MINUTES OF THE
SENATE COMMITTEE ON GOVERNMENT AFFAIRS

Eighty-first Session
February 10, 2021

The Senate Committee on Government Affairs was called to order by Chair Marilyn Dondero Loop at 3:35 p.m. on Wednesday, February 10, 2021, Online. 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

STAFF MEMBERS PRESENT:

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

OTHERS PRESENT:

Jake Tibbitts, Manager, Department of Natural Resources, Eureka County
Julian Goicoechea, Chair, Board of Commissioners, Eureka County
Colby Prout, Nevada Association of Counties
Marla McDade Williams, Churchill County
Christine Saunders, Progressive Leadership Alliance of Nevada
Patrick Donnelly, Center for Biological Diversity
Richard Karpel, Executive Director, Nevada Press Association
Maggie McLetchie, Nevada Open Government Coalition
Kyle Roerink, Executive Director, Great Basin Water Network
Holly Welborn, American Civil Liberties Union
Kevin Remus, Lieutenant Colonel, State Judge Advocate, Nevada National Guard, Office of the Military
Karen-Nicole Randel, Captain, Sexual Assault Response Coordinator, Nevada National Guard, Office of the Military

Anthony Yarbrough, Veterans of Foreign Wars; United Veterans Legislative Council, Department of Veterans Services
Zach Conine, State Treasurer
Tara Hagan, Chief Deputy Treasurer, Office of the Treasurer

CHAIR DONDERO LOOP:
We will open the hearing on Senate Bill (S.B.) 77. This measure is a Legislative Committee on Public Lands bill which revises provisions relating to public bodies.

SENATE BILL 77: Revises provisions relating to public bodies. (BDR 19-466)

SENATOR GOICOECHEA:
This bill pertains to all public bodies, including Native American tribes, able to obtain cooperating agency status by signing a memo of understanding (MOU) with federal agencies under the National Environmental Policy Act of 1969 (NEPA). The problem is elected officials in public bodies entering into a MOU which is a confidentiality agreement with federal agencies.

To avoid violating the Open Meeting Law (OML), only one staff person or one elected official can be in attendance at a meeting when going through the predecisional process for an Environmental Impact Study (EIS) or an Environmental Assessment (EA) under NEPA. These elected officials represent the public's interest in an otherwise closed process.

This bill would allow more members of the public body to attend a closed meeting without violating the OML. However, it must be understood before any decision or determination is made, it must be presented in an open meeting.

The problem is only one public body member or one staff person can attend a closed meeting with a federal agency under NEPA. This is unfair to other public body members and the public because only one person offers an opinion or guidance in the process.

Senate Bill 77 would allow the OML to be waived in cases in which there is a MOU with a federal agency and the public body is given cooperating agency status under NEPA.

SENATOR OHRENSCHALL:
What is the issue with the applicability of the OML? I do not understand the problem we are trying to solve with seeking an exemption from the OML.

SENATOR GOICOECHEA:
Because it is confidential, if more than one public body member attends a NEPA or EIS meeting it would be a violation of the OML. If two or more public body members attend a meeting, it has to be posted as an open meeting. That cannot happen because it is a closed session with the federal agency under NEPA.

CHAIR DONDERO LOOP:
Would this only pertain to county public bodies in certain instances? Could other entities such as school board trustees or people from other counties use this law as well?

SENATOR GOICOECHEA:
It would apply to any public body; however, I do not know what the circumstances would be in which the Clark County School District would meet with the Bureau of Land Management (BLM) or the U.S. Forest Service in a NEPA action. The Legislative Committee on Public Lands intended this to be extended to any public body that entered into a MOU with a federal agency for a predecisional determination under NEPA. It is already accepted practice that by signing a MOU with a federal agency, a public body can be granted cooperating agency status. That extends to Native American tribes; however, they are not bound by the OML.

In most cases, if more than one representative of an elected public body sits on the NEPA meeting, that would be a violation of the OML. We are trying to allow public body interaction with federal agencies as it goes through this process without running the risk of violating the OML.

JAKE TIBBITTS (Manager, Department of Natural Resources, Eureka County):
Eureka County proposed S.B. 77 to the Legislative Committee on Public Lands and identified related issues. Because there is so much public land in Nevada, virtually everything the State does has a nexus to federal agencies which often requires some NEPA process. This bill in no way undermines government in the sunshine. It does not allow backdoor deals. That is not the intent. The intent is to allow those elected to public bodies to represent their constituents, participate actively, know what is going on and then inform their constituents.

The predecisional and deliberative process has been defined by the courts and in federal law. However, I want to make clear to the Committee that federal regulations and rules require any public body meeting the threshold to be a cooperating agency must sign an MOU and must not disclose any of the predecisional information. The federal agency cannot have a public meeting in which agendas are posted and minutes reported because of its rules and the Freedom of Information Act (FOIA).

After the predecisional determination, everything becomes public. The EIS or the EA starts the public process. The public body will then hold a public meeting in which their constituents will be able to see the document and go on record outlining their issues and concerns. This is not done behind closed doors.

I submitted a document (Exhibit B) containing various federal regulations and language from MOUs with Eureka County. This will give you an understanding of federal language across a broad range of federal agencies. It also contains a letter from the BLM regarding a public meeting in which the Eureka County Board of Commissioners spoke about their concerns on a mining project and its water use. A local reporter wrote about the meeting in the newspaper. The BLM saw the article and sent a letter telling the Commissioners they were violating their MOU and were disclosing information.

If this bill does not pass, the status quo will continue. Only one staff member or public body member will be made aware of what is going on and the rest will be excluded from the process. It is not right that appointed staff, who are not elected and not representing the people, are representing the interests of the county. Those elected to represent the county's interests need to be at the table with federal agencies.

JULIAN GOICOECHEA (Chair, Board of Commissioners, Eureka County)
Eureka County provides more comments and feedback as a cooperating agency than any other county in Nevada. This bill is needed because if Jake Tibbitts were to leave the County, the continuity in the Board of Commissioners would be gone. I could not step in and pick up many of these processes and neither could any of the other Commissioners because he is our point person.

There are times when he and I work together on many natural resource issues which is not fair to the other Commissioners on the Board. We cannot disclose to them what kinds of conversations we are having with federal agencies. If we

did, we would be conducting a meeting because we are a three-member board. If two of us were to have a conversation in which I speak about what is happening, I would be violating the OML.

Elected officials change just as staff does. When someone loses an election or chooses not to run for election again and that person is the point person for BLM, the U.S. Forest Service or the U.S. Fish and Wildlife Service, there is no continuity. That is not fair to the electorate of the county. They deserve better.

We are not trying to do anything behind the scenes. We do a good job. When the comments are completed and finalized, we bring that forward in the public process. We have no way of bringing that forward in our public meeting because we would be violating the MOUs we sign with various federal agencies.

COLBY PROUT (Nevada Association of Counties):
The Nevada Association of Counties (NACO) represents all 17 Nevada counties and supports S.B. 77. This bill will encourage and enable full, transparent cooperation between counties and federal management agencies. It will give county governments and their residents full and fair representation regarding major plans and projects affecting their communities. Senate Bill 77 will reconcile attention between federal and state sunshine laws. Specifically, under the federal FOIA, agency deliberations in the beginning of the NEPA process are privileged and remain confidential to encourage frank discussions among cooperating agencies. Meanwhile, Nevada's OML would require these discussions to happen in public.

Without S.B. 77, federal agencies will continue to avoid deliberating with county commissions because Nevada's OML requires any such discussion be open to the public in contravention of a privilege under federal law. While it may seem as though this bill encourages secrecy or lack of transparency, in fact it does the opposite. Federal agencies engaged in the planning process under NEPA do not engage in deliberations with county boards of commissioners. Instead, they are forced to engage with unelected, appointed county staff members out of view of the public and without accountability to voters.

The underlying importance of the exception in S.B. 77 is to ensure county governments and their constituents are properly represented and protected. When an agency is engaged in a large-scale project within a county, this would allow agencies to deliberate with elected county boards of commissioners.

Just as the OML was amended in recognition of attorney-client privilege to allow a closed session during county commission meetings, this bill would amend the OML in recognition of federal agencies' predecisional and deliberative communications privilege to allow a closed session during county commission meetings. For the reasons just described, NACO urges this Committee's support of S.B. 77.

MARLA MCDADE WILLIAMS (Churchill County):
Churchill County supports S.B. 77.

Churchill County has three commissioners. Only one member at a time is allowed to attend a NEPA session. The member carries issues forward to the best of his or her ability; however, the integrity of the process can lose value if that member is not able to carry forward concerns of other members of the commission.

As noted in previous testimony, the final deliberation of the county is done in a public meeting.

CHRISTINE SAUNDERS (Progressive Leadership Alliance of Nevada):
The Progressive Leadership Alliance of Nevada opposes S.B. 77. We have submitted comments from a number of groups (Exhibit C).

It is important for directly impacted communities to be involved in the environmental planning process as early as possible, particularly for mining projects and access to how and why decisions are made. The NEPA proceedings are already difficult for the community to determine how to participate. Often, the local public body will be the primary conduit for the public to be involved in such proceedings.

It is inappropriate to exempt public bodies from government transparency laws. It limits the public's access to processes impacting their land, water and community. We ask you to oppose S.B. 77.

PATRICK DONNELLY (Center for Biological Diversity):
The Center for Biological Diversity is opposed to S.B. 77 because it violates the spirit of Nevada's public transparency laws which are essential to maintaining the democratic ideals of this State.

Counties and other public bodies have participated as cooperating agencies in NEPA proceedings across the Country for decades without the need for creating new, gaping exemptions from public transparency laws.

More than one county commissioner cannot participate in a meeting with any party regardless of whether it is a closed NEPA meeting without adhering to the OML. A meeting with federal agencies, particularly on topics having large impacts on the environment and communities, for example for an EIS, should not be exempt.

As for the idea the public has transparency at the time a draft EIS is put forward—the cake has been baked by that time. Substantial changes almost never occur beyond the draft EIS stage. Input by public bodies before the draft has been prepared is the critical moment. If multiple county commissioners or other entities are participating in those meetings, the public has a right to know what is going on.

In sum, the balance of competing interests must fall on transparency. At worst, it seems it is somewhat inconvenient for public bodies at this time. If so, they should ask the federal delegation to pursue revisions to NEPA and FOIA statutes in favor of more transparency as opposed to trying to throttle transparency at the State level.

SENATOR OHRENSCHALL:
If this were to become law and the exemption from the OML granted, how many NEPA discussions in Nevada would not be subject to the OML?

SENATOR GOICOECHEA:
It would not make any difference. It would be the status quo. It would limit the participation. They already have the ability as a cooperating agency. It would continue to limit cooperating agency meetings going on as per the MOU.

Mr. Donnelly is right. If there is a change, it probably should happen at the federal level, but until that happens this is a way to allow the public to participate in the process.

RICHARD KARPEL (Executive Director, Nevada Press Association):
Nevada's OML and the Nevada Public Records Act (NPRA) are not perfect, but they set high standards for government transparency that benefit the citizens of

this State. Senate Bill 77 would import federal secrecy rules to override those standards to keep all NEPA proceedings hidden from the public. Do we really want to farm out our transparency standards in Nevada to the folks in Washington, D.C.? Given Washington's record in these matters, it is an extraordinarily bad idea to do so.

As a practical matter, it would mean when federal agencies leading NEPA proceedings hold meetings or issue reports about the environmental impact on massive projects in Nevada, the citizens in this State will be left in the dark. We will have no ability to determine whether the underlying NEPA process was conducted with the interests of Nevada's citizens in mind, nor would we have the ability to hold public officials accountable if they are not.

For these reasons and others articulated today by my colleagues, the Nevada Press Association opposes S.B. 77.

MAGGIE MCLETCHIE (Nevada Open Government Coalition):
The important democratic principles underlying both the OML and the NPRA do not change. The fact that our government officials are supposed to work for the taxpayers and the public does not change just because Nevada is working with a federal agency. This would set a dangerous precedent that would start opening the door to getting rid of our fundamental principles of openness and transparency just because a Nevada agency is working with the federal government.

We have heard much today about this not undermining transparency because government officials will be there to work on behalf of the public. Both the NPRA and the OML reflect that the public has the right to know what government officials are doing. They do not have to just trust a representative; they get to hold their representative accountable.

There has been much talk today about the challenges of the OML. There should not be an exception to the OML, but none of the arguments made today explain why the changes to the NPRA would be necessary. Under Nevada caselaw, if a document is subject to the predecisional common-law privilege, a government can and does withhold that record. That is limited to when the interest outweighs a significant need or the presumed interest in access. That is the correct law. There is no need to create a huge, gaping hole in the NPRA for Nevada's environmental work with federal agencies.

KYLE ROERINK (Executive Director, Great Basin Water Network):
I want to echo what has been said regarding the foundational principles of our government. I also want to note that local governments are between a rock and a hard place as it relates to these issues. To participate as a cooperating agency they have to silence themselves.

Going back to the principles of transparency, this is not the way we should be fixing the process. A bill resulting in less transparency is not the solution. As it relates to predecisional and deliberative process, many documents would not be subject to not being out in the public under FOIA laws. I am concerned this bill would do that in Nevada. There are many documents available that would no longer be available.

The solution is much bigger than this legislative offer. We need to ask the federal government to take the muzzle off under NEPA and to change the FOIA laws.

HOLLY WELBORN (American Civil Liberties Union):
The American Civil Liberties Union opposes S.B. 77. The spirit and purpose of the OML and the NPRA is to foster a level of transparency better than that provided by the federal government. By providing this new exemption, we are moving in the wrong direction.

CHAIR DONDERO LOOP:
We will close the hearing on S.B. 77 and move on to S.B. 28, which revises provisions of the Nevada Code of Military Justice.

SENATE BILL 28: Revises provisions of the Nevada Code of Military Justice. (BDR 36-261)

KEVIN REMUS (Lieutenant Colonel, State Judge Advocate, Nevada National Guard, Office of the Military):
I have provided written testimony discussing the background and context of S.B. 28 and outlining why this revision is in the best interest of the State, the National Guard and its service members (Exhibit D).

KAREN-NICOLE RANDEL (Captain, Sexual Assault Response Coordinator, Nevada National Guard, Office of the Military):
I have submitted written testimony in support of S.B. 28 (Exhibit E).

SENATOR NEAL:
I am concerned about section 3, subsection 1 of the bill regarding the deletion of a third party acting as an agent for another individual who could have caused a nonconsensual contact. Why has "causes nonconsensual" been stricken?

CAPTAIN RANDALL:
The proposed definitions are word for word the same definitions used in the Uniform Code of Military Justice and in the U.S. Department of Defense (DOD). A person causing someone else's nonconsensual sexual contact was the prior definition. I and other agencies of the DOD have interpreted this to mean that it does not matter who is causing intentional nonconsensual sexual contact; if it occurs and is nonconsensual, it is covered by that definition.

LIEUTENANT COLONEL REMUS:
We are trying to use DOD definitions. As in section 3, subsection 4, paragraph (a), we have stricken "nonconsensual" as a defined term and replaced it with "consent."

SENATOR NEAL:
The reason I ask is because when "intent" is stricken as in section 3, subsection 4, paragraph (b), legally, intent is when someone forms the state of mind to do the act. Legally, how do you establish if a person formed the intent or not? Either way, is that person still guilty? Is that what you mean?

LIEUTENANT COLONEL REMUS:
Section 3, subsection 1, states "engage in intentional sexual contact" with another person. Therefore, we still have the intent element.

SENATOR NEAL:
Yes, I saw that. It seems incongruent regarding the third party.

However, this is fine. It is a good first step. It is 2021 and we are trying to deal with sexual harassment. It is about time.

CHAIR DONDERO LOOP:
In this situation, who is responsible for reporting aside from anyone who might be a witness or be involved?

LIEUTENANT COLONEL REMUS:
Certain designated positions have reporting responsibility. It is also a command responsibility to report. Major General Ondra L. Berry wants to work on a policy to clarify who must report. It is a command responsibility, and he wants to expand that to include more people than just commanders and leaders. It will take time to develop such a policy.

CHAIR DONDERO LOOP:
I ask because as an educator I am a mandatory reporter.

ANTHONY YARBROUGH (Veterans of Foreign Wars; United Veterans Legislative Council, Department of Veterans Services):
I represent 6,000 members of the Veterans of Foreign Wars and close to 500,000 members of the United Veterans Legislative Council (UVLC). The UVLC is an organization of all the veterans groups throughout Nevada, including veterans, active duty military, the National Guard, families and advocates.

Many of you have veterans in your family history and have direct experience with active duty military service. As we move forward, please remember the family's sacrifices and commitment to serve our Country and how proudly you support them. We want the best for them.

The UVLC supports S.B. 28 because it recognizes this is appropriate timing for updating the UVLC language. It is important to maintain safety as well as command and control throughout the organization. I have taught, trained and adjudicated the DOD side and the corporate side of this process. Many times people misunderstand. It is not easy to understand; however, it is easy for the victim to understand.

LIEUTENANT COLONEL REMUS:
By adding sexual harassment to the Nevada Code of Military Justice, the Nevada National Guard has taken that step before the active duty military.

CHAIR DONDERO LOOP:
We will close the hearing on S.B. 28 and open the hearing on S.B. 47.

SENATE BILL 47: Revises provisions governing public borrowing. (BDR 30-395)

ZACH CONINE (State Treasurer):
Senate Bill 47 is about interim debentures. In response to the devastating financial impacts of the Covid-19 pandemic, the Nevada Legislature passed S.B. 4 of the 31st Special Session.

Senate Bill No. 4 of the 31st Special Session permitted the State Board of Finance to issue interim debentures if the balance of the State General Fund was insufficient to meet future obligations. The provisions of S.B. No. 4 of the 31st Special Session are set to expire on June 30.

Senate Bill 47 makes the provisions of S.B. No. 4 of the 31st Special Session permanent and slightly modifies the process to ensure greater checks and balances. Upon expiration of S.B. No. 4 of the 31st Special Session, the State will have no mechanism or ability other than calling the Legislature into special session to borrow money in an emergency.

Senate Bill 47 gives Nevada a permanent process to address financial crises, whether caused by severe economic downturn, public health emergencies or other extreme extenuating circumstances in which the State is unable to pay its bills. Nevada is one of only four states with a biennial budget process, including Montana, North Dakota and Texas, which makes it challenging to respond efficiently and adequately to evolving economic conditions.

Senate Bill 47 will provide the State with a level of flexibility to ensure that general fund appropriations made by the Legislature can be fulfilled in an economic downturn without taking significant losses in the State's investment portfolio.

Much like S.B. No. 4 of the 31st Special Session, S.B. 47 permits the State Board of Finance to issue not more than $150 million in interim debentures through the following steps:

The State Treasurer determines that the balance in the General Fund is insufficient to meet future obligations. The Office of the State Treasurer forecasts cash flow by day through 2027. However, sometimes there are surprises like a pandemic.

The State Treasurer notifies the Interim Finance Committee (IFC) of the amount of the insufficiency and transmits a request to allow for the issuance by the State Board of Finance.

The IFC has 15 days, as with other emergency measures, to consider the item and deliver a resolution establishing the maximum amount that may be issued. If the IFC does not meet within the 15-day timeline, the approval is automatically processed and the request is sent to the State Board of Finance.

While it will only be used in limited emergency circumstances, S.B. 47 is necessary to ensure the State has the tools it needs to respond effectively and efficiently in times of crisis.

The Office did not need to use this emergency measure during the time between the Special Session and now, for which it is grateful. You do not put on a parachute expecting the plane to crash; you put on a parachute in case it does. I have also submitted written testimony on S.B. 47 (Exhibit F).

SENATOR NEAL:
I understand what you are trying to do. The only reason I voted for S.B. No. 4 of the 31st Special Session was because we were in an emergency. I never intended for this language to be permanent.

Senate Bill 47 has a provision from S.B. No. 4 of the 31st Special Session allowing unrestricted revenue, including tax revenue, to be pledged. It is an issue for me because it is an expansion of power. The expansion of power enables the use of unrestricted revenue, including tax revenue, which becomes automatic if the IFC does not approve within 15 days. This is unworkable for me. How do we know for what those revenues are designated? What do we probably want to use them for without them being swiped? I have a problem with that.

Section 2 of S.B. No. 4 of the 31st Special Session indicated a temporary change of bank service charges to bond administrative expenses. Senate Bill No. 4 of the 31st Special Session was a temporary change; however, S.B. 47 makes "bond administrative expenses" permanent. What is the effect of that change? Help me understand why we need to do that kind of wordsmithing.

MR. CONINE:
Regarding the intention of the revenue language, the goal is to have a mechanism to pay the bills the Legislature has already approved. When we issue general obligation debt, it becomes the general obligation of the State. It could be a specific type of revenue. If it is not a specific type of revenue, then it is all the revenue of the State.

The rest of our bond issuances are based on property tax. They are general obligation debt, but if property tax is not sufficient, then money is taken from other revenue streams. The intention is not to pick and pull from a specific revenue stream. It says if we issue an interim debenture like the rest of our general obligation debt, it is based on the full faith, credit and ability to pay it back.

This is specifically used when the Legislature approves an expense, an emergency occurs and we cannot pay that bill. It could be used for payroll or for paying the National Guard when there is no opportunity for a special session.

Nevada is one of the few states that does not have a legislature in session all the time, which makes this more concerning. We cannot go down the hall and say we are going to run out of money next Thursday, could you do something? Everyone would have to get called in for an issuance. This is not something the IFC can do. As the financial steward of the State's bills and the person responsible for making sure our checks do not bounce, this terrifies me.

TARA HAGAN (Chief Deputy Treasurer, Office of the Treasurer):
The bank assessment was a technical change. The prior language said bank assessment was dated in terms of the cost of issuance and all the different obligations going into cost of issuances, such as bond counsel, disclosure counsel, rating agencies and other fees. This will align the statute with the current process.

SENATOR NEAL:
If that is the case, then why are we flipping it back?

MS. HAGAN:
We will have to consult the Legal Division of the Legislative Counsel Bureau to understand that because that was not our intention.

SENATOR NEAL:
I have put my objections on the record. I do not like the permanency.

SENATOR GOICOECHEA:
I wonder why all the language regarding the parameters was deleted. Why was the General Fund falling below 25 percent of its lowest average and payment within 120 days deleted? Why was the determination of insufficiency turned over to the State Board of Finance and the State Treasurer? The only backstop to it is ultimately it will come to the IFC. If it does not act within 15 days, it is still approved. Technically, it is still the State Board of Finance and the State Treasurer determining there is not enough money. We do not really have any guidelines in place.

MR. CONINE:
We put the bill together during the Special Session obviously based on a relatively quick drafting process. In the drafting process, we wanted to ensure everyone was comfortable with the limitations. With more time, we wanted to make sure the bill worked the way we wanted it to. It would act as a parachute that could be pulled by the people looking at the bank accounts every day, who could then go to IFC, make a case and the IFC could handle it.

The great thing about this process are the significant guide rails on it. One is the Legislature has to have already approved the spending through the budget process. For example, during a pandemic a temporary moratorium could be put on gaming revenues. Those revenues do not come in, but eventually they will. Or we have to repay live entertainment taxes as we did this time. If we did not have federal dollars in the bank account, we could run out of money. The goal is to be able to shoot up a warning flare and know the IFC is going to hear it within 15 days. The IFC has heard everything we have asked them to hear on an emergency measure within 15 days. We have been able to work through it and ensure the State Board of Finance, which is responsible for approving the issuance of all debt, is still involved in the process. The important fact is these are legislatively approved expenditures. It does not create new spending. It ensures we can pay the bills to which we are already committed.

CHAIR DONDERO LOOP:
I will close the hearing on S.B. 47 and open the hearing on S.B. 68.

SENATE BILL 68: Revises provisions governing public investments. (BDR 31-399)

MR. CONINE:
Senate Bill 68 is a lifeline and an opportunity for some of our struggling school districts. The Office of the State Treasurer is charged with a number of critical State functions, one of which is the responsibility of investing public monies. This includes all investments, accounting activities relating to the general portfolio, the local government investment pool, the Permanent School Fund (PSF) and the oversight of the Edvest investment advisors.

Senate Bill 68 modernizes and strengthens Nevada's investment statutes by increasing the impact of the Nevada Capital Investment Corporation (NCIC) on public school funding, ensuring greater participation from local school districts and extending the State's investment vehicles.

Senate Bill 68 accomplishes these goals by making the following changes:

Section 2 of the bill increases the transfer from the PSF to the NCIC from $50 million to $75 million to generate additional funding for public schools. The NCIC is administered by the Office of the State Treasurer and operates through the Silver State Opportunities Fund (SSOF). The SSOF invests dedicated capital in Nevada businesses and does so with the primary goal of generating greater returns for the State's PSF. The SSOF secondarily seeks to increase economic development and employment in the State.

Under *Nevada Revised Statutes* 355.280, the State Treasurer is permitted to transfer up to $50 million from the PSF to the NCIC. To date, these investments have generated $32.3 million for the PSF and $12.8 million in interest payments directly to the Distributive School Account (DSA). Section 2 of the bill increases the amount of this transfer to $75 million which will further increase investment returns to support funding public education in this State.

During fiscal year 2020, NCIC had net returns of 6.5 percent compared to the PSF which had net returns of 2.89 percent. In the last fiscal year, more than half of the interest paid into the DSA came from the NCIC. It is an exceptionally good vehicle. The more money we get into the DSA, the more money there is for things like teachers and class size reduction.

Under the law, school districts are allowed to apply to the Office of the State Treasurer for a guarantee agreement where money in the PSF is used to back the payment of debt service on bonds issued for school construction. Clark County and Washoe County School Districts generally bond for new schools on their own. However, this guarantee is critical for smaller, rural districts to help finance school construction.

Sections 3 and 4 of the bill increase the total amount by which the State Treasurer can issue bonds guaranteed by the PSF upon request from school districts from $40 million to $60 million. By increasing this cap, smaller school districts can use the PSF and encourage additional school construction in areas of need.

Functionally, this allows us to use the State's good credit rating to guarantee school construction funds in areas with less than a great credit rating. It allows them to borrow money more cheaply which gives them the opportunity to build more things and spend more money on the stuff we all care about.

Finally, section 1 of the bill allows the Office of the State Treasurer to invest in reverse repurchase agreements (RRP). In an RRP, the State as the investor owns the security which a bank or dealer purchases under an agreement and sells back to the State at a specified date at an agreed upon rate. A reverse repurchase agreement can be used as a cash management tool to help avoid liquidating the securities prior to maturity date to meet unexpected or immediate cash flow requirements.

Such an agreement also allows the State to add a few points to its bottom line. It provides the State with additional liquidity should the need arise for an overnight or an ultrashort term loan. The agreements are highly regulated, performed by third-party custodians and tailored to match the specifics of the State's statutorily required high quality securities. Much like the changes of S.B. 47, these will be used in rare and extenuating circumstances.

SENATOR NEAL:
What schools are actively trying to use bonds? Historically, there is a report listing all the schools by county. What is happening in the State to cause the need to increase during a pandemic?

MR. CONINE:
This does not cost the State any money. These are refundings and other agreements made through those counties. They pay the costs of issuance. The State has no expense nor does it do anything from a budgetary perspective.

Nine school districts have active PFS guarantee debt totaling $161 million. They include Carson City, Churchill County, Douglas County, Lincoln County, Lyon County, Nye County, Storey County, White Pine County and Washoe County. We have saved about $11 million for those districts through this program.

SENATOR NEAL:
I want to clarify something. I know it is not costing the State anything. When I reviewed the two bills together, this is an expansion of power. I do not understand. I am uncomfortable because there are several asks in two sections. You are asking for increased authority and money to act.

I understand what they do. I am uncomfortable with certain things because I do not understand a $20 million jump here and a then a $25 million jump there. I understand the PSF performs well. It had some rough years, 2011 and 2013. However, it has hit its sweet spot. Those are my issues. Expansion of power usually gives me pause no matter who is asking. I want to be clear on that.

Regarding the RRP, I have seen this concept before. What are the disadvantages and the risks involved with the RRP? Typically, RRPs are not used by governments. Yes, the Federal Reserve has used them, but typically we do not see a lot of engagement in state treasurer departments. We see it with businesses and various tools in which they use this security. How does the maturity date work, and how can we run into a risk with it maturing before it is due?

MR. CONINE:
Regarding the expansion of responsibilities, I am the fiduciary of the PSF. I am the person whose name is on the responsible documents. My Office spends much time making sure that as the fiduciary of the PSF, it is taken care of. Part of that means having the tools available to make sure it can grow and serve its purpose as a guarantee.

Counties have come to us and asked us to expand this number. This has not changed in a number of years, even as the PSF has grown. We have additional capacity, but we do not have a way to get it out on the street. We are encouraging the school districts, especially in times of crisis, to look for ways to refinance existing debt at lower interest rates. They are able to do that, but they need access to the PSF guarantee to do it.

When it comes to expansion of powers and responsibilities, I hear you. This is a good opportunity to make sure the Office works most effectively taking care of the State's money.

All investing has risks. The investments we take in fixed income, PSF and NCIC, have risks. The goal of a program like this is to mitigate those risks and make sure securities do not have a maturity date prior to the end of an RRP contract. I have never heard of that happening to an institution doing it at our level and with our level of control over the actual securitization.

MS. HAGAN:
In the 1980s, the RRP was used not as a liquidity tool but as a way to enhance performance on a portfolio. Yes, a risk is associated with it. However, using it as a cash management or liquidity tool in an effort to not sell a security early at a detriment to the portfolio can mitigate the risk by only using it for that purpose.

A third-party custodian is used. Most importantly, the RRPs are used for a short time frame, usually overnight or a maximum of five to seven days. That is another way to mitigate the risk with these types of agreements.

SENATOR NEAL:
Are you getting interest on the RRP? How does it work? I know how it works, but this is a concept that may not have been heard of in the Senate.

MS. HAGAN:
Interest is part of the agreement. Standardized agreements are used in the securities world for these, but the interest would go to the other party in an RRP. The State would be using it in an emergency to have cash available. For example, the State would need the cash. It would send the securities as the collateral so the interest would be derived from the other party taking possession of those securities.

MR. CONINE:
These are important issues. I will answer any further questions offline. I want to make sure everyone is comfortable because these are important tools for the State.

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VICE CHAIR OHRENSCHALL:
I will close the hearing on S.B. 68. Having no further business to come before the Senate Committee on Government Affairs, the meeting is adjourned at 5:00 p.m.

RESPECTFULLY SUBMITTED:

Suzanne Efford,
Committee Secretary

APPROVED BY:

Senator Marilyn Dondero Loop, Chair

DATE:

EXHIBIT SUMMARY				
Bill	**Exhibit Letter**	**Begins on Page**	**Witness / Entity**	**Description**
	A	1		Agenda
S.B. 77	B	1	Jake Tibbitts / Eureka County	Written Testimony
S.B. 77	C	1	Christine Saunders / Progressive Leadership Alliance of Nevada	Written Testimony
S.B. 28	D	1	Kevin Remus / Nevada National Guard	Written Testimony
S.B. 28	E	1	Karen-Nicole Randel / Nevada National Guard	Written Testimony
S.B. 47	F	1	State Treasurer Zach Conine	Written Testimony