to do with any threatened or endangered species issues.

SENATOR HANSEN:

If you have ever been involved with the permitting process, one problem is by the time you go through one agency after another, you are six months or a year out or more. Has anyone analyzed if this will add any significant time to the permitting process?

MR. DAVIS:

The provisions of the bill put NDOW under NRS 278.335, which is a portion of law that requires the other agencies I mentioned to provide feedback to the local government within 15 days of receiving a map. The NDOW will be held to that same standard. It would receive a map and it would have 15 days to respond and provide its feedback. The bill is not designed to stretch things out.

CALLI WILSEY (City of Reno):

The City of Reno supports A.B. 211 and NDOW's review of tentative maps that come through the City. In fact, the City of Reno encourages NDOW's involvement in its agency review process, and it includes NDOW in a distribution of all of its land use planning cases. As part of its master plan, the City of Reno aims to promote the protection and conservation of wildlife habitats, and it welcomes the input of NDOW in this area.

The City of Reno thanks the bill's sponsor for working with it and others to resolve procedural issues relating to the length of time and listening to its concerns in that area.

The City of Reno hopes the conversation about fees will also take into consideration the impact to local housing markets, particularly as the City continues working to address affordable housing issues.

RACHAEL HAMBY (Western Resource Advocates):

Western Resource Advocates work to protect the west's land, air and water. We are excited to support A.B. 211, which would help Nevada maintain connected habitats and avoid impacts to wildlife.

As Nevada's population grows, the need for housing to support the State's economic growth will only increase. We recognize the need for new

development. At the same time, urban sprawl is by far the leading driver of land and habitat loss in Nevada. The State must thoughtfully balance the need for growth with the need to protect our iconic wildlife and the outdoor recreation economy it supports by ensuring impacts to wildlife are considered when planning new developments.

Assembly Bill 211 provides an efficient way to do this by adding consultation with NDOW to the existing review process for subdivisions of land and by adding wildlife impacts to the existing list of factors that local governments must consider when reviewing a proposed subdivision. Taking advantage of NDOW's existing data and expertise can help local governments make better informed decisions that lead to better outcomes for the people, lands and wildlife of Nevada.

Western Resource Advocates support the amendment proposed by the Nevada Conservation League which would authorize the Board of Wildlife Commissioners to establish reasonable fees for NDOW's consultation. Other agencies included in the existing review process already have this authority. It is only fair that NDOW also be allowed to cover its costs rather than having to divert sportsmen's dollars promised to other programs.

I urge you to consider the proposed amendment and to vote yes on A.B. 211.

WILLIAM PREGMAN (Battle Born Progress):

Nevada outdoors is home to numerous unique species of plants and wildlife. However, urban development can harm and displace wildlife habitats and disrupt migration corridors as well as impacting the quality of air and water in the ecosystems. These impacts can be avoided or minimized with A.B. 211 to protect habitat environmental quality for the benefit of wildlife and people.

Assembly Bill 211 requires developers to consult with NDOW on their development plans so the permitting authority can consider the potential impact to wildlife and habitat when approving or denying a project. This would encourage developers to start avoiding impacts to wildlife and habitats and protect the open spaces that make our State special.

I encourage your support for A.B. 211 and thank Assemblywoman Jauregui for bringing it forward.

LARRY JOHNSON:

I support A.B. 211 and its proposed amendment. I support the NDOW review of proposed development's impacts on wildlife resources. Sportsmen presently pay for the majority of wildlife management in this State. In addition to licenses, tags and special excise taxes, sportsmen raise tens of millions of dollars and volunteer tens of thousands of man hours for wildlife enhancement.

We are constantly reminded that our wildlife resources belong to everyone, not just the sporting community. However, we are tired of sportsmen having to foot the bill for all wildlife protection. Permitting through governmental agencies involves fees, whether it is a local, county or State agency. We just ask that developers pay their own way rather than being a further burden to sportsmen.

We thank you for your consideration and urge your support of this bill and the proposed amendment.

PATRICK BRUCE (Friends of Nevada Wilderness):

The Friends of Nevada Wilderness is a 501(c)(3) nonprofit focusing on stewardship and advocacy for public lands in Nevada. Our members and volunteers have generated well over \$2 million worth of in-kind labor to the agencies managing public lands in Nevada.

The Friends of Nevada Wilderness supports A.B. 211 with the proposed amendment. As we develop more of the State, wildlife impact is obviously an issue. Having plans submitted to NDOW for review is a small part developers can play to help us with our valuable resources in the State.

Obviously, the cost incurred should be related to the fee, as the amendment states, to support NDOW in its operations. The 15-day turnaround does not seem to add any undue process to permitting. The NDOW budget is obviously allocated and does not need any more strain so that fee would be a small addition.

MATTHEW WALKER (Southern Nevada Home Builders Association):

The Southern Nevada Home Builders Association (SNHBA) is neutral on A.B. 211. The SNHBA extends its thanks to Assemblywoman Jauregui for the opportunity to review the amendment prior to today's hearing and crafting the bill to create additional wildlife review and input on potential impacts on new



developments. The sponsor was careful to avoid duplicative review for areas already covered by a multiple species habitat conservation plan (MSHCP).

In that vein, I would like to thank Kyle Davis for the clarification that new tentative maps would be exempt from review by NDOW because of their location within areas covered by the Clark County or Pahrump Valley MSHCPs, and would be exempt from a fee adopted by NDOW to facilitate their review authorized by A.B. 211.

I thank Kyle Davis and Assemblywoman Jauregui for their diligent work on this bill and appreciate the Committee's consideration of my comments.

JAMIE RODRIGUEZ (Washoe County):

Washoe County is neutral on A.B. 211. The County supports reprint one of the bill. The NDOW reviews subdivision maps in Washoe County. The County has no objection to that process being formalized in statute. However, the County is neutral while we work to understand some of the impacts of the amendment.

I thank the bill's sponsor for working with us in the Assembly to address our concerns. She stated that we will be speaking at some point following this hearing to discuss the amendment.

The County had concerns with the bill as originally drafted regarding the conformity of timing for map review. It originally was 30 days. However, it now aligns with the conformity of other reviewing agencies to be a time of 15 days. The second concern with the bill as originally drafted was a fee up to \$5,000 that NDOW could charge for the review. Washoe County is focused on addressing the lack of affordable housing. When it looked at the cost for all agencies to review subdivision maps the total usually averages about \$5,000. As originally drafted, those costs could have doubled.

I appreciate that the amendment would only give authority for NDOW to create some cost recovery options. We have concerns with the cost of \$400 per map and then \$3 per building. That is not what is charged for subdivision maps. The cost for the State for those maps is \$100 per map and then \$1 per building. We appreciate some cost recovery for the agency for the work they have been doing and would continue to do through this bill. However, we need some time to better understand the intent and what the idea might be from NDOW.

Washoe County continues to focus on affordable housing. These types of costs are always passed down to the buyers. That is why the County wants more time to understand. While it is not opposed, thinking there is probably a road to get there, it wanted to express those concerns. We look forward to continuing to work with the bill's sponsor.

ALAN JENNE (Administrator, Habitat Division, Department of Wildlife):

The NDOW appreciates the intent of this bill, the proposed amendment and the opportunity to testify neutral on A.B. 211.

The proposed amendment for fee authority is greatly appreciated by NDOW as it receives less than 3 percent of its current budget from the State General Fund. Despite this, NDOW has a very active technical review program. It reviews over 600 projects annually. Most of those are associated with the National Environmental Policy Act projects spread across federal lands across the State.

Despite this workload, NDOW only has one full-time position dedicated to technical review. All other involved personnel have other priorities and additional duties. The technical review program is funded by sportsmen's fees and federal grants through the United States Fish and Wildlife Service's Wildlife and Sport Fish Restoration Program. The use of these sportsmen's and federal funds to review subdivision maps means those funds are not available for more beneficial projects to improve conditions for Nevada's fish and wildlife species throughout the State.

Mining and energy industries have been required by State statute to pay for NDOW's technical review of their projects for years. Additionally, we are of the understanding, and it has been mentioned here today, that many other General Fund State agencies continue to receive fee support through NRS for subdivision map review.

JAKE TIBBITTS (Natural Resource Manager, Eureka County):

Eureka County is neutral on A.B. 211, similar to the way Jamie Rodriguez outlined for Washoe County. Eureka County received the amendment earlier today and has not had the time to have the necessary discussions with the sponsor and County decision makers.

Eureka County was opposed to the original bill. We thank the sponsor for working with us to amend it. The County supports A.B. 211 in its first reprint

form. I would like to point the Committee to our written testimony on the legislative website provided on the original bill. It still has many relevant considerations for both the first reprint and possibly the proposed amendment.

It was previously stated that NRS 278.3295 allows the State Environmental Commission to develop fee regulations for the Division of Environmental Protection and the Division of Water Resources. However, there is no authority in that statute for the Division of Water Resources. Therefore, that fee authority through those regulations is only for the Department of Environmental Protection.

Nevada is limited in its private land base. In many cases, it cannot just simply relocate new housing opportunities because of this land locked-status. It is rather disingenuous to put this constraint back on developers as if it is their fault.

We understand and agree with Jamie Rodriguez that the *Nevada Administrative Code* related to the fee for the Department of Environmental Protection, specifically under NRS 278.335, is in NAC 445A.342. That is \$100 per map plus \$1 per lot, not the \$400 plus \$3 per lot as previously stated.

The NDOW has a biologist covering each county of the State. It already has technical review staff on board. Their job is to stay engaged down, advocate for and assist in the conservation of wildlife. They can do that in the current scheme.

With the housing shortages, developers pass the costs on down so any fees will continue to go through and further exacerbate increased costs on housing and development.

There are already many things in statute relating to conservation and wildlife resources. There are many ways to work across the board with multiple entities to address the things this bill intends to do.

MARLA MCDADE WILLIAMS (Churchill County):

As Kyle Davis noted in his testimony, the issue of fees was negotiated in the Assembly. Churchill County was able to come to a point where it did not oppose the legislation. The County extended its appreciation to the bill's sponsor for the changes at that time. Unfortunately, the amendment just came

to our attention today. The fee structure being proposed is potentially problematic. The County needs an opportunity to further discuss this issue with the bill's sponsor. That is why it is neutral right now.

DAGNY STAPLETON (Nevada Association of Counties):

I do not have much to add. I want to echo the comments of Washoe County, Churchill County and Eureka County. The Nevada Association of Counties just received the amendment a few hours ago and looks forward to conversations with the bill's proponents.

ASSEMBLYWOMAN JAUREGUI:

You asked what the review process would cost. It looks like we overestimated. It looks like what the other agencies charge is actually only \$100 per review. It is not something that is very costly.

We are asking for parity for NDOW with other agencies that do the same work. The good news is that NDOW does not set the fees. It does it through regulation which means it is ultimately up to this Body through the Legislative Commission to approve the fees NDOW is requesting, so we ultimately have the authority to set those reasonable fees.

I urge your support for A.B. 211. This is great legislation that will allow us to continue development in a way that protects our natural environment and the wildlife that makes the Silver State so unique.

CHAIR DONDERO LOOP:

We will close the hearing on A.B. 211 and open the hearing on A.B. 249.

**ASSEMBLY BILL 249 (1st Reprint)**: Revises provisions relating to common-interest communities. (BDR 10-796)

ASSEMBLYWOMAN SANDRA JAUREGUI (Assembly District No. 41):

In 2019, I worked on a bill with the same people who are with me here today. Our mission in 2019 was creating a safer work environment on construction sites. We were successful in passing A.B. No. 290 of the 80th Session which created the Occupational Safety and Health Administration (OSHA) of the United States Department of Labor registry to help combat the growing problem of fraudulent OSHA cards.

We are here before the same Committee again, tackling a new and growing problem on construction sites—a less tangible problem—heat exhaustion and heat stroke. Those in the construction industry are uniquely susceptible to heat-related injuries. The work comes with inherent risks amplified by exposure to direct sunlight during the hottest months of the year.

Between 1992 and 2016, 285 construction workers died from heat-related causes and more than one-third of all U.S. occupational deaths are from heat exposure. These figures come from the American Journal of Industrial Medicine which examined heat-related deaths in a report published July 2019. The study also noted that 78 percent of heat-related deaths in the construction industry occurred during June, July and August. Nonfatal heat injuries are far more prevalent. A study conducted in North Carolina showed that heat-related injuries are the most common cause for occupational emergency room visits.

Injuries from heat exhaustion or heat stroke can result from cognitive impairment, dizziness, sweaty slippery hands, slowed response time, muscle fatigue and cramping, nausea or vomiting and clouded eyewear that blocks vision. The risks are obvious when these individuals are working with hammers, power saws, nail guns, welding and probing torches and doing so suspended several stories in the air or on the roof of a home.

While everyone is affected, cement masons are most at risk. They are ten times more likely to die than the average construction worker followed by roofers and seven times more likely to die than the average construction worker. According to the federal agency, the National Institute for Occupational Safety and Health, one of the most effective ways to combat this is to schedule higher risk jobs for cooler parts of the day. That is exactly what A.B. 249 aims to do.

The bill before you is the first reprint. We worked with stakeholders in the Assembly to get to a place where we could all compromise. The bill states that a common-interest community (CIC) must not restrict the hours that construction work may begin during the months of May through September, other than those hours in which construction work may begin pursuant to a zoning ordinance by the governing body of a county or city. If a city's start time is 7:00 a.m., then a CIC must allow work in the community to begin at the same time only during the months of May through September.

VICTORIA CARREON (Administrator, Division of Industrial Relations, Department of Business and Industry):

There are many heat-related illnesses in Nevada's desert climate. To give you a sense of the Nevada data, I have provided written testimony ([Exhibit C](#)). You can look at the workers' compensation claims related to heat exhaustion from fiscal years 2018 to 2020. There is an average of 73 annual workers' compensation claims. That gives you a sense of how many we have on the workers' compensation side.

Nevada OSHA receives complaints from employees about heat stress in their workplaces. There has been an average of 61 complaints per year over the last 5 years in southern Nevada and 8 complaints per year in northern Nevada. Obviously, that has to do with the difference in the climate. Some of the complaints result in inspections by Nevada OSHA. Nevada OSHA has conducted an average of ten inspections per year over the last five years in southern Nevada and three per year in northern Nevada.

It is an important issue and one we have placed a high priority on. Nevada OSHA has proposed a regulation to address heat stress, which is pending. It would require employers and employees subject to certain high temperatures to do the following:

Include a program for management of heat stress in their written workplace safety program; encourage employees to hydrate frequently; ensure employees have ready access to potable drinking water; provide access to shade to employees who may be suffering from heat illness and provide training to employees and supervisors on heat illness.

In cases where an employee actually is starting to show signs of heat illness, the regulation would require an employer to:

Relieve the employee from duty; provide the employee with sufficient means to reduce their body temperature and monitor the employee to determine whether medical attention is necessary.

We had a regulation workshop in March, and we have an adoption hearing upcoming in June. This regulation is a good complement to [A.B. 249](#).

KELLY GAINES (President, Nevada Subcontractors Association):

The Nevada Subcontractors Association (NSA) supports A.B. 249. The NSA represents approximately 150 residential contractors, subcontractors, construction vendors, suppliers and other businesses. These companies employ thousands of southern Nevada residents.

The NSA's No. 1 priority in the construction space is to create and adhere to safety standards to protect employees and still have a positive impact on Nevada's economic development.

The restrictions on construction start times exposes workers to extreme heat during southern Nevada's summer months and an inability to complete full work days. Coming off a year of job loss, high unemployment and closed businesses, construction remains steadfast with job availability. However, we are coming into the summer months where existing employees and new hires entering the workforce will not work full time and provide fully for their households. In addition, with the newly passed paid time off policy, limited work hours would not qualify for future paid time off for some of these employees.

Employers are not forcing their employees to work in the extreme summer heat. However, if employees need the time for financial regularity, they may put themselves into heat stress situations that causes safety hazards for themselves.

The passage of this bill will give employees the ability to work full time during the summer months while limiting their exposure to high heat indexes thereby creating safer workplaces.

SENATOR NEAL:

Since you are creating regulations, what happens if a homeowners association (HOA) does not comply? Are there penalties?

ASSEMBLYWOMAN JAUREGUI:

The CIC has administrative fine authority. If an HOA is in violation of regulations or NRS, a complaint can be filed with the CIC, the HOA is given notice, there is a hearing and then the CIC can issue an administrative fine.

MS. CARREON:

Nevada OSHA only looks at what an employer is doing and would only be able to issue a penalty against an employer. It would not have any direct authority over the HOA unless it is acting as the employer.

SENATOR OHRENSCHALL:

The bill states, "If the governing body of a county or city in which a common-interest community is located adopts an ordinance restricting the hours in which construction work ... ." Have any ordinances been adopted to restrict construction during certain times in the hot summer months?

ASSEMBLYWOMAN JAUREGUI:

Is that local governments or HOAs?

SENATOR OHRENSCHALL:

Local governments.

ASSEMBLYWOMAN JAUREGUI:

Local governments have their own set start times. As we were working on the bill, we noticed that different municipalities have different start times. They do not restrict start times. Some are 7:00 a.m., some are 6:00 a.m. and some are 8:00 a.m.

We are not trying to address the start times that local governments set. We are trying to address the start times that CICs and HOAs set that are beyond what local governments have set. We have encountered some issues where a local CIC might have a start time of 10:00 a.m. or 9:00 a.m., which during August if you are a roofer, is not a great time to start.

SENATOR OHRENSCHALL:

If this passes, would HOAs have to comply with the local ordinance?

ASSEMBLYWOMAN JAUREGUI:

Only during the months of May through September.

CHAIR DONDERO LOOP:

I know this pertains to HOAs, but do we have any laws for bigger buildings such as a hotel being built or just a bigger project? Those people are also out in the sun.



ASSEMBLYWOMAN JAUREGUI:

I do not know if there are similar laws. We are first trying to tackle the residential problem. My intent with the bill has always come from a place of worker safety. I have worked on OSHA issues for a couple of sessions with Victoria Carreon and some local stakeholders. We are taking one small bite of the apple at a time.

SENATOR HANSEN:

It actually seems like a good idea. My brother has a roofing company in Reno and those workers are out no matter what the weather. Starting early in the summer, not just heat stroke but the convenience of trying to work in reasonable temperatures makes sense. I am trying to understand why there was opposition in the Assembly.

MR. WALKER:

The SNHBA supports A.B. 249. I thank the NSA and Assemblywoman Jauregui for their coordination and outreach on this effort. It is a great bill for worker safety. It is a great bill for business, and we urge your support.

CYRUS HOJJATY:

This is support/neutral testimony. I support the bill. It is important that we improve worker safety. There are certainly many issues with construction that I have seen. I was hoping this would be more about land use planning. Even though it is the No. 1 concern in Las Vegas, there have been many injuries and many unnecessary disruptions that I have seen at a rate higher than many other states.

Much of the heat in Las Vegas is not all natural desert heat. Much of it is the urban heat island effect. Las Vegas is the fastest warming city in the Country because of the buildings and pavement. When you go to those far out towns, like Indian Springs and Pahrump, nights cool off faster. Las Vegas used to cool off faster back in the 1940s. If it did not warm up so much, nights would be more tolerable.

I was hoping this would not disrupt the supply of construction because we are having a short supply of housing. I was hoping this bill would address 3-D printing construction or a manufactured unit that is being set up as delivered as a way to set up new units that would reduce costs and labor dramatically.

ASSEMBLYWOMAN JAUREGUI:

Summer is often the peak construction period, especially with it being the busiest season in the housing market. There is no choice but to go out and work even on the hottest days. The first reprint of A.B. 249 helps us target the two biggest dangers of working in Las Vegas heat, heat stroke and heat exhaustion. I urge your support of A.B. 249.

CHAIR DONDERO LOOP:

We will close the hearing on A.B. 249 and open the hearing on A.B. 253.

**ASSEMBLY BILL 253 (1st Reprint)**: Revises provisions relating to governmental administration. (BDR 19-947)

ASSEMBLYWOMAN VENICIA CONSIDINE (Assembly District No. 18):

Assembly Bill 253, first reprint, addresses public bodies and virtual meetings. This bill began because of the pandemic. The pandemic made all of us learn virtual communication and made virtual communication more accessible. This bill extends the options for virtual meetings beyond Governor Sisolak's emergency order. This is an option for public bodies, if they choose, to use virtual meetings or incorporate it into any public meeting they may have.

After the Assembly hearing, we worked with stakeholders, which is why we have the amendment ([Exhibit D](#)). We hope we have met all of their issues.

ROSALIE BORDELOVE (Chief Deputy Attorney General, Boards and Open Government Division, Office of the Attorney General):

The Boards and Open Government Division in the Office of the Attorney General houses the open meeting law (OML) enforcement unit. We have worked hard on A.B. 253.

Prior to the Covid-19 pandemic, public bodies in Nevada were required to always have a physical location for their meetings under the OML. The Governor's emergency directives have allowed public bodies to hold completely virtual meetings during the pandemic, which has actually increased participation from the public for many of them. It has also allowed technology to evolve so these meetings are able to function much better than they would have been able to prior to the pandemic.

This bill is intended to provide a permanent avenue for public bodies to hold entirely virtual meetings. The proposed changes to the law would never require a public body to hold a virtual meeting, but it would provide the option along with certain requirements, if a virtual meeting is held, to ensure that public participation is protected.

Sections 1 and 2 of the bill require public bodies to provide either a physical location or an electronic means for the public to attend and participate in public meetings. In addition, they require that the means for attending a meeting and requesting supporting material be included in the public notice agenda.

Section 2 also removes the requirement that a physical copy of an agenda be posted at three separate prominent places within the jurisdiction of the public body. However, it requires the public body to designate a location as its principal office and post its notice there. That would provide more consistency than we have had in the past in regards to where public bodies choose to post their notices.

Section 3 adds additional requirements to the conduct of a virtual meeting, including live or recorded public comment but removes the physical location requirement, as long as the virtual option is available. However, if those extra requirements are not met for the virtual option, the physical location is still required.

Section 5 is a change to the law regarding the privilege individuals have when making public comment. It is just a clarification. The law states that a witness has an absolute privilege to publish knowingly false information as part of a public meeting but then qualifies that privilege in the same sentence. This change is intended to clarify the same actual effect of the law as it is today.

Section 6 also amends the Nevada Administrative Procedure Act, NRS 233B, to remove the requirement that a physical copy of the notice and text of proposed administrative regulations be placed in a library in every county in the State, but it adds the requirement that the agency provides a copy to any person who requests it. The idea was to waste less paper in printing but make sure we have the same, if not more, access to the public who is actually interested in receiving a copy.

There is also a proposed amendment, [Exhibit D](#), which is the product of working with stakeholders to resolve concerns regarding any of the bill's language. We tried to develop language that would work for everyone. The amendment proposes removing changes to the definition of a subcommittee and returning the language which exists in law. That definition was added in 2019.

The amendment also adds language clarifying the requirement that a public body reasonably ensures that an individual with an item on the agenda is able to attend and participate in the meeting. An exception is added to the virtual meeting option for public bodies comprised entirely of elected officials. Those bodies will still have to offer a physical location to the public.

The amendment adds an effective date for the bill. The Governor's directive that suspends the physical location requirement is set to expire on May 31. We want to have a smooth transition from the Governor's directive to the law in this bill.

SENATOR NEAL:

Section 3 of the amendment is similar to section 3 in the bill. Have you considered mandating closed captioning? Some communities have been left out that need to be able to read what is being said rather than being able to hear it.

MS. BORDELOVE:

Closed captioning is perhaps something that could be added in the future. I am not sure the technology is entirely there to add that as a requirement. With physical meetings, that is not usually required or offered. I worry because many smaller public bodies at times are just a subcommittee of some other smaller public body. Offering closed captioning may be an expense that could go beyond their means. I do not know that the technology is there yet for computers to be able to provide it easily; although, I am not well versed on that technology. However, it is possible that in a couple of years that technology would be available. That is a requirement we could look to add then.

SENATOR NEAL:

You also mentioned placing notices in public libraries. That has been the standard practice. But certain communities in southern Nevada do not have a library. The nearest library may be five miles away. When we talk about public libraries and other spaces, maybe there are other ways communities can get notices. The library is fine but thinking about the expansion of that is important because not everyone goes to the library or there is no library in their vicinity to

get the notice. It is more likely that people could access the notice in more places than a library.

It we are talking about access, access is putting notices in places where people actually see them.

ASSEMBLYWOMAN CONSIDINE:

One of the problems the pandemic brought up was requiring public notices to be placed in libraries because libraries were closed. There was almost no point to have it in the library if no one could get into the library to see it. However, access is one of the reasons this bill was brought forward. Having notices in multiple areas promotes access. I agree with your statement about libraries not always being the most convenient place for everyone in the Las Vegas Valley.

SENATOR HANSEN:

Does the law allow noticing by email in addition to posting in libraries? Is it only limited to postings in libraries or in a newspaper?

MS. BORDELOVE:

The law requires posting notices at the principal office of the public body or the location of the meeting, plus three additional physical locations and post online on the public body's website if they maintain one as well as on Nevada's notice website.

If someone has requested a copy of the agenda by email, it can be delivered by email. However, a public body is not required to email if the request is emailed, but it is required to mail it. I have yet to find a public body that does not email if that is the request because that is much easier to do.

A public body is permitted to send the notice by email to anyone who asks. It is required to send it to anyone who asks, in general, and must keep a list of those who make a standing request to receive agendas for every meeting for up to six months. A person needs to renew that request every six months.

SENATOR HANSEN:

I have an issue with the bill with the idea of Zoom meetings. I have noticed that it is convenient for elected officials to skip out on meetings. I get worried. When I have issues with public bodies, it is nice to know that all the members are

supposed to be in one location during a meeting, and I can talk to them face to face. The Zoom concept makes me uncomfortable. Is there a sunset in this bill?

This could be a convenience for people who do not always like to face the public. This might be a way for them to avoid showing up when there is a crowd full of hostile people. It might be handy at times to sit behind a computer and do it from a Zoom location. Is it correct that this bill would allow that?

ASSEMBLYWOMAN CONSIDINE:

I thought that was the law also, but after getting into this bill and the law, there must be a public location and everyone is not required to show up.

SENATOR HANSEN:

I read that. It is in the law. There must be a public location. If this bill passes, an elected or appointed official can still meet the requirements of the open meeting law but not be in person at the physical location. Is my understanding correct?

Ms. BORDELOVE:

The law does not require members of the public body to attend in person. Members of the public body are permitted to attend virtually or in person. All that is required under the law is that there be a physical location where members of the public can attend and participate to the same level as members of the public body. If members of the public body are attending via telephone, there has to be a meeting location where there is a phone on speaker, conferenced in, so the public can make comment and listen at the same level as other members. This bill would not change that. When a virtual meeting is being held instead of a physical meeting, they are allowed to provide that electronic format to the public. The law does not require physical attendance by members of the public body.

SENATOR HANSEN:

I was not aware of that. That is an interesting point. I thought they had to be in a physical location. I have seen them on conference calls, but that seems to be an exception. I will have to do more homework on that. My concern is that I want people on boards to be at the physical location you are describing unless there are practical reasons that would prevent them from doing that.

HEIDI CHLARSON (Counsel):

The Legislature is not subject to the OML regardless of whether the circumstances are in a pandemic or not. This bill does not impact the requirements for the Legislature to hold meetings again because the Legislature is not subject to the OML.

Under the provisions of the OML, there is existing authority under normal circumstances for members to participate through teleconference or videoconference.

The bill expands a little bit and uses different terminology. It refers to remote technology systems, but there is already authority under existing law for a member to attend by telephone or videoconference.

SENATOR OHRENSCHALL:

Section 2, subsection 4, paragraph (a), states, "Minimum public notice is posting a copy of the notice at the principal office of the public body." Then the deleted part states,

or, if there is no principal office, at the building in which the meeting is to be held, and at not less than three other separate, prominent places within the jurisdiction of the public body not later than 9 a.m. of the third working day before the meeting.

That language would be deleted. Is that correct?

Ms. BORDELOVE:

Correct, that language would be deleted and the effect of that deletion would require a public body to designate a location as its principal office and always post at that location.

SENATOR OHRENSCHALL:

If the meeting is going to be held completely virtually, then the only posting would need to be on the website. There would be no physical posting as stated in the language on page 7, lines 36 through 43.

Ms. BORDELOVE:

The clarification in that language is because under prior law public bodies have always been required to post to their website, if they maintain one, as well as

Nevada's notice website. However, Nevada's notice website cannot host a document, so if the public body does not maintain its own website, it cannot post to Nevada's notice website. There is an exception in the law that allows those public bodies to not post to Nevada's notice website due to technical difficulties. That has been our interpretation. When the public body does not have a way to post a document, the agenda does not end up on the website because Nevada's notice website does not have the ability. This bill is trying to close that loophole for an entirely virtual meeting. A public body must find a way to have its agenda posted online to hold an entirely virtual meeting, otherwise, it cannot hold an entirely virtual meeting. It is trying to close that exception, so there is never a circumstance where an entirely virtual meeting is held, and no agenda is online.

SENATOR OHRENSCHALL:

I know it is old-fashioned to have the posting of the three notices at some prominent place, but there have been times where I have seen one at the grocery store. I know things are getting more digital and everyone is online now. Not too many people are like me who still like to see those posted notices.

I like the bill, but that is the only part I hate to see us lose. My concern is some people may see the notice at the grocery store who are not subscribing to the public body to get the agendas online.

SENATOR NEAL:

Have you considered when a public meeting is viewable online, but cannot be accessed to have an immediate fix for that? That is a problem because it cannot be watched from home. That is going on now.

ASSEMBLYWOMAN CONSIDINE:

There is language in the bill about reasonably making efforts to work on that from the public body side.

MS. BORDELOVE:

City councils would not be able to have an entirely virtual meeting under this bill. They would still need a physical location because a city council is an entirely elected body. However, for bodies that are doing an entirely virtual meeting, if they receive notice that the public is not able to view the meeting, they would be required to recess the meeting until the issue can be fixed. That is a risk they take if they choose the entirely virtual option.



The main reason we put this bill together is because many public bodies have to schedule a special meeting because they need to hear or decide on one item. This is targeted at those types of meetings as opposed to regular meetings. Although, this would permit larger regular meetings. When you have greater attendance, there is more possibility for technological issues. A public body would be taking the risk that they may have to recess if they receive phone calls that the public is not getting in. If their livestream is not working, they would be in violation if they continue the meeting.

If they offer a physical location for the public to attend and participate, they will have met the minimum requirements under a physical meeting, which would be under the law as it stands today. We hope they would offer virtual options just because the technology is there. We would like to see both, but this is creating that option. Public bodies need to pay attention and make sure that their livestream is working.

SENATOR NEAL:

I want to clarify that my statement was not about city councils going completely virtual. They currently have a video or livestream. Sometimes, you cannot get to the meeting and you cannot see it. I want to know if the bill could address the immediate remedy or a reasonable time to fix the problem. Not being able to see the meeting is an infringement upon citizens.

I understand about elected officials not being completely virtual. I was talking about what is happening now with hybrid livestreaming that has been going on for a while. It should be put into statute that the public body must ensure access is always readily available to everyone.

MS. BORDELOVE:

At this point, we do not have a requirement that there be virtual options. I would like to see public bodies always have a virtual option, but for many of the smaller public bodies, that is not feasible. They will be going back to entirely physical meetings. I do not think technology is at the point to be able to require every public body in Nevada to have a virtual option. I would like to see as many public bodies as are able to continue to have these hybrid meetings. However, since this applies to every public body, many of which are small, some rural town boards are not yet to the point to require a hybrid model. That would make meetings unfeasible for some of these bodies.

VINSON GUTHREAU (Nevada Association of Counties):

The Nevada Association of Counties (NACO) supports A.B. 253. This bill is good public policy and provides further clarity on some of the language from A.B. No. 70 of the 80th Session. It balances the need for government transparency and public participation while providing an effective mechanism to ensure local governing bodies can adhere to the spirit and the letter of the OML.

Assembly Bill 253 provides common sense measures to allow for virtual participation in our public process while not overburdening local governing bodies while they conduct the public's business in an open and transparent forum.

The NACO thanks the sponsor and the Office of the Attorney General for presenting A.B. 253. The NACO has been a participant in the Attorney General's OML Task Force since its creation, and we appreciate the Office of the Attorney General for bringing together such a wide range of interested stakeholders and including counties on that Task Force.

TONJA BROWN (Advocates for the Inmates and the Innocent):

We support this bill, but it is vague in the area dealing with the material that is provided from the private citizen to the board. I have attended many board meetings over the years including the Nevada Board of Pardons Commissioners.

Ballot question No. 3 passed in November 2020 allowed four Board hearings per year. In March 2021, I appeared before the Board asking it to consider allowing one of those hearings to be set aside for family members of those who were wrongly convicted and were appealing their conviction, or for those who lost loved ones either through natural causes, a deadly virus disease and other things.

The material I provided to the Pardons Board was not accepted. They contacted the Office of the Attorney General and after the Office reviewed my material it would not allow my material to be part of the public record for the Board. This was the first time that ever happened. I am not sure if it was because I was not there in person. However, another person called in and her material was accepted. So something is not right with this bill. It is a good bill. But why is one person's material allowed and another person's is not. But I do support the bill.

ANNEMARIE GRANT:

My brother Thomas Purdy was one of three men asphyxiated to death by deputies at the Washoe County jail. When my brother was killed, the commissioners were neglecting their duties under NRS 211.020. When my brother was killed, the death rate at the jail was five times the national average.

It was 600 percent higher when Sheriff Chuck Allen took office. Of course, I wanted to make my feelings known and be a voice for my brother during the weekly county commissioner meetings and other public meetings in the State where my brother was killed. Because I do not live in Nevada, I am from Boston, I could not physically attend the meeting. I would email my public comments to the county clerk. The clerk would acknowledge it but would not put it on the record.

I filed an open meeting complaint, 70 plus pages long, which I submitted during the Assembly Judiciary meeting. The Washoe County District Attorney's Office response to the complaint was that I was not attending in person; therefore, they did not have to put the substance of my remarks in the minutes. Sadly, the Office of the Attorney General concurred.

Fast forward three years later, they now conduct Zoom meetings and allow me to have a voice for my brother and address the shortcomings of the commissioners who oversee the Sheriff's budget. They started accepting email public comment and voice mail public comment, which they were playing in the chambers. Truth be told, only my brother and I were the ones emailing and leaving a voicemail. This went on for a couple of months when Bob Lucey, County Commissioner suddenly stated on the record he was changing the rules and they would not read or play the emails. This was an attempt to silence me and my brother.

Not only do remote meetings help me, but they will also allow and encourage more community members who perhaps would not have participated in the meeting. Now they can do so from their own homes whether it is because they are disabled, have a schedule conflict or no means of transportation.

Elected officials are supposed to be the voice of the people. No one wins when government business is conducted in the dark without opportunity for review. I am invested in your local and State government. That is where my brother was murdered by police.

While Nevada has some great open meeting laws, there is always room for improvement. I only wish it were mandatory language for remote access for all meetings.

VICTORIA GONZALEZ (Executive Director, Department of Sentencing Policy):

I support this bill. We are a small agency that supports the newly established Nevada Sentencing Commission under the Executive Branch. We appreciate the work that has gone into this bill to help small agencies and public bodies like ours that have important work to do but have limited resources. This bill will allow the Nevada Sentencing Commission to keep handling meetings as it has been in the last year, still meet the needs of the public and fully vet important issues relevant to the State. We appreciate what this bill provides and thank the sponsor and the work of Rosalie Bordelove and what she has done to help and support our Commission.

CALLI WILSEY (Urban Consortium):

The Urban Consortium includes the City of Reno, the City of Sparks, the City of Henderson and the City of Las Vegas. The Urban Consortium is neutral on A.B. 253. We thank Assemblywoman Considine and Rosalie Bordelove for working with us on the amendment brought forward today. This addresses our concern that it may be viewed that a local government would be required to provide technical support to a user to be in compliance with the OML. We appreciate the various discussions on this bill and the collaboration to find a way to address this concern.

CHAIR DONDERO LOOP:

I will close the hearing on A.B. 253 and go to public comment.

MS. GRANT:

My brother was 38 years old when he was hog-tied by the Reno police for over 40 minutes during a mental health crisis. He was then dumped at the Washoe County jail still hog-tied, put prone and then asphyxiated to death.

Today, I would like to talk about Micah Abbey, who was 33 years old when he lost his life to the Reno police on December 25, 2011. He was in a group home for mentally disabled people. He got into a verbal argument at dinnertime with one of his peers. The Reno police came. By the time Officers Keith Pleich, Daniel Bond, Scott Rasmussen and Brad Demitropoulos arrived, Micah was resting peacefully and calmly in his bedroom by himself sitting on his bed. Micah

apparently resisted arrest. Who would want to go to jail on Christmas? However, the police reaction was to tase him 22 times; for 12 of those he was handcuffed and face down with officers on his neck and back. They also hog-tied Micah like they did to my brother Thomas Purdy. They used a baton on him as well. He never made it out of his room alive.

I personally know Micah's family. So many families are living the nightmare of police killing their loved ones without consequence. It was a dreaded day for Denise, Micah's mom. He was killed on Christmas Day. She worked in a mental hospital for years and they did not kill anyone. Truth be told, the only community member to die at a mental facility was Ronald Beach, who was the patient shot in the parking lot of the mental hospital by Reno police. Please support bills that promote transparency and accountability from law enforcement.

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CHAIR DONDERO LOOP:

Having no further business to come before the Committee on Government Affairs, this meeting is adjourned at 5:11 p.m.

RESPECTFULLY SUBMITTED:

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Suzanne Efford,  
Committee Secretary

APPROVED BY:

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Senator Marilyn Dondero Loop, Chair

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

| <b>EXHIBIT SUMMARY</b> |                       |                       |  |                    |
|------------------------|-----------------------|-----------------------|--|--------------------|
| <b>Bill</b>            | <b>Exhibit Letter</b> | <b>Begins on Page</b> | <b>Witness / Entity</b>  | <b>Description</b> |
|                        | A                     | 1                     |  | Agenda             |
| A.B. 211               | B                     | 1                     | Kyle Davis / Nevada Conservation League  | Proposed Amendment |
| A.B. 249               | C                     | 1                     | Victoria Carreon / Division of Industrial Relations, Department of Business and Industry | Written Statement  |
| A.B. 253               | D                     | 1                     | Assemblywoman Venicia Considine  | Proposed Amendment |
| A.B. 253               | D                     | 1                     | Rosalie Bordelove / Office of the Attorney General                                       | Proposed Amendment |