MEETING OF
COMMITTEE ON GOVERNMENT AFFAIRS
APRIL 21, 1975

Chairman Dini called the meeting to order at 8:05 A.M.

MEMBERS PRESENT: Assemblyman Joseph E. Dini, Jr., Chairman
Assemblyman Patrick M. Murphy, Vice Chairman
Assemblyman Don A. Moody
Assemblyman Jean E. Ford
Assemblyman Paul W. May
Assemblyman Harley L. Harmon
Assemblyman Robert G. Craddock
Assemblyman James W. Schofield

MEMBER ABSENT: Assemblyman Roy Young

OTHERS PRESENT: Myrl Nygren, Nevada Health Division
Thomas R. Rice, Las Vegas Valley Water District
Gordon Pratt, Washoe County Schools
Jim Lien, Nevada Tax Commission
Micki Blomdal, Nevada Tax Commission
Frank Holzhauer, Dept. of Human Resources
Kenneth C. Hamister, So. Nevada Home Bldrs.
John D. O'Brien, So. Nevada Home Bldrs.
G. C. Wallace, Consulting Engineer, Las Vegas
C. W. Riggan, Chief Deputy Recorder, Douglas County
Richard Bunker, Clark County

(The following bills were considered: A.B. 593, S.B. 365, S.B. 239, S.B. 275, A.J.R. 29, A.B. 618 and A.B. 526.)

A.B. 593 - Mr. Frank Holzhauer, Department of Human Resources, said this bill had been introduced at the request of his department, and is one that should have been taken care of when the department was organized. This bill allows a little more flexibility in designating the agency which will do the planning for construction and services in the various federally funded programs. The agencies of particular interest at this time are the community mental health centers and mentally retarded centers. It is felt the division which carries out the program should be allowed to take care of their own planning.

S.B. 365 - Mr. Thomas R. Rice, Las Vegas Valley Water District, said this bill is what he would term a housekeeping act to clarify several points in the Water District Act. He stated the first clarification asked for is the addition of the word "services" in their billing procedures. This relates also to other revisions requested because, in addition to selling water, the District also provides certain services, and this would clarify the authority to charge for such services.

In Section 10 which concerns, in part, illegally taking water from the system, it is requested the words "wrongfully and maliciously" be changed to "wrongfully or maliciously."

Language has been added to Section 16d to clarify service additions, and enumerates the items which might be charged for, as well as allowing different rates to be charged to areas that are non-contiguous to the service. He cited Kyle Canyon and Blue Diamond as examples.

Assemblyman Craddock felt a definition of contiguous areas might present a problem.

Mr. Rice said the contiguous areas were those adjacent to and served from the same system of pipelines.

S.B. 239 and S.B. 275 - Mr. C. W. Riggan, Chief Deputy Recorder for Douglas County, said on Page 1, Line 13, the search fee is increased from $3 to $6 since, particularly in the larger counties such as Clark and Washoe, as many as 300 names have had to be searched and the $3 was not adequate to cover this service. He further noted on Page 2, Line 13, the fee is changed from $1 to $2, but that A.B. 529 changes the fee to $3 and this bill should perhaps be amended also to the $3 figure. He also stated that three pieces of legislation had been presented that changed the fee for filing of a parcel map to $5, and he was under the impression that had been agreed upon; however, the reprint of this bill shows $2.50, and he requested this be changed at this time also.

Chairman Dini referred to Page 2, Line 3, covering filing fee for condominiums, and Mr. Riggan said the present fee does not cover the cost of this service and storage of the maps, and there should be no difference in fees for townhouses, condominiums or subdivisions of land.

Mr. Riggan said that S.B. 275 was concerned with the time audits should be completed

Mr. Gordon Pratt, Washoe County School District, said that S.B. 275 amends two time tables involving the completion and submission of annual audit reports. He said he was in favor of advancing the time of completion from six months to five months; however, he felt advancing the time period to ten days rather than thirty days for submission to the governing body could involve a special board meeting for those boards which meet approximately every two weeks.

Members of the audience indicated the Board of County Commissioners and Washoe County School District concurred with Mr. Pratt.

Mr. Jim Lien, Nevada Tax Commission, said this bill had come out of the Advisory Committee to the Tax Commission and most entities had supported the change from six months to five months. He stated that the Senate, after hearing testimony from some of the budget people, as well as the employees associations, decided that thirty days for submission to the governing body was too long. In discussions with local governments, however, it was felt that the necessary filings with other agencies at the same time as presentation to the governing bodies in order to comply with the ten-day requirement would be inappropriate. He suggested this time period be changed to fifteen days.

S.B. 279 - Mr. Lien said this was another bill originating out of the Local Government Advisory Committee and that it was felt necessary to provide for larger amounts for petty cash funds for purposes of economic reasons, confidentiality and timeliness. It is, therefore, requested that the statute be expanded to allow for imprest accounts to improve financial management of the various entities. It is set up by ordinance of the governing body and administered by the chief administrative officer or other authorized personnel. When the expense has been made, a claim must be approved by the governing body. The purpose is to give more latitude to the entities.

Members from the audience indicated the Boards of County Commissioners and the Washoe County School District were in favor of S.B. 279.

S.B. 365 - Mr. G. C. Wallace, Consulting Engineer, Las Vegas, said his firm was an associate member of the Southern Nevada Home Builders Association, and spoke in opposition to S.B. 365. He presented statistics indicating that the median family income had not risen proportionately with the cost of housing from 1973 to 1975, and would rise less proportionately when projected to 1978, while the qualifying income would rise, thus lowering the percentage of families with the ability to purchase a home. He said the Southern Nevada Home Builders Association was concerned about the situation because housing could not be provided for many people. S.B. 365 contains certain revisions which it would appear changes the enabling legislation for the Water District which could lead to new charges to be passed on to the home buyer. He said the Home Builders Association had protested at public hearings certain proposed additional charges, one of which was a proposed source of supply which was a graduated fee depending upon the size of meter to the house, and for new houses it was going to add an additional fee of $250 per house. Subsequent to these public hearings, the Water District did hold in abeyance the proposed source of supply charge. It is felt that S.B. 365 might provide revisions to the enabling legislation which would allow the Water District to make these additional charges.

Chairman Dini asked Mr. Wallace if it should be the taxpayers who paid these additional charges if the home builders did not.

Mr. Wallace replied that the Water District obviously needs more money, but he did not feel one class of consumer or prospective consumer should pay the total charge, and the Water District should revise the rate structure of all users.

Mrs. Ford said it appears the Water District presently has the power to charge reasonable rates and charges and asked if Mr. Wallace was suggesting that this should be limited in the law to only certain kinds of rates and charges.

Mr. Wallace said he would refer that to Mr. Ken Hamister who is an attorney.

Mr. John O'Brien, Attorney, introduced Mr. Kenneth Hamister of the firm of Christy and Hamister in Ohio. Mr. O'Brien then presented to the members of the Committee a brief prepared in opposition to S.B. 365, which is attached hereto.

Mr. Hamister said the question raised by Mrs. Ford regarding the existing legislation as opposed to the new bill he felt was right to the point. The existing law provides in Section 16d that the District shall have the authority to establish rates and charges, subject to the limitations that the rates and charges be reasonable. The board is to fix the rates for the delivery of water to cover costs of operation and to cover its debt structure. It was his position that the present authority contained in 16d is all the authority the board needs if the rates it is going to establish are going to be reasonable, and to add anything beyond that point is to subject to customers of the District to something that is unreasonable. He pointed out that the District has authority to levy with the vote of the people ad valorem taxes over all the property in the District whether that property is presently a customer of the Water District or vacant land. The District has never levied any taxes under this section. The main purpose for this provision is to provide that the District can, in issuing its bonds, give the full faith and credit of the taxing power of the District to get a better rate. He said that the law is consistent on this point: that all customers of a public utility, municipal or private, in getting the same service shall be charged the same rate. That law has been enforced and is reflected in such legislation as the enabling act of the Water District. At its inception the Water District floated bond issues with which to put in its initial works. As it has expanded over the years, it has floated new bond issues. This is consistent with the way utilities have operated. The debt service is paid back out of the revenues of the district. As of 1973 all of the works of the District had been paid for by bond issues that are retired by the revenues from the rate structure. At that point the District put on its book a regulation charging $6 a front foot on lines that had not been put in on special assessment. He said it was his understanding they are actually charging developers who put in the line this frontage foot charge, so they are in effect paying for it twice. He said the proposed language"...connection charges or frontage charges if such rates and charges represent an equitable allocation and recovery of costs or providing facilities and delivery of water service" is an attempt to put into this statute enabling legislation above and beyond the reasonable charge and to charge new customers part of the cost of backup facilities. The District has, pursuant to Section 25 to 45 of the District Act, the right to require the developer or individual to pay for the cost of the line that immediately benefits him, or an on-site improvement. Municipal public utilities can require a developer to provide the pipes that immediately benefit him within a subdivision and require them to be donated to the district. The customer who is buying the home is donating to the district the value of the pipes that service his particular home and adding that value to the district. The future revenues he is going to add by paying his water bills, which revenues include the allocated part for the debt service for all the main works that have been put into the system at that point. This is the debt service that has been incurred in behalf of all the customers of the district to get water. To require a new customer to assume

a charge of the old debt and still have to pay a special fee in order to get on that line is discriminatory in terms of what the courts have decided, and therefore unconstitutional as the taking of property without due process. The courts have said that you cannot charge in the form of a special assessment any more than the benefit to the property. Mr. Hamister concluded by saying it was felt there is presently sufficient authority for the District to make charges which are fair to the customers and that to put this language into their enabling act is only going to give a sense of false security to the District to establish such charges as had been discussed, and the result will only be costly litigation.

Chairman Dini asked if this testimony had been given to the Senate Committee when it heard this bill.

Mr. Hamister replied it had not because it was his understanding the heading on this bill as printed does not represent the major change that is in the bill.

Mrs. Ford asked if by deleting the words concerning connection and frontage charges the objection would be removed.

Mr. Hamister replied the major objection would be removed, but he still felt the other language, "Service from different sources or to areas which are noncontiguous to the existing service area of the district may be deemed to be different classes or conditions of service for the purposes of this section" is just as unconstitutional as the other. He said the main concern expressed by his client has been the connection charge or frontage charge. He said he felt the proposed language only lends ambiguity to what is presently a clear statute.

Following discussion between the members of the Committee and Mr. Hamister, Chairman Dini asked Mr. Rice if he would like to speak in rebuttal.

Mr. Rice said he felt the Water District and its board needs to have the authority to do whatever is necessary on an equitable basis. The idea of a main connection charge or source of supply charge is for the purpose of trying to equate costs of all users and not put old users in the position of speculation with the Water District, the principle being that the property shall receive and pay the cost of facilities that provide that service. If no charge is made for lines of this kind, the rate structure must carry the cost. You can carry this a step further by not selling any bonds, not charging any fees and just raising rates to cover costs, but you would have a user revolt on your hands. This would not be a good businesslike way to do things. Language in the Southern Nevada Water Project contract requires costs be assessed against users, and that is what the proposed language in this bill refers to. Mr. Hamister referred to the charges relating to the service to the property, that you have an unconstitutional situation where the charge is a percentage of the line, but not unconstitutional where it is a service to the property, and that's what we are talking about. This is a cost to the property which will receive the service.

In response to Mrs. Ford's question, Mr. Rice advised the Water District attorneys and bond counsel both feel the Water District has authority and they are not afraid of a constitutional question under the bond covenants and under the act that is itself constitutional.

Mr. May asked who was legal counsel for the District and Mr. Rice replied the house counsel was McNamee, McNamee and Rittenhouse and the bond counsel was Urban Schreiner.

A.J.R. 29 - Assemblyman Bob Benkovich testified in favor of A.J.R 29 which raises the postage allowance for legislators and requested the Committee favorably consider this more realistic allowance.

A.B. 618 - Mr. Richard Bunker, Clark County, said this bill is a matter of clarification covering assessment districts of $100,000 or under. Under the present procedure four to six months are required for these small assessment districts because of the time involved to fulfill the requirements of advertising, notice and public hearing. The Public Works Department has requested they have the legal authority to poll these people by mail and, if the majority are in favor, to do away with the preliminary hearings and go to the petition hearing and give notice of a resolution that would be adopted to proceed with an assessment district.

Mrs. Ford indicated she felt the canvas procedure should be clarified.

Mr. Bunker said it was the intent that it be by certified, return receipt requested, letter.

Chairman Dini advised Mr. Bunker he could present the specific language at the 7:00 P.M. meeting this date.

A.B. 593 - Mrs. Ford moved "Do Pass" on A.B. 593. Mr. Harmon seconded the motion. Motion carried unanimously.

S.B. 239 - Chairman Dini pointed out the changes requested in the testimony were changing the figure of $2 to $3 on Page 2, Line 14, and $2.50 to $5 on Line 30.

Mr. Craddock moved to "Amend and Do Pass" on S.B. 239. Mr. Schofield seconded the motion. Motion carried unanimously.

S.B. 275 - Mr. Schofield moved to change the figure on Page 2, Line 14, to "15". Mr. Murphy seconded the motion. Motion carried unanimously. Mr. Schofield moved "Do Pass" on S.B. 275 as amended. Motion carried unanimously.

S.B. 365 - Following discussion among the Committee members, it was decided to postpone action on S.B. 365 pending receipt of a legal opinion.

S.B. 279 - Mr. Schofield moved "Do Pass" on S.B. 279. Mrs. Ford seconded the motion. Motion carried unanimously.

A.J.R. 29 - Mr. May moved to indefinitely postpone A.J.R. 29. Mr. Schofield seconded the motion. Mrs. Ford moved to amend the motion to hold, rather than indefinitely postpone. Motion to amend died due to a tie vote. Motion to indefinitely postpone carried by majority with Chairman Dini, Mr. Moody, Mr. May, Mr. Harmon and Mr. Schofield voting in favor and Mrs. Ford, Mr. Murphy and Mr. Craddock opposed.

A.B. 526 - Mr. May moved "Do Pass" on A.B. 526. Mr. Harmon seconded the motion.

On the question:

Mr. Craddock pointed out this bill contains a provision that there will be no consolidation of services.

Mrs. Ford said she would oppose the motion because two identical bills have been killed in the Senate.

Chairman Dini said that, in view of the fact the consolidation of Clark County is currently being considered, this is an inopportune time to pass this bill out.

Mr. Schofield said the bill might have merit at a future date, but he would oppose it at this time.

Mr. Craddock said he felt there was no merit to the bill because he felt there will be some consolidation of services affecting North Las Vegas in this session.

Mr. May said the citizens of North Las Vegas do feel quite strongly about this measure and he felt it was important to the citizens of that city.

Mr. Schofield said he had no appetite for the bill, but he would vote in favor.

Motion carried by majority with Mr. Schofield, Mr. Harmon, Mr. May, Mr. Moody and Chairman Dini voting in favor, and Mrs. Ford, Mr. Murphy and Mr. Craddock opposed.

Meeting adjourned at 10:10 A.M.

Respectfully submitted,

Mildred Cave

Mildred Cave, Secretary

ASSEMBLY

AGENDA FOR COMMITTEE ON GOVERNMENT AFFAIRS

Date Monday, APRIL 21, 1975 Time 8:00 A.M. Room 214

3-1066

Bills or Resolutions to be considered	Subject	Counsel requested*
S.B. 239	Increases certain fees charged by county recorders. NOTIFY: County Recorders, Miss DeHaven, (Lyon County)	
S.B. 275	Reduces time in which local government annual audits must be concluded and audit reports submitted. NOTIFY: County Recorders, Miss DeHaven (Lyon County)	
S.B. 365	Allows Las Vegas Valley Water District to charge different rates in areas noncontiguous to existing service area; requires county or municipality to pay relocation costs of water facility where county or municipality changes street grade; and corrects typographical errors. NOTIFY: Las Vegas Water District, County Commissioners City of Las Vegas, Assemblyman Ford	
S.B. 279	Authorizes local governments to establish and maintain petty cash accounts, imprest accounts and revolving bank accounts. NOTIFY: Mr. Bob Warren, Mr. Broadbent	
A.B. 593	Provides for planning and construction of health facilities to be carried out by appropriate division of department of human resources. NOTIFY: Mr. Holzhauer, Mr. Broadbent, Mr. Warren	
A.B. 618	Permits boards of county commissioners to authorize expenditures for certain improvements without providing certain notices and hearings if majority of affected property owners consent to assessment for the improvements. NOTIFY: Mr. Broadbent, Mr. Warren	

*Please do not ask for counsel unless necessary.

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CONTINUED ON PAGE TWO

ASSEMBLY

AGENDA FOR COMMITTEE ON GOVERNMENT AFFAIRS
MONDAY,
Date April 21, 1975 Time 8:00 A.M. Room 214

Bills or Resolutions to be considered	Subject	3 Counsel requested*

PAGE TWO (CONTINUED)

A.J.R. 29 — Proposes to amend Nevada constitution by increasing amount of legislators' allowance for payment of postage, stationery and related expenses.

NOTIFY: Mr. Benkovich and Mr. Mann

*Please do not ask for counsel unless necessary.

3-1075

GOVERNMENT AFFAIRS COMMITTEE

GUEST REGISTER

DATE: April 21, 1975

NAME	BILL #	REPRESENTING	TESTIFYING
Mark Teggan	AB 593	Washoe Health Dist.	No
Thomas R. Rice	SB 365	Las Vegas Valley Water Dist.	Yes
Gordon Pratt	SB 275	Washoe Co. Schools	Yes
Jim Lien	SB 275 & 279	Nev Tax Comm	yes
Nicki Blomdal	No	—	No
Hank Holthauer	AB 593	Rep of H R.	Yes.
Kenneth C. Hamister	SB 365	Southern Nev. Home Bldrs.	Yes
John D. O'Brien	SD 365	Southern Nev. Home Bldrs.	Yes
S C Wallace		Consulting Engineer L.V.	Yes.

SB365

3- 1076

BRIEF IN OPPOSITION TO SENATE BILL NO. 365

ON BEHALF OF THE

SOUTHERN NEVADA HOMEBUILDERS ASSOCIATION

The Southern Nevada Homebuilders Association is strongly opposed to the adoption of SB-365 and, in particular, Section 3 thereof which would amend Section 16d of Chapter 167, Statute of Nevada, 1947 as added by Chapter 797, Statute of Nevada, 1973, hereinafter referred to as the "Act". The Act is the legislation which established the Las Vegas Valley Water District ("District") and its authority for supplying of the territory of the District with water as a public and municipal function. The District in 1974 served approximately 58,000 customers, of which approximately 41,000 are individual customers.

The amendment to the Act set forth in Section 3 of SB-365 would purport to authorize the District to establish;

> "connection charges or frontage charges if such rates and charges represent an equitable allocation and recovery of costs of providing facilities and delivery of water service. Service from different sources or to areas which are noncontiguous to the existing service area of the district may be deemed to be different classes or conditions of service for the purpose of this section."

It also enumerates other charges which the district may establish but it is our position that these other charges are already within the authority of the District to make and collect pursuant to the existing provisions of the Act.

Our opposition is based on two principals of law:

I. That the amendment is in conflict with the other provisions of the Act.

II. That the amendment is in violation with the provisions of the Nevada Constitution and the U. S. Constitution.

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PROPOSITION I

The present provision as set forth in existing Section 16d authorizes the Board (of the District) to establish reasonable rates and charges for the products and services furnished by such works and properties (of the District) and further

> "Subject to the limitation that the rates and charges be reasonable, the board shall fix rates and charges which will produce sufficient revenues to pay the operating and maintenance expenses of such works and properties, the general expenses of the district, and the principal of and interest on all outstanding bonds of the district as the same fall due and any payments required to be made into any sinking fund for said bonds..."

In the amendment they are requesting authority to charge some customers above and beyond what are "reasonable charges" by imposing some portion of the cost of their reservoirs and main works in addition to the usual rate structure. This would be in conflict with the existing provisions of Section 16d because such rates would not, therefore, be uniform but be discriminatory and unreasonable.

Pursuant to Section 1.1, paragraph 2 of the Act;

> "The water district shall assume supervision, operation and maintenance of all existing and future Southern Nevada water project facilities and water treatment plants, and shall assess the costs against the users of water." (Emphasis added)

> "The common-law rule that one engaged in rendering a service affected with a public interest or, more strictly, what has come to be known as a utility service, may not discriminate in charges, or service as between persons similarly situated is of such long standing and is so well recognized that it needs no citation of authority to support it. The economic nature of the enterprise which renders this type service is such that the courts have imposed upon it the duty to treat all alike unless there is some reasonable basis for a differentiation. Statutes have been enacted in almost every state making this common-law rule a statutory one." Pond, Public Utilities (4th ed. 1932) sections 270-275.

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> "....The real reason for the rule that, in so far as treatment of consumers is concerned, the municipally-owned utility is no different from the privately-owned utility is that the economic nature of the business has not changed; it remains a monopoly in spite of the change in ownership."
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> "The change from private to public ownership may, in theory at least, eliminate or lessen the profit motive, but the consumer of utility services still cannot pick and choose his supplier of water as he does his grocer. The utility consumer is thus at the mercy of the monopoly and, for this reason, utilities, regardless of the character of their ownership, should be and have been, subjected to control under the common-law rule forbidding unreasonable discrimination." City of Texarkana v. Wiggins, 151 Tex. 100, 246 S.W. 2d 622 (1952).

We submit that the legislative intent of Section 1.1 and Section 16d is that the cost of the constructing and operating the water system is to be paid for out of the uniform water rates that are charged to all customers. The only additional types of charges which would be authorized are services which particularly benefit the customer or special assessments for local improvements pursuant to the special assessment proceedings set forth in Sections 25 to 45 of the Act. The definition of the "improvements" for which special assessment may be made as set forth in Section 25 of the Act only refers to local improvements.

The Supreme Court of Nevada in the case of City of Reno v. Folsom, 464 P 2d 454 (1970) held that the

> "only justification for special assessment tax is that proposed improvements of assessment district will result in a benefit to those property owners included in assessment and absent a benefit to property assessed, special assessment is illegal and void as taking of private property for public use without compensation."

It is also well-established that there can be no discrimination in rates between customers who are receiving the same service. There can be no distinction between new customers and old customers. Bradford v. Citizens' Telephone Co., 126 NW 444; and State Ex el de Burg v. Water

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Supply Company of Albuquerque, 140 P 1059; and Bothwell v. Consumers Company, 92 P 533

PROPOSITION II

The proposed amendment in providing for connection fees and frontage fees and for different rates for customers receiving the same service would be taking of property without just compensation in violation of Article I, Section 8 of the Constitution of Nevada and the United States Constitution as set forth in the previously cited case of City of Reno v. Folsom. Citing the landmark United States Supreme Court case of Norwood v. Baker, 172 U.S. 269, and the quotation therefrom as follows:

> "(T)he exaction from the owner of private property of the cost of a public improvement in substantial excess of the special benefits accruing to him is, to the extent of such excess, a taking, under the guise of taxation, of private property for public use without compensation." (Emphasis in original.)

We think particularly appropriate to the issue at hand is the decision of the California Supreme Court in the case of the City of Los Angeles v. Offner, 358 P 2d, 926 (1961).

> Syll. 5 "Where state statute and local legislation permitted and city frankly proposed to effect unequal taxation of real property in guise of special assessment for local improvement, it was manifestly inappropriate for court to uphold particular assessment on theory that other political subdivisions might perhaps not act unconstitutionally pursuant to such legislation."
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> Syll. 6 "Rule that when legislative body enacts statute which prescribes meaning to be given particular terms used by it, that meaning is binding on courts, cannot sustain a definition the operative effect of which is unconstitutional."

In conclusion, it is respectfully submitted, that the Las Vegas Valley Water District is fully authorized by the existing language of the

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Act, and in particular, Section 16d to establish all reasonable charges for its products and services. The proposed amendment can only be construed as authorizing charges which are in conflict with the other provisions of the Act and therefore clearly unconstitutional. To enact this statute could only result in costly litigation for the District and its customers.

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