

February 10, 2021

Senate Committee on Government Affairs

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*Re: Senate Bill 77*

To the Senate Committee on Government Affairs:

We are writing in opposition to SB77.

The National Environmental Policy Act (NEPA) is the chief governing statute for environmental protection in the United States. It requires environmental impacts analysis for any federal actions which are likely to affect the natural or human environment. It applies to every federal agency, from Environmental Protection Agency to Interior agencies (Bureau of Land Management, Fish and Wildlife Service, Bureau of Indian Affairs, etc.) to US Department of Agriculture (Forest Service, etc.) to the Department of Transportation (related to highways, etc.) to the Department of Energy (think Yucca Mountain) to the Department of Defense to any other federal agency which considers actions which may have environmental impacts. The culmination of a NEPA process is an environmental assessment (EA) or an environmental impact statement (EIS) which the federal government must approve before a project can go forward.

NEPA processes have real and tangible effects on Nevadans' lives. There are the most obvious examples, like large gold mining projects in rural Nevada counties. There are numerous other examples of NEPA being used on public lands including the widespread deployment of toxic pesticides to control grasshoppers, the now-shelved and controversial Southern Nevada Water Authority (SNWA) pipeline, and oil drilling in Railroad Valley. The Bureau of Land Management is currently conducting NEPA on the toxic waste at the shuttered Anaconda Mine in Yerington, potentially cutting out the public from future cleanup efforts and having significant effects on Nevada's indigenous communities.

But there are also many examples of NEPA affecting the welfare of Nevada's urban populations. The Department of Transportation is conducting NEPA for proposed alignments of Interstate 11, which would bring a huge amount of heavy trucking through the Las Vegas Valley. Similarly, the Federal Highway Administration did NEPA on the reconstruction of the spaghetti bowl in Reno. The Truckee Meadows Flood Control Project, which keeps Reno safe from floodwaters, had a NEPA process. EPA uses NEPA to determine toxic chemical cleanup standards, like the cleanup of the perchlorate plume in Henderson. The Department of Energy used NEPA to assess impacts from Yucca Mountain. Many of our burgeoning renewable energy projects, including large-scale solar projects and transmission lines, undergo NEPA.

In short, the National Environmental Policy Act has a pervasive impact on the lives and well-being of Nevadans, and it is the best and most important tool the public has for protecting the quality of the natural and human environment and human health.

State agencies, counties, and other public bodies are often termed "cooperating agencies" in NEPA proceedings, meaning they are involved in the development of NEPA documents (EAs, EISs, etc.). However, states and counties are not merely passive observers – they frequently have a vested interest in the outcome of a NEPA proceeding. Rural counties have a strong incentive to work with mining companies to get mines permitted for economic development. State agencies may have a strong incentive to work with federal agencies to retain control of toxic waste cleanup efforts. Public bodies are frequently also in a quasi-applicant position, since they often have a vested interest in the outcome of a NEPA proceeding.

SB 77 would exempt from the Open Meetings Law and the Nevada Public Records Act all meetings and records from a public body related to a NEPA proceeding. The bill is expansive enough that any mention of a project, be it a mine or highway improvement or a toxic waste cleanup, would be exempted.

NEPA proceedings are arcane, complicated, and difficult for the average member of the public to figure out and participate in. Often the local public body will be the primary conduit for the public to be involved in or understand such a proceeding.

The Open Meetings Law and the Nevada Public Records Act are designed to promote transparency and democracy, and to provide a window into the workings of government so that government is held accountable for their actions. This does not change when a public body is working with the federal government. The public has a right to know what state and local agencies and other public bodies are doing.

Information that is actually covered by the common law predecisional or deliberative process privilege is already withheld by government agencies. The test in Nevada is that the privilege has to clearly outweigh the public's presumed interest in access. No new law is needed to further restrict the public's access to information.

Moreover, counties already have an outsized influence in the development of NEPA documents. If SB 77 were to be codified into law, it would only encourage collusion between counties, federal and state agencies, and project developers, and limit transparency in the process.

This exemption to public transparency laws seems intended to mimic the federal Freedom of Information Act ("FOIA") 5 U.S.C. §552(b)(5) exemption, which is applied very broadly by the federal government, and some allege inappropriately. Applying such an exemption to state law for NEPA proceedings would render huge amounts of public information inaccessible, foreclosing on an important avenue for public transparency. The justification that the state's public transparency laws should be equally as restrictive as the federal government's is a poor one, and entirely contrary to both the Opening Meetings Law and the NPRA. The state should hold itself to the highest possible standard of transparency rather than receding from Nevada's strong interest in promoting democratic principles through access to the records of its governmental entities.

We urge you to reject SB 77 and uphold the public's right to transparency from our state and local governments.

Signed,

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