

**MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON GOVERNMENT AFFAIRS**

**Seventy-Third Session
February 16, 2005**

The Committee on Government Affairs was called to order at 8:00 a.m., on Wednesday, February 16, 2005. Chairman David Parks presided in Room 3143 of the Legislative Building, Carson City, Nevada, and via simultaneous videoconference, in Room 4412 of the Grant Sawyer State Office Building, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. All exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Mr. David Parks, Chairman
Ms. Peggy Pierce, Vice Chairman
Mr. Kelvin Atkinson
Mr. Chad Christensen
Mr. Jerry D. Claborn
Mr. Tom Grady
Mr. Pete Goicoechea
Mr. Joe Hardy
Mrs. Marilyn Kirkpatrick
Mr. Bob McCleary
Mr. Harvey J. Munford
Ms. Bonnie Parnell
Mr. Scott Sibley

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

None

STAFF MEMBERS PRESENT:

Susan Scholley, Committee Policy Analyst

Eileen O'Grady, Committee Counsel
Kiz Malin, Committee Attaché

OTHERS PRESENT:

Stan Olsen, Executive Director, Office of Intergovernmental Services,
Las Vegas Metropolitan Police Department, Las Vegas, Nevada

Jim White, Deputy Chief, Henderson Police Department, Henderson,
Nevada

Ronald Casey, Ed.D., Director, Southern Desert Police Academy,
Henderson, Nevada, Criminal Justice Professor, Community College
of Southern Nevada, Henderson, Nevada

Craig Kadlub, Ed.D., Director of Government Affairs, Clark County School
District, Community and Government Relations Office, Las Vegas,
Nevada

Ted Olivas, Chairman, Nevada Public Purchasing Study Commission,
Reno, Nevada

John Balentine, Member, Nevada Public Purchasing Study Commission,
Carson City, Nevada

Justine Chambers, Member, Nevada Public Purchasing Study
Commission, Carson City, Nevada

Dan Musgrove, Director, Office of the County Manager,
Intergovernmental Relations, Clark County, Henderson, Nevada

Rose McKinney-James, J.D., Legislative Representative, Clark County
School District, Las Vegas, Nevada

Mike Kuckenmeister, Chief, Department of Administration, Purchasing
Materials Management Section, State of Nevada

Chairman Parks:

[Meeting called to order and roll called.]

Assembly Bill 23: Authorizes state agencies and political subdivisions to request and receive certain information concerning person applying to attend academy for training peace officers. (BDR 19-302)

This was a bill that was submitted by the Committee on the Judiciary. Its Chairman apologized for sending us one of his bills, but my understanding was that the individuals who were to speak on it were from local law enforcement agencies.

Stan Olsen, Executive Director, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department, Las Vegas, Nevada:

This is not our bill. This bill was constructed for the ability to get background information on people that are attending the academy. In the case of Metro [Las Vegas Metropolitan Police Department], we have our own police academy, our own background operation, our own testing operation, so we can do it all internally. Henderson Police Department uses the Clark County Community College Academy, and it expands the ability for them to use the FBI [Federal Bureau of Investigation] system to conduct background checks on some of the candidates. Even with our system, those that shouldn't be, do get through parts of the process, and every part is critical. The ability to background these individuals through the computer system will give us another tool to prevent the wrong person from getting a gun and a badge.

Jim White, Deputy Chief, Henderson Police Department, Henderson, Nevada:

[His testimony was given via video teleconference at the Grant Sawyer Building, Las Vegas, Nevada.]

I would like to ask you to consider this bill. I will give you a little bit of history. Essentially, the City of Henderson Police Department, the City of North Las Vegas Police Department, and the Community College of Southern Nevada entered into a consortium, or partnership, to provide a Category I peace officer academy for not only our own agencies, but any of the other small agencies in this state that wish to attend.

This is a true partnership between law enforcement and the academic community. Upon graduation, each of our academy attendees receives 33 college credits towards an associate's degree. One of the problems that we ran into was the inability to do backgrounds on people who are not hired by law enforcement agencies at the time. This concept would allow community colleges to go ahead and have students apply and go through an academy, get a Category I peace officer certificate, and become viable candidates for hire from a police agency here in southern Nevada.

Essentially, the community college's job is to prepare people for careers in various different fields, and we feel that, absent this bill, they will not be able to complete their mission.

Ronald Casey, Ed.D., Director, Southern Desert Police Academy, Henderson, Nevada, Criminal Justice Professor, Community College of Southern Nevada, Henderson, Nevada:

[Introduced himself.] His testimony was given via videoconference from the Grant Sawyer Building, Las Vegas, Nevada.]

One of our missions as a college is to train people for various career fields, and we have been doing that since 1998 in the area of law enforcement. We modeled our academy after Truckee Meadows High Sierra Regional Police Academy. We have a number of people who are applying who are nonaffiliated students, and by allowing them to come through the academy, police agencies and law enforcement can hire these people and save governmental agencies a great deal of money. The big problem is that we want to make sure that the candidates that come in have a background check and are able to serve as peace officers without having any problems from their pasts.

Chairman Parks:

Do you have any numbers as to percentages of individuals that get into the academy and then for some background history reason, are rejected or terminated from the academy?

Ronald Casey:

Since we started the academy at the community college—our first class was in 1998—I would say that we have had about three or four students that we have had problems with that were not able to get into law enforcement. We have a blending of affiliated and nonaffiliated students who come into the academy. For instance, in our next class that will start at the end of this month, we have 22 people seeking a career in law enforcement.

Chairman Parks:

Have all those individuals had an adequate background check, or are there some gaps in the background that you are still working on regarding their qualifications?

Jim White:

Essentially, we were, at a point in time, running criminal histories on these people and discovered that we are not supposed to. On a recommendation from your compliance unit in the State of Nevada, we had them apply for a CCW [permit to carry a concealed weapon], through Las Vegas Metro. This at least tells us if they are persons prohibited to carry a firearm. To answer your

question, yes, there is a gap in the background, because we do not know their complete criminal history. We can only ask it and surmise that the information they are giving us is correct.

[Jim White, continued.] What this law will do is give us the opportunity to submit their fingerprints and get a complete criminal history. One of the problems in training law enforcement officers in this day and age, the post-9/11 [September 11, 2001] era, is that we don't want to be training people from the criminal element in the various basic skills of a police officer and sharing information with them that they are not entitled to have. We would like to have the ability to do a more complete background.

Stan Olsen:

Since 9/11, we have received more and more lessons that have come down, from Homeland Security, from Nevada P.O.S.T. [Commission on Peace Officers' Standards and Training], that are very sensitive. We want to make sure that we have the right people in the academy class.

Jim White:

What we would like to see in the future is that if community colleges could have folks who attend the academy and gain certification, they would then be providing a vocational pool for the local law enforcement agencies to hire from. I don't think that they can do that without having a good background check, especially when we are mixing in law enforcement agencies from Las Vegas and Henderson. We cannot train our people in the same environment with persons whose backgrounds are unknown. We are not comfortable with that.

Ronald Casey:

What we are concerned about is that we want to make sure that the nonaffiliated students who attend our academy have the same background check as students that are coming from Nevada law enforcement.

Chairman Parks:

Could you tell us if there is anyone else in southern Nevada that is looking to testify in the audience?

Jim White:

There is no one else present, but we do have the support of the North Las Vegas Police Department, as well.

Stan Olsen:

I wanted to add that what the gentlemen from southern Nevada has stated is actually true. However, what they don't realize is that their numbers that are

going to be denied are going to increase as a result of passage of this bill. We do provisional employment based on completion of a background, unless it is critical information. It is not unusual for us to remove someone from the police academy within the first or second week of that academy when background surfaces that didn't previously get there before we started the academy. While the professor stated two or three, I would venture to guess that some people have gotten through this system without the proper information that would have denied them, if the college was aware of that. This is a great benefit to them.

[Stan Olsen, continued.] We had one individual, and what surfaced was that he made and detonated a bomb at a church about four years before he applied for Metro. We did remove the person from the academy, and then turned all the information over to the local agency. It was another state. These things do come up. Some of them are felony issues, and some of them are other types of background issues, where the person absolutely does not belong in law enforcement. This piece of legislation for that community college operation is a critical piece of legislation.

Ronald Casey:

I totally agree with the lieutenant [Olsen]. If they don't belong in the police academy, we don't want them in the police academy. We want to make sure that we have the same quality candidates coming in that serve all of the law enforcement agencies in southern Nevada.

Assemblyman Goicoechea:

It seems like a good, clean bill. How much difference is there between the P.O.S.T. school, and the one that they have down there?

Ronald Casey:

All of us are mandated to follow the curriculum that is in the Category I that is mandated by P.O.S.T. [Commission on Peace Officers' Standards and Training]. In addition, in our academy, we get into community policing, and we try to have as much proactive policing as we possibly can. We also believe in critical thinking skills. We run scenarios just like the other academies. In fact, we have a program through the Community College of Southern Nevada, whereby anyone who has attendance at one of our courses at the community college can also be granted 18 credits towards their associate's degree in criminal justice.

Assemblyman Goicoechea:

When we come to Category II officers and not P.O.S.T., do you also have that curriculum at the community college?

Ronald Casey:

Are you looking at Category II police officers? Not the regular police and sheriffs' departments, but that would serve as specialized law enforcement?

Assemblyman Goicoechea:

Yes. Do you just have the entry-level P.O.S.T. at your academy, or do you continue on?

Ronald Casey:

No. We just do the basic Category I, basic course of training for Nevada peace officers. We have provided some services to various state agencies, but right now, that is all we are providing.

Assemblyman Goicoechea:

A Category II officer would be required to come to the state program?

Ron White:

Category I is the highest level of police officer in the state of Nevada. We are training people at the highest level possible. Our academy is under the exact same curriculum as every other academy in the state of Nevada. That is controlled by police officer standards and training in *Nevada Administrative Code* 289. We teach an identical curriculum. In fact, we like to think our academy is on par with any other academy, if not better. We have consulted with the Canadian Mounties [Royal Canadian Mounted Police] and various different agencies around the country. We send our people over to Las Vegas Metro's academy and they send their people to ours, so we can share in the experience and have a better academy for our Category I police officers in this state.

Assemblyman Goicoechea:

I was thinking that the Category III officer was higher than the level I.

Stan Olsen:

Category I peace officer is a police officer like a city police officer or a county sheriff. A Category II would be juvenile, parole and probation officer, park police, and school police, things of that nature. Category III is corrections in a county jail or a state system setting. The type of training is critical as to what they are each getting. It is just that it is a different type of training. In the case of Metro, our corrections academy is merged with our police academy for the first several weeks, because they are both learning the exact same things up to that point.

We then split them off and the corrections go off and do the rest of their academy. It is pertinent to their needs of operating a correctional or detention facility. The police academy goes a different direction. The police academy indicates that Metro is 22 weeks and the academy for the jail lasts about 16 weeks. We do split off at about 30 to 45 days.

Ronald Casey:

With our Category I program, we also service a number of Category II agencies. When you get a Category II certificate under the NAC [*Nevada Administrative Code*], you can serve in either a Category I or a Category II agency. The only difference is that if you are going to go into corrections, you definitely need to have a pure Category III certification.

Assemblyman Goicoechea:

Is there anything that would preclude a local jurisdiction, say county or city police, from actually requiring him to have a Category I or Category II? Would there be any police officer standard training? Do you see what I am saying? It seems to me that some of the people are saying, "I am a code enforcement officer, but I am a Category II, I would like to be a Category I." Can a local jurisdiction on their own, say, "We have this officer, we would like to have all officers trained at Category I?"

Stan Olsen:

A code enforcement officer does not have the same arrest power as a peace officer, and it would take a change in the law to allow that. Parole and Probation are Category II, and there is some mix of I in there, because they have gone back and forth. NDI [Nevada Division of Investigation] is all Category I. Nevada Highway Patrol is all Category I peace officers, but they are all under the same Department of Public Safety.

I believe that there is going to be a bill coming forward here to address that and bring the Category II to Category I, I think. I am not certain who is bringing that. Yes, they can do that if they see a need, and if the person is a II, then they will have to go and make up that gap in training that they don't have between what is required as a II and what is required as a I. If they have gone to a category II academy and they have only had so many weeks and they need more weeks, then they would have to make up the difference. If memory serves me, Nevada P.O.S.T. has that curriculum set up and it is a two-week course to bring you up to speed to a Category I.

Assemblyman Goicoechea:

I had an email on this from a constituent. That is why I am asking. Can a code enforcement officer be P.O.S.T. certified?

Stan Olsen:

I will speak for the Las Vegas Metropolitan Police Department. Metro will not put you through the academy unless you are a Metro police employee. In the case of the community college—I am not certain. I believe that someone may be able to go through the college and get their certificate as a Category I, for example, and then go out on the job market. Other states do this. In the state of California, I know that they do this for certain. I think that in the case of the community college training, somebody could do that, and then go out on the job market, saying, "Here is my certificate. Can you employ me?"

Ronald Casey:

The University and Community College System of Nevada has three police academies within the community college system. We have one at the Community College of Southern Nevada [CCSN], one at Truckee Meadows Community College [TMCC] and one at Western Nevada Community College [WNCC]. I am not sure about the one at Truckee Meadows right now, but I know that Western Nevada and CCSN allow people to apply to come in as nonaffiliates.

In reality, somebody could be a code enforcement officer and apply to go to the academy, not being sponsored by the agency, but coming through as an individual and meeting the requirements. We make them go through the physical training test and everything else to meet the requirements of Nevada P.O.S.T..

Assemblyman Grady:

I need to disclose that my son is going through P.O.S.T. school as we speak. I understand that if you are going for a Category II, which he is as a juvenile probation officer, and you want to change to Category I, at a later date, you go back through the entire academy. Maybe there is someone from P.O.S.T. that could address that.

Jim White:

In our police department, if you had a Category II peace officer's certificate, we would require you to go back through, either our academy, or had you graduated Metro's academy and had a Category I, we would accept you. That would actually be up to the agency as to what P.O.S.T. certificate they have. For example, I believe that school district police are Category II, yet they train all their officers at the level of a Category I. You can always train up, if the agency chooses to. But if an agency hires a person with a Category II and the job requires a Category I, then he would have to probably go through the entire training program for that agency. I don't think that they would accept that Category II P.O.S.T. certificate. It is really very agency-specific.

Ronald Casey:

A couple of years ago, we had somebody come in from NDI and they had a Category II. NDI then required them to go through the whole academy for a Category I.

Paul Pabon, Academy Commander, Training Division, Nevada Department of Public Safety:

I can answer some of your questions regarding the Category II to Category I issues. At present, there is no vehicle to go from a Category II to a Category I without going through the entire academy. There is going to be a bill presented this session to create that vehicle, and P.O.S.T. has already outlined the subject matter to be covered. It will include approximately 280 hours of additional training to move from a Category II to a Category I.

The Department of Public Safety Training Division is in support of this bill, as the nonlaw enforcement entities that are training police officers do not have the ability to get the backgrounds that they require in order to provide this training. Subsequently, subversives can pay to go to school and learn the tactics of police officers with no intentions of ever becoming police officers other than to gather the intelligence. Subsequently, if the entities that are nonlaw enforcement related as it is in the college environment, if they have this ability to be able to obtain background, they can weed out those individuals who don't belong or should not even have the training in the first place.

Chairman Parks:

I think that this is certainly helpful for all of us to get a good understanding of how the different categories relate.

Craig Kadlub, Director, of Government Affairs, Clark County School District, Clark County, Nevada:

[Introduced himself.] As you may know, we have approximately 150 police officers, and we see this bill as consistent with our goal to get as much comprehensive background information as possible on all of our employees. We stand in support of this measure.

Chairman Parks:

I would like to close the hearing on Assembly Bill 23. I would like to open the hearing on Assembly Bill 39. This is a bill that I requested. It was a bill that I requested on behalf of the Nevada Public Purchasing Study Commission. I do not have any prepared remarks on the bill; however, I believe that there are numerous individuals wishing to speak on it. I am going to turn the meeting over to the Vice Chairwoman, Ms. Pierce, to take over.

Assembly Bill 39: Revises provisions relating to purchasing by local governments. (BDR 27-560)

Vice Chairwoman Pierce:

Thank you, Mr. Chairman.

Ted Olivas, Chairman, Nevada Public Purchasing Study Commission:

[Introduced his fellow witnesses and himself.] Before you, there is an information packet ([Exhibit B](#)) that includes a few things. The first one is an executive summary of this bill that goes through, section by section, what we are attempting to accomplish here. There is also a proposed amendment to this bill, and finally, there is a document that gives a little history about what we are, what we do, why we do it, and a list of our membership.

I would like to thank Chairman Parks for his assistance on this bill and for the support that we have received as a group from this Committee in years past. I will provide a short introduction and a summary of our group. Our group is made up of folks from northern and southern Nevada. It is the purchasing folks from all over the state. We are a nonprofit, unfunded, statewide group that was established by the Legislature in 1975. Our charter is very clear, and that is to study practices in governmental purchasing and laws related thereto, and to make recommendations with respect to those laws during the next regular session of the Legislature.

Some of you who have been around in previous sessions know that we have been before this Committee in years past and we have made some very positive changes to the purchasing laws. There are about 100 public employees who are a part of this group, representing 66 state and local municipalities working in public purchasing. Since I have changed jobs, we have added the term, "and related fields." We do have our list attached. Our role is to advise you on public purchasing related legislation, and I would like to let you know that we are available. I gave you our card that has the chair, the vice chair, the secretary, and two of our members from the north on it. We are ready, willing, and able to provide you any information that is related to the public purchasing process, through the session and in between sessions.

John Balentine, Vice Chairman, Nevada Public Purchasing Study Commission:

[Introduced himself.] What I would like to do in reference to the packet ([Exhibit B](#)) that you were handed, is to walk through the proposed changes to *Nevada Revised Statutes* (NRS) 332 and talk about the amendments that we need. An overview of what we are trying to do is to modernize, simplify, and standardize public purchasing procedure for supply and services statewide. This

will reduce administrative costs and increase the efficiency of our various individual purchasing units.

[John Balentine, continued.] Section 1 of A.B. 39 adds the optional provision for a bidder protest to a contract. The provision has been in the *Nevada Revised Statutes* 333, which is the state purchasing section, and also in the *Nevada Revised Statute* 338, which is the public works purchasing section that was added last session without objection. This section of the bill would standardize the procedure for all types of public purchasing. It proves to be a valuable tool in virtually eliminating the frivolous protests by bidders, which can tie up necessary supplies and services for our local entities.

We are also requesting a minor amendment to that particular section to eliminate some additional advertising requirement, which Mr. Olivas will go over shortly. Section 2 of the bill clarifies that the governing body, or its authorized representative, may or may not request bids. This clarifies that the governing body, or its authorized representative, may direct staff to make the request for bids. In Section 3, there are two changes proposed. The first is that this section makes the newspaper qualification advertising consistent with our NRS 338. The second section in this section adds an additional advertising requirement, which we are respectfully requesting to be removed in our amendment.

In Section 4, online bidding has been an element of procurement for a while now. It has been allowed by statute for some time, but the provision is only allowed by that statute in conjunction with other methods of bidding. This is normally a reasonable restriction, because all bidders don't necessarily have computers or computer access. Our goal in public purchasing is to maximize the amount of bidding, not restrict the number of bidders. However, when using the specific process with any government known as "reverse options," or "online bidding," it is the only process that allows reverse options to work. It has to be exclusive.

Reverse options call for and allow the bidders to bid in real time on computers. This is the only way that reverse options can really work. It has to be an exclusive method. Therefore, we are requesting the addition of the reverse option to this particular section of the bill. This bill includes the definition of reverse options so that the sole exception can be understood by all who use it. In Section 5, we are clarifying that all proprietary information, as defined in NRS 332.025, is confidential and shall not be disclosed or given to one bidder to give them any kind of an unfair advantage over any other bidder.

Section 6 expands the list of criteria that local governments may use to find a bidder responsive and responsible. It enhances the ability of us as local

governments to award a contract to a bidder that meets all of the unique requirements of that particular bid document. In Section 7, again, two changes are requested. The first is that this section clarifies the authority of the local government to join federal or GSA [General Services Administration]-type contracts without competitive bidding, as well as public contracts of other governments, both inside and outside of the state of Nevada. We respectfully request that this section be amended to clarify that the state of Nevada would have the same authority.

[John Balentine, continued.] The second change in the section exempts communication, design services, and equipment from the competitive bidding process. This exemption is recommended as a result of the passage of the state Homeland Security Act last session that mandates the compatibility, standardization, and integration of communications statewide. Such requirement in a purely competitive bidding environment would be impossible without revealing very confidential information to potential sources, where it could be very damaging to us.

In Section 8, the final section, it clarifies that any information, proprietary or not, will give a particular bidder any advantage over another bidder oversubmitting a bid, and would result in voiding of all bids. In conclusion, what we are looking for here are the changes to NRS 332.045. They are administrative in nature, they serve to standardize, clarify, and simplify public purchasing of supplies and services, benefit our local governments, and their taxpaying citizens.

Ted Olivas:

I will go through the amendment that we are proposing, which is in your packet ([Exhibit B](#)). There are a couple of things that we looked at when reviewing this bill. In the first section, which is on page 2, there is a requirement that was added to the protest provision. It says that we have to advertise the time period that you can submit a protest in the newspaper. That is inconsistent with how it works for public works and state purchasing. We are trying to be consistent with that. It really adds no value to the bidder.

The law that defines what those requirements are is very clear: where you can get the bid, when it is due, when the prebid is, and those kinds of things. This really doesn't add any value to the bidding community. We are proposing that the notice requirement be taken out. We have some additional language that we are proposing, and that is on your amendment page, and it is in bold. The section would then read "within the time frame specified in the bid document," so the bid document will tell you the time frame that you can submit a protest after the date the bids were open.

We wanted to clarify that you can't submit a protest before you know what the bids are. You have to get the bids first, and then there is a period that you can submit a protest. That is just a clarification. There is a second clarification on page 3 which relates to what I just mentioned. It is on the bottom of page 3 where they added that requirement to the "notice" section of NRS 332.045 (2). Right now the information in the advertisements is the nature, character, and object of the contract: What are we buying? What are we requesting? If the plans and specifications are to constitute part of the contract, where can you get the plans and specifications? Where can they be seen? That is appropriate. The most important is the time and place where the bids will be received and open.

[Ted Olivas, continued.] Those are things that bidders really need. We don't feel that the time period that someone can submit a protest is something that you need to put in the newspaper advertisement. Again, that is consistent with NRS 333, which is state purchasing and NRS 338, which is the public works purchasing law.

The final change that we are proposing is on pages 6 and 7. At the bottom of page 6, there is a subsection (m). That section in the law as it is currently written allows local governments to buy off of GSA contracts or from contracts from other governmental agencies within or outside the state. We call that a joinder provision. We can join on other entities contracts.

There is a specific provision in NRS 332.195 that talks about joining on other contracts. From a cleanup perspective, we wanted to make sure that all of that was consolidated into one section. Therefore, we respectfully request that subsection (m) of Section 7 go back to the way that it was originally written and add a provision to NRS 332.195 that clarifies that the local governments, as well as the State of Nevada, can join or use the contracts of other jurisdictions, in the state and outside of the state. That concludes our requested amendment. If you have any questions, we would be glad to answer them.

Assemblyman Goicoechea:

I need you to explain to me, if you could, how this reverse option works on the online bidding. It is something that I am not familiar with. What types of items would you bid on this reverse option?

John Balentine:

A reverse option works like this: Suppliers that would like to bid on a particular item, and this would have been advertised to them, are given a time and a date to go online for this commodity. These would be baseline commodities, things

like copy paper, or similar items, very, very basic commodities, maybe fluorescent light tubes. Something that everybody needs is considered basic commodities. They are given a specific time and place to go online, and the requirements are outlined online.

[John Balentine, continued.] For instance, Washoe County is bidding on 1,000 energy-saving light tubes, and all of those that would have been interested in bidding would have been prequalified, so they know what they are getting into. Then, they come online, their identity is concealed, and they put in a bid of what they would like to sell these light tubes to us for. Bidder one might say \$1.00 each and bidder two would say \$0.75 each and then they have an opportunity to see what they are bidding and lower their bids. That is why it is called reverse option. Instead of the price going up, the price would come down.

The way the law is currently written, we would have to advertise this in the paper, we would have to allow for mail-in bids, faxed-in bids, and this type of bidding. It is just inconsistent. It takes the value out of being able to go online and do a reverse option type of bid and come up with some very, very low prices. The state of Oregon has had great success in running these online bids reverse options for very basic materials.

Assemblyman Goicoechea:

I don't see anything in this that would preclude you from bidding, let's say, a grader or a truck.

John Balentine:

No, there wouldn't be anything that would preclude that, but when you are bidding machinery that complex in nature, it is far, far better to use the written means of purchasing than to go online. You really would have no idea the complexity of a loader, or a dump truck, or what you might be getting. Paper has few qualifications. You know what you are getting there, and it is a baseline commodity. Reverse options do not work well when you are bidding on one or two items. When you are bidding a thousand pallets of paper, a million gallons of diesel fuel, then it begins to work.

Assemblyman Goicoechea:

Coming from local government, I have seen some real dog fights when you have sealed bids, so it might be cost-effective for this reverse option and actually save some money. I know that there have been a lot of disgruntled bidders at the end, when they realize that if they had knocked it down \$5,000 or so, they would have been awarded. This reverse option is different from a true bid. It looks like it works well for local government.

Assemblyman Grady:

Do you run your legislation through either city/county managers or elected officials before you bring it here? Are you bringing it here without the approval of the local governments?

Ted Olivas:

As a third-party entity, we are not representing any one jurisdiction. Individually, we work for our public agencies. As the NPPSC [Nevada Public Purchasing Study Commission], we act as purchasing advisors to the Legislature. That being said, the answer to your question is that, probably for most of the jurisdictions, the answer is no.

Justine Chambers, Nevada Public Purchasing Study Commission:

Whenever I testify before a committee while representing the Nevada Public Purchasing Study Commission, I have run the legislation by the people that I work with. If they are neutral or they support it, then I testify. If they are against it, then I ask someone else in the group to testify. We try to keep ourselves separate as the Public Purchasing Study Commission from our agencies, because we are not political. Our job is to report to you on purchasing practices and procedures, keeping the politics out of it. That is our goal.

John Balentine:

My governing body is well aware of all of this legislation that is submitted to them. If there was any objection to it, I would not be testifying before you today.

Assemblyman Grady:

I guess that makes me even a little more nervous about the process. We could be putting something into statute of which our elected officials, the people that have to make the decision on spending the money, may not be aware. If Washoe County does not agree with it, or if Carson City does not agree with it, then we have no way of knowing that, if you are not here. If any county or city has questions on this legislation, the elected people who are responsible to the citizens have not had a chance to review the legislation that you bring forward.

Justine Chambers:

They have seen the legislation. It is not a secret. We aren't doing this behind their backs. Everything that this Commission has done and that I have worked on for the last 14 years has provided copies of that legislation to the people that I work with, to my supervisors, to the city manager, whatever system that they have set up at the time that it is being proposed. I personally solicit every member in our agency to provide recommendations, and a lot of the recommendations that are in the statute do come from our local governments in

the state. I did not mean to imply that it was a secret organization and that there was no cooperation, because there is. Does that make it any more clear?

Assemblywoman Kirkpatrick:

I just want to disclose for the record that I do work in sales and we do participate in the state bidding process. For me, I think that a good salesperson should always put their best price out first, instead of going back to the bidding war. I just wanted to disclose that, for the record.

Assemblyman Sibley:

First, I have a disclosure. I have a trust that owns the financial stake in a newspaper that is qualified under NRS 238.

My question is for Mr. Balentine. You are trying to delete language in Section 3 that says, "If no such newspaper is published in the county, then the publication must be in any newspaper published in the state, having general circulation in the county." With some of our rural counties losing population, there is a potential that we may lose some of those newspapers in those counties. If there is not a newspaper qualified under NRS 238, what are your plans to notice this bidding process, since you are trying to delete that language?

Ted Olivas:

This section was changed in accordance with a change that we made two years ago in NRS 238. The concern that we have with this section was that you could take a paper, any newspaper, the *Latin Daily News*, and you could advertise in that newspaper, and that could be considered general circulation. When we talked to the LCB [Legislative Counsel Bureau], they suggested this wording, wherein we tied the requirement to the requirements of NRS 238 more specifically. So we considered this a cleanup change consistent with the way that the law reads in other sections of the law.

Assemblyman Sibley:

I understand the change of needing to make it "qualified pursuant." That is good language; it actually does clean it up. It is the paragraph that says that "If there is not a newspaper in the county..." What do you guys plan on doing for publishing? You are taking out the language that says it could be done in another county.

Ted Olivas:

We would still have to publish in a newspaper of general circulation. If there is not one in the county, then the jurisdiction would still have to go to a paper that is qualified under NRS 238, if it is outside the county. The fact that this is in

here doesn't preclude a local government jurisdiction from not advertising. It was just considered redundant. Whoever you advertise with has to be in accordance with NRS 238 and it has to be of general circulation. I would believe that some of the smaller jurisdictions in northern Nevada would use the *Reno-Gazette Journal* and those types of publications, because obviously we want to reach out to as many bidders as we can. That is how it would work in practice.

Vice Chairwoman Pierce:

Does the State have a member on the Nevada Public Purchasing Study Commission?

John Balentine:

Yes, they do. Mr. Mike Kuckenmeister represents the state purchasing, and he is here today in the chambers, also.

Assemblyman McCleary:

Was this proposal for a reverse bid in another bill last session? Would this pertain to construction?

Ted Olivas:

The answer to your first question is no. There was no legislation that we know of last session to do that. Your second question, relating to public works, the answer is no. This only relates to local government purchasing. NRS 332 is the goods and services law.

Assemblyman Goicoechea:

As I look at your ability to require 25 percent of the total bid over the \$250,000 bond that they would be submitting when they did, in fact, protest an award, I was curious as to how extensive you could make the damages equal to the expenses incurred. In some of these cases, you might have a spike in the price, or because of the time frame involved in resolving the protest, can you go ahead and pass those on and call them expenses incurred? What if we are talking about fuel, and somebody challenged the award, and in the two weeks that it took to resolve the protest, you had a 20 percent spike in the fuel cost? Is that an expense incurred?

Ted Olivas:

When we submit a bid document out into the bidding community, for the most part, the requirements are that they submit a bid and that it is a firm, fixed price for a certain period. With something like fuel, because the price fluctuates, the bid would be set up differently, where you had, in this case, a wrapped price plus a markup. That would allow some flexibility for the bidders. The bid would

have to be set up appropriately for what you are buying to mitigate that exact problem. The bid has to be done properly so that doesn't happen. I think that it is appropriate to mention to the Committee that this is an optional provision, so when the local government is putting the bid document together, you have to make a business decision as to whether this is appropriate for what you are buying. I do not think that for fuel, unless done properly, this would be appropriate.

Assemblyman Goicoechea:

I agree, typically. I am trying to come up with an example. We have all seen, at least those of us who have been involved in local government, bids protested, sometimes for good reason, and sometimes very frivolous. I was curious how far you could carry that punitive back on the protester of the bid.

Vice Chairwoman Pierce:

Any other questions? Is there anyone from the State here to speak to the proposed amendment?

Mike Kuckenmeister, Chief, Materials Management Section, Nevada State Purchasing Division:

[Introduced himself.] We are not statutory members of the Public Purchasing Study Commission; however, we are active participants with the Board with respect to formulating public purchasing policy. We have worked with them throughout the interim in providing input into the proposed bill, that the Commission is recommending to your Committee today. The Purchasing Division is in support of the proposed bill.

Vice Chairwoman Pierce:

And the amendment?

Mike Kuckenmeister:

Yes, we are in support of the amendment, although I should say I have not read the amendment yet. Today is the first day that I have heard about the amendment. We could certainly get back to you on that with comments, if you like.

Vice Chairwoman Pierce:

Thank you. Is there any one in the audience wishing to speak on Assembly Bill 39?

Dan Musgrove, Director, Office of the County Manager, Intergovernmental Relations, Clark County, Nevada:

We do support the bill as amended. Clark County works as a part of the NPPSC. Mr. Olivas' guidance on this is appreciated and we are in full support.

Assemblyman McCleary:

I do want to point out that Clark County is willing to agree to the first amendment in our Committee.

Dan Musgrove:

Absolutely. Amendments are good things.

Rose McKinney-James, J.D., Legislative Representative, Clark County School District, Las Vegas, Nevada:

[Introduced herself.] This morning is my first opportunity to appear before the Committee this session. I would like to indicate our support for the bill as written. In particular, the district is pleased with the ability to mitigate the number of frivolous protests. I should indicate, though, that the amendments have not been reviewed. I don't want to assume outgoing support for the amendments. I would appreciate the opportunity to provide you with comments relative to the amendments. I see no reason why we would not support them, but I think that it is appropriate to make sure that our procurement folks have an opportunity to review them. We have been very active with the purchasing organization over the course of time, so unless Mr. Olivas or someone else can give me some updates, I would like to leave the record with that.

Vice Chairwoman Pierce:

Yes. We would like a written opinion. Is there any one else wishing to speak for or against A.B. 39?

Mike Kuckenmeister:

In reviewing the amendment, the section specifically pertinent to the State of Nevada, with respect to NRS 332 of the section that the Committee has asked to consider to be amended, NRS 332.195, there is a section of NRS 332 that was removed in 2003. We have appreciated at the State, the ability to work with local governments and to utilize the contracts established by local governments for many years.

A couple of examples of the contracts that we have used for the benefit of state agencies would be police motorcycles that they purchased for the Nevada Highway Patrol; we have utilized contracts from Las Vegas Metropolitan Department and the Reno Police Department; we have also utilized contracts established for routers, hubs, and switches that Clark County has established, with very good pricing, with Cisco Systems. We like the ability to be able to consider and use those contracts when it is in the State's best interest to do so,

so we support the amendment to reinsert the State's ability to utilize local government contracts of NRS 332.

Vice Chairwoman Pierce:

With that, I will close the hearing on Assembly Bill 39, and turn it back over to the Chairman.

[Meeting adjourned at 9:19 a.m.]

RESPECTFULLY SUBMITTED:

Kiz Malin
Committee Attaché

APPROVED BY:

Assemblyman David Parks, Chairman

DATE: _____

EXHIBITS

Committee Name: Assembly Committee on Government Affairs

Date: February 16, 2005

Time of Meeting: 8:00 a.m.

[illegible]

