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Counties want open meeting law exemption for projects with environmental impacts

By

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Rural counties are asking the Nevada State Legislature to allow elected officials to meet behind closed doors when discussing and deliberating projects that have major environmental effects.

County representatives say the exemption is needed because the state's open meeting laws conflict with federal environment policy, leading to a paradox where they cannot effectively participate in conversations they should be involved in. But open government and environmental advocates are pushing back, arguing the state should protect transparency, especially when it involves an important process that is already difficult for everyday people to become involved in.

The proposed changes to Nevada's open meeting law are detailed in [Senate Bill 77](#), which received its first legislative hearing Wednesday in the Senate Committee on Government Affairs.

Republican state Sen. Pete Goicoechea presented the bill, which was first proposed by Eureka County.

The issue centers around the National Environmental Policy Act (NEPA), which requires federal agencies to assess the environmental effects of proposed actions prior to making decisions. NEPA allows for public bodies such as state or local municipalities to be involved in the process as “cooperating agencies.” But involved parties are required to keep confidential discussions and information until the publication of an environmental impact statement or environmental assessment.

That requirement presents a problem for any rural county that would like two of its three commissioners to be involved or apprised of those behind-closed-doors NEPA discussions, said Eureka County Commissioner J.J. Goicoechea, who is also the son of the state senator. The county would be forced to break either the state open meeting law or its nondisclosure agreement with the federal agency.

“That’s not fair to the electorate of our county,” he added.

Eureka County Natural Resource Manager Jake Tibbitts told lawmakers SB77 would align the state’s open meeting law with the federal Freedom of Information Act (FOIA). Federal law exempts certain parts of the NEPA process — specifically those “predecisional” and “deliberative” conversations that rural counties want their commissioners to be a part of — from being disclosed under FOIA.

“This bill in no way undermines government in the sunshine,” said Tibbetts. “It doesn’t allow for backdoor deals, at least that isn’t our intent.”

Tibbetts presented to lawmakers a 2009 letter from the Bureau of Land Management chastising the county commission for breaking its nondisclosure agreement by releasing information discussed during closed NEPA discussions.

Tibbetts said the disclosure happened during a county commission meeting that was reported on by the Eureka Sentinel.

The Nevada Association of Counties and Churchill County are both supporting the bill.

Opposing the bill were several environmental and open government groups, including the Center for Biological Diversity, Great Basin Water Network and American Civil Liberties Union of Nevada.

Maggie McLetchie of the Nevada Open Government Coalition said the principle of transparency that is enshrined in the state's open meeting and open records laws "doesn't change just because Nevada is working with a federal agency."

She added that changing the law would set a dangerous precedent.

"Counties and states have participated in NEPA proceedings across the country for decades without the need for creating new, gaping exemptions from public transparency laws," said Patrick Donnelly, Nevada state director at the Center for Biological Diversity.

If a conflict exists between the state law and federal law, he added, the answer should be to seek federal level changes that favor transparency over secrecy.

Donnelly noted that significant changes are rarely made after the draft of an environmental impact statement or environmental assessment is publicly released, making those early behind-closed-doors discussions all the more important.