

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

**Seventy-Third Session
April 7, 2005**

The Committee on Government Affairs was called to order at 7:36 a.m., on Thursday, April 7, 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 Chairwoman
Mr. Kelvin Atkinson
Mr. Chad Christensen
Mr. Jerry D. Claborn
Mr. Pete Goicoechea
Mr. Tom Grady
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:

Assemblyman John Carpenter, Assembly District No. 33, Elko County
and Humboldt County (part)
Assemblywoman Barbara Buckley, Assembly District No. 8, Clark
County

STAFF MEMBERS PRESENT:

Eileen O'Grady, Committee Counsel
Susan Scholley, Committee Policy Analyst
Michael Shafer, Committee Attaché

OTHERS PRESENT:

Allen Biaggi, Director, Department of Conservation and Natural Resources, State of Nevada
Steve Robinson, Natural Resources Advisor, Office of the Governor, State of Nevada
Hugh Ricci, P.E., State Engineer, Division of Water Resources, Department of Conservation and Natural Resources, State of Nevada
Michael Turnipseed, P.E., President, Turnipseed Engineering, Ltd., Carson City, Nevada
Lawrence Werner, P.E., P.L.S., City Engineer, Development Services Department, Carson City, Nevada
Doug Busselman, Executive Vice President, Nevada Farm Bureau Federation
Julie Wilcox, Director of Public Services, Las Vegas Valley Water District, Southern Nevada Water Authority, Las Vegas, Nevada
Andy Belanger, Management Analyst, Las Vegas Valley Water District, Southern Nevada Water Authority, Las Vegas, Nevada
Joe Guild, Legislative Advocate, representing the Southern Nevada Water Authority
Mike Baughman, Legislative Advocate, representing the Humboldt River Basin Water Authority
Gordon DePaoli, Legal Counsel, Truckee Meadows Water Authority and Walker River Irrigation District
Russell Fields, President, Nevada Mining Association
Edwin James, P.E., General Manager, Carson Water Subconservancy District, Carson City, Nevada
Bruce Scott, P.E., PLS, Principal, Resource Concepts, Inc., Carson City, Nevada
Marv Teixeira, Mayor, Carson City, Nevada
Jonathan Cervas, Intern for Assemblywoman Buckley
James Jackson, Legislative Advocate, representing Consumer Data Industry Association
Bill Uffelman, President and CEO, Nevada Bankers Association
Randy Potts, Chief Information Security Officer, Department of Information Technology, State of Nevada

Bob Roshak, Sergeant, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department

Alan Glover, Clerk-Recorder, Carson City, Nevada, and Representative, Nevada Clerks and Records Association

Lynn Chapman, Vice President, Nevada Eagle Forum, Sparks, Nevada

John Albrecht, General Counsel, Washoe County School District, Washoe County, Nevada

Laura Mijanovich, Northern Nevada Coordinator, American Civil Liberties Union of Nevada, Reno, Nevada

Janine Hansen, Executive Director, Independent American Party of Nevada, Sparks, Nevada

Don Renner, General Manager, Renner Equipment Company, Yerington, Nevada

Steven Kost, Executive Vice President, Far West Equipment Dealers Association, Dixon, California

Gilbert Griffin, Owner, Carter Agri-Systems, Lund, Nevada

Hugh Montrose, President, Carpenters Equipment, Inc., Lovelock, Nevada

Doug Busselman, Executive Vice President, Nevada Farm Bureau

Bjorn Selinder, Legislative Advocate, representing Churchill County and Eureka County, Nevada

Dino DiCianno, Deputy Executive Director, Compliance Division, Nevada Department of Taxation

Carole Vilardo, President, Nevada Taxpayers Association

Richard Pozesky, President and Executive Director, Nevada Association of Medical Product Suppliers, Boulder City, Nevada

Jeanette Belz, Legislative Advocate, representing Nevada Ophthalmologic Society

Robin Nyberg, Nevada Area Operations Manager, Praxair Healthcare Services, Sparks, Nevada

Michael Alastuey, Legislative Advocate, representing Clark County, Nevada

Chairman Parks:

[Meeting called to order and roll called.] This morning, we're going to take up pretty much where we left off with A.B. 253 and A.B. 434.

Assembly Bill 253: Makes various changes concerning provisions governing water. (BDR 48-548)

Assembly Bill 434: Makes various changes concerning environmental resources. (BDR 48-206)

Chairman Parks:

At this point, I'd like to invite our colleague, Assemblyman Carpenter, to come forward. He has a couple of comments that he'd like to make.

Assemblyman John Carpenter, Assembly District No. 33, Elko County and Humboldt County (part):

I'd like to lend my support to Section 3 of A.B. 434 and A.B. 253. I believe this has to do with adjudication of the transfer of interbasin water. It seems to me that if water is going to be transferred via a proposed interbasin transfer, the only way to protect the current users is to determine what amount of water they have and what they're using. Many basins in Nevada are not adjudicated. Many of these rights are vested rights. Vested rights are those rights where the water was being used before 1905, which was the year that our water law became effective. So, I think it's very important to have those rights adjudicated.

You may hear an argument that ranchers may lose some of their stock watering rights if the adjudication process is ongoing. The argument is that when you made your application and got your certificate, and maybe you add a couple hundred cows and 400 sheep, but now, maybe you're not running any sheep; consequently, you couldn't make use of all that water. In many of these instances, people have more cattle than they did when the application was first approved. Another situation is that wildlife is using many of these waters now, especially since we've had an increase in the elk herds. They are making substantial use of these waters, as well as these livestock. I think, by and large, it's all going to come out, and those waters that the ranchers have been using and applied for are going to remain as they should be. I just don't see how to protect the people that are there. We don't have an idea about what they're using, and in many instances, I think we have to figure out the water that's going to be used for other uses or in many areas.

I think that the recreational use of these waters is very important, because we know what's happening in the urban areas. Recreational opportunities are becoming less and less. So, it's going to be up to the rural areas of Nevada to pick that use up. I think that those things need to be considered. I'd just like to suggest a couple of amendments to A.B. 253 and A.B. 434. On page 2 of A.B. 253, line 11, add "to land or surface water." I think that it's important that when we do these adjudications that we also have to look at

the surface water as well as the groundwater. On A.B. 434, page 5, line 14, it seems to me that for any of the local entities, including cities or counties within the proposed basin where the water is going to be transferred out of that, the State Engineer should give them the opportunity to be part of the procedure, as well as the Department of Wildlife or any of the other entities that are mentioned here. On Section 13, page 10, I'm really not in favor of elimination of the State Forester, but I certainly don't have a problem with having a specific person that advocated for issues related to conservation beyond the commission.

[Assemblyman Carpenter, continued.] I think with that, Mr. Chairman, if there are any questions, I would be happy to answer them. I'd just like to add that the people in the rural areas—which you've probably heard from—are very, very concerned of any of these transfers of water. We know what can happen. I'd like to raise it with the situation. We know the monster is coming, and we need to do all we can to protect our way of life, and hopefully, we'll be able to grow the same as other areas of the state are wishing to grow.

Allen Biaggi, Director, Nevada Department of Conservation and Natural Resources:

Also with me this morning is Steve Robinson, Governor Guinn's Natural Resource Advisor, who would like to make a statement as well. I would like to defer to him at the outset.

Steve Robinson, Natural Resource Advisor, Office of the Governor, State of Nevada:

In light of the testimony yesterday, I'd like to offer a few comments on both A.B. 253 and A.B. 434. You'll hear from my colleagues at the table and various other witnesses about technical and policy comments related to both bills. From the perspective of the Governor's Office, I want to give you some insight in the bill's implications and the policy implications and why you will hear opposition from the administration today.

First, the Governor has serious concerns with the alteration of the operations for the State Engineer and deviation from state water law. It was said yesterday by one of the sponsors of A.B. 434 that some will tell you that the state water law is perfect. I'm not here to say that or make that statement or defend that, because that's not true. None of our government entities are perfect, but it has withstood 100 years of federal, state, and local judicial review. From a water management standpoint—not just from a judicial standpoint—it has placed us far ahead of other states that have followed a more political path, a popular path for water regulation. Our neighbor to the

west is probably one of the worst examples of the direction we can take. Other states—Texas, for example—really are unregulated and have no groundwater laws at all. That has not served their citizens with the resource well. The independence of the State Engineer is something that the Governor is concerned about. We've talked about that in the resource committees on both sides. I know that the Committee shares in that concern and, hopefully, agrees with that sentiment.

[Steve Robinson, continued.] Just as an example, on the State Engineer's real-life decision on the SNWA [Southern Nevada Water Authority] applications that were made in January of this year, that decision was received in the Governor's Office on the same day that the decision was made. We received it about 8:00 a.m. that morning, and it was made public at about 10:00 a.m. that morning. That was all the Governor's Office had in these quasi-proceedings under the State Engineer, and that's the way we think it should be kept.

Yesterday, a reference was made to Owens Valley, California. There's no doubt that that was a famous environmental debacle. This is not California. The counties in northeastern Nevada are not Owens Valley. Certainly not their governor—and all the governors I think can come about in the future—would ever allow such an action. In fact, the most effective avoidance of the situation like Owens Valley is to retain the safeguard of Nevada water law and what is institutionalized in the State Engineer. A popular majority should not have arbitrary control over the water resource. Again, on the Owens Valley comparison, that happened about 75 years ago. It's inconceivable with the federal, state, and local environmental constraints of today, with the National Environmental Policy Act, the Endangered Species Act, and dozens of other limitations on public land use. We have growth problems in Nevada and, perhaps, issues with interbasin transfer, too. We definitely do. Many in this room do. Unlike California in the 1930s, we have a proven system to deal with it. To those who believe that a study or inventory is necessary, we will work with you or offer to work with you, so that concurrence can be reached on the scope and direction of the intended product.

A lot of taxpayer money has been expended on water studies in this state. The federal government—the United States Geological Survey (USGS)—budgeted about \$6 million alone for a study that came out of the Lincoln County Lands Act. Other studies by the Bureau of Land Management and the water districts are being contemplated. The Governor's concern, when all is spent and the consultants have been paid, is that you and the executive, the Governor, are able to make better decisions with that information. Certainly,

that's not always been the case when government has studied water. In connection with the study, if a study is conducted, certainly there is a complete void with natural resource water planning in the rural counties, and perhaps part of the legislative effort to help the rural counties, which I think is the reason behind this situation, would be to look at the rural counties' capacity for how they choose to use their natural resource or water, because right now, they don't have that. When they come into the Governor's Office to meet with him—and I get in most of those meetings—the rural county commissions are at a loss where they're going to be down the road, where they're going to be 20 years from now, five years from now, or whether they are even going to be able to open their schools and finance their roads and highways a year from now.

[Steve Robinson, continued.] Finally—in connection with the capacity of the State Engineer's Office—to meet the demands of the state's growth, the Governor has asked the Director to evaluate and report back to him on the enhancement of the office. This was the intent of Mrs. Gansert's bill, and we recognize that agencies—this agency in particular—need to change practices with the time, and can always be improved. I would again caution against major alterations of an office and a law that have served us well. We have a lot of government institutions that don't work or don't work very well at all. This one works, and this would be our caution to you in deliberations.

Assemblyman Goicoechea:

I'm concerned. I think both bills address groundwater inventory rather than study, and I personally would like to make sure we're not confusing those. I don't think we're proposing any extensive studies out there, but rather a compilation of what true water resources are available across the state. Is that how you read it?

Steve Robinson:

Understand, if that what it is, that there's other legislation out there and legislation contemplated that would also be inventory study. All we're asking for is those be coordinated along with the federal studies that are going on.

Allen Biaggi:

[Summarized from [Exhibit B](#).] Over the last two days, you've heard a lot of testimony that we in the Department of Conservation and Natural Resources can agree with. We agree that Nevada is the driest state in the union. We agree that we are the fastest-growing state. We agree and acknowledge that we have a tremendously booming economy, and we are stretching our precious water resources. We also agree that no body of law is perfect, and that circumstances in time change, and the law has to change with it. Past

legislatures have seen fit to modify the law periodically. It's important to recognize, however, that the board recognize that these changes be made deliberately and with careful contemplation. Personally, I can't think of another body of law where unwise changes can have the potential to adversely impact our economy and our Nevada lifestyle. In this regard, I understand and appreciate that according to the sponsors, the primary intent of the bill is to stimulate a dialogue in the discussion of water law. With that said, however, we are unable to support the bills for the reason Mr. Ricci will mention in a moment.

[Allen Biaggi, continued.] Finally, as Mr. Robinson said, there is one bit of testimony from yesterday's hearing that we feel compelled to comment on. You heard from a California water expert extolling the lessons of the California experience. While I appreciate the historical context he was referring to, I find it ironic that the subject of these bills is groundwater regulation. The irony is that the state of California has no groundwater regulatory program. For the most part, it is a groundwater free-for-all. In contrast, Nevada has carefully and successfully regulated this resource since 1939. If we're looking to California as an example of how to regulate groundwater, we're setting the bar extremely low. Hugh Ricci will now present some detailed testimony on A.B. 253 and A.B. 354. His comments are relatively extensive, but I think it's important that he go through a section-by-section review and outline the position of both the State Engineer and the Department of Conservation and Natural Resources.

Hugh Ricci, P.E., State Engineer, Division of Water Resources, Department of Conservation and Natural Resources, State of Nevada:

[Read from [Exhibit C](#).]

Let me mention at the outset that the Nevada water law has been in place for 101 years, and I agree that this body of law has served the state well. Nevada water law is often referenced as the most complete and comprehensive water resource regulatory program in the West, if not the nation. Nevada water law has been amended over the years. However, revisions to the law should be carefully considered and a determination made whether or not changes are really necessary, good for the state as a whole, and not just for the interest of particular entities. Provisions to Nevada water law can have enormous implications to existing future water users and the economy of the state.

[Hugh Ricci, continued.] Before I begin my review of my concerns with these bills, let me provide you with a couple of important concepts and definitions that are contained in them. One of the focuses on these bills is what is known as an "interbasin transfer" of water. We heard that bantered about yesterday; I just want to make sure that everyone for the purpose of these hearings understands what the interbasin transfer is.

For management purposes, Nevada is divided into 232 discrete water basins. In general, these hydrographic areas are valleys surrounded by mountains. These basins, while certainly interconnected, provide an excellent planning tool for Nevada water resources. As Nevada's towns and cities have developed, their local water supplies have become unable to support community growth, and these communities have found it necessary to look outside the basin in which they are located for additional water supply. In these situations, water must be transferred from one basin to another. This is called an "interbasin transfer."

The transfers of water are not inherently bad, and have been part of the development since 1873, when water was moved from the Sierra Nevada Mountains to Virginia City. Since that time, there have been nine groundwater transfer projects and ten surface water transfer projects. Of the 19 historical interbasin transfers, 15 have been from municipal use, three for irrigation, and one for a power facility. In fact, the water we're drinking right here in Carson City comes from multiple interbasin transfers. In fact, Carson City gets more than 50 percent of its water from outside of this basin.

The other definition important to today's discussion is the concept of adjudication. The Nevada Legislature enacted Nevada's water law in the early 1900s, settlements had taken place, and water had been put to beneficial use. In an adjudication, these prestatutory rights, which are known as "vested rights," are quantified and formally recognized. An adjudication is a process with both administrative phases and judicial phases that also take into consideration nonstatutorily created water rights claimed by the agencies of the federal government and Native American tribes.

On the second handout I've given to you is the process set out in the statute for an adjudication. At the administrative level,

the process includes providing public notice that the adjudication is going to take place, the period of time for a person to file claims asserting prestatutory or federal right, and a period of time for field work and compiling an abstract into claims. After the State Engineer issues his preliminary order of determination, there is an administrative hearing process leading up to the order of the termination. That order of the termination then starts a judicial phase of the adjudication, where there is a second hearing process leading up to the final decree. After that, there is a right of appeal to the Nevada Supreme Court from the district court's decree. The primary focus on these bills is that all pre-statutory vested water right claims, federal agency claims, and tribal claims should be determined before any other interbasin transfer of water is approved, and that the person or entity requesting the interbasin transfer should pay for these adjudications.

[Hugh Ricci, continued.] Moving to the specifics of A.B. 253 and A.B. 434, the State Engineer is in opposition to these bills, as they propose to amend Chapters 532, 533, and 534 of the *Nevada Revised Statutes* (NRS). I would like to provide you with a section-by-section analysis, beginning with A.B. 253. Section 1 provides for an interbasin transfer adjudication fund. Please note that the appropriation in Section 3 for \$3 million is not contained in The Executive Budget. Section 2, subsection 6 of the bill requires that before the State Engineer can approve an interbasin transfer of groundwater, he shall, at the expense of the applicant, adjudicate any existing rights to all surface and groundwater related to, or that would be impacted by, the proposed transfer. This provision is in direct contradiction to the adjudication statutes found in NRS 533.090 through 533.320, where all the parties whose rights are being adjudicated bear the cost of the adjudication. The Legislature has wisely recognized that such an adjudication may benefit all water right holders in that basin and has required the cost to be allocated to all of the holders. The adjudication amendment also creates a bias against interbasin transfers. For example, a large in-basin water-consuming project, such as a power plant, hopefully can use identical amounts of water and have identical associated environmental impacts. Also note that during the adjudication process, no other water right applications or transfers in that basin could be acted upon.

[Hugh Ricci, continued.] Presently, there are 36 hydrographic basins in which interbasin transfers are sought. For the adjudication of these basins to be complete and comprehensive, they would have to contain the claims of the federal government and Native American tribes. With the large amount of federal land found in Nevada, it is likely the adjudications will have a great number of claims filed by federal agencies, and there will be significant federal issues to be resolved. This will substantially delay the adjudication process by months, and more likely years.

You should also be aware that under a federal law commonly known as the McCarran Amendment, the federal government has not paid the costs associated with adjudications. The Ninth Circuit Court of Appeals, which is the federal appeals court that Nevada would be subject to, has affirmed that the United States is not required to pay filing fees for matching adjudication proceedings. While western state water officials have suggested to Congress that an adjudication fee fairness act should be passed, to date, Congress has not chosen to act.

These adjudication provisions would also have an enormous economic impact on Nevada in that they would essentially halt water transfers throughout the state until water transfers are complete. Areas such as Reno, Sparks, Churchill County, Las Vegas, Fernley, Lincoln County, and Washoe County are all looking outside the basins where they are physically located for water to support these communities. This bill would essentially stop all interbasin transfer of water for possibly many years.

Completing an adjudication under state law is a complex and lengthy process, and relatively simple adjudications have historically taken many years to complete—for example, the Franktown Creek adjudication. Franktown Creek is in Washoe Valley between Reno and Carson City, mostly on the west side of the freeway. The irrigation was initiated in September of 1951. The majority of the work started in 1954, but it still took until July of 1960 to complete that adjudication. That adjudication only had two claimants. The Warm Springs Creek adjudication, which is north of Reno, began in mid-1976 and was not completed until 1998. Again, it only had two claimants. Adjudication in the Las Vegas artesian basin, which

was initiated in April of 1995, was not through the appellate process until January of 2002, a seven-year period of time.

[Hugh Ricci, continued.] Section 4, subsection 1 appropriates \$12 million for a water resource inventory. This was also not included in The Executive Budget. Section 4, subsection 2 requires an inventory of the state's water resources. It is not clear what the bill is contemplating when it refers to "an evaluation of the state of technical information related to surface and groundwater resources of the state and quantification of groundwater reserves."

The Division of Water Resources has a scientific-based estimate of the amount of water available of the 232 groundwater basins. The Division also has an inventory of every water right application, claim invested right, and claim of reserved right ever filed with our office. That database includes a summary of all permanent and certificated groundwater rights, identified by manner of use and status. Nevada's water resources are not managed using the concept of groundwater reserves, as noted in Section 4.2, subsection 1(b). Rather, groundwater basins are managed on a perennial yield basis. That is the maximum amount of groundwater that can be utilized each year under the long-term without losing the groundwater reservoir.

Section 4.2, subsection 1(c) refers to water efficiency. This is strictly a function of the local governments. The State Engineer has no authority to impose conservation or efficiency, and nor should he or she. For example, it is only a local entity that can order, through their ordinance process, outdoor watering schedules in order to conserve and manage resources for its own community. In Section 4.2, subsection 2(c), it is not understood what is meant by "evaluation of water use." If this means determining market price for the water, neither the State Engineer nor the Governor should be involved. This is best left for market forces.

As to the interim study proposed by Section 5, there have been several interim study committees concerning water issues during the last few decades. If this Legislature feels and others warrant, the State Engineer takes no position except that the persons identified in Section 4—that is, industry, conservation organizations, local government, State agencies, and federal

government—should be included along with the legislators. Please note that under Section 5.2(b), the proposal to study the effectiveness of existing systems for administering, controlling, allocating, distributing, and protecting water resources is in essence a review of the entire body of water law, since those are the purposes that the law serves. Under 5.2(d), it is unclear what is meant by, “The potential for the government of this State to provide technical and policy advice regarding water resources to local governments, businesses, other organizations, or others that consume water.”

[Hugh Ricci, continued.] In summarizing my testimony as to A.B. 253, this legislation in spirit is intended to protect existing rights holders from the impacts of interbasin transfer applications. In fact, Nevada water law already has those protections in place under NRS 533.370. Under that statute, the State Engineer must consider the following in reference to an interbasin transfer: the need to transport water from another basin, if an inactive conservation plan is in place for the receiving basin, whether the action is environmentally sound, whether transfer is an appropriate long-term use, will it unduly limit the future growth and development in the basin of origin, and most importantly, any other factors the State Engineer considers to be relevant to the action.

In addition, the interests of water rights holders are protected even if a basin is not fully adjudicated. Nevada, being a prior appropriation state, vested water rights are protected, whether adjudicated or not, since the law provides that a new appropriation cannot conflict with existing rights. It is my belief that this legislative intent to complete basin adjudication prior to interbasin transfers being decided can strike a blow to the economic well-being of our many communities for decades. The impact on Nevada’s economy could quite simply devastate the prosperity we have enjoyed.

I would like to provide you with a section-by-section analysis of my concerns focusing on A.B. 434, which often mirrors A.B. 253. As to Section 1, the State Engineer believes that it is more appropriate for each local government to adopt its own goals for water conservation. They are better equipped to do so through local ordinances and rate structures for their own water plans. Much of water planning is tied to land use planning and

zoning, which are local government decisions. It would be inappropriate for the State to issue an unfunded mandate to a local entity to reduce water consumption, when such a reduction could only be achieved through rate increase or other actions.

[Hugh Ricci, continued.] Please adopt my comments from A.B. 253 for the interbasin adjudication fund described in Section 3, as it contains nearly the same language. In Section 4, we focus solely on public hearings. For an interbasin transfer, that seems misdirected. A large appropriation for water within a particular hydrologic basin could have an identical groundwater impact, one example being a manufacturing complex. The State Engineer has always held public hearings on these requests for interbasin transfers of water. These hearings are open to the public, as are the records associated with them. Under existing water law, if the person or entity wants to become involved in the process, they do so by following the statutory procedure found in NRS 533.365 for filing a protest.

This process also provides for public comment from those who do not choose to be a formal party to the hearing process. The State Engineer does not believe it is necessary to hold additional hearings on the enforcement actions of any order issued as a result of the original public hearing. Such hearings would create expenses and delays, have no value to the process, and would not be good public policy. If a person or entity wishes to be a participant in a monitoring or a plan issued pursuant to the ruling of the State Engineer, they are allowed to do so when they are protested in the manner. In addition, persons or entities who are not part of the application of protest review should not be allowed to enter the process at the eleventh hour when they haven't brought forward scientific-based information, data, or evidence to the quasi-judicial review of the application during a public administrative hearing.

The concern addressed in Section 5.1 is speculation in water rights. The Nevada Legislature has already addressed applications filed for speculative purposes and enacted laws to address such filings. For example, NRS 533.3701(c) provides that the applicant must provide proof to the State Engineer to his intention and good faith to construct any work necessary to apply the water to beneficial use to reasonable diligence. He

must also demonstrate both his financial ability and a reasonable expectation that project will be reasonably constructed with the water applied to the intended beneficial use. The State Engineer also has the authority to order hydrologic studies, and in addition, NRS 337.75 provides the State Engineer the authority to require additional information from the applicant. The bottom line is that this section of law does not provide the State Engineer with any powers to eliminate speculation not already found in Nevada water law.

[Hugh Ricci, continued.] Section 5.3 of the bill requires the State Engineer to reject an application if the person other than the applicant is to put the water to beneficial use. The State Engineer strongly believes this provision should not be adopted, as it would stop many worthwhile projects and ventures moving forward. For example, from a direct reading of the language, this amendment would prohibit the appropriation of water by a municipality to serve its citizens. It would prohibit the appropriation of water by the United States in support of recreation on public lands, since it is the people who use the water to recreate, not the United States. It would prohibit a developer from building a group of homes or a commercial center on one well under a municipal water right permit, since it is the new homeowner or commercial unit that would put the water to beneficial use, not the builder.

The civil penalties proposed in Section 6 are inconsistent with the State Engineer's recommendation to the Legislative Counsel Bureau as a result of A.B. 213 of the 72nd Legislative Session. The recommendation was that if the authority to fine is viewed as a useful means to control the unauthorized or illegal use of water, that concept should be first addressed in an interim legislative committee. An interim committee would provide for full public input into that concept.

Subsection 4 of Section 6, which would revoke or temporarily suspend a permit, may have constitutional implications and public health and welfare consequences. As drafted, this could result in shutting down individual wells if the permit is revoked or suspended. This type of government power must not be entered into lightly and is why these matters of civil penalties should be considered in an interim committee.

[Hugh Ricci, continued.] The amendment found in Section 7.5(a) appears to complement the comments found by any of the enlisted agencies, would require consideration by the State Engineer, and could provide for rejection of the application. The amendment does not provide the form in which these comments may be presented or standards for their submission or review. Rather, the language allows for unilateral submission of information without providing other parties the chance to have them reply, comment, or provide evidence to refute the agency comments. The result would be that not all parties for the applicant would be given due process.

When a State Engineer holds a hearing on a protested application, the law considers the hearing to be a quasi-judicial proceeding. Testimony and evidence submitted are subject to certain standards reflected in rules of practice and procedure in protest hearings before the State Engineer, found in NRS 533. Those rules require testimony to be given under oath and are subject to cross-examination. The State Engineer does not believe he should consider any information submitted that is not subject to these standards. The amendment also is against the very essence of the procedure set forth in NRS 533.365, which provides that any interested party has a right to file a protest against any application. If any of the agencies outlined have an issue with the proposed application, that agency has the right to protest the granting of the application. State agencies have taken advantage of that on previous occasions. The amendment simply opens additional doors for litigation.

Section 7.5(b), which deals with the applicant paying the cost for adjudication, has already been discussed in regard to A.B. 253. As to Section 5(c), every decision the State Engineer makes is based on the best available and scientific information he has before him at the time of the decision. Section 8.2 appears to change the appropriation process in Nevada water law to one similar to the National Environmental Policy Act and its cumulative analysis provision. The amendment is not necessary. First, it is only applicable to applications that have been filed for a finite period of time under NRS 533.371 and, as such, does not apply to a permanent water right. This provision was added to the statutes to allow a water right to be granted in a basin that was fully committed, but not being fully utilized. The condition or approval was that the use had to be

temporary, and the program had to expire at some specific date identified on the permit.

[Hugh Ricci, continued.] As to Section 12, which creates the Water Rights Protection Fund, we believe that the Board for Financing Water Projects would be the appropriate agency to administer these funds. However, the amendment should not be included in Chapter 534 of the Nevada Water law, but in NRS 349.935 to 349.961, that being provided to the Board for Financing Water Projects. The purpose of the Water Rights Protection Fund in Section 12.4 suggests that certain persons under these do not want to be responsible for the costs of presenting evidence as per case law. The State Engineer does not agree that all citizens of Nevada should pay to support particular citizens or interest group agendas. There is a question as to what is complicated by other organizations and what water rights other organizations might hold. Once again, it should be noted that the appropriation fund established in Section 14 is not in The Executive Budget.

Local governments are already protected under the existing review for a water right application found in NRS 533.370. In addition, sovereign Native American tribes have representation through their own representatives or the Bureau of Indian Affairs. Tribes have appeared as applicants and protested before the State Engineer for many years. They brought their own experts to those hearings and do not need to be covered under this amendment. This also unclear as to what could constitute "projects to enhance or protect existing water rights."

Sections 13 and 17 deal with the makeup of the State Environmental Commission. This is identical language contained in A.B. 25, which has been heard before your Committee on Natural Resources, Agriculture, and Mining. We would suggest you defer to that bill and committee on this matter. As to the water inventory and report proposed in Section 15, please adopt my comments made on A.B. 253. Similarly, as to the interim study committee proposed in Section 16, we reiterate what this Legislature feels and others warrant it. The State Engineer takes no position.

In conclusion, many of the matters contemplated in A.B. 253 and A.B. 434 should be left to local government. Some proposals need more time for

consideration, discussion, and contemplation. Others request to use taxpayer money to support narrow agendas. As I mentioned at the beginning of my testimony, the provisions to the Nevada water law should be carefully considered to allow for maximum public input and thoughtful deliberation to produce the best law for the people of Nevada.

Assemblyman Goicoechea:

You establish yield. What happens in the case that the sustained yield doesn't equal the perennial yield you qualified? How do you determine a vested right in that application, and how it will be impacted, especially if that water's already been put to another beneficial use? My concern is that it's being used someplace else would really address the vested rights, and we end up with a sustained yield of the base not being what we anticipated the perennial yield was.

Hugh Ricci:

Let me go through the first question. That is, what if the amount of water that was appropriated has an impact on existing rights? There is a provision already in the statutes that allows that if there is an impacting existing right, the State Engineer has the right to regulate water on a priority basis. This has been done since the inception of the water law on surface water. Every decree on any permit that has been issued, for 100 years, has been done that way. It's never been applied to groundwater, but the law still allows for that to happen. Groundwater can be regulated by priority.

Then, how do we take into account the claim of vested right? When a decision is made, we look at every right within that basin. We also look as to whether it has proximity to the stream system and what rights are on those systems, if there are any. There's also a provision in the event that there is an application for a surface water source. The Legislature enacted a law that wildlife that would customarily use the source would still have a right for that amount of water before anybody else could divert that. That's probably the only place in the statutes that I recall that an appropriation is allowed without a basis of a permit. So, we look at everything, Mr. Goicoechea, as to what happens within a groundwater basin prior to any decision.

Assemblyman Goicoechea:

But again, I'm saying we looked at this scenario, and ultimately we found out that we made a miscalculation, we hit a dry stretch for a number of years, or whatever happened occurred. We've already put the appropriation to beneficial use and, probably, will be a higher manner of use. So, what happens then?

Hugh Ricci:

If the laws remain the same that they are today—Nevada being a prior appropriation state—senior water right holders have the priority. They are the ones that are protected regardless of whether the junior right has been granted a permit and that water has been put to beneficial use. The law allows today for that junior priority or junior appropriator to be regulated, to ensure that the senior water right holder is not impacted.

**Michael Turnipseed, P.E., President, Turnipseed Engineering, Ltd.,
Carson City, Nevada:**

I am a consulting engineer here in Carson City. Prior to leaving State service, I was the director of the Department of Conservation and Natural Resources, and prior to that, I was the State Engineer for just over 10 years. My entire water experience includes 34 years of experience in three different states. I should add that I am here on behalf of the City of Fernley. However, I am not being paid by them today, but most of my comments will apply statewide, and then I will get to a specific example of how it affects the City of Fernley. I'm limiting my testimony to A.B. 353 and the adjudication portion of A.B. 434.

There are three concepts that have been put into a blender with these bills. Those are adjudication, export of water, and protecting existing rights. Let me tell you, there's no milkshake coming out of this blender. I would dare say that 99 percent of the groundwater usage in this state is already known. The Nevada water law passed in 1913 gave the State limited authority over groundwater appropriations, and entirely since 1939. Keep in mind that well drilling expertise was not very well developed before 1939, so most of the wells that they've drilled in this state have been drilled since 1939. As well, the science of groundwater hydrology came about much after 1939. So, for 66 years, you've had to get a permit to drill a well, with the exception of a single-family domestic well. On the surface side, I would say that 90 percent of the usage is known. We have the Truckee River Decree, the Carson River Decree, the Walker River Decree, the Humboldt Decree, and over 40 other decrees where stream systems have been adjudicated. There are some in the state that have not. It would be nice to have all of the water in this state confirmed by a court, but that has nothing to do with export or import. Like Hugh Ricci said, an in-basin appropriation could have just as much effect on existing rights as an out-of-basin usage of water.

The State is already charged with basic water protection. You mentioned that, so I won't go through it. It appears to me that these two pieces of legislation are intended to put the brakes on the growth in Las Vegas and the bidder applications. Let me give you a little history on adjudications: the

Truckee River Decree began in 1913, and wasn't completed in final decree until 1944. In fact, some still think it's going on. There has been continuous litigation on the Truckee River since 1913. The Carson River Decree began in 1924, with the final decree in 1980. Likewise, the litigation is still going on. The Humboldt Decree began in 1908 and completed in 1938. So, it took 30 years to complete those decrees, and those didn't even involve any federal claims. You're handing the feds a silver platter.

[Michael Turnipseed, continued.] For those of you who don't think the federal government should hold water rights, you're giving them a smorgasbord. In the Hawaii adjudication alone, the BLM [Bureau of Land Management] filed 1,500 public water reserves. The U.S. Forest Service has filed instream flows, flushing flows, and stock water rights. We just finished the Southern Water Valley Adjudication that began with the age-old controversy over federal water rights. Then, enter tribal claims. Las Vegas' adjudication had to be initiated and stepped up. All adjudications had to be set aside, because the Paiute reservation in Las Vegas began drilling wells with no permits. They filed a claim for 45,000 acre feet of water. That's all the water there is in the Las Vegas basin.

Fernley has an application at Dodge Flat for 14,000 acre feet. It hasn't been granted by the State Engineer. It won't be granted by the State Engineer until some water is freed up. Fernley is flat out of water. They have approved sufficient homes to consume all of their existing groundwater rights. It's good, quality water. They really need it. The Pyramid Lake Tribe reservation sits in Dodge Flat. It would take ten years to take an order of determination at Dodge Flat, another ten years in district court, another five years in the Nevada Supreme Court, could possibly go to the U.S. Supreme Court. That means it could be 25 years for Fernley to get an approval to draw water out of the Dodge Flat Basin. The basin is right next door to them. Hugh already mentioned that Carson City gets water from five different basins. Larry Werner can tell you more about that, but they still can't meet their peak demands. Both bills can bring economic growth to a stop.

One of the interbasin transfers that Hugh did not mention is in Mr. Goicoechea's district. It is the Rain Project. Newmont Mine could not find any water in Pine Valley. They had to go over the mountains to Dixie Valley to get water. This would have stopped the Rain Project from ever becoming reality. You talk about economic impact. In 1989, when Las Vegas filed all of these applications, they filed one of them for surface water. That was to take water out of the Virgin River. I held those hearings, and I think it took about 12 weeks. At any rate, I believe the testimony was that because

Las Vegas was looking at a moratorium on growth and building permits—I know there have been a lot of things happening since the 1992 hearings—and I believe the testimony in 1992 was that unemployment would increase by 8 percent. I’m sure there are fiscal notes attached to these bills, especially funding the adjudication process with the State Engineer, but I don’t think there’s a fiscal note attached to these bills anticipating an 8 percent increase in unemployment.

[Michael Turnipseed, continued.] Hugh mentioned that we’ve never regulated a groundwater basin, and that’s true for a basin as a whole, but I remember the mining project in Desert Valley. John Fallon had a stock water well dry up as a result of pulling the water table below the old body. Sleeping Mine said, “You’ve dried up this prior right. You have to deepen his well or replace the water.” So, even though we may not have regulated groundwater basins as a whole, we have certainly required formation of groundwater. Another example right here in Carson City is dealing with domestic wells. Carson City was contemplating drilling a domestic well out on Bennett Drive. We did a theoretical calculation of the drawdown from that well, and it would have impacted 76 domestic wells. We told Carson City, “We can’t approve your permit unless you replace the water and serve these 76 homes,” and they did.

Assemblyman Goicoechea:

Could you walk back into how you would regulate a water basin? Maybe that’s really what we’re looking for, rather than the adjudication process. I think we’re all on the same page. We’re talking about protecting existing water rights. On just a separate little issue, I’ve noticed most of the surface water, especially where there are flows—especially adjudicated or acted on at least between two parties—what really concerns me is when one source is spraying. That’s an old, vested right. It doesn’t flow anywhere, but has been put to beneficial use for 100 years, it services 2,000 to 3,000 acres of meadow, and those are the ones that really concern me when we talk about large groundwater withdrawal.

Michael Turnipseed:

Hugh is correct. The law does provide for the regulation of groundwater just like it does for surface water on a priority basis. For one of the basins that you’re closest to, Diamond Valley, we considered regulating it on a priority basis at a time when they had cheap power and everyone was flood irrigating. Water tables were dropping two or three feet a year. We considered regulating the basin on priority. About that time, center irrigation became well known, increasing efficiencies, increasing power consumption, power rates, and caused a great increase in the efficiency of use in

Diamond Valley. I haven't looked at water use in Diamond Valley for a lot of years, but they leveled off. They still may be climbing, but nowhere near two to three feet a year. There are only a handful of basins in this state that have been overappropriated and overpumped, and for various reasons.

[Michael Turnipseed, continued.] Obviously, the Las Vegas Basin was essentially allowed to be overpumped, but with the idea the pumpage would cease and that water would be replaced by Colorado River water. That hasn't been a total success. Diamond Valley was developed largely by desert land entries. At the time, the success rate in desert land entry was about 2 percent, so the then-State Engineer then said, "We'll just grant them all, because only 2 percent of them are going to be successful anyway." That also turned out to be a mistake and that wasn't the case. So, there's no doubt. Then, we have some smaller basins north of Reno that are overappropriated in part, because at the time we didn't have the science to know how much water was available, and at the same time, they're largely overappropriated by single-family domestic wells, which, at the time, we had no control over and have very limited control over today.

Lawrence Werner, P.E., P.L.S., City Engineer, Development Services Department, Carson City, Nevada:

Essentially, Hugh Ricci and Mike Turnipseed have expressed some of the concerns that Carson City has. I've handed out to you graphics that show our particular concern ([Exhibit D](#)).

We are a community that has all of its water involved with interbasin transfers. The city encompasses five different groundwater basins and one interstate river, the Carson River; all of our users are connected. So, any of the water that is supplied within Carson City is an interbasin transfer. Every application that we process is an interbasin transfer. Whether it's just a couple of hundred acre feet or whatever it might be in the Eagle Valley Groundwater Basin, the users are ultimately in Washoe County Groundwater Basin, the Dayton Valley, the Carson Valley, the Tahoe Valley, and also the Eagle Valley. So, the concern that we have is the adjudication process for an application that might be for 30 acre feet or so, on an annual basis, could cost us millions of dollars. If we were to adjudicate the Carson Valley Groundwater Basin because of a small application that we're filing in Carson City, that effectively would bring us to a halt. We wouldn't be able to go any further with any of our applications. Effectively, we think it would be a moratorium on the city's growth from a water standpoint, and are very, very concerned. I've passed out comments that relate to the bill itself ([Exhibit E](#)).

[Lawrence Werner, continued.] In general, we support the comments made by the Department of Conservation and Natural Resources and Mike Turnipseed.

Chairman Parks:

You're not advocating that we move the capital out to preserve our water right?

Lawrence Werner:

Not yet.

Doug Busselman, Executive Vice President, Nevada Farm Bureau Federation:

[Read from [Exhibit F.](#)]

The Nevada Farm Bureau has reviewed A.B. 253 and wishes to express our appreciation to Assemblyman Goicoechea for his efforts in trying to bring this proposal forward. While we understand the philosophy of establishing a clear basis for existing water right prior to appropriation decisions involving interbasin transfers, we have serious concerns over the unintended consequences that this approach could have on our state's water policy and law. Our organizational policy pertaining to water supports existing law and authority. From that perspective, we are opposed to the changes A.B. 253 would bring about.

In regard to the bill's proposed water study, our policy supports and encourages funding and implementation of water studies. We believe that it is important that these studies and water modeling be carried out prior to exportation of water, as well as part of an ongoing monitoring process. We note that A.B. 253 and other legislative proposals set the stage for this type of study. We would encourage such a water study proposal be a standalone legislative initiative without ties to policy and water law changes.

As it relates to A.B. 434, much of our comments relating to water are the same ([Exhibit G](#)). However, with regard to the proposed changes in natural resource matters that go beyond the water, including those dealing with water, we are opposed to those changes.

**Julie Wilcox, Director of Public Services, Las Vegas Valley Water District,
Southern Nevada Water Authority, Las Vegas, Nevada:**

For those of you who don't know, the Las Vegas Valley Water District is the largest water purveyor—a retail water seller—in Las Vegas. The Southern Nevada Water Authority is a regional water management agency. As such, we take our jobs very, very seriously as water managers. We're here today to talk to the bill, and we want to make statements specifically to the bill, but I did want to mention that because of the other issues that were brought up, we are very thankful that the Chairman is willing to work with us and have Pat Mulroy [General Manager, Las Vegas Valley Water District] come and talk to you about our water project and answer any questions you might have about that.

We also want to make it clear that there are a lot of tools that have been put in place for the protection of people and the protection of water since the Owens Valley episode. I think that those have been explained much better in previous testimony than I can do, so I'm not going to repeat it. However, that is something that we get asked all the time. If you want more data or have any other questions, we'd be more than happy to answer. Also, I think it's very important to remember, as many of the speakers have said, that the current water law does ensure protections for the people. It does ensure protections for all water transfers. There are many water transfers that our state has had in the past 100 years—the same protections that are there for small water transfers, whether it's Lovelock, Wendover, or where there are substantially large water transfers, such as the new land projects or the project that we are currently researching now. I think the same protections are in place.

Beyond that, I just would like to note that our agency is extremely active in water studies. We have contracted with independent, private water consultants. We have worked with the USGS [United States Geological Survey] for years on water studies, we have our own staff that does water measurements and water studies, and we take those responsibilities in the area of environmental protection very seriously. Beyond even those studies and many of the studies in our area, we are very committed to environmental protections, conservation, and are noted nationwide and, sometimes, even internationally for the work we have done in species management and habitat, as well as our conservation programs. With that, I would just like Andy to go through very briefly the bill and parts of the bill that haven't been mentioned.

**Andy Belanger, Management Analyst, Las Vegas Valley Water District,
Southern Nevada Water Authority, Las Vegas, Nevada:**

In general, we concur with the testimony already provided by the Executive Branch and the State agencies. I do want to make note of two provisions, where I believe we can extrapolate a little bit more.

Section 6 of the bill has to do with civil penalties of \$5,000 for a violation of NRS 533.460. Our Advisory Committee for Groundwater Management has studied the issue of overuse for the last two years. During the course of that discussion, the most that they could support in terms of a fine for overuse was \$1,000 per acre foot. So, we believe that the amount in this section of law in the bill is a bit high. We do want to note that our committee looked at overuse just in the southern Nevada region, and we believe it would be appropriate for this section to be looked at in the next interim so that this issue can be addressed statewide, and we consider the needs and concerns of other communities in other areas of the state.

In addition, in Section 12 of the bill, which has to do with the creation of the Water Rights Protection Fund, we're concerned, as a policy matter, with the use of State funds being used to provide to local governments to pit one local government against another in the case of a water rights hearing. We believe that State funding should be better used to help bring groups together in the spirit of cooperation. We're just concerned about the intent of that section.

Joe Guild, Legislative Advocate, representing the Southern Nevada Water Authority:

I'd like to make a brief introductory comment and make two references to the bill that I don't believe have been touched on in enough detail. The first comment is that we heard yesterday a lot of concern about protection for rural Nevada. I don't think there's anybody in this room who has more of a concern for that than I. I am an agricultural producer. I own water rights—both surface and groundwater rights—and the two bills as written concern me greatly as an agricultural producer.

I also believe, having practiced in this area in the past and having spent a great deal of time in my legal career dealing with water and resource issues, that the comments of the State Engineer here today, the comments of the Director of the Department of Conservation and Natural Resources, and the comments of the former State Engineer, Michael Turnipseed, should give the Committee an overwhelming sense that our water law has a great deal of protections in it presently. I'm not saying that it's perfect, and I'm not saying that there shouldn't be changes made to any law as time goes by, but I just

echo the comments of the previous speakers regarding of the protections that we have and the proven record of this law.

[Joe Guild, continued.] Actually, it was a little bit offensive to me yesterday when the California lawyer came in here—although I’m licensed to practice in California too—and talked to the Committee about the experience in a California valley near here, because of everything that was said to you today about that situation. I was thinking about that during his testimony yesterday. California has a completely different scheme of water law than we do, and there were no federal or other protections in federal law during the Owens Valley situation many, many years ago. The assurances to you this morning from the representative of the Governor’s Office that that could never happen in Nevada, I would echo strongly.

Now, to the bill. In Section 1, subsection 1 of the bill, this interbasin transfer adjudication fund gives me a great deal of concern, because it uses public money to encourage litigation. On a personal note, I’m a third-generation lawyer, and my family worked on the Carson Decree, which took 59 years. The decree was entered when I was in law school, but afterwards, I was involved in litigation relating to that decree for several years. An adjudication is a very ponderous and time-consuming undertaking, and the State Engineer has the ability today to order an adjudication where he feels it’s necessary. So, that part of it gives me a great deal of concern.

As to Section 6 of the bill, subsection 4: basically, this means two strikes and you’re out. You get a fine, and then you’re found to be in some way in violation by the State Engineer, and there’s the ability to permanently revoke. I think that is onerous in the least and does contemplate in my mind a Fifth Amendment violation of taking private property without compensation. Those are the only things I would add to what has already been said.

Mike Baughman, Legislative Advocate, representing the Humboldt River Basin Water Authority:

The legislative subcommittee of the board met recently and discussed these bills. There are parts of the bills they like and parts of the bills they don’t like, so I would like to be very specific and offer some very specific amendments. We’ve heard a lot of comments both ways. I don’t think you’ve gotten any specific direction as to what people would like to see in or out, so we’d like to offer some of those. Let me just also preface my remarks by noting that the section in here—I believe it deals with Section 5—is the speculation criteria, and this is in A.B. 434.

[Mike Baughman, continued.] The Humboldt River Basin Water Authority was organized in 1993 in response to a proposal to export about 360,000 acre feet of water out of the Humboldt Basin into the Truckee/Carson Water Basin by Sierra Pacific Resources and a private engineering firm. The five counties protested those applications, worked with the State Engineer's Office and the hearings process, and ultimately the State Engineer found—based upon existing law, and the criteria that were previously mentioned by the State Engineer, do allow them to consider speculation—that those applications were indeed speculative in nature. If you look at the ruling, it specifically says they were speculative in nature. He denied those applications on that basis. I'm just giving you that real world example of how the existing law concerning speculation has worked, and in our case, it worked in a rural area to protect some of our concerns.

With regard to the bills themselves, specifically, the River Basin Authority very much supports the idea of additional study to get a better handle on ground and water resources in the state and to make that information available to all use. They also very much support the notion of the interim study committee to keep the issue of water resources in the forefront to work through these difficult issues, so our specific recommendations for amendments to these bills are as follows: with regard to A.B. 253, we specifically recommend deleting Sections 1 through 3. We would recommend amending Section 5 to expand the scope of the interim study to include, in addition to the concurrently listed actions, mechanisms for protecting existing water rights to water resources in basins that have not been adjudicated, including the adjudication process. Then, an additional focus would be factors to be considered in establishing goals for water conservation, including, without limitation, the maximum amount of water use, improvements in the efficiency of water use, and the appropriate conservation goals of water users.

With regard to A.B. 434—some specific recommendations for amendments there—we recommend deleting Sections 1 through 6. On page 5 of the bill, lines 15 through 18, we recommend deleting those lines, Sections 9 through 11. Delete Section 14; delete Section 16, similar to the recommendation on A.B. 253. We recommend expanding the scope of the interim study as per the recommendations mentioned for A.B. 253, and we will provide these specific recommendations to the staff for this reference.

Gordon DePaoli, Legal Counsel, Truckee Meadows Water Authority and Walker River Irrigation District:

I would second the comments of the Department of Conservation and the State Engineer, relative to the provisions of these bills regarding the

inventory and interim study. We support the idea that the water laws should not be substantially revised without careful study and analysis, and we essentially agree with the comments that have been made by Mr. Ricci. For purposes of my testimony, I grouped the substantive provisions of these bills into categories:

- Conservation goals and penalties
- Speculation
- Requiring an adjudication whenever there's an interbasin transfer application
- "Seeds" that move in the direction of regulating the surface
- Groundwater as a single source of supply in the water rights protection fund

[Gordon DePaoli, continued.] On conservation goals and penalties, I would simply add to what has already been said that, before the Legislature directs the State Engineer and the county commissions to undertake what is referred to in Section 1 and Section 6 of A.B. 434, careful consideration needs to be given to whether actions like that can be made to work in situations that we have in western Nevada on the three major river systems, which involved three federal court decrees, two states, and multiple counties on the system. In addition, I would suggest that when and if additional consideration is given to conservation and encouraging conservation, the Legislature also look to carrots and not just sticks and consider what happens with conserved water. At the present time, if water is conserved, it accrues to the benefit of the system. Some consideration should be given to whether people who spend resources to spend water should have the opportunity to use it.

I agree with what has been said on speculation. The statute already takes care of that. With respect to interbasin transfers and the adjudication provisions, I would suggest that the place where water is going to be used should not drive whether or not an adjudication is needed. It's the fact that water is going to be pumped and used, which has the impact that folks are concerned with, and whether water is going to be used in the basin or out of the basin, the impacts are going to be substantially the same. There are going to be some different ones, but in terms of whether an adjudication is needed, that should not be a determining factor.

There are a couple of provisions in the bill that are referenced in the adjudication provision, which I at least look to as sort of being the seeds for the idea of regulating surface and groundwater as a single source of supply. I would suggest, before any of those seeds be planted, that careful

consideration be given to whether that is a direction in which to go, because for a long time, there has been great reliance, that the two systems are essentially regulated separately. With respect to the Water Rights Protection Fund, I don't think it's sound policy for the State to provide funding for intramural litigation, and I would suggest, as an example of an appropriate example of State funding, that you look at NRS 538.650, which does make funding available in certain circumstances. That particular section makes funding available to local governments whenever there is a perceived initiated buyer, on behalf of a person or another entity from outside the state, that could adversely affect or place in jeopardy our supply of water within the state.

Russell Fields, President, Nevada Mining Association:

[Distributed [Exhibit H](#).] I'm here today on behalf of the Mining Association to oppose A.B. 434. We concur with the position of the Executive Branch and the points that have been made by Mr. Ricci, the State Engineer, in his testimony. I would like to reemphasize something that's been said a couple of times this morning. We believe the provisions of this bill could be used inappropriately by opponents of economic development, whether it's mining development, urban development, or anything else that requires water. This opposition could be in the form of multiple appeals at various points in the process, and also litigation in some cases, funded by the public through operation of the Water Rights Protection Fund envisioned in Section 12 of the bill.

Edwin James, P.E., General Manager, Carson Water Subconservancy District, Carson City, Nevada:

Prior to coming to the District, I managed a very large groundwater adjudicated basin in California. It provides water to over 600,000 people. It's a source of agriculture for over 100,000 dairy cattle. It was something that was necessary. Because of adjudication, we were able to do quite a bit. It was really important for the area. However, Nevada is much different from California.

It's important to understand that we do have laws here in Nevada that protect the groundwater resources that they do not have in California. I think it's important to realize that there are other ways to protect these resources than adjudication. There may be some basins that need to be adjudicated, and the State Engineer already has the authority to do so when necessary and when he sees the need. I think that should be left up to the discretion of the State Engineer.

[Edwin James, continued.] Years ago, this Committee lobbied to form the Carson Water Subconservancy to do regional planning to deal with those issues outside the adjudication process, and I think it's more effective that way and is something we need to be looking at. Going through, I was not involved in the adjudication. I was managing it when it happened. Understand the history of it; I was involved with that. Understand that one of the concerns I have is the population growth that would concur if we adjudicate all the water basins, with all the attorneys moving into the area that would be required. It is a huge undertaking, and I just want you to be aware that every water right hole in there would have to have a water attorney, basically. It's very cumbersome. I think we support having funding sources available through the State Engineer to do inventories and studies. We work very closely with the State Engineer, and we continue to support that.

Regarding A.B. 434, I think to keep it concise, we do a lot of work with the State Engineer. We have a lot of respect for the State Engineer. Any time we do a project with them, we understand that insight and the efforts they put into it. They take their job very seriously. We're concerned that A.B. 434 would actually be cumbersome to the State Engineer and would make it tougher for them to do the job that they are doing now. I think that we would recommend that this not move forward, because it has some things that we don't understand there, and the State Engineer can already do most of the things that are required in this bill, and we leave it to them.

If an interim committee is necessary, I think it should be more on the focus of what the State Engineer can and cannot do to educate people. When we start working with them, we understand that every time we deal with them, there are already laws in place today that can resolve most of the issues there.

So, we would recommend that A.B. 434 not be pursued. If you want to do an interim committee, that would be something, but focus on what the State Engineer can do right now, and if there are deficiencies in law, let's discuss them at that point, rather than push through something too quickly.

Bruce Scott, P.E., PLS, Principal, Resource Concepts, Inc., Carson City, Nevada:

I worked for the Nevada Division of Water Resources from 1969 to 1973, developing the first water plan. I've been a consultant since then. I'm here today on behalf of what I would call "the resource." I have clients on all sides of this issue. I have just a couple of observations that might be helpful to the Committee.

[Bruce Scott, continued.] First, I believe there's a major misunderstanding of what "adjudication" means. We've heard some testimony today that I think addresses it, but I think it appears to me that in the context of the bill drafted, the sense was that adjudication sometimes translates to "water planning," and it doesn't. It is simply a way of finalizing claims of vested right that are anywhere from 75 to 150 years old. It only does that. It does nothing with regard to current uses. We represent many people who have filed claims of vested right. It's a good way to get your claim on record.

These bills both have provisions that would force, for example, farmers and ranchers to hire attorneys and engineers to provide the background and the protection basis for responding to an adjudication, and I think right now, particularly, those users who are the ones that probably have the greatest potential for valid, vested rights currently have the best of both worlds by simply filing a claim, which I think is basically a \$50 process. It puts it in the State Engineer's Office, and he is then required to review that claim whenever he does something that may adversely affect it. They don't have to do the full adjudication process until such time as the basin is adjudicated, or there is some other requirement for more detail regarding their claim. But, if there claim is of record and it provides a significant level of protection to them, if there are significant water resources out there that have a valid claim from vested right that haven't been filed on, I think people are crazy and they don't exist. I think the misconception may be part of what has driven much of the concern and opposition, as well as much of the support.

These bills would force the federal government to intervene or file their claims. As it was noted earlier, without necessarily participating in the cost, I think there is a huge impact on the district court system, and it affects a lot of things that are not obvious on the surface. Many of those have been addressed. One other final item: I am a member of the State Board for Financing Water Projects. We have not taken a position or reviewed A.B. 434, but as an individual, I would tell you that the use of that board for funding, evaluating, and reviewing requests to allocate money for one entity to fight another is not something I, as a member of that board, would feel comfortable in being asked to do. Certainly, that board will respond to whatever we are requested, but I would tell you that those are quite a stretch from the basic tenets from where that board defines some water projects that they originally created.

Marv Teixeira, Mayor, Carson City, Nevada:

My only comment to you this morning is that I think I have no problem with the intent of the bill. The problem we have is that we have so many basins we're exchanging water between. Just to illustrate a point: it was the

Nevada State Legislature that commissioned the Subconservancy District. Its members are Carson City, Douglas, and Lyon Counties. We work together at a cost to the taxpayer. It has been for years. It's a long-use water planning issue where we work together for the future. Not all counties in the state of Nevada are adversarial. We are not. We're working together in a tri-county compact to work together on issues like water.

[Marv Teixeira, continued.] The first thing we did on the subconservancy was buy the water in Mud Lake, which is in Douglas County. The Subconservancy, with taxpayers' dollars, bought that product, and guess what? Carson City ended up leasing water from Douglas County from the Mud Lake project. We do have a transportation system in some regard as to service water, and that's the Carson River. So, we can put it in one place and take it out at another. Everything we do, we try to work together on. When you take a look that we're taking water out of Marlette, also understand: where does Storey County get their water from? The answer to this is from Washoe County, because of the siphon that comes out of Marlette and goes up to Storey.

My only comment to this Committee: be very careful with whatever legislation you go to enact, that you're not throwing some babies out with the bathwater. I say that sincerely, because our western side is pretty much built out, and we want to take up the eastern side, which is another groundwater basin. Are we going to have to gate all of our water? You're talking years; you're talking an awful lot of money. I would hope that this Committee would be very, very sensitive to whatever the intent of the bill is, not to hurt people that already have and are doing on an everyday basis what some parts of the bill say you can't do.

We have the expertise, and I hope we can meet in conference and shape this bill to do what this Committee thinks it wants to do and what can work for all of Nevada. We are working regionally—Washoe, Lyon, Douglas, Carson, and to an extent, Storey. What happens when I siphon those? Then, wouldn't it be good for us to pump water from our area to Storey County? You bet. We just spent \$137,000 to do the engineering to take our water line up Highway 50 right to Moundhouse. We are probably, at some point in time, having to work conjunctively together. They're paying \$22,000 an acre foot in Lyon County.

I guess there are so many unanswered questions, I hope you'll look very hard at what us and the experts. We've really been working hand in hand with the State.

Assemblyman Goicoechea:

Most of the opposition to A.B. 253 seems to be subsection 6 of Section 1. So, with the Chair's approval, maybe I can work with some of the opposition and see if we can come up with something that at least breathes some life into this. I had to see us through all the language for the water inventory. I also believe that an appropriation from the State Engineer's Office would allow further adjudication, when practical, to occur.

Chairman Parks:

[[Exhibit I](#) was submitted in opposition to A.B. 253 and A.B. 434.] Since we have only a week left to move bills out of Committee, if something can be drawn from this, certainly we would want to consider it.

Just as a closing remark: we did have a number of individuals who did sign on as cosponsors of A.B. 434, and I would just simply say that in so signing, it wasn't that they were fully endorsing the bill, but they were supporting the discussion. I think this is an ongoing discussion that we will have to have for many years to come.

With that, I'm going to close the hearing on A.B. 253 and A.B. 434. We'll go ahead and proceed to the hearing on A.B. 334.

Assembly Bill 334: Provides for protection of social security numbers and certain other personal information. (BDR 19-874)

Assemblywoman Barbara Buckley, Assembly District No. 8, Clark County:

[Distributed [Exhibit J](#) and [Exhibit K](#).] My intern is going to present the bill.

Jonathan Cervas, Intern for Assemblywoman Buckley:

It's my pleasure to be here to present A.B. 334, which provides for protection of Social Security numbers and other personal information. It is not unprecedented in our society for someone to have their identity stolen by means of fraud and deception. Criminals are able to capture a person's personal information, including Social Security number, bank account access codes, driver's license numbers, and even credit card numbers. Using this information, they can proceed to capture a person's identity and use it to commit malicious deeds. Large-volume databases on computer systems make the availability more centralized and, therefore, more accessible. Unfortunately for victims, theft of information can cause devastation. Someone could see their credit rating destroyed, their finances depleted, or even a criminal record acquired.

[Jonathan Cervas, continued.] According to the Privacy Rights Clearinghouse, identity theft now affects between 500,000 and 700,000 annually. Victims spend hundreds of hours and a great deal of money to mend credit and expunge criminal records that are committed in their names. Oftentimes, these victims do not discover that they have been victimized until many months after the criminal has committed the act and moved onto the next victim. Studies show that Social Security numbers are the central piece of information needed to commit fraud. In June 2004, the *Salt Lake Tribune* reported that making purchases on credit using your own name and someone else's Social Security number may sound difficult, even impossible, given the level of sophistication of the nation's financial service industry. But investigations say it is happening with alarming frequency, because businesses granting credit do little to ensure names and Social Security numbers match, and credit bureaus allow perpetrators to establish credit files using other people's Social Security numbers.

Ron Ingleby, the resident agent in charge of Utah, Montana, and Wyoming for the Social Security Administration's Office of the Inspector General—as reported in that same article—stated that “Social Security number only” fraud makes up the majority of cases of identity theft. Public documents, such as bankruptcy filings and other types of court records, often contain Social Security numbers of the parties to a proceeding. A number of states shield Social Security numbers from disclosure in public records. Marriage licenses are invitations to identity theft in many states, including Nevada. Many criminals will steal Social Security numbers off of this document. Birth and death records are just another example of public documents that have an abundance of personal information. Again, some states have enacted legislation that would limit the appearance of a parent's Social Security number on birth records.

Students are at a particular risk of identity theft. The use of Social Security numbers at institutions is a regular practice for identifying students. At the University of Nevada, Las Vegas (UNLV), Social Security numbers are also student numbers. That means that everything from financial status at the school to grade transcripts are tracked by that number. The Chronicle of Higher Education reported in August 2002 that nearly half of colleges nationwide still use Social Security numbers as a primary means to track students in academic databases. The survey also shows that 79 percent of colleges display student Social Security numbers on official transcripts. On March 18, 2005, UNLV issued a press release that stated the reported activity of a computer hacker on a computer that stored 5,000 records. In

their statement, they urged all those who could have been affected to consult the Federal Trade Commission's website for ways to protect against identity theft.

[Jonathan Cervas, continued.] Using this number in today's age is attractive, because it is a completely unique number, with no two numbers at any point in history having ever been the same. The distinctive method that is used for formulating the number encourages many to use it, even though it was never envisioned to be a national ID. Today, the Social Security number plays an unparalleled role in identification, authentication, and tracking of American citizens. Social Security numbers are at high risk of becoming the de facto national identifier. Because of the countless purposes this number retains, it remains invaluable to those who desire to obtain credit, commit crimes, or simply impersonate other people. California was the first state to enact laws limiting the usage of Social Security numbers on printed materials for individuals, commercial entities, and certain government entities. Similar efforts to protect Social Security numbers have been introduced in 30 other states.

In Nevada, we know the importance of protecting personal information. On March 7, 2005, the Department of Motor Vehicles (DMV) bureau in North Las Vegas was burglarized. Among the stolen items was a computer that held personal information of nearly 8,900 motorists. This computer contained names, ages, dates of birth, Social Security numbers, photographs, and signatures of those motorists. Nevada also ranks second among states in identity theft victims, according to the Identity Theft Data Clearinghouse report entitled "National and State Trends in Fraud and Identity Theft for 2003." It is time Nevada takes a look at its statute and finds ways to prevent crimes such as identity theft.

Assembly Bill 334 does just that. It accomplishes this in three ways. First, it requires government entities to ensure that Social Security numbers in books and records are maintained in a confidential manner. Second, it requires government and businesses to notify a person if personal information was stolen. Notification is simple. A company has to send written notices of this potential risk within a practicable time. If the cost would be more than \$250,000, a company or government agency can simply send electronic mail or post a notice at a conspicuous place on their website. This bill was drafted so that it wasn't a burden for those agencies that might be privy to providing notification. It's essential to get people to protect themselves in case of a breach in security.

[Jonathan Cervas, continued.] Third, this bill prohibits spyware from being installed on one's computer without a person's knowledge. Spyware is software that can track or collect online activities or personal information of Web users, change settings on a user's computer, or cause advertising messages to pop up on user's computer screens. Users are often unaware that this spyware has been downloaded to their computers, and it can be very difficult to remove. This bill would add spyware to the definition of "computer contaminant." At least 25 states are currently considering legislation to provide penalties from unauthorized use of spyware and other such software.

By protecting a person's confidential information, ensuring the person is notified that their data is stolen, and by ensuring someone's computer does not inadvertently reveal confidential information to an unauthorized person, this bill provides persons security from criminals who purposefully steal others' identities. I have passed out a little pamphlet that has some stats and some background information, along with some articles about cases that happened in Nevada, for the Committee ([Exhibit J](#)).

Assemblyman McCleary:

Last summer I went to a Chamber of Commerce event. The head of the Secret Service for Las Vegas was there, and he was telling us how to avoid identity theft. One of things he mentioned was that there are only a couple of instances where you're required by law to give your Social Security number, yet everybody asks for it. Everybody in the world asks for it, but there are only two. Are you aware of which those are?

Assemblywoman Buckley:

I believe one is for Social Security purposes.

Jonathan Cervas:

The IRS [United States Internal Revenue Service] is also allowed now to take Social Security numbers for means of tracking information.

Assemblyman McCleary:

So, the two reasons are for taxation and Social Security benefit purposes. But other than that, everybody in the world asks for your Social Security number.

The other question I had for you: I'm aware of spyware. They sell it over the counter here in Nevada. How do you trace back who put the spyware on your computer? You go to a site and it downloads without your knowledge, so how do you trace it back?

Jonathan Cervas:

It may be difficult to do it, but by putting it in statute, if there is a case where we can find out what company put that spyware on there, we can prosecute, obviously.

Assemblyman McCleary:

Will this bill prevent CompUSA and other computer companies from selling? If it's illegal to use it, why would we even sell the program?

Jonathan Cervas:

This bill addresses spyware that's downloaded through third-party companies over the Internet. It's not sold. When you go to a website, they put a cookie or something onto your computer that will cause these popups, or they are able to track information from you. It's not something that can be sold. It's downloaded through the Internet for third-party purposes of collecting that information.

Assemblywoman Buckley:

There's nothing in the bill to prevent it from being sold. It would end up being similar to stun guns, which aren't allowed to be used in certain circumstances. There's nothing to allow law enforcement, if they had a warrant, from imposing it. So, nothing in the bill affects sales.

Assemblywoman Kirkpatrick:

I was one of the people whose license was stolen from the DMV, and the little handbook that they gave me doesn't quite do the trick, in my opinion. So, how do we go back and change all these processes? Right now, I'm in the middle of protecting myself, closing bank accounts and all that, because of the Social Security number. They're just notifying your credit report. Two years later, it could be worse. So, how do I go back and change my driver's license number and all of the ID cards that I have currently?

Assemblywoman Buckley:

There is a lot of good information out there on the Web about what to do if you're the victim of identity theft. It's also been prepared in pamphlet form. Also, having all of my identification stolen by a thief—when I had my car stolen, with my purse in it, out of my locked garage in my house—I too learned a lot about identity theft. There are a number of things a person needs to do when it happens to them, starting with immediately notifying the credit bureau, and then every single one of your creditors. I was lucky. I started with my own bank first with my checking account, which was great, because my thief was still using it. I was able to go to the 7-Eleven and get a picture of her swinging my car keys and using my credit card to buy

Twinkies at 6:00 a.m. Then you notify the credit bureaus, immediately notify your creditors, putting the freeze flag on your account, and then you begin replacing all of that. Then, you have to guard it.

[Assemblywoman Buckley, continued.] Many people will often check their credit report, because you can't rely on anyone else to take of this. You have to do it all yourself. It's an incredible amount of work. So, I think the best way we notify people is by having the pamphlets available with easy-to-follow steps, along with phone numbers of folks that can help walk you through it.

We were visited by J.J. Jackson, representing the credit bureaus, and Sheryl Bloomstrom, from the Bankers' Association; these were the only folks that came and presented amendments. There were three or four of them: an effective date, an exception for people who are already following the Gramm-Leach-Bliley Act [of 1999], and a couple of other amendments. I supported all of those amendments.

There's only one, after sleeping on it, that still gives me a little concern. There's a proposed amendment that says if your data was stolen and it was encrypted, you would not have to be notified, and I think that should be changed: if it's encrypted, and the entity believes that there is no way for it to be decoded, you may not be notified. For example, if something was breached, and it just violated one level of encryption and the thief is caught an hour later, do you want to notify anyone? Well, probably not in that circumstance. But, if someone does steal encrypted information, they also steal the code on how to encrypt it, or if they're a hacker, they probably could uncode it. We want people to get this information soon, so if you know your identity has been stolen, you can take steps. If you don't know, you can be in line for a disaster. That's what this bill is all about.

Chairman Parks:

We do have a proposed amendment by American Express. Have you seen that amendment?

Assemblywoman Buckley:

It's the same amendment proposed by the Bankers' Association, and the Bankers' Association did present theirs to me, and I did say that I thought it was consistent with the bill's intent.

James Jackson, Legislative Advocate, representing Consumer Data Industry Association (CDIA):

We're asking to add to Section 4, subsection 4, page 5, line 5, that if the information of more than 1,000 persons is breached at any one time, the business, entity, or person holding that database must notify the credit reporting agencies right away, so that steps can begin immediately to flag individual consumers' data. I suppose I should have prefaced all of my remarks with the point that the CDIA and all of its members do support the idea of database breach legislation, and we think that certainly, with the experience of what has occurred in southern Nevada, it's high time that we do this in the state of Nevada. There's really not a whole lot more that we can add to that.

I know there were a lot of questions with respect to what a consumer can do when they believe or know they are a victim of identity theft. I've been through similar experiences. My own housekeeper stole my birth certificate, passport, and Social Security number, and went to town on a credit card for about three months. I didn't know about it until the collection agency called me. With that data, she was able to change not only herself to an authorized user, but the mailing address as well, because she could answer all the out-of-pocket questions—as they call them—that are often asked. It is still incumbent on the consumer, the individual, to protect themselves and to keep an eye on their credit, to opt out if they want to from unsolicited offers of credit cards, because those often contain enough information to obtain a card on your behalf without you knowing it, and also to take advantage of a lot of federal legislation.

You can certainly contact me at any time, but each of you is entitled to a copy of your credit report from each of the three major reporting agencies, meaning that you can get three copies per year of your credit report. CDIA's recommendation is that individuals do that on a semi-quarterly basis and spread them out over the year, so you can get a picture throughout the year of what's going on with your own individual credit. I share that not only from the Committee, but for the audience and anyone listening.

Again, we support this legislation in terms of addressing these concerns. We're fine with the other amendments. We've worked together with Mr. [Bill] Uffelman and Sheryl Bloomstrom, who unfortunately is stuck in another committee, and we also have no trouble with American Express' amendment as well.

Chairman Parks:

The proposed amendment indicates, "This Section of more than 1,000 persons at one time." Was there any reasoning how the 1,000 came to be?

James Jackson:

That number was provided to me by my colleagues in Washington, D.C. at CDIA. That seems to be the threshold number that's been accepted in other states. It would not necessarily relieve the business from notifying those members of the database whose information was breached, but this at least puts it at a threshold where now they're going to include notification for the consumer reporting agency, so they can begin to flag the process.

Chairman Parks:

Yes, we understand the process. Why not 500?

James Jackson:

I think they felt that that was a reasonable threshold.

Chairman Parks:

As an editorial note, I vaguely remember that I had a bill one or two sessions ago that dealt with the availability of credit reports for individuals such as was just explained, and I think I was talked out of that bill.

James Jackson:

Yes, indeed; I did talk you out of that. It was mainly because we knew a lot of federal legislation was coming down. I don't think that's ended yet. There is reference to the Gramm-Leach-Bliley Act. There's an ongoing series of hearings and a lot of work being done at the federal level with respect to consumer rights, consumer protection, and consumer data protection as well. Obviously, we haven't seen the end of it.

Bill Uffelman, President and CEO, Nevada Bankers Association:

As J.J. has said, Sheryl is stuck downstairs on another bill. The other amendments that you see there, J.J. spoke to the first part. The "not encrypted" that the Assemblywoman spoke to: I guess the notion there is if you lost the algorithm, it's no longer encrypted, so don't attempt that claim, and perhaps we need to fix that. We don't have a problem with that, but it is the notion that the encryption is presumed to protect the data, and if it is no longer doing that, then certainly you should be notified.

The next portion came from us, the Gramm-Leach-Bliley Act. We cited the U.S. Code. American Express has offered the citation to the Code of Federal

Regulations, which happened to come out this past week, which I have provided to all of you ([Exhibit L](#)). It is 27 pages. The last two pages immediately after the portion that talks about the Paperwork Reduction Act—and how these 27 pages are complied—are, in fact, the rule. The agencies that regulate the financial services industry: this is their joint rule to implement the act, and how financial institutions are going to comply with disclosure and privacy and such. It parallels state law, and it does give us a national standard to work on.

[Bill Uffelman, continued.] Finally, we've suggested an effective date. January 1, 2006, would be appropriate, simply because in the time to implement these procedures, there might be variations of what they're currently doing. It gives our association time to go out and explain to our members whether they want to do some other things to be compliant.

Assemblywoman Parnell:

Every month when I get my bank and mortgage statements, it always has the account number. I was just wondering whether you get any complaints about that in the banking industry. Every time we throw that away, if we don't have shredders—that has always been a real concern of mine, depositing any information that does actually have your account number on it. Is there anyway to disguise that when we get things in the mail?

Bill Uffelman:

The account number is there so you can identify it. I suppose it's just like when you've signed your credit card slip at the restaurant or whatever. Today, only the last four digits are there, if you're trying to figure out what card this should be and where should it show up. A shredder is a good answer, and I bought my wife one of those \$10 ones for Mother's Day a year or so ago. That did not go over well. I think that a shredder should be an accessory in every home today. If you're going to throw those things away, they ought not to be in useable form. Shredding is recyclable and, if anyone is really industrious, can be reassembled, but the notion is that you should not throw away things with account numbers on them. It just is not smart. Industry shreds them for that purpose. We suggest that it's looking out for your own well-being.

Assemblywoman Parnell:

I certainly worry about an elderly person who's living alone and probably not into the shredder mode of behavior. I would just appreciate it if the banking industry can leave it to the four digits of the accounts or something. I think that's really an entrée to the continued abuse of personal information and theft.

Bill Uffelman:

I understand that. Of course, I look at my 84-year-old mother, who never throws anything away. I'll have to bring in an industrial unit. When you say it, we've gone online personally, and I don't get things in the mail with my names on them anymore. So, I do understand.

Chairman Parks:

I guess the one thing I have the biggest problem with is all the banks that send me these little checks with the monthly statements, trying to get me to draw down money on my credit cards. I have to feed those through the shredder as well. So, that is another thing.

Randy Potts, Chief Information Security Officer, Department of Information Technology, State of Nevada:

We definitely do support the spirit of this law. In addition, I also had the opportunity to serve as proxy for Terry Savage, the Director of Department of Information Technology, as a member of the Attorney General's Cyber Crime Advisory Board. As well, I'm a former member of the Federal Bureau of Investigation National Executive Board for InfoGuard, which is a collaboration between government and private industry.

A couple of things that I wanted to address: I had some concerns with all government in general, but also in implementing this type of confidentiality. It definitely does have a fiscal impact, if we're talking about the notification requirements and/or the litigation. There are really four different ways we can address risk when it talks about identity theft and other security breaches in general.

- We can accept the risk, which means that does have potential impact for the notification dollars that an agency and/or another organization would need to be able to have at their disposal in case there is a security breach.
- We have risk mitigation, which is using procedures and/or technology to further protect that type of data. As you heard earlier, encryption was one idea that was submitted out there. Those do have costs, not just from the ability to actually procure that technology and put it in place, but even to utilize that technology, because there are specific types of data users that are out there that have varying levels of degrees and to be able to build the interfaces required to decrypt the information for them to carry out their job functions. It's not just a one-shot deal where you build one application. There are multiple layers of that application.

- There's risk avoidance. In other words, an organization can choose no longer to collect the data, which has probably the lowest fiscal impact, and it may be a positive fiscal impact, in that you reduce the overall costs associated with dealing with that type of data setting.
- The last one, which is probably the most dangerous, and probably the one we've seen practiced industrywide as a whole, is risk rejection. We simply do not believe that there is a risk. That's why we're developing this proposal right now to address this, that it is being recognized, that identity theft is an issue, and that breaches of our computer systems are an issue.

[Randy Potts, continued.] The reason why I talk about risk rejection is because it is ultimately the most costly, because we choose not to do anything about it until the occurrence happens. We either have the notification fees or the notification, as well as mitigation, that happens at that point. I really wanted to address this because we have had projects that have gone before other organizations in our budget hearing, and we wanted to practice good, sound policies and standards and procure those technologies to be able to address these types of concerns. When this provision becomes law, we definitely will have more fiscal impact to make sure we can address those concerns. This is not just about confidentiality. It's security in general. It's about confidentiality, integrity, and the availability of data.

Chairman Parks:

Mr. Savage gave you a proxy. Did he also give you his Social Security number with that?

Randy Potts:

When we talk about who is authorized to go and have specific things, you may have the authority to go and conduct business, but does it really mean that you have the need to know? So, it's really a two-part question.

Bob Roshak, Sergeant, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department:

We would just like to indicate that we support this bill and any legislation limiting identity theft.

Alan Glover, Clerk-Recorder, Carson City, Nevada, and Representative, Nevada Clerks and Recorders Association:

We have more questions than answers, because we do not know how Section 1 affects the county clerks, courts, marriage bureaus, and the recorder's office. Maybe they help you out a little bit.

[Alan Glover, continued.] To give you some information, marriages were mentioned in the earlier testimony, and this is one of those areas that by federal law, a Social Security number is required on all marriage licenses. It goes back to the legislation from Congress a couple of years ago, with deadbeat dads—and trying to collect from them—and welfare reform. They required you to give your Social Security number every time you put in for a license. They were thinking about doctor's licenses and so forth, but it affected marriage licenses. We had to change our forms and have a box for that to be put into. Now, we have indexes to marriages on the Internet, but all it would give the bride and groom's names, the document number, and the date of the marriage. That's all that we have out there. However, if somebody did write in to the office and said, "I need a copy of my marriage license for Social Security," which is the most common; the DMV, "I'm going to change my driver's license"; or immigration, we make them a copy, certify it, and mail it to them. If we were to alter that document in any way—e.g. black out the Social Security number—we have then altered the document and cannot certify it. They have to be certified, because the agencies will not be able to do it.

Voter registration is another area. Under legislation that you passed a number of years ago and in the HAVA [Help America Vote Act of 2002] legislation, voter applications ask primarily for your driver's license number or, if you don't have that, the last four digits of your Social Security number. That's working very well. However, we have thousands of people who still have their Social Security numbers on their voter applications. When we give the number to parties and sell to candidates and to private parties voter registration information, the Social Security number or the ID number is never given out. That is not on any data that you would get as a candidate. You would not know that.

However, if somebody comes into the office and says that they would like to either see or purchase a copy of their voter registration application, and they could be lying to us, we would have to let them look at it or sell it, because that's covered under the public records law, which says that everything that we have is public record. I might say that very, very few people every do that. They'll get a copy of their voter registration application if they're traveling to Mexico or Canada. We had an instance where a doctor needed certified copies of their voter registration, everything they had, because they got put on Homeland Security's "no-fly list." They had to prove who they were and how long they had been here, and it turned into quite a deal. So, people do come buy that information.

[Alan Glover, continued.] The real area of concern that we have is with recorders' information. As recorders, we do not know if the document has a Social Security number in it or not. Of course, some documents are 30 or 40 pages. We've noticed recently deeds of trust that come in and have your name and address and so forth. Then, it had a box down there where you filled in your Social Security number. They are now printing in that "not required," because our national association dealing with this in Washington came to the conclusion that you can't recant this information out of the files. There's just too much of it. It would cost billions of dollars.

The main point: you do not need to give your Social Security number on these documents. We cringe when we notice that coming in. That information does go out. We sell every piece of information. Every recorded document we get is sold to a title company or to a reporting company that uses that to transact business. That information also is out on the Internet. The recorders in this state have spent millions of dollars in software to make those documents available to people, so they can simply look it up and check it out. There are not as many Social Security numbers now as there used to be, but it is there. This information is disseminated all over the world. So, there are a lot of Social Security numbers for people spread everywhere. There is no way to retrieve that. The horse is out of the barn. You can never retrieve it. Frankly, we do not have any way of guaranteeing or maintaining confidentiality of that information. It simply cannot be done. We don't know if Section 1 really affects us. We think it does, and the Assemblywoman may help shed some light on it.

Another example of documents that have Social Security numbers on them are liens. A lot of them are from local governments. There are nasty people who are going to file a lien on you, and if you have their number, you have it in there. If we couldn't get that information out, those liens may be useless to somebody. Court records have Social Security numbers quite often. The court lien appears, and I don't know what the Seventh and Eighth Judicial Districts are going to do, but we are not going to put those documents out on the Internet. We will hopefully have indexes in the future, so the press can call up and see who has been divorced today, what estates have been handled, what criminal trials are coming up, or what the disposition was, but I think most of the judges feel that this is really inappropriate. There is a lot of information. Children's names, dates of birth—we're simply not going to do that sort of stuff.

I'm asking, as you consider this legislation, if you think it does affect us, if there is some provision in there on telling us how, at the county level, we can handle this and any direction you have, we would certainly appreciate it.

Lynn Chapman, Vice President, Nevada Eagle Forum, Sparks, Nevada:

We are in support of A.B. 334. Honorable James Huse, Jr., the Inspector General of the Social Security Administration, testified before the House Subcommittee on Social Security on May 22, 2001. He had some very good quotes:

Misuse of a Social Security number, catalyzed by the Internet, has quickly become a national crisis. The Social Security number's universality has become its own worst enemy. The power it wields—the power to engage in financial transactions, the power to obtain personal information, the power to create or commandeer identities—makes it a valuable asset and one that is subject to limitless abuse. It falls on government, which created the Social Security number and permitted it to assume such power, to take action to control its own creation.

Identity theft begins in most cases with the misuse of a Social Security number, and while the ability to punish identity theft is important, the ability to prevent is even more critical. First and foremost, the time has come to put Social Security numbers back into their box. We, as a government, created the Social Security number, and we, as a government, must control that. Last week, I was reading the *Reno Gazette-Journal*, and there was an article about Amazon.com, and the article went on to say that Amazon collects Social Security numbers, credit card numbers, peoples' names and addresses, et cetera. They keep them on file and they use this information. How many people work at Amazon.com? How many people have access to all of that information?

My father is almost 80, and I talked him into getting satellite TV. It took him two weeks for him to get it, because they kept insisting that he needed to give them his Social Security number, and he kept saying that it's none of their business. He said that if they want him as a customer, they won't get this Social Security number, and he did win out. Just to get a satellite dish, you're required to give your Social Security number. That's ridiculous. How many people come and go, working in those satellite companies? So, people do have access to that information just working in those places.

My daughter wanted to get a job a few years ago. She was filling out all these different applications. It always asked for a Social Security number. So, I told her to put "upon hiring." That way, she didn't have her Social Security number out on all these applications at all these stores, et cetera, because who has access to all of that? We do have to learn to protect our Social Security numbers and our personal ID information, but because

government requires citizens to have a Social Security number, I feel it is up to government to prevent problems like this.

John Albrecht, General Counsel, Washoe County School District, Washoe County, Nevada:

[Summarized from [Exhibit M](#).] I initially put opposed to the bill. We're more concerned and opposed to the bill if it's applied to the school district. The Washoe County School District has 60,000 students. We did a check yesterday. We have 74 percent of the students that we have Social Security numbers for. It's completely voluntary. We don't require the Social Security number to enroll. However, there are views in the administration of the Millennium Scholarship Program to ease that transition, and it is also used to allow children to obtain free and reduced price lunches. We somehow interface our computer system with TANF [Temporary Assistance for Needy Families] or whatever other welfare system, and those children are allowed easy eligibility for free and reduced price lunches. As a result, we have Social Security numbers for 74 percent of our 60,000 students.

Current law that protects the privacy of all of those students is the Family Education and Rights Privacy Act of 1974 (FERPA). We have other Nevada state law, which I've put into my written testimony: NRS [*Nevada Revised Statutes*] 386.650 and 386.655, which makes FERPA applicable to the automatic system of accountability maintained by the Department of Education, and the Social Security Act, which requires Social Security numbers to remain confidential. Our main concern is the additional burden upon school districts of an unauthorized disclosure, either by a student who obtained access into our computer records or by someone else. That's our big concern: at that time, we'd have to provide notice and have civil liabilities for civil damages. I would like to note that this act points out punitive damages against a government unit and is the only act I'm aware of that provides for punitive damages against a government unit. So, for those reasons, as I said, we could take care of it by exempting school districts from the bill completely.

Laura Mijanovich, Northern Nevada Coordinator, American Civil Liberties Union of Nevada (ACLU), Reno, Nevada:

I just want to go on record supporting [A.B. 334](#). As you may know, in the area of personal information, courts have increasingly recognized constitutional protection for personal information. The Ninth Circuit Court of Appeals has coined the phrase "informational privacy" as a newly recognized area of constitutional protection. It's really a good thing that the Nevada Legislature is addressing this issue to increase protection of this privacy concern.

Janine Hansen, Executive Director, Independent American Party of Nevada, Sparks, Nevada:

In 2001, we worked very hard with the Constitutional Amendments Committee to have A.J.R. 9 of the 71st Legislative Session passed, which called upon Congress to protect the Social Security number and other private information. We have been involved in this issue for many years, and we support this bill. There has been a lot of good information brought forward.

I just have a couple of issues I would like to mention. One is that in the state of Nevada, there are over 130 licenses for things, and Social Security numbers are required on all of those. That makes a tremendous vulnerability for those licenses. When I went up to Wal-Mart last fall to get my hunting license, I was required to put my Social Security number on my hunting license and give it to a clerk at Wal-Mart. They put it into a drawer there. That made me a little uncomfortable, making my Social Security number and all that other private information that's contained in a hunting license available to whomever might be working on that shift at Wal-Mart. I think there might be a better way to protect that information, especially on something as vulnerable as the hunting licenses.

I also might mention that I'm concerned about the information available through the schools. I would like to see this applied to the schools. One reason: through the No Child Left Behind Act [of 2001], a military recruiter has the ability to access all of the school records. So, the Social Security number, whether it's voluntary or not, when you put on there that they want it, most people just put it down automatically. They aren't sensitized to the issue of identity theft. These are our most vulnerable people in our society. If their Social Security numbers are there, I think it's a particular problem. That is, although it may be uncomfortable and hard for them to do, I think it's particularly important.

Where many Social Security numbers have been stolen is through the universities. In fact, in the article by the Inspector General of the Social Security Administration, he talks about an ongoing investigation where they were actually selling Social Security numbers that were collected at a university. The school setting is one where perhaps we have not been duly diligent in protecting those numbers, and I would like to see that happen. We do fully support this bill.

Assemblywoman Buckley:

When your name is at the top line of a bill, that means you're the sponsor. So, if you have questions about the bill, you can go talk to that person and explain your concerns. That is the process we use in this building. My

second comment is in regard to the school districts. It absolutely is intended to apply to the school districts. We need to protect the Social Security numbers of everybody, whether you're a teacher, whether you're a student—no matter what your occupation is. I'm happy to work with the clerks and anyone else who wants to work on this bill. All they have to do is give me a call.

[Assemblywoman Buckley, continued.] For example, federal law does require collection of Social Security numbers for purposes of child support. So, here's what an agency can do: they can require for it to be collected with a child support order. So, the clerk's office in Clark County has a separate sheet of paper where the Social Security number is placed, and then it's filed in a confidential manner, so it's not in the child support order. Government can already do this. If someone comes into file a piece of information that has a Social Security number—let's just say it's on a garnishment, because every garnishment in Clark County has the Social Security number on it. It has your name, it has your date of birth, it has your Social Security number, and it has where you work. It has all the information you need to steal someone's identity. All the court has to do is send out a notice to every lawyer, post it, and send it to everybody who uses the court system. It would say, "You no longer are allowed, pursuant to state law, to put the Social Security number on this sheet of paper." If someone comes in and the Social Security number is on that, they can say, "You aren't allowed to include the Social Security number. You can take this black marker right now and cross it out or redo your papers."

This does not have to be complicated. We can just make sure we don't collect it, and then we don't have to worry about the wonderful World Wide Web. I think people in this room are smart enough to figure this out, and I'd be happy to help them if they need it.

Chairman Parks:

We'll close the hearing on A.B. 334 and open the hearing on A.B. 347.

Assembly Bill 347: Revises provisions governing exemptions from sales and use taxes on farm machinery and equipment. (BDR 32-981)

Assemblyman Pete Goicoechea, Assembly District No. 35, Eureka, Pershing, White Pine, Churchill (part), Humboldt (part), Lander (part), and Washoe (part):

With me today is Assemblyman Tom Grady, a cosponsor of the bill, and Don Renner from Renner Equipment. Assembly Bill 347 asks for a ballot question for the 2006 election to provide for the exemption from the State's 2 percent sales tax on farm implements. If you look in your packets ([Exhibit N](#)), you will see the ballot question as it was posed for the 2004 election. On that ballot question, it included fine arts, aircraft, and aircraft parts, as well as racing chassis, engines, and racing vehicles. There were two other components on that question, and you will hear bills on those a little later today, I believe. One is on medical equipment, and the other is on trade-in of vehicles and occasional sales. In the last election, we felt that it was a combination of all these different issues that really confused the voter, as well the explanation of both pro and con.

This gets down to the ballot question again in 2004, with that failure. What it did was that on January 1, 2006, we will have all sales tax reimplementations on farm implements, as well as all the other things that failed. There are a number of dealers in the room today who will be able to testify on how that will impact them.

If you will look in your packet ([Exhibit N](#)), you will see a map of the states that do employ full sales tax on farm implements. The only two states are Washington and Hawaii. If you look at the surrounding states, they either have no sales tax or partial. These dealers will be able to tell you—when you start talking about a uniform and streamlined sales tax—if, in fact, our organization states don't have a sales tax on the same particular product. With that, I know Taxation feels they will be able to capture those out-of-state sales, but I think the testimony you will hear from the implement dealers will show you how impractical that is.

Assemblyman Claborn:

How are we going to define all of these farm equipments?

Assemblyman Goicoechea:

I'm sorry. I was hustling through this a little quicker than I wanted to. Subsection 2 of Section 1 and Section 3 of the bill do define what "farm implements" are, as well as tractors, especially Section 3 on page 3. If you look at it, it defines it.

Assemblyman Claborn:

What I'm really concerned with is an ATV [all-terrain vehicle]. If you use that as farm equipment, all the attachments on an ATV do not come under that, even though you can use that as farm equipment?

Assemblyman Goicoechea:

It means tractor, implement of husbandry, or a piece of equipment used for irrigation, part of repair, or maintenance of farm equipment. A tractor typically means a motor vehicle designed and used primarily for drawing of an implement of husbandry. We get all down, without limitation, to plows, a machine used for mowing, hay baler, combine—a piece of equipment used to stockade, till, harvest, or handle agricultural commodities, apply fertilizers—and other heavy, movable equipment designed and adapted or used for agricultural purposes. I'll let Taxation determine whether an ATV fits there or not.

Assemblyman Claborn:

I would like to have a definition myself, if there is any way you can get one.

Assemblyman Goicoechea:

That is the definition, and I see Dino [DiCianno] in the back row. We'll ask him when he comes up.

Assemblyman Claborn:

I know there is going to be some other legislation brought forth for registering ATVs. As far as I'm concerned, I'd like to know what the outcome of that is going to be. I'll listen to some more testimony.

Assemblyman Goicoechea:

In that particular bill, I know it does in fact exempt ATVs used in agriculture.

Assemblywoman Parnell:

On the ballot, does the farm machinery issue stand alone, or does it become part of a generalized sales tax exemption?

Assemblyman Goicoechea:

This will be a stand-alone ballot question. We were afraid of what happened last time, and I know the car dealers are bringing one forward. I know Mr. Sibley is also bringing another bill forward. I'm not saying that won't be rolled together by some process here in this Body. We would prefer that the voters have the opportunity to tell you that yes, this should be exempt, and no, this shouldn't. We feel that implements are exempt in a matter of state.

It places a real hardship on an industry, and I'm sure the dealers will explain to you what that economic loss will be.

Assemblywoman Parnell:

I think when you put too much into it, you have a greater probability of losing all of them, and I'd hate to see that.

Assemblywoman Kirkpatrick:

Out of all the tractor dealers that sell equipment in the state of Nevada, how many of them are locally owned? I'm just curious, and I want to know how that helps our agricultural folks.

Assemblyman Goicoechea:

Presently, they are all independently owned. In your packet ([Exhibit N](#)), you have 10 or 12 letters from most of the implement dealers that are in the state of Nevada. Those letters come in support of the bill. We do have at least four or five implement dealers here today, and they can answer your questions better than I can.

Assemblyman Tom Grady, Assembly District No. 38, Lyon County, Storey County, Carson City (part), and Churchill County (part):

I am going to very brief, because the implement dealers are the ones that you need to hear from. In many of our ranch communities, they are close to a nontax state. The Nevada sales tax could be the difference in the price between a \$60,000 to \$100,000 piece of equipment. That is why the state farm implement dealers are losing this kind of business, because it is an advantage for the out-of-state dealers against our in-state dealers. When they start losing business, this means jobs. It's a domino effect. When they cancel the equipment, there are fewer jobs in the service department, in the sales department, and in the office, which spreads to the whole community with less spendable income throughout the community.

Assemblyman Claborn:

Mr. Grady, as you know, we had legislation last session that was in regard to the ATV and how it was a disadvantage to our Nevada dealers to sell ATVs, because the other states surrounding us didn't have to pay the taxes and Nevada did. This is a very good bill, and I'm glad you brought it to our attention, but before the day is over, I'd like to get a definition of "ATV," because they use all types of different scrapers or backhoes or attachments. If you ever watch Channel 73, you'll see that they just about do anything now. I'll listen to some more testimony, but I think it's a great bill.

Assemblyman Grady:

What I'm really worried about is that this may affect my lawnmower, too.

Don Renner, General Manager, Renner Equipment Company, Yerington, Nevada:

This is a fairness issue. We had it pass in 2001, and I felt like our increase in sales proved this was a good idea. We were reduced to 2 percent, and at that time, Joe Dini helped me get this on the ballot. We did not spend as much money as we should have and tried to get that passed by the public at that time, primarily because we were reduced down to 2 percent. That puts us competitive with other states, and we dealers were happy with that. So, the people may have spoken and voted this out—I think we had 36 percent at that time—but at the time, we really didn't mind. Maybe we should have taken more interest in it, but we thought this was fair enough that we are now competitive. The streamlined sales tax issue has brought us back to the plate; we're caught in the catch-22. My sales have gone up. If we go back to 6.5 percent, then I think I'll see my sales go back down. I'll start laying people off instead of expanding my business.

There are lots of issues today for farmers in the state of Nevada. I think it's the third-largest industry in the state, and it's one we really need to support for the rural economies. My home is in Smith Valley. There are lots of people retiring to Smith Valley, and I see it happening. Our farm and agriculture scene is changing. Maybe it isn't for the best; maybe it is. I happen to look at my dealership now, and I'm adding hardware and ATVs to the Fallon store. I'm thinking, what else can I do to keep my business strong? The issue of supporting my farmers is something I want to do. I really think these people need a break. It's a fairness and competitive business issue that puts them in a global market with a disadvantage.

Steven Kost, Executive Vice President, Far West Equipment Dealers Association, Dixon, California:

We are a trade association that represents eight industrial and rental dealers in the seven western states. I just updated this map ([Exhibit O](#)) this week. To give an example, we talk about global markets for our farm products and produce. If this sales tax goes to a full sales tax January 1, Nevada producers will have the highest cost of inputs, as far as machinery, of anyone in the nation. Today, in the state of Washington, they do have full sales tax on farm machinery, but they do now have a sundown law from four years now. It expires in 2006 and exempts most farm machinery from the sales tax. It reduces double, so they can reduce burning and other items that they're doing there. I've attached to that another bill, so that this bill will now be extended until 2011. So, they will have exemption for most

machinery bought in Washington. They will also be exempt for certain pieces of machinery on property tax. So, in effect, growers in Nevada, as of January 2006, will have the highest input costs.

[Steven Kost, continued.] I think Don's point was that when you look at agriculture, one of the few things that you can do locally is your costs, because your prices are determined globally on the commodities you grow. It is a factor for producers and growers. Again, because of the streamlined sales tax, we saw that this particular situation makes it a little more difficult for us, but I'm here to speak in support of this bill.

I think it's needed as a fairness issue for rural Nevada and our members. In regard to Mrs. Kirkpatrick's question, the dealers, as far as I know, are all independent businessmen that live in the state of Nevada. None of the stores are run by the manufacturers. They have no direct representation here or are part of another company that has headquarters outside of this state, to my knowledge.

Gilbert Griffin, Owner, Carter Agri-Systems, Lund, Nevada:

My brother-in-law and I are owners of Carter Agri-Systems in Lund, Nevada, which is in White Pine County. We also own a ranch there. I appreciate the opportunity to take a moment concerning this bill. I can't tell you the elation I had four years ago when we went through this process of getting a reduction, a partial exemption. It was like a shot of adrenaline in our business. I had watched sales creep away from us for years, and I was helpless to do much about it. It just changed the entire business climate that I was working in. Now, after going through the ballot questions last November and having to face this again, I just have a real knot in my stomach as to what the future holds for us. Between my brother-in-law and myself, we have ten children. I have six, and he has four. As a small business owner and a family man, I have a lot of desire to have my children live around me—where I can enjoy my grandchildren—and our long-term goal has been to provide an operation that would allow our children to come back to rural Nevada.

I have people asking all the time, "Why on earth do you have a farm equipment dealership in Lund, which has only 350 people?" I guess from a business perspective, it maybe doesn't make much sense. We have to put a lot of miles on to carry the area that we cover, but just like my father-in-law and his father, who started this business in 1929, we like Lund. We like to live there, and we like to raise our children there. They'd like to come back. In order to do that, there certainly has to be something to come back for, and we've been working to build that type of foundation for them. We

currently have seven of our children that are planning on coming back. We're trying to prepare a setting that will allow this to happen. Currently, we're the second-largest employer in Lund, the largest being the school district. In order to have this happen, we feel that we have to have a business climate that will simply allow us to compete.

[Gilbert Griffin, continued.] I want to take two avenues here. The first is from an equipment dealer perspective. I've had customers say to me just since November, "I see the sales tax is going back on farm equipment." I said, "Unfortunately, that's correct." They've said, "That's going to kill you." I said, "Well, thank you very much." But that's the reality of it. I can just feel it in the way they talk that they're going to be willing to go out of the area, purchase these big ticket items, and bring them back. I'm helpless to do anything about it. It's not unusual on big ticket items to make 3, 4, 5, or 6 percent margins. That's less than the sales tax. There's no way we can compete. I don't know how to say it other than to plead for help. We have no place to turn.

Looking at it from another angle—from a farmer perspective—we currently own a cattle range in Lund that my brother-in-law manages. We have just, within the last two months, made a significant commitment to double the size of our operation by purchasing an adjoining farm. We're doing this so that we can have opportunity for our children. Well, we're making a long-term financial commitment, and we're going to be competing against other farmers in surrounding states that do not have tax on these implements. Everywhere I look, we're at a competitive disadvantage, whether we're the farmer or we're the dealer. I just strongly urge support of this bill. I realize we have to go to ballot with this, and there's a process here, but I would certainly hope that we would get the first step going here with the passage of this bill and see maybe a brighter future for us than I see right now, with some of the issues that we're facing.

Hugh Montrose, President, Carpenters Equipment, Inc., Lovelock, Nevada:

I'm a native son of Lovelock, Nevada, and I'm the president and chief janitor for Carpenters Equipment, a family-owned business since 1954. I'd like to just touch on a few things that I see coming. There is no doubt in my mind that the sales tax increase is going to have a detrimental effect on my business, pure and simple. I think all of you have seen the rising fuel costs. That has also affected fertilizer cost, and interest rates are going up, so in the agricultural community, the farmers are becoming very, very conscious of keeping their costs down.

[Hugh Montrose, continued.] When you look at this map and see that we're surrounded, the 6.5 to 7.5 percent difference between ourselves and the competition is going to be a big thing for us. Thirty years ago, the rural areas were a lot more remote. Today, with communications, transportation, UPS [United Parcel Service], and FedEx [Federal Express], the very nature of the world we live in today makes us compete not only among ourselves—the dealers in Nevada—but we also compete with the dealers surrounding us. When you give those dealers a 7 percent advantage on us, we're going to have trouble.

I urge your support on A.B. 347, and I urge you to consider the fairness of this issue for the dealers in Nevada.

Doug Busselman, Executive Vice President, Nevada Farm Bureau:

The Nevada Farm Bureau would like to go on record as being in support of A.B. 347. Through passage of this bill, Nevada voters will be given the opportunity to vote on the ballot questions of whether sales and use tax will be removed from farm machinery and equipment. Recent studies by agricultural economists at the University of Nevada Cooperative Extension showed that in one rural county, an alfalfa hay producer—this is a family operation—has an investment of over \$500,000 in farm equipment, because the purchasing and the maintenance of this equipment is very high—made all that much more severe by the burden of sales tax, use taxes, and annual property tax expenses that are charged to these producers for those equipment items.

Nevada agricultural producers, as has been mentioned here earlier, compete in an international marketplace, producing commodities that have extremely narrow, if any, profit margins. Keeping rural Nevada's economy whole depends on keeping agricultural producers and their enterprises viable. We believe that A.B. 347 provides the chance to take our message to Nevada voters, to seek their support for maintaining a farm and machinery equipment tax exemption we believe is necessary.

Bjorn Selinder, Legislative Advocate, representing Churchill County and Eureka County, Nevada:

I wish to express our support for A.B. 347. As you are probably well aware, both Churchill and Eureka Counties enjoy an agricultural economy. We would certainly support placing the question on the ballot in support of our agricultural industry—our ranchers, farmers, and implement dealers. I noted during a presentation by Assemblyman Goicoechea that there was some possibility that there might be a melding of questions. If that is the case, I'd urge against it and certainly leave that free standing on the ballot. Perhaps

that is the way it's going to be anyway. It may not be possible to do that. I would simply urge that this be a stand-alone question on the ballot and leave it to the voters.

[Bjorn Selinder, continued.] All that we're asking for here is not a matter of being set apart, but to allow our ranchers and implement dealers the opportunity of enjoying the status of their neighbors in other states.

Assemblyman Munford:

Since this is a sales tax issue, what kind of impact would this have on the revenue of the State of Nevada? Is there much impact there with funding?

Dino DiCianno, Deputy Executive Director, Compliance Division, Nevada Department of Taxation:

I'm not sure if you did receive in your packet the fiscal note that the Department of Taxation conducted. I think it would be important for me to first back up a little bit before I answer your question directly.

The dealers who are here and I have talked in the past, because we've done some regulations together. Let's be clear here: the last ballot measure, which passed during 2004, removes the local exemption at the end of this year. So, if the local exemption still exists, this ballot measure, at the vote of the general election in 2006, would remove not only the local portion, but the 2 percent portion, so that then it will be fully exempt. Just to let you know, I am the voting member for the State for the streamlined sales tax. It was necessary because of our intent for Nevada to become a member of that agreement. So, there will be a period in 2006 where they will be subject to the full rate. That is correct. They've represented that correctly.

Currently, there is no impact to the General Fund. There will be an impact to the General Fund in the amount of approximately \$1 million if this passes at the general election ballot. There will also be a corresponding impact to the local governments of approximately \$4 million. The Department of Taxation is neutral with respect to the bill. I understand and appreciate what they are trying to do. The only way they can afford this exemption is to go back to the vote of the people, and that's what they're trying to do here. I realize this is not a simple tax. We would like to ask a favor of the maker of the bill to consider a potential amendment to incorporate the language that is also being used in other bills, with respect to sales tax holidays that would allow any definitions for agricultural equipment to conform to the sales and use tax agreement.

Assemblyman Goicoechea:

I would be glad to do that.

I'm concerned a little bit about the fiscal impact; that wouldn't occur. All this asks is that we can go to the ballot and outline both the question and the explanation. So, technically there is no fiscal impact until the voters do approve the measure.

Dino DiCianno:

I need to clarify that point just a little bit. Currently, you're correct. There is no impact to the local governments up until the end of this year. However, come January 1, 2006, that exemption goes away. So, the local governments will receive a windfall. The full amount of the tax would be due. However, come January 1, 2007, once the ballot is approved by the vote of the people, it will be a full exemption. Then, there will be a fiscal impact to both the General Fund and to local governments.

Assemblyman Goicoechea:

Yes, I agree. However, all that this bill does is ask that that bill be on the ballot.

Carole Vilardo, President, Nevada Taxpayers Association:

I have just a couple of very brief points. The first is that it is an issue of equity between the surrounding states. We don't normally like exemptions; we don't like to support exemptions. However, when you see an inequity that exists or you have demonstrated public purpose, then if it's going to go to the vote of the people, as it is in this particular case, we are going to see that we want you to put it to a vote of the people. We agree we would like to see it as a stand-alone question, as with any of these questions that you might process this year, to avoid the confusion we think happened with the voters last year when there were six items combined.

Relative to staff and the amendment that Mr. DiCianno suggested—I have mentioned it to the staff and the dealers outside—in A.B. 320, which is one of the sales tax holiday bills, if you take a look on page 2, and it is lines 28 to 37, that would be that language passed out to you. The only change would be that you're not looking for the temporary period. It was in A.B. 320 and the language you passed out.

Vice Chairwoman Pierce:

We'll close the hearing on A.B. 347.

Assemblyman Claborn:

For the folks that sent me these letters, I'm committed to help the working man and small businesses. I just want you to know that this bill is very important.

Vice Chairwoman Pierce:

We'll open the hearing on A.B. 430.

Assembly Bill 430: Proposes to exempt sales of medical goods and equipment from sales and use taxes and analogous taxes. (BDR 32-1003)

Assemblyman Scott Sibley, Assembly District No. 22, Clark County:

Assembly Bill 430 would also ask for a ballot question to exempt medical goods and equipment from sales tax. This bill would only allow the question to be placed on the ballot and allow the taxpayers to make the final decision. As the bill is written, we've gone over and found that it needs two amendments. The first one is to contain the language that was passed out to comply with the streamlined sales tax regulations. The second one: we want to work to define "medical goods and equipment," so we don't have everything under the sun exempted from sales tax. We currently do exempt prescription drugs, which is helpful to seniors and other disabled people, and I feel this bill would also help those same people with disabilities be exempted from the durable medical equipment. With that, I will turn it over to Dr. Hardy, who can explain to you the items specifically.

Assemblyman Joe Hardy, Assembly District No. 20, Clark County:

As Assemblyman Sibley alluded to, this would allow a ballot question that would avoid the six items on one question issue that Ms. [Carole] Vilardo talked about in the previous bill testimony. Durable medical goods would not be an ambulance, but it would be a personal use item that would improve healing, rehabilitation, and allowance for improving self-reliance and independence. I think of those of us who would not be able to read, drive, or do sports without optical help and prescriptions. Those using these medical devices have had a change in their lifestyle—whether temporary or long term—and this lifestyle has had a negative economic impact on the person using those devices. We need to avoid compounding the misery of an injury by another insult to their loss of income.

We do have a real expert. Richard Pozesky is in Las Vegas, and I will turn expert testimony over to him. He does durable medical equipment, and we

would be very open, flexible, and do whatever needs to be done to define the definition so it fits into the streamlined language. The streamlined sales tax language is very generous as to what it allows us as a state to exempt. We would be very amenable to what the Committee feels, the policy that they put forward in this ballot initiative, and to try to keep it narrow enough so people will know what they are voting on.

Assemblyman McCleary:

What other states are doing this?

Assemblyman Hardy:

There are about 40 states involved with the streamlined sales tax, and I do not have a count on what states have the medical durable goods exemption, but it's available to each and every state to do that. Likewise, they have the ability to exempt many other things, including farm equipment, prosthetics, and prescription medicines, which we currently do now. We currently have an exemption for prescription medicines.

What we're proposing: if you look at your bill, page 3, line 7, the intent is to be able to get in Section 4, line 7, the consumption of prescription medical goods and equipment. If we put a prescription on that, I think it narrows it enough that we can, in the language of the streamlined sales tax, decrease the fiscal impact, in that we would not include over-the-counter medicines or things that did not get a prescription.

Assemblyman McCleary:

What would be the financial impact to the State?

Assemblyman Hardy:

We asked that very question yesterday and got a very definitive answer that we don't know yet.

Assemblyman McCleary:

The reason I ask this is because we went through such a nasty session. We were facing a deficit and fought so hard and so long, spending two months in special session trying to get the revenues we needed to continue. Now, we seem to be in fairly good shape, and I'm nervous that anything that gets exempted might have an impact on the State.

Assemblywoman Parnell:

I have a question about the definition of "medical goods." Would eyeglasses for seniors be included in this? I'm just trying to get some depth as to the definition.

Assemblyman Hardy:

Yes. We would like that included in the definition, particularly if we look at the costs to the very people who need them the most. Seniors and those who have disabilities obviously have optical needs that should be included in that. That would be our "prescription" language that would qualify.

Richard Pozesky, President and Executive Director, Nevada Association of Medical Product Suppliers (NAMPS), Boulder City, Nevada:

These are a tax relief for the sick and disabled. It would be a resolution of ambiguous, conflicting language currently in our existing tax code statutes, and although it would have a minimal economic impact on our state, it will definitely have a real positive economic impact on the sick and disabled. We'd also especially like to thank Assemblyman Sibley and Assemblyman Hardy for sponsoring this bill.

Madam Vice Chair, did you receive a copy of the email I sent to the Committee and the fax this lady here sent up to you?

Vice Chairwoman Pierce:

Yes, we have it ([Exhibit P](#)).

Richard Pozesky:

I would like to mention that the email that I sent to everybody yesterday was a preliminary draft, and I only changed one word. That was in paragraph 3—the third line—and I had California listed there. In California, they have a very convoluted tax system. Most of their items are tax exempt, but it's not totally tax exempt. As I get into my presentation, I did list a few states that currently are totally tax exempt.

NAMPS currently represents 59 home medical equipment businesses in the state of Nevada, with 93 branches throughout the state. We serve over 20,000 sick and injured patients that are not on Medicare or Medicaid, both in the major metropolitan areas and also in rural Nevada, who will be deserving beneficiaries of this legislation if it so passes. NAMPS members, who are licensed by the Nevada State Board of Pharmacy, include private business owners as well as national companies with numerous branches throughout our state.

Assembly Bill 430 would give tax relief to our physically sick and disabled citizens in need of prescribed medical devices and supplies. It would bring our state in line with many other states, such as Arizona, Utah, Iowa, Idaho, Florida, and North Carolina, which have realized the need for this type of sales tax exemption. These states have recognized that their citizens require

medical equipment and supplies. They are not making a luxury purchase of something that they want, but rather purchasing life necessity items. These purchases are required because our citizens are sick or disabled, and these medical devices are needed to help them live and maintain a better quality of life.

[Richard Pozesky, continued.] NAMPS has been pursuing tax exemption status for all medical goods and equipment for many years. NAMPS wants to reiterate that the HME [home medical equipment] companies merely collect this tax money from the sick, disabled, and indigent Nevadan, and they submit it to the Department of Taxation as every other business does. Assembly Bill 430 would help to standardize our existing NRS [*Nevada Revised Statutes*] and NAC [*Nevada Administrative Code*] to resolve inequities and ambiguous language currently in our law.

NAMPS has attempted in the past to eliminate sales tax collection on all medical goods and equipment. In late 2000 and early 2001, when then-Director of the Department of Taxation, Dave Purcells; the Department's attorney, Norm Acevedo; and NAMPS recognized the statute problem with regard to the question "What is medicine?", Mr. Purcells pointed out in a letter to NAMPS, dated March 13, 2001, that medicine, defined under NRS 372.283, is not the same as medicine in NRS 639.007. He wrote, "It is the Department of Taxation's opinion that medical devices described in your prior correspondence, while being within the definition of 'medicine' pursuant to NRS 639.007, are not within the definition of 'medicine' in NRS 372.283, and some are specifically excluded from the definition."

During the 2001 Legislative Session, S.B. 528 of the 71st Legislative Session was submitted by the Senate Committee on Taxation, which recognized that the Nevada Tax Code required payment of sales tax on medical goods and devices sold to the State of Nevada, as well as the federal government, who are tax exempt. I am strongly in support of the Senate bill that was passed and was signed into law by Governor Guinn on May 31, 2001. Senate Bill 528 of the 71st Legislative Session eliminates all sales tax for all medical goods and equipment sold to any government agencies, such as Medicare and Medicaid. The bill, unfortunately, did not include the other citizens of Nevada who still are required to pay sales tax for their medical needs. That is why I alluded to the fact earlier that we serve over 20,000 non-Medicare or Medicaid patients that are paying this sales tax. As I believe we will all attest to, being disabled and sick is not a luxury. To have to pay a tax on your medical needs is adding another burden to an already disadvantaged person. The medical devices and goods that HME

companies are providing for the physically sick and disabled person are sold under the prescription from a licensed practitioner and meet the criteria set in NRS 639.007(2).

[Richard Pozesky, continued.] As mentioned above, the Nevada State Board of Pharmacy, in addition to licensing the retail and wholesale pharmacies, also licenses the home medical equipment companies that provide these medical goods. Since prescription medicines are tax exempt in our state, and medical devices meet the required criteria for medicine, we ask you today to allow the citizens by their vote to harmonize these statutes, to resolve conflicting and what we consider ambiguous language currently in our Nevada tax law, and to make clear that what we provide to our patients under prescription is also a tax exempt transaction.

I think Mr. McCleary asked about that the sales tax ramification. To the best of my calculations, it would probably be \$150,000 to \$250,000 per year. We're not talking large numbers.

Jeanette Belz, Legislative Advocate, representing Nevada Ophthalmologic Society:

We certainly request that the Committee make sure that optical goods are included.

Dino DiCianno, Deputy Executive Director, Compliance Division, Nevada Department of Taxation:

I believe I need to do some clarification here. I think it's important to understand what is meant by "medical goods and equipment" I think each and every one of us knows. Let's just take as an example a bottle of aspirin. You can purchase that bottle of aspirin everywhere. The difficulty for the Department of Taxation is that we need some clarification as to what "medical goods" means. I'll give you an example for medical equipment. Are we talking about medical equipment that is situated in our clinics or our hospitals? Are we talking about those kinds of things? We need to be very careful here because of the fiscal impact. If it's that broad, it could be significant. I can tell you it's over \$100 million each fiscal year.

We would be more than happy to get together with the makers of the bill to clarify the definitions, to make sure that they comport with the streamlined sales and use tax agreement, because the agreement is not that broad. It is very specific.

Carole Vilardo, President, Nevada Taxpayers Association:

On this bill, we were neutral except for the one point that Mr. DiCianno has just raised. It was so all-encompassing that it went beyond the realm of anything we thought was good public policy. There is a point beyond where it does not work. It will have sufficient language in the streamlined sales tax, and whoever works on the bill will try to narrow the definition, so it hits what the intent was—I believe, Mr. Sibley and Mr. Hardy—and that is particularly when you are dealing with very expensive or prescription-type medicines or drugs. It can go on the ballot, and we would hope that it would stay alone and not be consolidated with anything else.

Assemblyman McCleary:

Carole, I'm concerned about something in name. You mentioned when we were talking about the farm equipment about starting open and putting a hole in that proverbial "hole of exemptions." When do we stop? I'm thinking about this because there are so many industries that can come and justify that this is so important for this or that. What about children's clothing? Children have to have clothing. What are your concerns with this?

Carole Vilardo:

We've always had a concern and actually have a policy statement on that. Our policy statement generally has been that if you are going to consider exemptions from any taxation, they need to have some criteria, and two of the criteria we look at are that it will treat the same class of people as equally as possible, but even more importantly, that there can be an identified public policy that is satisfied by the exemption.

I believe you have one more bill on your agenda that is going to address the way the Legislature does look at exemptions, and I will be supporting that bill when I get back up here. It's not an easy issue, because you are 100 percent right. Anyone can find something that we think qualifies and equates to motherhood and apple pie.

Assemblyman McCleary:

I'm sympathetic with farmers. I'm sympathetic with the people that are injured and need medical help, and I could deal with a whole host of other issues, but I appreciate your comments.

Robin Nyberg, Nevada Area Operations Manager, Praxair Healthcare Services, Sparks, Nevada:

I just want to say that the clarification that everyone is searching for is in the licensure from the Board of Pharmacy. We're all licensed through the Board of Pharmacy. Therefore, we have to meet what is medicine, what is the

equipment we provide, and that kind of thing. All of those definitions are already in there.

Assemblyman Parks:

Does your equipment product line include things like adaptive-use vans for persons with medical disabilities?

Robin Nyberg:

Mine does not, but I have a colleague that does.

Assemblyman Parks:

My curiosity runs to things Mr. Claborn had talked about—like the ATV—and I was just wondering if vans that were adapted for people with handicaps might also fall under this definition.

Robin Nyberg:

It would depend on whether it's prescribed by a physician. Most insurance companies do not recognize that cost, and therefore, it is passed onto the consumer.

Vice Chairwoman Pierce:

I will close the hearing on A.B. 430 and open the hearing on A.J.R. 16.

Assembly Joint Resolution 16: Proposes to amend Nevada Constitution to provide requirements for enactment of property and sales tax exemptions. (BDR C-422)

Michael Alastuey, Legislative Advocate, representing Clark County, Nevada:

Assembly Joint Resolution 16 proposed a constitutional amendment, which, in effect—listening to much of today's discussion—is quite pertinent in that it would, if passed, provide the Legislature with a specific framework to consider and enact tax exemptions. I'm sure you got the feel today, hearing all manner of somewhat persuasive arguments from different sectors of the economy, that tax exemptions do indeed serve an excellent purpose, and in fact, some may have more merit than others. I think we heard from Mr. Goicoechea and some of this colleagues with agricultural interests that some may have more merit than others. When all those questions were put together in a single ballot question, it actually prevented individual consideration of the merits of those. So, I think that stands as a good framework for this discussion.

[Michael Alastuey, continued.] Assembly Joint Resolution 16 is really a resurrection of S.J.R. 1 of the 17th Special Session. By the time it reached the 2003 Session for its second legislative consideration, it was found that that particular measure had some flaws in it. When you work with legislative language, the difference between the word “and” and “or” can become very significant, and that was a significant part of the demise of S.J.R. 1 of the 17th Special Session. The Legislative Committee and the technical advisors worked pretty hard on A.J.R. 16, which you’re looking at today.

If I could just describe it briefly: it would apply to exemptions that you would enact for both sales taxes and property taxes, and there would need to be specific legislative findings made before enactment:

- It would achieve a bona fide social or economic purpose, and the benefits of the exemption are expected to exceed any adverse effects of the exemption on provision of services to the public by state and local government, which would otherwise receive the revenue.
- It would not impair the ability of state or local government to pay back bonded debt.
- In enacting an exemption from any of the sales tax, the Legislature shall ensure the requirements for the exemption are as similar as practicable for similar taxpayers, and each such exemption shall have a sunset date. We think that this stands alone on its merits.

It would not impede consideration of any of the measure that you are considering today. It is separate, apart, and independent. It would require your approval this session, Legislature approval next session, and then it would be placed on the ballot subsequent to that. Its effective date is well down the road. The measures that you are considering at this time can take their separate tracks.

Carole Vilardo, President, Nevada Taxpayers Association:

I am speaking in support of the bill just for the reason that it does set up some parameters before exemptions are granted, and the reason it’s in the *Constitution*, as we found out, working and testifying with the 353 Committee or 257, one of the things that happened was that we were looking at a statutory change. Then, Legislative Counsel Bureau’s Legal Division informed the members of the Committee that by doing a statutory change, the Legislature itself could ignore this. So, it was decided to go for a constitutional change, which cannot be ignored. So, you definitely have to make the finding, and we’re very supportive of that.

Vice Chairwoman Pierce:

Are there any questions? Is there anyone else who would like to speak on A.J.R. 16? Seeing none, we will close the hearing on A.J.R. 16.

Chairman Parks:

The first bill for our work session is A.B. 170.

Assembly Bill 170: Provides for administration of National Guard ChalleNGe Program in this State. (BDR 36-750)

Susan Scholley, Committee Policy Analyst, Legislative Counsel Bureau:

[Distributed Exhibit Q.] Assembly Bill 170, related to the National Guard ChalleNGe Program, was sponsored by Assemblyman McCleary. The bill does contain an appropriation. It is concurrently referred to Assembly Ways and Means, and it has a notice of eligibility for exemption. There was lots of testimony in support and no testimony in opposition. There were no proposed amendments to the substance or policy of the bill other than a suggested change to the Digest. However, General Giles Vanderhoof did want the appropriation corrected, although that may be a better matter for Assembly Ways and Means to deal with.

There is a fiscal impact at the state government level. It contains an appropriation not contained in The Executive Budget. We have been advised by the Fiscal Division that this bill is exempt from the requirements for a fiscal note since it contains an appropriation. With that, it would be appropriate for the Committee to consider action on the bill.

ASSEMBLYMAN GOICOECHEA MOVED TO DO PASS
ASSEMBLY BILL 170.

Assemblyman McCleary:

In the original language, it says they can get their high school diploma. It's a six-month program. It's really an advanced program. If you have enough credits, they can get you your high school diploma, but sometimes if you don't, they want to give you your GED, and it was just a mistake not to put "GED" in the original wording. So, it's high school diploma or GED. That needs to be added.

If you want to wait on the fiscal part of that until it goes to Ways and Means and let them do that part, it is fine with me. We do need the GED in that.

Actually, if we amend it now, it can be simple and they can just consider the whole thing. Is that correct, Mr. Chairman?

Chairman Parks:

I would like to defer to staff to advise us, because we want to get this bill through, and we don't want to unduly hang it up.

Susan Scholley:

There is no reference to high school diplomas in the body of the bill itself. While it might be nice to correct the Digest, I would suggest that it's not, perhaps, wise to do that at this point, and we can forward that information to Ways and Means, and when the bill is amended for the appropriation, they can take care of the Digest at that time.

ASSEMBLYMAN CHRISTENSEN SECONDED THE MOTION.

THE MOTION CARRIED. (Assemblywoman Parnell and Assemblyman Hardy were not present for the vote.)

Chairman Parks:

The next bill we have is A.B. 201.

Assembly Bill 201: Revises provisions relating to rehabilitation of certain residential property. (BDR 22-813)

Susan Scholley, Committee Policy Analyst, Legislative Counsel Bureau:

Assembly Bill 201 was sponsored by Assemblyman Horne and would allow certain nonprofit organizations to receive loans for the rehabilitation of deteriorating, substandard, or unsanitary residential property or for the rehabilitation of abandoned residential property. Currently, such loans can only be made to certain qualified persons. There was quite a bit of testimony in support of the bill. There was some concern about the impact of the bill on existing and complimentary programs at the city or county level, but there was no testimony in direct opposition to the bill.

After the hearing, David Olshan of the Nevada Fair Housing Authority submitted amendments that are set forth in the mockup that is attached ([Exhibit Q](#)), which are intended to address the concerns of the Committee members. There was no fiscal impact at the State or local level. I did email a copy of the amendments to Mr. Olshan last night, and I also provided a copy of the amendments to Assemblyman Horne.

[Susan Scholley, continued.] Going through the amendments in the mockup, on page 2, lines 9 through 11, Mr. Olshan added some additional language to clarify the application of the gross median income calculation. On line 28, you see the addition of a 501(c)(4) exempt organization, and I've included the quote out of the Internal Revenue Code for what that would encompass in the text box. There are parallel amendments on page 4 to the amendments on page 2. On page 3, you will see lines 28 through 30. In an effort to address concerns that the property, once rehabilitated, remained for use by low- to moderate-income families, Mr. Olshan suggested the addition of subparagraph (c) on page 3.

Finally, turning to page 5 of the mockup: to address some concerns raised by Dan Musgrove and Nicole Lamboley, lines 29 through 36 would add some new language, and it may or may not be additional sections of adherence. The basic idea would make it clear that nothing in this chapter would impact the authority of the counties to implement programs under NRS [*Nevada Revised Statutes*] 244.189, which is a program for assisting with affordable housing and rehabilitation.

I was just consulting with legal counsel, and we also need to look into whether or not there is some parallel language for cities, and I'm just not sure in terms of the whole if that's necessary or not. If the Committee would allow the flexibility to include some language to protect cities to the extent that it's determined necessary, it would also be clear that we're not adding any authority to cities that we don't already have, but we don't intend to take away any concurrent powers.

Assemblyman Christensen:

Who administers this? Who oversees this? Whose jurisdiction does this fall under? I met with the City of Las Vegas. They answered a lot of my questions, and I mention this to Committee members who had the same issues, but this is a fairly regulated deal. I feel the city has certain jurisdiction, since they know the neighborhoods and they know what's going on, but it's a very controlled and regulated field. Therefore, I will be supporting it.

Chairman Parks:

It just strikes me rather strangely: on page 2 and again on page 4—the wordings on 9, 10, and 11 on page 2—it says, “In the county concerned.” Reading the other words, it says, “Within the same geographic area in the county, concern based upon estimates...” I guess that word concerns me; is there a better word we can use, or is that a commonly used word?

Susan Scholley:

Last night, I also considered taking out that word, but I didn't want to start messing with what was provided to me. As we always warn the Committee, Legal Division will be drafting the intent of these amendments into the NRS. Again, the amendment that you see back will likely not be the precise language that you see here, so that will be addressed.

ASSEMBLYMAN MCCLEARY MOVED TO AMEND AND DO
PASS ASSEMBLY BILL 201.

ASSEMBLYMAN HARDY SECONDED THE MOTION.

THE MOTION CARRIED. (Assemblywoman Pierce and
Assemblywoman Parnell were not present for the vote.)

Chairman Parks:

We have one more bill, and that is A.B. 210.

Assembly Bill 210: Requires contractor and subcontractor on certain public works to submit monthly report on demographics of persons employed on public work. (BDR 28-872)

Susan Scholley, Committee Policy Analyst, Legislative Counsel Bureau:

Assembly Bill 210 requires contractors and subcontractors on certain public works projects to submit monthly reports on demographics on persons employed on that public work. This was sponsored by Assemblyman Hogan, and it requires these demographic reports on public works projects that cost \$20 million or more, as set forth in the original bill. The reports would include information on the race, ethnicity, and gender of workers on the project. The bill also creates a committee that may meet to discuss it, and the intent of the bill is to promote the interests of minorities. The bill also provides monetary penalties for failure to comply.

As noted in the work session document ([Exhibit Q](#)), there was quite a bit of testimony in support of the bill. There was also testimony in opposition to the bill, as noted. After the hearing, Assemblyman Hogan submitted some additional amendments to address concerns raised at the hearing, and I did a mockup of Assemblyman Hogan's amendments, which is attached. I've also attached the amendments that were presented at the hearing by the Associated General Contractors (AGC) and by Ted Olivas. Some of these

were included into Assemblyman Hogan's amendments, and some were not. There is no fiscal impact.

[Susan Scholley, continued.] Turning to the Assemblyman Hogan's amendments in the mockup ([Exhibit Q](#)), you'll note—right off the bat, on line 4—that he has proposed raising the trigger for the reports from a public work costing \$20 million to a public work costing \$25 million. That change has been made throughout the mockup. He also suggested changing, on line 8 of page 1, "workmen" to "workers." However, Legal has advised me that workmen is a defined term, so although "workers" may seem preferable—being gender neutral—I'm not sure if we want to have to go back and reamend "workmen" every where it's used.

On line 16, the addition of the phrase "performing over 1 percent of the project amount" was a suggested amendment from AGC, which was intended to make sure that folks doing the reporting were people that had a significant role in the project. So, as was given to me, the example of a painter coming in and doing one day of work on a big project wouldn't trigger that painter to having to do demographic reports. There's also a provision there, starting on the bottom of page 1, line 18 and continuing over to page 2, lines 1 and 2, which is used elsewhere in the public works chapter, that you can't segment a public works project into separate projects to avoid the requirements of the bill. Going down, you see the dollar amount changing to 1 percent on page 2, and "women" was added after "minorities."

Also, you'll see on lines 25 through 34 that Assemblyman Hogan is proposing to take out the monetary penalties. However, he proposed as an alternative the withholding of payments of violation of the bill. I would point out, however, that it is "may withhold." It's not required they be withheld. Otherwise, the remainder of the changes are to the dollar amount.

On page 14, new Section 9 or whatever is best is inserted by the Legal Division, Assemblyman Hogan was also proposing that four years after the first project started, using the procedures in the bill, the Legislative Auditor would conduct an audit to assess the level of compliance with the act, including the effectiveness of the bill in improving the utilization of minority and female workers, and the degree of burden, if any, experienced by those implementing the bill.

As I mentioned, I did include the proposed amendments submitted by John Madole—and Ted Olivas' A.B. 210 comments as additional information—if you are inclined to incorporate any additional amendments.

Assemblyman McCleary:

On the withholding of payment, is that until they comply? I'm trying to figure this out. So, if you're not doing what you are supposed to, they can withhold the payment of the public work until when? Is that addressed in the bill?

Susan Scholley:

When the payments are then released, I would presume that it would be upon compliance. There's nothing specifically in the bill, though, that speaks to that.

Assemblyman McCleary:

I was asking on that, because it's kind of vague. If I could go to Section 9 on page 14—the new language in there about the Legislative Auditor—does the Committee think that there should be a point when this sunsets? Should we put a date in the distance and say, "We'll get these statistics and then, at a certain time, report to the Legislature?" Here are our findings; here's what we've done? I'm trying to figure out what are we going to use this information for. If we don't have a report at the end, it ends, and I guess that's what I'm fuzzy on. I'm not sure what we're doing here with all this information. The Legislative Auditor is going to make that determination, or is it going to come back to us?

Susan Scholley:

In response to that question about the sunset—and Eileen [O'Grady] would have to explain the whole parallel concept—Section 1, which is the operative section of the bill requiring the reports, is currently not sunsetted. That was raised at the hearing. Someone else suggested that during the hearing of the bill, so that's certainly something that the Committee could consider in moving this bill forward.

Assemblyman McCleary:

I would be more comfortable if we had a set date, that it had to terminate rather than be perpetually out there. Twenty years from now, it might be antiquated, but I will balance the consensus of the group though.

Chairman Parks:

Our staff is taking a second look. While they're discussing that, I just want to go over the added information or requested language that AGC had requested. It was to say, "Performing over 1 percent of the project amount." That would translate to \$250,000. So, if they, as a subcontractor, were performing more than \$250,000 worth of work, they would fall under that. I

just wanted to make sure that was satisfactory to Committee members. Did we have anything?

Assemblyman Goicoechea:

In most of the areas I represent, we wouldn't do a \$25 million project. Typically, there's just not many of them. So, I'm going to defer more to southern Nevada, but a question to the delegation from southern Nevada: Is it truly a problem? I didn't see the problem that required this legislation in this kind of reporting.

Assemblyman Munford:

I would say that there are some minority contractors that I do know who make a living and reside in my district. There have been certain complaints and concerns that have come to me—not directly, but from other sources. They've experienced a lack of opportunity, a lack of chance to be considered for certain types of bidding and these types of things. It has occurred. To what extent, I can't say, but I know it does occur. I don't know how serious it is, but it does occur.

When Mr. Hogan told me about this bill, I was really surprised about his past experience, and that he felt there was a need for a correction or some type of change. He told me about it right before the impeachment trial, and I just about fell out of my seat. I couldn't believe he was ready to introduce that, but then I said, "That's great!" I thought it was all right, because my district has a lot of minorities, and there are some contractors that always feel they haven't gotten a break.

Assemblyman Goicoechea:

I guess the way I look at it, I wonder what it's going to fix, other than the report. Typically in these contracts, even if you're doing a sub-\$20 million, you might hold up the contract for a little while, but generally a contractor, if they understand it's out there and being scrutinized, I just really question what the bill will do. Of course, it doesn't affect us; it's counties over 100,000. I don't have any.

Chairman Parks:

If there was a giant highway improvement project anywhere out in your district, it could conceivably go over that \$25 million, in which case, it could apply.

Assemblyman Goicoechea:

I believe in a county which is 100,000 or more. I don't have any of those.

Chairman Parks:

You're right. I'm sorry.

Assemblywoman Kirkpatrick:

I will be supporting this. I think Mr. Hogan has done a little bit of research, and he believes there may be a potential problem, but I do think we have the option of coming back next session to figure out where these people were going and what this accomplished.

Assemblywoman Pierce:

I think Mr. Hogan made a very good argument for that. This had worked very well in the Bay Area, and it put a lot of people in touch with jobs that they would not normally think of pursuing. The whole process of getting people together in a room really brought community groups in, and it disseminated information about some crafts into communities that normally didn't hear about these jobs or didn't know how to pursue them. I'm convinced that he made a good case that this was very successful.

Assemblyman Grady:

This doesn't affect us, but Section 9—the audit—bothers me somewhat, because I'm not sure, with the wording, who you're going to audit. Are you going to the counties? Are you going to the cities? Are you just going to audit the report that was sent in? I'm not sure what we're trying to accomplish there.

Chairman Parks:

This is fairly common language that we have put into a fair amount of legislation over the years. In other words, if we're going through all the effort of making someone comply with something, we want to make sure that it is having some degree of effect and that it is trying to achieve the goal that the bill was designed to achieve. They will be looking at the level of compliance and how well have the contractors complied with this provision.

I might indicate that this is information that these contractors all have. It's just the ability to submit it as part of their requested payment for the work that they've done. It is obviously an added item of paperwork that needs to be completed, but it's not something that they don't already have available.

Assemblyman Christensen:

I've never worked in construction. I've worked in a family of contractors, so some of this is outside of my experience. I've talked to a handful of contractors that I know. Most of them are southern Nevada contractors who are minorities. Basically, the comment that I got was they didn't feel that

there was an issue of being disadvantaged. The minority population in my district and Clark County is so significant that it seems like a big melting pot, so I didn't sense this overwhelming need to come and address a throbbing issue that's really affecting people's way of life.

[Assemblyman Christensen, continued.] I've qualified that this isn't really my area. I've gone to the last page of the section that we're looking at here in our work session document ([Exhibit Q](#)), and this is the testimony from Ted Olivas of Las Vegas. I'll read his testimony here: "I know of no study or data to suggest that there is a problem with the demographics and works employed by the general and subcontractors on our public works projects." From what I've heard, this bill was specifically designed to address these issues. With that said, there's always need for improvement, and I agree that there are always things we can do to improve.

My concern is, having run small companies—or for me, a larger company of 40 people—that there are so many hoops and so much red tape that we already have to jump through just to make a profit, that I feel part of my mission here in the Legislature is to give everything I can to support those businesses so they can just run their business, be compliant with government, but to make sure government isn't just out there doing things that are given away. It's already such a challenge. So, if they're collecting this data, I feel this is just adding more proof that now they just get together. They run the risk of—maybe somebody didn't get the paperwork—their \$25,000 being withheld, and this could potentially create a disruption of doing business that affects our way of life. I don't think we want to go there, and I really encourage everyone to take that to heart. I understand the testimony of Assemblyman Hogan, and I respect this position on this, but I just wanted to share my perspective. I will be voting no.

Assemblyman McCleary:

I support this bill, but I don't want business people to jump through hoops that we're not even going to review. I just want to make sure that if we go forward with this, we have some kind of review in two years to see what it is doing. Then, we can say, "You know what? It's what we want. Let's extend it."

Chairman Parks:

I'm going to hold this for our next work session. I'm going to ask if staff will look at possible rewording for that Section 9.

Assemblyman McCleary:

I apologize, Mr. Chairman. I like the bill. I just had that one concern with it.

Assemblyman Claborn:

This is public money, and I think every ethnic group ought to have a piece of the pie. I'll be supporting this bill.

Assemblyman Hardy:

I'm going to take a little different approach. As a business person who interviews persons to hire them, one of the things that I don't do is ask questions of race, ethnicity, gender, marriage, sex, and now I'm going to be held accountable in this bill to do that very thing. It just doesn't fit with me as a business person. I'm looking back at the 1988 to 1992 study that we published in 1994.

I'm looking at Ted Olivas' comment, and I have the same angst that, perhaps, Assemblyman Christensen has. Even if you put in the subcontractor or the other amendment of \$40 million, a subcontractor, with \$400,000 in a project, is going to have to make a report every month. I have a hard time writing my bills every month or talking on the phone to my kids every month. Now, that's what I'm going to be doing. That's the business perspective, and I'm not going to dwell much on Section 9, where it talks about the audit on line 29 of "improving." What are we improving? Where are we at? Where are we going? What is our goal? I don't understand our improvement in that section. I have major problems with the bill.

Chairman Parks:

We'll see if it's something we can't do some minor rewording and bring that back.

Assembly Bill 477: Revises provisions relating to authority of deputies appointed by certain public officers. (BDR 20-584)

Not heard.

Chairman Parks:

Is there anything further to come before the Committee? Not seeing any, we are adjourned [at 12:11 p.m.].

RESPECTFULLY SUBMITTED:

Paul Partida
Transcribing Attaché

APPROVED BY:

Assemblyman David Parks, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Government Affairs

Date: April 7, 2005

Time of Meeting: 7:36 a.m.

Bill	Exhibit	Witness / Agency	Description
N/A	A	*****	Agenda
<u>A.B. 253</u> and <u>A.B. 434</u>	B	Allen Biaggi / Nevada Department of Conservation and Natural Resources	Written Testimony in Opposition to <u>A.B. 253</u> and <u>A.B. 434</u>
<u>A.B. 253</u> and <u>A.B. 434</u>	C	Hugh Ricci / Division of Water Resources, Department of Conservation and Natural Resources	Written Testimony in Opposition to <u>A.B. 253</u> and <u>A.B. 434</u>
<u>A.B. 253</u> and <u>A.B. 434</u>	D	Lawrence Werner / Development Services Department	Map of the Carson City Water Basins
<u>A.B. 253</u> and <u>A.B. 434</u>	E	Lawrence Werner / Development Services Department	Written Testimony in Opposition to <u>A.B. 253</u> and <u>A.B. 434</u>
<u>A.B. 253</u>	F	Doug Busselman / Nevada Farm Bureau Federation	Letter in Opposition to <u>A.B. 253</u>
<u>A.B. 434</u>	G	Doug Busselman / Nevada Farm Bureau Federation	Letter in Opposition to <u>A.B. 434</u>
<u>A.B. 434</u>	H	Russell Fields / Nevada Mining Association	Written Testimony in Opposition to <u>A.B. 434</u>
<u>A.B. 253</u> and <u>A.B. 434</u>	I	Gracian Uhalde, Representing John Uhalde & Company	Letter in Opposition to <u>A.B. 253</u> and <u>A.B. 434</u>

<u>A.B. 334</u>	J	Assemblywoman Buckley and Jonathan Cervas / Intern to Assemblywoman Buckley	Pamphlet Giving Statistics and Changes the law would make to the <i>Nevada Revised Statutes</i>
<u>A.B. 334</u>	K	Jonathan Cervas / Intern to Assemblywoman Buckley	Minutes from the U.S. Subcommittee on Social Security from the House of Representatives Ways and Means Committee
<u>A.B. 344</u>	L	Bill Uffelman / Nevada Bankers Association	Excerpt From Minutes Posed by the United States Department of the Treasury's March 29, 2005 Meeting
<u>A.B. 334</u>	M	John Albrecht / WCSD	Written Testimony Citing some of the Issues with the Bill the School District Has
<u>A.B. 347</u>	N	Assemblyman Goicoechea	Information Package Including the Ballot Initiative from Last Election and Letters in Support of <u>A.B. 347</u>
<u>A.B. 347</u>	O	Steven Kost / Far West Equipment Dealers Association	Information Package and Map Containing Proposed Forms, Assembly and Senate Bill Reports, and Map with which States Tax Farm Equipment
<u>A.B. 430</u>	P	Richard Pozesky / Nevada Association of Medical Products Suppliers	Written Testimony in Support of <u>A.B. 430</u>
	Q	Susan Scholley / LCB	Work Session Document on <u>A.B. 170</u> , <u>A.B. 201</u> , and <u>A.B. 210</u>