

Minutes of the Nevada State Legislature
Senate Committee on Government Affairs
Date: April 21, 1979
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Present: Chairman Gibson
Senator Dodge
Senator Echols
Senator Ford
Senator Kosinski

Also Present: See Attached Guest Register

Chairman Gibson called the thirty-fifth meeting of the Government Affairs committee to order at 2:00 p.m. Senators Keith Ashworth and Bill Raggio were excused from the meeting.

SB-253 Adapts County Economic Development Revenue Bond Law to certain projects for generating and transmitting electricity.

SB-254 Provides for payment in lieu of taxes on certain power projects.

David Hagen, bond counsel for White Pine county, brought back information regarding the possibilities of a special act. He noted two constitutional mandates. (1) Addresses special legislation regarding internal affairs of a county and (2) general law applicability shall be uniform.

Mr. Hagen cited the attorney general's opinion #38 where Washoe county was involved in the consideration of a power plant. It was considered special legislation and declared unconstitutional. Also in 1977, Goodwin vs. City of Sparks. The law was unconstitutional due to the prohibition of special legislation. Local legislation operates under a particular locality instead of the whole state.

Mr. Hagen sited another case that was held unconstitutional (Clark County vs. City of Las Vegas) on the consolidation issue and it was also considered special legislation. Mr. Hagen felt that bond counsel preferred to keep the legislative vehicle for a power plant within the general law and use the County Economic Development Revenue Bond Law. He suggested that a special chapter could be written that would pertain to all counties.

Senator Dodge felt that the committee should work on the provisions rather than writing a new chapter.

Chairman Gibson stated that a clear definition of a power plant facility should be written. At this time the committee members were asked to look at W-2 (See Attachment #1 - W-2) where a definition was written. The committee felt that this definition belonged somewhere in Section 10.

The committee discussed the definition of a public utility and felt that this definition was to protect Nevada utilities and help with the possible expansion of Nevada utilities. Chairman asked if these should be included in the bill.

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Senator Dodge felt that we should include these definitions in Section 4 (See Attachment #2 - W-4) and this would help insure that other counties would attempt to also build power plant facilities without the prior approval of the legislature.

Mr. Gremban asked the committee to look at the language in W-4, (ii) (attachment #2). Mr. Gremban felt that this language was not necessary as (i) takes care of the problem. There would be little fear of additional generating units would be considered after the completion of a power plant.

Mr. Hagen stated that there is a possibility of having additions built and that was the purpose of having the language in (ii) of W-4. Mr. Hagen indicated that W-2 and W-3 go together. (See Attachment #1 and Attachment #3 for W-2 and W-3)

Senator Dodge asked about a joint ownership that would not jeopardize the tax protection. Mr. Bath (White Pine County) stated that this was provided in SB-253. He further stated that the Internal Revenue tax limitation is protected also.

Senator Dodge asked Mr. Hagen if they had any objections to a joint ownership proposal that will preserve the tax base. Mr. Hagen stated that it was provided in the bill and what they would like to know is what percentage of the ownership would be allowed.

Chairman Gibson noted that the original estimation of the megawatts was around 1,000, now it is up to 3,000. We are concerned about the percentage rates allowed for the Nevada Utility and feel that since the figure has changed so much it is very important to address this question.

Tom Bath stated that the 3% rule means that anything under 3% does not apply to the 25% factor of participation. Mr. Bath indicated that they tried to allow Sierra Pacific Power Company and Nevada Power Company the use of the tax exempt option.

Mr. Gremban responded that they do not see any problem with the Nevada utilities participating if the White Pine entity goes along with the percentage of participation that would allow up to 33%.

Chairman Gibson stated that the bill doesn't address the size of the project and doesn't feel that this should be addressed.

Senator Dodge asked if the people from White Pine would get together with Mr. Gremban from Sierra Pacific, Dave Hagen, bond counsel and work out the areas that they have agreed upon. They could also review their suggestions with bond counsel in New York prior to bringing their findings back to the committee.

Mr. Gremban, Mr. Bath and Mr. Hagen agreed to a meeting date set for Tuesday, April 24th at 9:00 a.m. in Mr. Gremban's office in Reno.

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The committee discussed having the Public Service Commission review the power plant and they would have the authority for the definition of a power plant. The PSC would not have rate making authority but they could review participation.

Senator Kosinski felt that the committee should maximize private utility participation. This can be written in the bill but emphasized that too much qualifying language would not be appropriate.

Mr. Gremban felt that there was a need for recapture provisions to be written into the bill.

Chairman Gibson felt that a requirement of legislative approval for the project should be written into Chapter 244. The language suggested is in attachment #2, W-4. This language in Section 2 of W-4 will place the public and private utilities under the purview of the legislature and the legislature doesn't want the private utilities included on those utilities that are affected by Chapter 244.

Section 24 of the bill will be worked on regarding the export of resources outside the state.

Senator Dodge felt that the legislature should only keep informed and be able to keep track of the progress of the plant and have some kind of review power. The Public Service Commission should have power to deny a permit.

The committee discussed coal leases and the need to determine the price of the coal. It is recognized that if a lease can be acquired the cost will be much more economical.

Mr. Bath stated that the repair of the railroad was estimated at approximately \$100. million. (\$1 million per mile)

Mr. Gremban stated that Sierra Pacific Power Company would be willing to take on the expense of repairing the railroad, the money would be recaptured in the fees charged for transporting.

John Miller, representing Kennecott Copper, Personnel Relations Division, stated that the railroad sees this project as a chance to upgrade the system with earned revenues and they do not intend to sell or lease. Mr. Miller reminded those present that they were still in operation and were a world-wide organization. Mr. Miller concluded by stating that they have no intentions of abandoning the project.

Mike Bourn, White Pine Power Project, felt that the costs of the coal would be upgraded because of the costs for upgrading the railroad.

Senator Dodge felt that the enabling authority could be reviewed by the Public Service Commission.

At this point the committee took a fifteen minute recess, the recapture provisions would be the next matter for the committee to discuss.

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Mr. Hagen was asked about the recapture provisions as noted in W-5 and W-6 (See Attachment #5 & #6). Mr. Hagen stated that they would have to provide money for the outstanding bonds and the participants for the contractual participants prior to recapture. The participants are committed for the life of the bonds. If the statutes did not have any language regarding payment it would impair the salability of the bonds.

Senator Dodge felt that the structure of the bond payment should be centered around the importance of getting the best interest rate on the bonds in order to protect the Nevada utilities. The Senator felt that sub-paragraph three on page 4 of W-5 should be deleted. He did not think that L.A. Power and Light should be the only consideration with regard to the salability of the bonds.

In the recapture provision noted in W-5 it was the decision of the committee to consider Nevada utilities first, even if the interest rate were a little higher, not jeopardizing the financing and guarantee to the Nevada utilities.

Sierra Pacific Power has an A rating and feels that if it were to have a higher rating the costs would also be higher and they feel that in order to keep the rates lower for their customers they are quite happy with the single A rating.

Senator Dodge felt that this aspect of the project should not be handled in the structuring of the bill. At this time a hypothetical case regarding recapture provisions was estimated by the committee and Mr. Hagen. Mr. Hagen felt that the basis for recapture should be on what the company losing the power would have to pay in order to obtain additional power from another source.

Senator Dodge felt that the recapture should be based, in part, on depreciation, not just the loss of power.

Senator Dodge asked Mr. Hagen about the Management committee, its functions and the voting power of the participants.

Mr. Hagen responded that the management committee operated with 100% of the participants approval and there is a requirement in the Inter-mountain Power Project that there is an 80% vote required to take any action. Mr. Hagen further noted that the participants with the majority of power have an advantage over the participant with a lesser amount.

The committee discussed writing into the bill the decision-making authority with regard to who will operate the plant. It was clear that White Pine County would not run the plant.

Many of the items discussed today were not agreed upon by all the parties involved and it was hoped that during the meeting mentioned between Mr. Hagen, White Pine County and Mr. Gremban amendments could be worked out.

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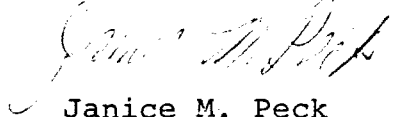
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When agreement on major items are settled and appropriate amendments drafted the committee would again meet to discuss these amendments.

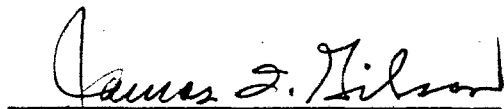
With no further business the meeting was adjourned at 5:05 p.m.

Respectfully submitted,



Janice M. Peck
Committee Secretary

Approved:



Chairman
Senator James I. Gibson.

ADDITIONAL AMENDMENTS TO
S. B. 253 REGARDING ADDITIONAL UNITS

1. Add the following new sections to S. B. 253.

SEC. ____ . "Additional Electric Project" means an additional electrical generating unit, associated necessary transmission facilities and other facilities required for use therewith, which is to be constructed at or near the site of an existing completed project for the generation and transmission of electricity that is owned by a county under and pursuant to NRS 244.9191 to 244.9219, inclusive. If a county is to finance and own all or any part of an additional electric project, then such additional electric project or the county's ownership interest therein shall be a project for all purposes of NRS 244.9191 to 244.9219, inclusive, and such additional electric project may consist of any of the items enumerated under NRS 244.9196.

SEC. ____ . "Domestic Utility" shall mean a company, corporation, association or other entity, public or private, domiciled in the state whose business includes furnishing electric power and energy primarily to customers in the state.

SEC. ____ . 1. Subsequent to the completion of a project for the generation and transmission of electricity (hereinafter, together with any planned additions thereto not covered by this section, referred to as a "completed project"), the county shall be required to cooperate with a domestic utility in planning, financing, acquiring, constructing, operating and maintaining an additional electric project in accordance with the following provisions of this section.

2. Prior to the county taking any action under this section, the domestic utility (i) shall have obtained from the Nevada Public Service Commission an order, after a hearing, indicating that there is a need for such utility to obtain electricity generated and transmission usage (which need not be the entire amount of electricity generated or transmission usage of such additional electric project) from such additional electric project to service its customers in this state and that there is a need by the domestic utility to begin, at the time of such order, the initial procedures leading up to the acquisition and construction of such additional electric project and (ii) the domestic utility shall have requested in writing that the county cooperate with it in the planning, financing, acquiring, constructing, operating and maintaining of such additional electric project.

3. Upon receipt of the items mentioned in subsection 2, the county shall use its best efforts to assist, upon mutually agreeable terms, the domestic utility in the planning, financing, acquiring, constructing, operating and maintaining of such additional electric project. Any ownership and financing by the county of the additional electric project or any interest therein or part thereof shall be done pursuant to, and only pursuant to, the provisions of NRS 244.9191 to 244.9219, inclusive and such ownership and financing shall in all respects comply fully with the provisions of such sections.

4. The county shall not be obligated to, and shall not, take any action provided for by this section if and to the extent such action would or might result in the loss of the exemption from federal income taxation of interest on bonds issued pursuant to NRS 244.9191 to 244.9219, inclusive; jeopardizing the current or future use, operation, reliability, maintenance, repair, replacement or expansion of the completed project; the impairment of any rights under any contract or agreement with any of the participants in the completed project or any contract which relates to the completed project or of the rights of the holder of, or security for, any bonds issued under NRS 244.9191 to 244.9219, inclusive; or the violation of or default under any law, rule or regulation or under any agreement, contract, resolution or other instrument relating to such bonds or the completed project.

5. Any expenses incurred by the county in carrying out the provisions of this section which are not otherwise provided for by the participants in the additional electric project shall be paid by the domestic public utility. The county shall not pay any such expenses from its general funds or any other fund of the county.

6. It is the intent that the provisions of this section are in addition and supplemental to, and not in substitution for, and that the limitations imposed by this section, do not affect the powers otherwise provided for by NRS 244.9191 to 244.9219, inclusive, relating to additional electric projects, it being further the intent that such additional electric projects may be acquired, constructed, financed, owned and operated in accordance with the provisions of the sections, other than this section, of NRS 244.9191 to 244.9219, inclusive.

SEC. ____ . If any section, subsection, sentence, clause or phrase of NRS 244.9191 to 244.9219, inclusive, or the application thereof to any person or circumstance, is held invalid, the remainder of NRS 244.9191 to 244.9219, inclusive, shall not be affected thereby.

W-39 W-4

AMENDMENTS TO PROVIDE FOR
STATE APPROVAL OF POWER PLANTS
(To be inserted in NRS where appropriate).

Section 1. Commence Construction or Commencement of Construction shall mean excavation for the foundations for an electric power plant.

Section 2. Electric Power Plant means (i) any plant located within the state, owned or to be owned by a public or private entity, for the generation of electric energy to be furnished, within or without the state, for or to other persons, firms, association, corporations or entities, public or private and, (ii) any additional generating unit to be added to such a plant. The term electric power plant shall not include any additions, modifications, extensions, alterations, repairs, replacements or improvements to such plant or unit. The term electric power plant shall not include any such plant or unit for which contracts for the performance of any preliminary or final feasibility studies relating thereto shall have been entered into on or prior to the effective date of this Act.

Section 3. The legislature hereby finds and determines that there is a need and it is in the public interest for the legislature to approve electric power plants prior to the commencement of construction thereof in order that the resources of the state may, to the extent necessary, be preserved for use within the state, to insure that the environment of the state is protected, to insure the orderly growth of the electric resources within the state, to insure that any such electric power plant will not unduly interfere with the orderly development of the region wherein which such plant will be located and to insure that any adverse impact of any such electric power plant on the social and economic conditions and the health, safety and welfare of the inhabitants of this state will be at a minimum.

Section 4. No person, firm, association, company, corporation or entity, whether public or private, shall commence construction of an electric power plant unless such plant shall have been approved by either an act of the legislature of the state or, if the legislature is not in session at the time, by action of the legislative commission. Such approval shall be required in addition to all other permits, licenses and approvals required to be obtained in connection with such electric power plant, and such approval may be obtained at any time prior to commencement of construction of such plant.

Section 5. There is hereby approved an electric power plant of not to exceed 3000 megawatts to be owned by White Pine County or by White Pine County and one or more co-owners.

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Section 6. If any provision or provisions of this Act shall be declared invalid, then all provisions of this Act shall become null and void.

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AMENDMENTS TO PROVIDE FOR
STATE APPROVAL OF POWER PLANTS
(To be inserted in NRS where appropriate)

Section 1. Commence Construction or Commencement of Construction shall mean excavation for the foundations for an electric power plant.

Section 2. Electric Power Plant means (i) any plant located within the state, owned or to be owned by a public or private entity, for the production, delivery or furnishing of electric light, power or energy, within or without the state, for or to other persons, firms, associations, corporations or entities, public or private and (ii) any additional generating unit to be added to such a plant. The term electric power plant shall not include any additions, modifications, extensions, alterations or improvements to such plant or unit. The term electric power plant shall not include any such plant or addition for which contracts for the performance of any preliminary or final feasibility studies relating thereto shall have been entered into on or prior to the effective date of this Act.

Section 3. The legislature hereby finds and determines that there is a need and it is in the public interest for the legislature to approve electric power plants prior to the commencement of construction thereof in order that the resources of the state may, to the extent necessary, be preserved for use within the state, to insure that the environment of the state is protected, to insure the orderly growth of the electric resources within the state, to insure that any such electric power plant will not unduly interfere with the orderly development of the region wherein which such plant will be located and to insure that any adverse impact of any such electric power plant on the social and economic conditions and the health, safety and welfare of the inhabitants of this state will be at a minimum.

Section 4. No person, firm, association, company, corporation or entity, whether public or private, shall commence construction of an electric power plant unless such plant shall have been approved by either an act of the legislature of the state or, if the legislature is not in session at the time, by action of the legislative commission. Such approval shall be required in addition to all other permits, licenses and approvals required to be obtained in connection with such electric power plant, and such approval may be obtained at any time prior to commencement of construction of such plant.

Section 5. There is hereby approved an electric power plant of not to exceed 2000 megawatts to be owned by White Pine County or by White Pine County and one or more co-owners which is to be built in White Pine County.

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EXHIBIT 3

Section 6. If any provision or provisions of this Act shall be declared invalid, then all provisions of this Act shall become null and void.

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NEW SECTION TO BE ADDED TO S.B. 253
RELATING TO RECAPTURE

Sec. 1. A county which, pursuant to NRS 244.9191 to 244.9219, inclusive, owns and has financed a project for the generation and transmission of electricity, and which has initially sold power and energy to one or more out-of-state entities in an aggregate amount which is in excess of 50% of the power and energy of the project, shall, if required by the Public Service Commission in its proceedings granting a construction permit for such Project pursuant to NRS 704.820 to 704.900, provide in the power sales contracts with such entities provided for such sale, that the amount of such excess, or any portion thereof, shall be available for recapture and use by the Nevada utility or utilities, if any, which have initially purchased power and energy from the Project under long term power sales contracts. Such recapture shall be made subject to, and such power sales contract shall provide for, the following terms and conditions:

1) any recapture of all or a portion of such excess by a Nevada utility shall be made from each such out-of-state entity in the proportion that such entity's then current entitlement to power and energy from the Project bears to the total current entitlement to power energy from the Project of all out-of-state entities under their power sales contracts;

2) such recapture by any Nevada utility shall take place either (i) twelve years after written notice has been given by such Nevada utility to the out-of-state entities it intends to exercise its right of recapture for an amount of power and energy specified in such notice, if

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1 such notice is given after the date of commercial operation
2 of the first generating unit of the Project, or (ii) twelve
3 years after such date of commercial operation if such a
4 notice is given prior to such date, and, in either case,
5 only if such written notice shall be accompanied by an
6 agreement by such Nevada utility obligating it to
7 recapture such power and energy in accordance with the
8 terms and conditions hereof;
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3) the right of recapture may be exercised by only a Nevada utility which has a credit rating assigned by Standard and Poor's Corporation or Moody's Investor Service, Inc. in effect at the time of such recapture equal to or higher than the highest such credit rating of any of the out-of-state entities;

4) upon the exercise of a right of recapture, each out-of-state ~~utility~~ ^{ENTITY} shall be paid by such Nevada utility, for the amount of power and energy recaptured from it, an amount equal to the product obtained by multiplying (A) the fraction obtained by dividing the amount of power and energy so recaptured from such entity by the total power and energy of the Project by (B) the amount determined by subtracting from the replacement cost of the generating plant at the time of recapture (i) accumulated depreciation and (ii) the product obtained by multiplying the aforesaid fraction by the outstanding and unpaid principal amount of bonds issued to finance the costs of acquiring, improving and equipping the Project;

5) on or before the giving of the notice specified in 2) above, the Nevada utility and the County shall have entered into an appropriate amendment to its power sales contract, such amendment to take effect upon such recapture, to increase (i) the amount of the power and energy to be taken by such utility by the amount of power and energy to be so recaptured and (ii) the payments to be made by such utility thereunder by an amount sufficient to provide for the payment of all costs, including, without limitation, operation, maintenance and debt service costs, associated with such recaptured power and energy. Upon

1 any such recapture, the power sales contracts between the
2 out-of-state entities and the County shall be deemed amended
3 to reduce (i) the amount of power and energy to be taken
4 by such entity by the amount recaptured from it and (ii) the
5 costs payable by such entity by the costs, including,
6 without limitation, operation, maintenance and debt service
7 costs, associated with the recaptured power and energy.

8 2. The County and such Nevada utilities and out-of-
9 state entities may provide by contract for such other matters
10 relating to such recapture as they deem necessary or desirable
11 to protect their respective interests.

12 3. No right to recapture power and energy shall exist
13 at any time by virtue of this section, and now power and energy
14 shall be recaptured at any time pursuant to this section or by
15 contract, if and to the extent that, under the Internal Revenue
16 Code and regulations thereunder, as in existence at such time,
17 such recapture would or could result in a change in or loss of
18 the exemption from federal income tax for the interest paid, or
19 to be paid, on any bonds issued or to be issued by the County to
20 finance all or a portion of the costs of acquiring, improving
21 or equipping the Project.

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TO BE INSERTED AT THE END OF SECTION 2 OF S.B. 253:

If a county shall decide that it will sell the electricity generated and transmission usage of the Project after the expiration of all of the initial contracts for the sale of such electricity and usage, it shall give a first right of refusal to Nevada electric utilities to purchase such electricity and transmission usage. No right of first refusal shall exist at any time by virtue of this section, if and to the extent that, under the Internal Revenue Code and regulations thereunder, as in existence at such time, such right of first refusal would or could result in a change in or loss of the exemption from federal income tax for the interest paid, or to be paid, on any bonds issued or to be issued by the County to finance all or a portion of the costs of acquiring, improving or equipping the Project.

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