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**TESTIMONY OF THE NEVADA ASSOCIATION OF COUNTIES
BEFORE THE SENATE COMMITTEE ON GOVERNMENT AFFAIRS
ON SB 145
MARCH 5, 2003**

Introduction. Senate Bill 145 addresses the issue of County flexibility and extending the authority of counties in certain areas to address issues of local concern in a timely manner so long as such authority does not conflict with provisions of the Nevada Revised Statutes.

Background. The powers of local governments throughout the nation have been greatly influenced by Judge John Dillon, Chief Justice of the Iowa Supreme Court Justice in the late 1800's. The 1868, Justice Dillon authored Merriam v. Moody's Executors, 25 Iowa 163 (1868), an opinion that was interpreted over time to sharply limit the powers of local governments.

"[I]t must be taken for settled law that a municipal corporation possesses and can exercise the following powers and no others: First, those granted in express words; second those necessarily implied or necessarily incident to the powers expressly granted; third, those absolutely essential to the declared objects and purposes of the corporation – not simply convenient, but indispensable; fourth, any fair doubt as to the existence of a power is resolved by the courts against the corporation – against the existence of the power."

Merriam v. Moody's Executors, 25 Iowa 163, 170 (1868). This passage became known as "Dillon's Rule" and was interpreted over time to limit the authority of county governments to those powers specifically delegated by the state legislature. Today, only a handful of states still operate under Dillon's Rule. Of the forty-eight states with viable county governments, thirty-seven of them have granted some measure of self-governance to counties (Logan, Scott. Dillon's Rule or Not, National Association of Counties, July 1999). This is normally in the form of enabling "home rule" or "charter county" legislation. Nevada is one of the eleven states that has not enacted such legislation.

Senate Bill 145. Senate Bill 145 seeks county authority in three important policy areas. First, the bill clarifies when a county may provide for a civil citation in lieu of a criminal penalty. This clarification is brought forth on behalf of the Clark County Department of Business Licensing. Second, SB 145 would allow counties apply for and accept grants, permits, leases and patents in accordance with federal land law. This item, brought forth by the Clark County District Attorney's office, is vital to the expansion of recreational opportunities in Clark County. The third item, also requested by Clark County, would allow the county to designate employees to issue citations and enforce existing ordinances. Although these items were requested by Clark County, the substance and content of SB 145 will be beneficial to all counties throughout Nevada.

Action Requested. Passage of SB 145 is of the highest priority to the Nevada Association of Counties and our membership. We respectfully request that counties be afforded flexibility in the manner outlined by SB 145 and urge your favorable support and prompt passage.

Senate Bill 145
(As Introduced)

SENATE BILL NO. 145—COMMITTEE ON GOVERNMENT AFFAIRS

(ON BEHALF OF THE NEVADA ASSOCIATION OF COUNTIES)

FEBRUARY 18, 2003

Referred to Committee on Government Affairs

SUMMARY—Makes various changes concerning counties.
(BDR 20-172)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

EXPLANATION - Matter in bolded italics is new; matter between brackets (without asterisk) is material to be omitted.

AN ACT relating to counties; authorizing a board of county ~~commissioners to create by ordinance the same offenses~~ ~~punishable as misdemeanors by statute and to provide for a civil penalty in lieu of a criminal penalty for violations~~ ~~of ordinances in certain circumstances, authorizing a board of county commissioners to exercise certain additional powers under certain circumstances, revising the uses of and interests in federal land that a board of county commissioners may apply for and accept, and providing other matters properly relating thereto.~~

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

- 1 Section 1. Chapter 244 of NRS is hereby amended by adding
- 2 thereto a new section to read as follows:
- 3 ~~A board of county commissioners may, by ordinance,~~
- 4 ~~1. Except as otherwise provided by specific statute, create an~~
- 5 ~~offense which is punishable as a misdemeanor if the same offense~~
- 6 ~~is punishable as a misdemeanor by statute; and,~~
- 7 ~~2. Provide for a civil penalty and the payment of costs and~~
- 8 ~~reasonable attorney's fees for a violation of an ordinance enacted~~
- 9 ~~by the board, in lieu of a criminal penalty, unless a statute~~
- 10 ~~provides a criminal penalty for the same act or omission.~~

SUGGESTED AMENDMENT

Proposed by CLARK COUNTY NEVADA

Amend the title of the bill by deleting the second through ninth lines and inserting:

"commissioners to create by ordinance misdemeanor offenses not in conflict with any existing state laws and to provide for a civil penalty in lieu of a criminal penalty for violations of ordinances in certain circumstances; revising the uses of and interests in federal land that a board of county commissioners may apply for and accept; authorizing the board of county commissioners to designate certain county employees to prepare, sign and serve citations on persons accused of violating ordinances; and"

Amend section 1, page 1, by deleting lines 3 through 10 and inserting:

"A board of county commissioners may, by ordinance:

1. *Create an offense which is punishable as a misdemeanor as long as the ordinance is not in conflict with any provisions of NRS or other laws or regulations of this state; and*
2. *Provide for a civil penalty, in lieu of a criminal penalty, for a violation of an ordinance enacted by the board unless a statute provides a criminal penalty for the same act or omission."*



1 Sec. 2. NRS 244.189 is hereby amended to read as follows:
2 244.189 1. Except as otherwise provided in subsection 2 and
3 in addition to any other powers authorized by specific statute, a
4 board of county commissioners may exercise such powers and enact
5 such ordinances, not in conflict with the provisions of NRS or other
6 laws or regulations of this state, as the board determines are
7 necessary and proper for:

- 8 (a) The development of affordable housing;
- 9 (b) The control and protection of animals;
- 10 (c) The rehabilitation of rental property in residential
11 ~~neighborhoods; and~~
- 12 ~~(d) The rehabilitation of abandoned residential property; and~~
- 13 ~~(e) The redevelopment of communities;~~
- 14 ~~(f) The abatement of nuisances;~~
- 15 ~~(g) Public safety; and~~
- 16 ~~(h) Public health and sanitation.~~

17 2. The board of county commissioners shall not impose or
18 increase a tax unless the tax or increase is otherwise authorized by
19 specific statute.

20 ~~3. The board of county commissioners may, in lieu of a
21 criminal penalty, provide a civil penalty for a violation of an
22 ordinance enacted pursuant to this section unless state law provides
23 a criminal penalty for the same act or omission.~~

24 Sec. 3. NRS 244.277 is hereby amended to read as follows:
25 244.277 The board of county commissioners may apply for and
26 accept [grants]:

27 1. Grants of rights-of-way, [for] permits, leases and patents
28 and subsequent renewals of grants of rights-of-way, [for] permits,
29 leases and patents over, upon, under or through any land or interest
30 in land owned by the United States and administered by the
31 Secretary of the Interior through the Bureau of Land Management
32 and by the Secretary of Agriculture with respect to lands within the
33 National Forest System, pursuant to Title V of the Federal Land
34 Policy and Management Act of 1976, [§] 43 U.S.C. §§ 1761-1771
35 D-1, and the Recreation and Public Purposes Act, 43 U.S.C. §§
36 869-869-4; and

37 2. Special use permits for parks, forests and public property
38 owned by the United States and administered by the Secretary of
39 Agriculture, through the United States Forest Service, pursuant to
40 Title 16 of the United States Code and 36 C.F.R. Part 251,
41 and in connection therewith may comply with federal regulations
42 and stipulations consistent with [Title V of the Federal Land Policy
43 and Management Act of 1976] the federal statutes and regulations
44 set forth in this section or any other applicable federal statute [] or
45 regulation.

Amend section 2, page 2, by deleting lines 11 through 16 and inserting:
"neighborhoods; and

(d) The rehabilitation of abandoned residential property."



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~~Sec. 4. This act becomes effective on July 1, 2003.~~

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Amend section 4, page 3, by deleting line 1 and inserting:

"Sec. 4. Chapter 244 of NRS is hereby amended by adding thereto a new section to read as follows:

1. A board of county commissioners may designate certain of its employees to prepare, sign and serve written citations on persons accused of violating a county ordinance.

2. An employee designated pursuant to this section:

(a) May exercise the authority to prepare, sign and serve citations only within the field of enforcement in which he works;

(b) May prepare, sign and serve a citation only to enforce an ordinance of the county for which he is employed; and

(c) Shall comply with the provisions of NRS 171.1773.

Sec. 5. NRS 171.17751 is hereby amended to read as follows:

1. Any [board-of-county-commissioners-] governing body of a city may designate the chief officer of the organized fire department or any employees designated by him, and certain of its inspectors of solid waste management, building, housing and licensing inspectors, zoning enforcement officers, parking enforcement officers, animal control officers, traffic engineers, and marshals and park rangers of units of specialized law enforcement established pursuant to NRS 280.125, to prepare, sign and serve written citations on persons accused of violating a [county-] city ordinance.

2. The state health officer and the health officer of each county, district and city may designate certain of his employees to prepare, sign and serve written citations on persons accused of violating any law, ordinance or regulation of a board of health that relates to public health.

3. The chief of the manufactured housing division of the department of business and industry may designate certain of his employees to prepare, sign and serve written citations on persons accused of violating any law or regulation of the division relating to the provisions of chapters 118B, 461, 461A and 489 of NRS.

4. The state contractors' board may designate certain of its employees to prepare, sign and serve written citations on persons pursuant to subsection 2 of NRS 624.115.

5. An employee designated pursuant to this section:

(a) May exercise the authority to prepare, sign and serve citations only within the field of enforcement in which he works;

(b) May, if he is employed by a city, [county-] prepare, sign and serve a citation only to enforce an ordinance of the city [county-] by which he is employed; and

(c) Shall comply with the provisions of NRS 171.1773.

Sec. 6. This act becomes effective July 1, 2003."



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