MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON GOVERNMENT AFFAIRS

Seventy-Third Session
April 11, 2005

The Committee on Government Affairs was called to order at 7:49 a.m., on Monday, April 11, 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:

Assemblywoman Chris Giunchigliani, Assembly District No. 9, Clark County

STAFF MEMBERS PRESENT:

Eileen O'Grady, Committee Counsel

Susan Scholley, Committee Policy Analyst
Michael Shafer, Committee Attaché

OTHERS PRESENT:

Jon Sasser, Legislative Advocate, representing Washoe Legal Services, Nevada Legal Services, and the Washoe County Senior Law Project
Anna Marie Johnson, Director of Advocacy, Nevada Legal Services, Las Vegas, Nevada
Ernest Nielson, Legislative Advocate, representing the Washoe County Senior Law Project
David Olshan, Managing Attorney Nevada Fair Housing Center, Las Vegas, Nevada
David Morton, Executive Director, Reno Housing Authority, Reno, Nevada
Norma Wollen, Private Citizen, Reno, Nevada
Tricia Williams, Private Citizen, Sparks, Nevada
Judith Lopez, Private Citizen, Reno, Nevada
Scott Smith, Director, Southern Nevada Multi-Housing Association, Las Vegas, Nevada
Robert Mills, Deputy Director, Planning and Analysis Division, Nevada Administrative Office of the Courts, Supreme Court of Nevada
Joe Johnson, Legislative Advocate, representing Toiyabe Chapter of the Sierra Club
Derek Morris, Deputy Executive Director, Planning Department Regional Transportation Commission of Washoe County, Reno, Nevada
Irene Porter, Executive Director, Southern Nevada Home Builders Association, Las Vegas, Nevada
Christina Dugan, Director of Government Affairs, Las Vegas Chamber of Commerce, Las Vegas, Nevada
Michael Pennington, Public Policy Director, Reno-Sparks Chamber of Commerce, Reno, Nevada
David Ziegler, Director, Truckee Meadows Regional Planning Agency, Reno, Nevada
Kimberly J. McDonald, M.P.A., Special Projects Analyst and Lead Lobbyist, City Manager's Office, City of North Las Vegas, Nevada
David Fraser, Executive Director, Nevada League of Cities and Municipalities, Carson City, Nevada
Bruce Bommarito, Executive Director, Nevada Commission on Tourism
Nancy Dunn, Deputy Director, Nevada Commission on Tourism
John Slaughter, Management Services Director, Office of the County Manager, Washoe County, Nevada
Mary Walker, Legislative Advocate, representing Carson City and Douglas County, Nevada

Pete Anderson, State Forester, Nevada Division of Forestry, Department of Conservation and Natural Resources, State of Nevada
Jim Linardos, Fire Chief, North Lake Tahoe Fire Protection District, Incline Village, Nevada
Ted J. Olivas, Director of Government and Community Affairs, City of Las Vegas, Nevada
Fred Hillerby, Legislative Advocate, representing Sun Valley General Improvement District
Andrew List, Executive Director, Nevada Association of Counties
Dino DiCianno, Deputy Executive Director, Compliance Division, Department of Taxation, State of Nevada

Chairman Parks:
[Meeting called to order and roll called.] Today, we have five bills posted for hearing as well as a work session. Our first bill this morning is A.B. 355.

Assembly Bill 355: Provides right of judicial review for final decisions of housing authorities. (BDR 25-752)

Assemblywoman Chris Giunchigliani, Assembly District No. 9, Clark County:
For the record, I wanted to say that I am quite proud that I've introduced A.B. 355, which grants the ability to have a court review the decisions of public housing authorities (PHAs). The administrative decisions of most state agencies are reviewed by the courts under the Administrative Procedures Act, which is contained in NRS [*Nevada Revised Statutes*] 233B.130 through 233B.150. Other State agencies have separate judicial review statutes, as do some local government programs. In other states, the practice differs. In some, the PHAs are considered state agencies, and their decisions are reviewed under the state administrative procedures act. In other states, there are different court processes available. Some states have no court review.

PHAs were established in NRS 315. They operate a number of programs that provide affordable housing opportunities to low income, elderly, and disabled Nevadans. Most of the funding is federal. The most common programs are conventional public housing, where the projects are owned and operated by the public housing authority, and the Section 8 voucher program, where the public housing authority contracts with private landlords to provide the housing. In both programs, the tenants' rent is deeply subsidized using federal funds. These subsidies are often all that stands between the low-income family and homelessness.

[Assemblywoman Giunchigliani, continued.] For certain decisions, such as those terminating a Section 8 voucher, federal law requires a public housing authority tenant the opportunity to request a due process administrative hearing before a housing authority hearing officer to contest the decision. Unlike, for example, a decision to terminate food stamps made by the Welfare Division, there is no Nevada statute authorizing the recipient to ask for a state court to review the agency's decision. I was approached by legal services last summer regarding this situation. They have received a number of hearing decisions from public housing authorities that they believe to be unfair and unlawful. For example, after a hearing, a hearing officer talked to someone who was not even present at the hearing and based a decision on that conversation.

I was going to say that I was pleased to announce that the legal services and the five public housing authorities have negotiated a resolution to the problem. As of 9:00 last night, the deal fell apart. I believe that the housing authorities were going to put on the record that they would implement an agreement to train and use independent hearing officers, those not employed by the public housing authority. I think this is a very key fact, because even in the school district years ago, we got rid of hearing officers that worked for the district because there was no independence of judgment. I was equally saddened to hear that they have reneged on the deal, but we are still here today to present the amendments that we had agreed to as of Friday, which I think are quite reasonable. They do not negatively impact anybody. You may have gotten some emails from senior citizens that may have been concerned about having rowdy tenants. The amendment will take care of any of those concerns, regardless of what happened with the public housing authority. I ask that you review the amendments, give them due consideration, and give them some sort of legislative commission review or performance audit to make sure that they're fair. This is an issue of low income, disabled, and seniors at risk of being thrown out on the street if they don't have an impartial officer making sure that the decision made about whether they should lose their Section 8 voucher was appropriate.

Jon Sasser, Legislative Advocate, representing Washoe Legal Services, Nevada Legal Services, and the Washoe County Senior Law Project:

I just want to thank Assemblywoman Giunchigliani for bringing this bill forward. She's been a good friend to low-income people over many years, and we thank her again for championing the cause of those who can't represent themselves. As Assemblywoman Giunchigliani said, we had hoped to be here this morning all coming to the table; however, that did not happen. As was mentioned, we became concerned over the last couple of years about the quality of the hearing decisions made by some of the public housing authority's hearing officers. We've been in discussions with the housing authority for a couple of months

now about that situation, and what we have arrived at was an approach that would take two steps: One would be to reform the way that hearing decisions are done at the housing authority level, and in addition, to have some limited court review of at least the most important decision which is the decision to take away someone's Section 8 voucher. The housing authority, since we have not dropped the bill this morning, has not made a commitment to go forward to reform that hearing process, and it would not support any form of judicial review.

[Jon Sasser, continued.] We had a couple of choices in drafting A.B. 355. Were we going to make a bill allowing user-friendly access to court without having to have a lawyer, or were we going to have a bill that required the assistance of a lawyer if someone wanted to appeal a decision? The way we originally drafted the bill made it easier for a person without a lawyer to get into court. Normally, when one wants to appeal an administrative agency decision, there is an initial decision by a court in order to stop or stay what the administrative agency did while the case is going forward. Because a bond is generally required, we have put in a provision for $1 bond since there was no real risk of loss of rent. The housing authority would continue to make its share of the payment to a private landlord, or continue to receive its share from the federal government if it were a housing authority property. The tenant would continue to be obligated for their share of the rent, and if they could not pay it, our bill draft gave the housing authority the ability to go through some tenants and evict them for nonpayment of rent.

There has been some concern that that would make it too easy for people without lawyers to go to court and get a stay, and there has been an unfortunate degree of alarm that's run through some of the tenants' organizations, that it would be too difficult to get rid of bad tenants because all they do is pay a dollar, and they can stay as long as they want. That was not the original intent of the bill. There would have to be a motion filed, and the amendment that I've offered this morning (Exhibit B) makes that absolutely clear. What we would do is change Section 8 to delete that dollar bond provision, delete the way we originally drafted the section that deals with stays of the housing authority's decision, and basically replace that with language that's identical to the language in the State Administrative Procedures Act. If somebody appeals a decision of a State agency, this is the process they must go through:

- They must file a motion with the court.
- They must convince the court that the same standards that govern preliminary injunctions would apply, such as the merits of the case and

the fact that it would create irreparable harm to the person if the decision cannot be stayed.

- In addition, the court could consider public safety matters. If there is a pyromaniac living next door, the housing authority can bring that to the attention of the court, and the court would take steps to make sure that that tenant did not remain.

- Finally, the court would set the amount of the bond. You could still argue those cases for a dollar, but it would be up to the court. If the larger bond would be appropriate, then the court could order it.

[Jon Sasser, continued.] I think the amendment takes care of most of the concerns you may have heard already—and that you may hear later this morning—from those that are alarmed that it would be too difficult to remove tenants.

I just want to correct Assemblywoman Giunchigliani, but this is not the amendment that we had agreed to last Friday. We agreed to a much more watered-down version of the bill that would narrow it more. That was in exchange for the promise to go forward with the reform of the hearing process today. Because of the tightened state provision, I think you don't have to worry about another argument made here that this is going to open the courts to being flooded with these kinds of cases. If you look at the other State agencies that have judicial review statutes, the use of those statutes has been minimal. I believe the Welfare Division has had three judicial review petitions brought against it when they denied food stamps and Medicaid eligibility over the last three years. Medicaid Services has only had five. The only other real area of activity has been the Employment Security Division, which has had some 120 cases over the last five years. In those cases, employers who have money to hire lawyers can also appeal, in addition to claimants. In other state statutes with the same stay provisions that require the use of lawyers, there has not been a flood of litigation, and there's no reason to anticipate it here.

The housing authority may tell you that because of this, they will lose all their liability insurance. That was based on a mischaracterization of the original stay provision of the bill and is taken care of by the amendment I'm offering today. Without an ironclad promise to reform the process, in exchange for dropping the bill, we believe it's important to keep the bill pretty much whole with one exception. In every single case when a hearing examiner is conducting a hearing, we want them to know there's a slight possibility that a court may one day look at what they're doing. With that hanging over their heads, we believe that the decisions, as it has in the other state agencies that have this process,

will be better and fairer for both tenants and housing authorities. We ask your support of A.B. 355 as amended this morning.

Chairman Parks:
For clarification, is this the amendment that you're proposing (Exhibit B)?

Jon Sasser:
Yes. It has one typo; I apologize. In subsection 3(b), it should read "staying the housing authority's decision."

Assemblywoman Parnell:
Does this just affect individuals with Section 8 housing, or is this broader than that?

Jon Sasser:
It is broader than that. It affects the final decision of the housing authority. In rural Nevada, it's pretty much the only issue that would be involved in Section 8 housing, because there is no conventional public housing, and it's owned and operated by the Nevada Rural Housing Authority.

Assemblyman Grady:
Mr. Sasser, would you state that one more time? You said there is no housing in rural Nevada that is owned by the Nevada Rural Housing Authority?

Jon Sasser:
No, I did not say that. I said that there was a protocol of conventional public housing program that is operated by HUD [United States Department of Housing and Urban Development]. It was the original public housing-type program that has what you might call "projects." We have some of those in Washoe County and Clark County, but there are none in rural Nevada. There are some projects owned by the Rural Housing Authority that they've put together with other types of financing—other types of funding—but the same rules regarding the requirement of hearing decisions and grievance procedures, et cetera, that apply in conventional public housing do not apply in those types of housing programs.

Assemblyman Grady:
I'm not sure I agree with that, because I know that Nevada Rural Housing owns a number of units, and they also manage units in rural Nevada. They do go through the same process if they own or manage that they would for any project.

Jon Sasser:
Again, I agree with you that they do own and manage a number of projects. They're not funded or operated under the conventional public housing protocol, which is the one that I'm talking about in Las Vegas or Washoe County. The bill, as drafted at the moment, would affect evictions from those properties. That is correct. Where we were last Friday, that would have been out when we had the compromise.

Chairman Parks:
I need an overview, if I might. That is, we're seeing some changes happening in Congress, and there are some proposals in Congress that would make it harder for poor people to receive rental subsidies from Section 8. Do you have any comment? Does that impact A.B. 355?

Jon Sasser:
You're certainly correct, Mr. Chair, that the budget resolution as put in front of Congress at the moment does cut funding for HUD housing programs of all sorts, including Section 8. So, I guess you could take that one of two ways: on the one hand, it makes having a subsidy an even more precious commodity, in which I would argue that we should not take away without due process. On the other hand, it does mean the housing authorities may have less money in the future than they have today from that federal source. So, it cuts both ways.

Assemblywoman Pierce:
I just want to be sure I understand this. If you lose your Section 8 housing, the same agency that makes that decision is also the entity you ask to reconsider that decision?

Jon Sasser:
Yes. Let me see if I can clarify that. A Section 8 housing voucher is like a piece of paper that you can use in the private housing market to get housing. Your rent is subsidized through federal funds that flow through the housing authority. If you have a problem with your landlord—for instance, you've breached the lease with your landlord—your landlord can evict you. The housing authority has nothing to do with that decision. If the housing authority, on the other hand, tries to revoke or take away your voucher for violation of their rules, then you do get a hearing in front of the housing authority. Under their present system, with the exception of the Rural Housing Authority, that decision would be made by an employee of the housing authority. If you lose that decision, you can ask that the deputy director reconsider it. He is also the head of that same agency, but there's no outside independent review by the court.

Assemblywoman Pierce:
You listed some other state agencies that do have that judicial review, including welfare, medicaid, and unemployment. Are there others?

Jon Sasser:
Yes. The Welfare Division operates a number of programs, such as food stamps and TANF [Temporary Assistance to Needy Families]. They also do the eligibility process for Medicaid and low—income energy assistance. They have a standalone judicial review statute in Section 422. The ESD [Employment Security Division] administers the unemployment compensation program. Local governments operate county social services agencies that give general assistance and low—income medical assistance to the indigent. They have a standalone judicial review process in NRS 428. All other state agencies are lumped together in the State Administrative Procedures Act, in NRS 233B.

Anna Marie Johnson, Director of Advocacy, Nevada Legal Services, Las Vegas, Nevada:
[Distributed Exhibit C.] If you're not familiar with us, we're a non-profit organization that provides free legal services to low—income individuals. Every year for the past five years, public housing cases have made up well over 40 percent of our case load. It's a very serious and important part of the work that we do, because we represent those who could not possibly enter the general rental market. If they lose their conventional public housing or their Section 8 voucher, their next stop is a shelter or the streets. They have nowhere else to go. Over the years, Nevada Legal Services has become frustrated by the inability to assist clients who lose their housing because of decisions made by the public housing authorities' hearing officers.

The problems that we've seen fall generally into two categories: The first category is the level of professionalism of the hearing officers. Most hearing officers are not trained in the law, and they don't understand their role as administrative hearing officers. They may understand the HUD regulations, but they do not understand due process. We have numerous examples of hearing officers having staff at the housing authority write all or parts of their final hearing decisions. The hearing officers at times have been brazen enough to say to one of our advocates attending the hearing that the case worker will be responsible for writing a section of the hearing decision dealing with the very issue from which the case worker had issued the notice of violation. There is no semblance of impartiality in a situation like this. When a hearing officer and the housing authority staff work hand-in-hand in reaching a decision after the hearing, the tenant has received no benefit from a process that HUD truly meant to be an impartial hearing process.

[Anna Marie Johnson, continued.] The related issue is one of perception of bias, when the hearing officer is actually an employee of the housing authority. Assemblywoman Giunchigliani mentioned a case we attended recently with the North Las Vegas Housing Authority. We represented a tenant whose Section 8 voucher was being terminated. The hearing officer called the hearing into order, took witnesses from both the housing authority and from our client, reviewed the documents that were presented at the hearing by the housing authority and by my advocate, and then closed the hearing. Under any other administrative hearing process, that would have been the end of the matter, and the hearing officer would have had to issue a written decision. In this case, the hearing officer went and talked to somebody who was not part of the hearing—someone who was not even mentioned in the housing authority's record—and made her decision based on that outside conversation. There was no ability to cross-examine that person or to judge the veracity of the information that the hearing officer received.

Finally, there are hearing officers that are simply incompetent. There have been hearings our advocates have participated in where our housing authority case worker actually ran the hearing because the hearing officer didn't know what to do. It is simply unconscionable that a poor person could be forced out into the streets due to the incompetence of a hearing officer. We believe that for these reasons, judicial review of hearing officer decisions is needed. As much as some people may disagree with individual justices of the peace and their decisions, they at least have been trained in how to be an impartial trier of fact.

The second general category that raises our concern is the arbitrary and capricious manner in which hearing officers frequently make decisions. HUD regulations do contain some absolute instances in which tenants must be evicted from conventional housing and/or lose their Section 8 voucher. These absolutes deal with people who are perpetrators of sexual abuse or who are charged with the distribution, manufacture, and selling of controlled substances. I have a copy of my written comments (Exhibit D) to provide for the record. In my written comments I have attached a copy of 24 CFR [Code of Federal Regulations] Section 982.553. This is a copy of all the instances where housing must be terminated, all the permissible areas, and the areas where the housing authority does have some discretion. What Nevada Legal Services has experienced is discretion applied in a capricious manner. Tenants cannot rely on an even-handed application of justice. There was one example we had in Clark County where a gentleman was participating in a contest that was sponsored by the housing authority. He was living in conventional housing in Clark County, and the local office in that complex of the housing authority was sponsoring a Christmas decoration contest. They were going around and encouraging the

tenants to participate in the contest. There were going to be prizes, and there was a lot of excitement that was built up around this. Our client really wanted to participate, so we went out, got some Christmas decorations, and put them up, including lights, around the front entry of his apartment. Unfortunately, his apartment didn't have an outdoor electrical socket, but the unit right next door to him did. So, he took an extension cord and plugged in his Christmas decorations into that unit next door, just three or four feet. Unfortunately, that unit right next door was the housing authority's office in that complex. He was charged with a violation of his lease agreement by theft of services and was evicted for trying to participate in a contest that was sponsored by the housing authority. This was a totally capricious and arbitrary enforcement of the rules. In some instances, where infractions are minor, there's discretion to ignore them or deal with them in another manner.

[Anna Marie Johnson, continued.] We had a client in Reno who was the victim of assault. She was a cotenant in an apartment, and her cotenant physically assaulted her. She did everything she was supposed to do. She called the police, the incident was reported, she pressed charges, the cotenant was arrested, but the housing authority decided to evict both tenants. We asked for a hearing, and the hearing officer upheld the decision to evict the innocent victim. The hearing officer based his decision on his belief that the innocent victim may have asked for the assault, even though no evidence was presented in a hearing that that was the case.

As part of my written comments (Exhibit D), I included a list of states around the nation that include judicial review of public housing authority decisions. Sixteen states have judicial review of their housing authority decisions, four of them under their administrative procedures act, and the other twelve under different processes. There were only four states that have no judicial review of their hearing officer's decisions. As part of my written comments, I also included a copy of the state of Minnesota's judicial review act. It is almost completely identical to what we have been introducing here today. So, judicial review of decisions is normal across the country. It's routine for housing authorities across the country. What we are seeking here is not something that is off the roadmap. You would not be breaking new ground.

Assemblyman Grady:
You made some pretty harsh comments that hearing officers are incompetent. Have you heard cases in Clark County, Washoe County, and the rurals, and do you find that they are generally all incompetent?

Anna Marie Johnson:
No, sir. They are not all incompetent. There are some good ones. The Rural Nevada Housing Authority has recently moved to a different type of hearing officer process. We were modeling our agreement last Friday on what the Rural Housing Authority does. The quality of their hearing officers has increased immensely since they moved to that process. There have been some bad hearing officers in Washoe. I know the contract with one of them was recently ended because the individual was so bad. The same is true in Clark County. There have been some hearing officers who have lost their jobs, but there are others who aren't who are members of the housing authority. I understand that they're union members, so the process of eliminating bad hearing officers is not as easy.

Assemblyman Grady:
Thank you for clearing that up. I have been very involved with Nevada Rural Housing, and I think they have gone out of their way to train their hearing officers. I appreciate you clearing that up.

Assemblyman Hardy:
I have never quite understood domestic violence problems where the police come in and arrest both people and put them into jail. Is that kind of what the hearing officer's approach was? Where there is domestic violence, we sometimes tend to put both parties in a position of safety or a position of being away from each other. What do you experience there? It sounds like it's the same kind of thing a hearing officer is faced with.

Anna Marie Johnson:
I'll admit that in some situations, the police do arrest both sides. They don't want to decide who was the perpetrator and who was the victim when the parties have been fighting with each other. In most of the instances we've seen where we're dealing with housing authority decisions, the perpetrator only was arrested by the police, not both parties. The housing authorities are evicting the victim of abuse because there has been a disturbance in the apartment complex; police have been called and a crime has taken place. The perpetrator's being taken care of through the criminal portion, but yet they are still evicting the victim, because the crime took place in their apartment. Our concern is that the victim was a victim of a crime. The victim did what they were supposed to do. It was reported, the police were called, and the criminal process is taking care of the perpetrator. Yet, this person faces losing their home because they did what they were supposed to do. Evicting the victim of a crime discourages them from getting help, from getting temporary protection orders, and seeking assistance they may need. Sometimes you do have the situation, I admit, where you have both people evicted. The housing authority hearing officer has the

same information the police do and has to make a choice. We'll agree with them sometimes.

Ernest Nielson, Legislative Advocate, representing the Washoe County Senior Law Project:
As you know, the Project represents low income seniors in a variety of matters. One area of law we concentrate on is housing, so we've had quite a bit of experience with the housing authority, representing our clients before an administrative hearing officer. Our experience has been frustrating, mostly because the hearing officers in the past have generally not been very good about applying fact to law. Nor have they been very good about weighing the facts presented.

I laid out an example of a case in my testimony (Exhibit E), in which a woman was being terminated because she had failed to give notice to the housing authority that she was going to be gone more than 30 days from the unit, and because she was alleged to have somebody come in and sublet her apartment. The woman was on the verge of a nervous breakdown. She had tried to contact the housing authority for weeks to resolve the situation at her apartment complex. She was a Section 8 tenant. Finally, one evening, she was on the verge of a breakdown and called her son, who took her from that apartment to his home. A couple of days later, he was able to make contact with the housing authority to let them know what had been going on, and yet the hearing officer said that the violation of the 30-day rule was sustained, and he would support an eviction despite testimony that suggested that people in her apartment were looking after the woman's cat. The hearing officer said that was sufficient to sustain an eviction based on people having to come in and sublet.

We've had much success with the Executive Director of the Reno Housing Authority. In that case, plus many others, we've gone to the Executive Director and appealed to him, saying that this isn't right. For the most part, we've been very successful at getting these kinds of factual determinations overturned by the Executive Director. As you certainly know, these kinds of situations are very critical to seniors. The subsidy helps seniors lead a life without struggle and with some dignity, rather than possibly living on the edge. If they lose the Section 8 hearing, as would have happened in the case I outlined for you, there's no appeal to a court. They are then left to their own devices. They are basically left on the street. We certainly supported the agreement that we thought we had last Friday. Unfortunately, that didn't go through. We certainly think that the need for judicial review is paramount, and we request that you allow the policy of judicial review on these administrative hearings.

David Olshan, Managing Attorney Nevada Fair Housing Center, Las Vegas, Nevada:
[Summarized from Exhibit F.] Prior to working for the Nevada Fair Housing Center, I worked for Nevada Legal Services. I litigated hundreds of cases against the housing authorities. Near the end of my 11-year career at Nevada Legal Services, I was exposed to a new argument I had never seen before. The argument by the housing authorities was that they were state agencies, and they were subject to a petition for judicial review under NRS 233B. The problem with that argument is that there's no Nevada law to support that. The housing authorities actually articulate them. The North Las Vegas Housing Authority, Las Vegas Housing Authority, and Clark County Housing Authority were arguing that they were subject to a petition for judicial review. We argued against that. That argument has never been successful in court, and thus, we were stuck in a no man's land. There wasn't a procedure that the housing authority was looking for. That's why I'm here to support A.B. 355. Assembly Bill 355 provides for a petition for judicial review, something the housing authorities have been arguing for. Quite honestly, it's good for tenants too, in that tenants have a reasonable procedure to follow should they be terminated from the Section 8 program or evicted from public housing.

I have experienced many of the problems that have been articulated by the advocates here. Again, I'd just like to voice my support for A.B. 355 and urge this Committee to pass it.

David Morton, Executive Director, Reno Housing Authority, Reno, Nevada:
[Distributed Exhibit G, Exhibit H, Exhibit I, Exhibit J, and Exhibit K.]
I've held my position for about 17 years, and I've been in this business about 30 years. I do have some knowledge of the system and the way it should work. There are four other housing authorities, as you've been told, that actually access traditional public housing agencies throughout the state. We do have Native American housing authorities, but they're governed by different rules. We were shocked at the legislation that was drafted. We applaud the change that's being proposed, but there's so much more that needs to be changed if this bill were to be considered in any serious manner. Even the sponsor had acknowledged—or at least the folks who drafted it—that there were some things that they had not intended and that have not been corrected.

I would first like to make the point that this is a federal program; it's not a state program. We operate under guidelines set forth by the U.S. Department of Housing and Urban Development (HUD). We don't have a choice; we have to follow those rules. They set forth very carefully the procedures involved in handling admissions, rent increases, and terminations. They're similar but different for the different programs, each of which we have to follow in the

manner that they're set forth. Assembly Bill 355 doesn't just deal with the traditional housing programs. It includes virtually every program we operate that deals with someone who receives any subsidy at all. That would include the home program and tax credits.

[David Morton, continued.] In public housing, there is judicial review right now. It goes to the JP [justice of the peace] court. We can't do any termination in public housing, rent collection, or any of those issues; that doesn't go to the justice court right now. That is a review process. In the Section 8 program, most appeals that are argued in that context before hearing offices either go to the executive director, or they go to HUD. We frequently have people go to HUD because it is a HUD program. Once a month, we get a call from someone in the HUD office regarding an issue that they want to discuss and review so that it's properly done. That process, that avenue, is there and is a practical matter that functions very well.

Grievance procedures follow the specific rules that are set forth in the CFR. With the rules we operate under at this point, we had 227 hearings of some sort last year. If all those hearings are now subject to a district court review process, that's a major issue by itself. But that's just the beginning. Most of the process we have now does not go to grievance hearing as it would under this rule. This would triple or quadruple the number of hearings, as A.B. 355 is presently worded. It even deals with rent increases. The way this is worded right now, if somebody has a rent increase, they can appeal that to district court. It's crazy. There's just no logic in that. The bill's sponsors acknowledged it shouldn't be there, but in their version today, they didn't even make that change.

We think it's a well-intentioned bill. I realize that the sponsors are trying to come up with something they think will address things that should not have happened, but it's misguided. All five housing authorities agreed that we would go to outside hearing officers if they would drop the bill. We had a formal statement to that effect. We laid this all out. We were willing to try it for two years. Let us go out and go to truly independent hearing officers that you helped train. We were offering to have legal services assist us in training to make sure these people had the proper training. If rural Nevada is the model that they're happy with, fine; let's do that for everybody. But they weren't willing to do that unless we also went to judicial review for all the Section 8 cases. That's how close we came to working out an agreement.

In my case, when they pointed this out to me, I changed hearing officers. I came up with someone whose veracity, intelligence, and ability to make a good decision could not be questioned. I think all of us want to do that. We try to

deal with any situation that comes before us that someone thinks has been improperly handled. We don't want that at all. The last thing we want to do is evict somebody. Every time we terminate a person from our program, we have to process a new person. It's a time-consuming process, and, if it's in public housing, we have major costs involved because we have to make repairs. We don't readily terminate anybody. That is the last thing we want to do. In fact, my residents think we're far too easy now. They think it takes us way too long to terminate people who are causing all sorts of problems for them and their neighbors.

[David Morton, continued.] Before I can terminate somebody at present, I have to go through a very lengthy process of building a case. Our staff has to be able to show—both to the justice court and the hearing officer—that, in fact, this person should be terminated for cause. This is other than termination for nonpayment of rent. Then, we have hearings. We had at least two hearings in our present situation. We have a hearing before the department director that made the decision, or someone for them, so that there's one hearing before it goes to the separate hearing officer. So, in our case, and I think this is true across the state, we actually have two hearings for anyone before we would proceed to terminate them. We don't terminate if we can possibly avoid it, because of the cost and because of all the time and effort. We don't want someone to lose their housing. If we can fix the problem, we'll try to.

We work with social services. We work with all the agencies to try to deal with problems. One of our biggest problems is in our senior complexes, because you have people who are physically and mentally challenged. They don't always function like ordinary folks. In many cases, they can create frustrations for their neighbors, yet we have to respect their rights and their interests. It can be a very laborious process. If this bill goes into effect, as amended, it would take care of the pyromaniac and it will take care of the axe murderer. It will take care of the real extremes, but it won't take care of people who are harassing people. It's hard to prove so many of those things. That's the problem we have right now. If we add this judicial review to all of those, the difficulties will increase dramatically.

In Section 8, our problem is that we don't have people monitoring what takes place. We basically give someone a voucher, inspect the unit, sign an agreement, and we don't see them for another year. Now, they can move somebody into their apartment, which frequently happens. The two most common reasons we would terminate a Section 8 tenant are unreported income or unauthorized people. They can have boyfriends; they can have other families living with them. The only way we're able to prove that this person has violated their agreement is information we get from the manager or from tenants living

around there. If someone has allowed someone to move into their unit and live there, and if he's not on the lease, that is unauthorized. If he beats the tenant up and the tenant has allowed him to be there most of the year, we may well terminate that person because of that. It's extremely difficult to prove those kinds of cases and we don't do those readily. HUD does clearly give us the right to do it, and that was a major change in federal law a few years ago. It used to be that it was very, very difficult to terminate anyone. Congress actually passed legislation relaxing the threshold so that we could terminate someone if the preponderance of evidence was such that we could prove the case. We don't have to have an absolute to be able to do it in public housing or in Section 8, particularly.

[David Morton, continued.] The district court would add months to the process of dealing with these. Section 8 payments on someone's behalf can be several hundred dollars, or a thousand dollars or more. Those payments would continue on during this period. If we find out later that they're not eligible, we won't collect this money back. The people will walk. They will be gone. Legal services did take us to court over one tenant a few years ago. This woman's husband works in rural Nevada, but he's with her every weekend. Welfare investigated and we had to come forth with a case to terminate her. We felt we had a solid case. It was appealed to the federal court on a technicality, and we lost. This person has received over $130,000 in assistance from the Reno Housing Authority over the last twelve years, and she's had a husband who has been making money throughout this period. It is extremely difficult for us to build these cases to begin with. To now add this kind of complexity and difficulty is just incredible.

The bill's sponsors say this language is standard throughout the country. It's not. This bill goes way beyond what any administrative procedure act or legislation that we're aware of demands. We sent a letter to virtually all of the national housing organizations, and you should have received letters back from them. Now, this isn't from David Morton or the housing authorities in Las Vegas. These are national housing organizations that are telling you that this bill is extreme. But right now, with the amendment that they've made, A.B. 355 is still an extreme version. We're basically advertising to tenants to come sue us, and we'll give you the name, address, and phone number for every agency that can help you do it. That is not standard around the country. If you look, you have letters from the National Association of Housing and Redevelopment Officials [Exhibit H and Exhibit I]. You have letters from the Public Housing Authority Director's Association, the National Development Law Institute, and the National Leased Housing Association [Exhibit K], and all of those folks are saying that this is not standard practice around the country.

[David Morton, continued.] This is a misguided, although well-intentioned, bill. This is not what we should be applying to our housing authorities. Our position is that you should let us try the position that we've advocated, which is to go to outside hearing officers. Let us do that. If that's their issue, let's come up with trained and absolutely independent hearing officers. But don't impose judicial review on us because of a few cases we haven't been able to respond to individually. We haven't had a chance to address those, and we certainly don't want to create problems.

We are facing major spending cuts. This isn't 2 percent, 5 percent, or 10 percent. In the latest version from HUD, which has just been posted, the Las Vegas Housing Authority stands to lose 37.8 percent of its public housing and allowable expense allotment. We're facing a 27.4 percent reduction. To toss us into this type of situation, we're going to have horrendous legal costs in every district court case that goes forward—the costs of transcriptions, the costs of fees, the attorney fees—which is not a minor issue for us. Maybe there will only be one or two court cases. I'd like to think that, but I promise you, if I tell every applicant that I've turned down for housing assistance that all you have to do to get this appealed is to call this number, call this person, and file a claim; I guarantee you that there will be many, many people who will take advantage of that.

In closing, I would like to read a section from one of the letters that I'm not sure you have. (Exhibit G, Exhibit H, Exhibit I, Exhibit J, and Exhibit K) I know it was sent to the Chairman, but I'm not sure it was sent to all of the folks. This was written by an attorney for the National Association of Housing and Redevelopment Officials [NAHRO].
[Read from Exhibit H.]

> Enactment of this bill will transmute virtually all of the thousands of daily administrative decisions affecting applicants and tenants made by housing authority officials into appellate cases, ultimately appealable to the Nevada Supreme Court. The diversion of PHA [public housing agency] staff productivity, and the direct monetary cost of the legal fees, transcripts, et cetera that would be occasioned by the passing of this bill are staggering to contemplate. This would occur, moreover, at a time when federal financial support is stretched so thinly that housing authorities in Nevada and elsewhere are struggling merely to keep their heads above water. The proponents of A. B. 355 are probably well-intentioned, but they are misguided. The scarce resources available to provide housing assistance to low-income families should not be squandered on an extraordinary system of judicial review that is

> superfluous to the ample process already afforded to beneficiaries of the housing assistance programs. While we would not presume to speak for the Nevada courts, the judiciary burdens, monetary and otherwise, that would fall from passage of this legislation are also staggering. We can't imagine that this transforming of the district courts and the Nevada Supreme Court into special housing assistance courts in this way is a prospect that would be welcome.
>
> [David Morton, continued.] Leaving costs and personnel burdens aside, the enactment of A. B. 355 would create a procedural gridlock that would unacceptably impede the reasonable administration of the housing assistance programs operated by PHAs. Tenant evictions for nonpayment of rent, termination of assistance for various reasons, including tenant or applicant fraud, and other actions vis-a-vis tenants and applicants would each be subject to a lengthy appellate procedure. From the standpoint of a public official charged with actual responsibility for the efficient and orderly administration of the low income housing programs, A.B. 355 is a spectacularly harmful and destructive idea. [Signed] Saul Ramirez, Executive Director of NAHRO.

Assemblyman Hardy:
I have a letter from Anna Marie Johnson, dated April 11, 2005, quoting from the New Mexico and Minnesota statutes. We've heard that there are four states that have judicial review, but in reviewing the review, it looks like it was from 20 states. Minnesota and New Mexico have the thing closest to what we would like to see in A.B. 355. I can't discern how New Mexico and Minnesota got away with some judicial review, and we can't get away with any judicial review.

David Morton:
Let me just distinguish between judicial review and this particular bill. If we were strictly following the Administrative Procedures Act (APA), it would be far less onerous. The bill, as drafted, is significantly different from a strict following of the APA. A state administrative procedures act is where state agencies can appeal decisions.

Jon Sasser told me that he had drafted this legislation, and that Ms. Giunchigliani would introduce the bill. So, the actual bill was drafted by legal services staff. It does differ from the strict administrative procedures act, as he would acknowledge.

Assemblyman Hardy:
So, the APA standards are in the judicial review that is acceptable to the national organizations in New Mexico and Minnesota, but our proposed standards are not?

David Morton:
First of all, most states don't have an administrative procedures act review procedure for housing authorities. That's just not true. This bill goes so much further than what a normal, administrative procedure review would do. It also goes into far more decisions. This bill deals with every applicant decision. If I turn down an admissions applicant, they could appeal that to district court. Maybe they won't, but for those who do, even if it's frivolous and it goes nowhere, the way A.B. 355 is worded, all the cost and time is on us in this process. The delays and the time involved are not standard around the country, I promise you. Home programs are not reviewed by anyone, to my knowledge. They have broadened this dramatically over what would be true in any other state or any significant number of other states. The majority of states do not have such a review. Our insurance provider is threatening to cancel insurance for the Nevada housing authorities because of the bill as it's worded now. If the bill were modified, that would be different; but even with the modification made so far, it doesn't go nearly far enough.

Assemblyman Hardy:
If we get near Minnesota's or New Mexico's legislation, would that be a good thing or a bad thing, or do we need to do that? What can we do that would be good? Do we adopt New Mexico?

David Morton:
I haven't looked at New Mexico, so I'm reluctant to deal with a specific state I haven't looked at. I'd be delighted to do some investigation and we could present a total picture if that were the request of the Committee. Our preference would be to go to the outside hearing officers. Let us try that approach and then two years from now, if they want to come back, we'll have a whole different thing. If you choose to go forward, you certainly should remove those obvious add-ons that are in the present bill, as far as the program and the extent of the coverage. To include rent increases is crazy. That's what we do every day.

Assemblyman Hardy:
The "crazy list of add-ons," I don't have that list. I'm not going to ask you to testify to it. It would be helpful for me to have that list.

David Morton:
I can certainly put that together.

Assemblywoman Pierce:
Mr. Morton, there was some type of agreement on Friday. Where you in that discussion?

David Morton:
Yes.

Assemblywoman Pierce:
Were you confused about there being an agreement or were the legal services folks? I don't understand why you're here this morning talking about this bill when it's my understanding you agreed to a considerably amended bill. You agreed to something on Friday. Who is confused besides me?

David Morton:
The problem you need to understand is that I'm only one of five housing authorities. I was hoping and trying to negotiate an agreement. I've acted in good faith throughout this process trying to do that. I still believe if I could get all the housing authorities to agree to an outside, independent hearing officer, that would address all the issues: the impartiality and the training. If we have these people trained and include legal services in the training—so there's no question that they know what to do and they know what flexibility they have—we can, in fact, address all of the cases that they raise.

I have copies so it might help if I passed those around. This is the agreement from our end (Exhibit G). We had made a proposal, hoping we could reach an agreement. Legal services is trying to get everything from their end too, in all fairness, and I think they were acting in good faith also. I don't want to imply that they weren't. They agreed to strip down their bill to the one program where you don't automatically have a judicial review. In other words, public housing already has judicial review. That's what the justice courts are. Section 8 does not have that automatic review. Their approach was that if we would agree to that, as well as our outside hearing officers, then we had a deal. That was a tough thing for my colleagues to bite off and accept. They had real trouble with the whole judicial review process.

On Friday afternoon, we grudgingly got the EDs [executive directors] to agree to the combined deal. In other words, when we were negotiating, we thought this was going to be an either/or situation, that we were going to get a bill we would live with or we would go with the outside hearing officers. What they choose to insist on is that we do both. My colleagues over the weekend said

that they could not agree to that. In other words, they were willing to go with what we had proposed, and they might have been willing to go with the other, but they weren't willing to have to do both. That's where it fell apart.

Assemblywoman Pierce:
Had you been asked to negotiate for all of these authorities, or were you just negotiating for your own?

David Morton:
It was strictly me trying to broker an agreement.

Assemblywoman Pierce:
When you walked out of the room on Friday, was it the legal services people's understanding that you had made an agreement, or your agency?

David Morton:
For my agency, yes, I did agree that I would support that, but that is not true of my colleagues.

Assemblywoman Pierce:
And you agreed to an amended bill—not that the bill would go away?

David Morton:
I personally said that I would be willing to do that, but I can't speak for all the housing authorities.

Assemblywoman Pierce:
The fact is, you made an agreement on Friday, yet somehow the agreement you made went away. That's troublesome for me, because we have a deadline here.

David Morton:
We did not have an agreement with all of the parties. That was the problem. We were trying to go forward without a full agreement, and that's where things fell apart. It's awkward when you don't have all the parties. There was no formal agreement. This was strictly a discussion on the phone while we were trying to reach an agreement. We had only two attorneys representing the folks. We really didn't have all of the players there. I don't think that anybody wasn't acting in good faith. It was just that they were feeling pressed to come up with something. Talking with their boards and staffs, they apparently were not willing to go forward. I can't fault them for that. We are still negotiating. We were trying to resolve something, and I think everyone acted in good faith.

Norma Wollen, Private Citizen, Reno, Nevada:
With me are other residents of the Silverado Manor public housing complex in Reno. All of our elderly, and several other persons, are strongly opposed to this bill. As vice-president of the resident council, I have been asked to deliver this message to you and to urge you to oppose this bill.

We understand that A.B. 355 was drafted and introduced at the request of the Nevada Legal Services. Their obvious intent is to give their clients who live in their housing an opportunity to easily appeal any decisions of the housing authority to district court. This will enable them to stay in our housing during the long months of their appeal. This will be extremely costly to the housing authority, but more importantly to us, because it puts all of the law-abiding residents in a very bad situation, by forcing us to continue to live next door to or near persons who should clearly be evicted from our housing complexes, and who may be disrupting our lives by their actions. You will be punishing all of the good residents of our complex and other Reno Housing Authority programs if you allow this misguided bill to pass. Please don't let it pass.

Tricia Williams, Private Citizen, Sparks, Nevada:
I live at McGraw-Silver Sage Courts. It's senior and handicapped housing in Sparks, Nevada. We've had a wonderful deal. I've been there for nine and a half years, and housing has been more than fair with all of us. We had a tenant who created such chaos that people were afraid to come out of their homes. When you're over 70 years old, you can't live like that. We had a young man there. He was 49 years old, on disability, and he was a recovered alcoholic who did very well. Then, he started stalking a young lady who was a caregiver at one of the other senior complexes. Then, he started walking up to people's doors and intimidating them. A lot of the people were frightened. They would fear somebody standing outside their window. These were things that you can't call the cops for because he'd be gone by the time the police came. I did a little bit more checking, and found out that he had worked for a cab company in town under an assumed name, and he beat up the girl who was a dispatcher. This was a person living in our midst. Housing went through their procedures and got him out; but believe me none of you would ever want to live through something like this. It's scary.

If this bill passes, we would still have him in there, and I'm very sorry to say that somebody could have gotten killed, because people didn't want to protect themselves. He worked out three to four days a week at the YMCA, so he was really powerful looking. When you have somebody like that coming to your door, you want to give him anything that you have. If this bill had been law at that time, the situation would still be going for another two years. We're

wonderful in senior housing. I am a law-abiding citizen, pay my taxes, and vote all the time. We want to live with people who are good people of the country.

Judith Lopez, Private Citizen, Reno, Nevada:
[Summarized from Exhibit L.] My husband and I reside at Silverada Manor, which is part of the Reno housing complex. In our particular building, we have a situation which involves an alcoholic who moved into our complex on May 24, 2004. He disconnected our phone lines trying to hookup his own phone. He started a fire in his apartment trying to cook a chicken on his stove without a pan. He called the fire department in retaliation on us, because we had called the fire department due to the smoke coming out of his apartment. Let me reiterate, he's already gone through arbitration, appeal, back to arbitration, and back to appeal.

I've listened to legal aid talking about how these people have no rights or their rights are being abused. I disagree with them. They have all the rights in the world. If you abide by the rules and regulations, do not antagonize your neighbors, pay your rent on time, you don't stand a chance with some of these cases. These people that move in and would be afforded this dollar bond—to get them into arbitration again, into appeal, or into whatever court system that we have—already—and know the system. My fear is that with A.B. 355 passing, it's not only going to be Section 8 low income housing or any other public housing that is affected. I have a feeling, that with a short amendment, this could apply to the private sector and to apartment buildings or homes that are rented out. I'm asking you please to reconsider this whole thing here and to vote no.

Scott Smith, Director, Southern Nevada Multi-Housing Association, Las Vegas, Nevada:
The Southern Nevada Multi-Housing Association is an association of people in the landlord/tenant industry. We have a concern about this bill. Today, there's been an amendment brought in for the part we're most concerned about, Section 8. I've heard that described. I haven't been able to look at it yet.

There's just a point that we wanted to bring before this Committee. If there is still an appeal process, that can go forward. If the tenant gets to stay on the property and housing has been required to make the payments for them, at the end of the appeal process, if the tenant is evicted, by the federal contracts that my clients are forced to sign to provide this low income housing, housing has the right—and will be required by HUD—to go back and make an offset for all the monies they've paid for this person who made the appeal, but lost. If they stay six or eight months in this property, the landlord is going to be receiving the money, that's true. But if it turns out that they were rightfully terminated or

evicted, the landlord then has this offset. The money will go back to HUD. What normally happens is that HUD stops making payments on other people who are good tenants who are staying there, following the rules, and making a pleasant living environment for everyone else. That amount will be deducted and offset, and the landlord would be out. If this bill, as proposed with this appeal process, goes forward, you're going to find a lot fewer landlords—private landlords, anyway—who are going to be willing to enter into this type of housing. If they do, they're going to have to drastically increase the rents to offset those costs. We also want to point out to you, because of the seriousness and the money involved, that landlords are going to want to be part of this process if there is an appeal. They will require attorneys to go in and argue this as well, because the landlord is going to have to have that money in an escrow account in case they lose it, if the appeal goes forward and the eviction is sustained.

[Scott Smith, continued.] The other thing we wanted to point out to you is time frame in this appeals process. Right now, for summary evictions alone, if a tenant appeals a summary eviction before the lockout takes place, that goes from the justice court to the district court. That process, which doesn't always include oral arguments, at least in Clark County, takes six months. When you look at these appeals, they are going to be very lengthy ones. When you look at how much rent is being paid during the appeal process, that can become a significant amount of money.

Robert Mills, Deputy Director, Planning and Analysis Division, Nevada Administrative Office of the Courts, Supreme Court of Nevada:
I just wanted to make the statement that the courts are taking no position on A.B. 355. We do, however, want to make the Committee aware of the impact that it possibly could have on the courts. The impact could be both with the funding, stretching our budgets even further, maybe additional personnel, and maybe some impact on the facilities. The big unknown on this, as you've heard so far, is that we don't know exactly what the numbers would be. We cannot give you a specific impact on the courts until some of those numbers are known. Based on numbers from the housing authority so far, if just 20 percent of the cases were being appealed, that would be an additional 300 cases to the district courts around this state. If just ten percent of those are appealed to the Supreme Court, that is another 30 cases to the Supreme Court. That's just based on the hearings last year. This bill would also add additional things that could be appealed, and that's the great unknown. We don't know what the additional impact of that would be. We just wanted to make the Committee aware of this, especially because the courts are taking no position. We just wanted to make you aware of the possible impact.

Chairman Parks:
We'll certainly accept any written testimony anyone would like to provide to us [Exhibit M, Exhibit N, Exhibit O, and Exhibit P]. At this point, I would like to ask the bill's sponsor for any closing remarks.

Assemblywoman Giunchigliani:
I think this bill was mischaracterized from the very beginning, through the flurry of emails that I have received about an over interpretation about what was going to happen. Unfortunately, it got quite a few individuals stirred up or falsely concerned, I think. But we will continue to try to work in good faith, which is where I thought we were last week, to make sure that at least individuals who were at risk of being dumped into the street—seniors, disabled, and low-income individuals—at least have an independent body that makes a decision on the hearing officer, and that the hearing officers are properly trained. I think that's still the ultimate goal in making sure some due process does exist. I'll do my best to get something resolved shortly.

Chairman Parks:
We'll go ahead and close the hearing on A.B. 355 and open the hearing for A. B. 425.

Assembly Bill 425: Establishes policies and incentives for urban design, mixed use development and environmentally friendly construction. (BDR 22-1084)

Assemblywoman Chris Giunchigliani, Assembly District No. 9, Clark County:
The intent of A.B. 425 is to establish what I refer to as "smart growth," a new term that means being sensitive to water conservation, to environmentally friendly uses, and showing the impact of high-rise construction as it's going up. What I'm attempting to do here is to try to give additional guidance to the regional planning authorities as well as the local governments. It was pointed out to me when we were first discussing this bill that I needed to change the definition of "mixed use development." I have received language from Clark County and several others that I am including in a suggested amendment (Exhibit Q) that I will give to this Committee. In addition to that, I may need to define an "urban growth boundary." That was not defined in the statute.

The intent is not to prohibit high-rise construction. It is to have regional planning work with the local cities and have the cities determine which areas were urbanized and would be areas within their cities for actual high-rise construction. The intent was to make sure that we didn't just have them

popping up across the area, which then impacts transportation and the views of our natural beauty. Assembly Bill 425 tries to deal with things that are constructed to ensure they are compatible with the area. Shadowing impacts are also contained within the legislation as well. Several states do use that. I know Las Vegas had mentioned that they are starting to look, as you have high rises going up, that you don't interrupt the shadows and the lighting for the next building, but also the shadow's location on residential property that's nearby.

[Assemblywoman Giunchigliani, continued.] In fact, I will add to the record just two articles that were in the paper last week "Developer to Sue Over Shadows" (Exhibit R) was in the *Las Vegas Sun*. One high rise was located next to another; they approved it, and did not deal with the shadowing content. If you're marketing something for a half a million dollars, you want to be able to make sure that they can at least see out of their windows, or at least not be shaded constantly. You also have another article out of the *Las Vegas Review-Journal* last week, "Analyst Says Las Vegas Towers Can Come Tumbling Down." (Exhibit S) It was really pointing out that out of the 106 projects that have been approved, probably less than 30 to 40 percent will actually be constructed. We just need to pay attention to how those will be melded into the development plans.

In addition to that, I'm working on clarifications. There was not much of an appetite to establish smart growth accounts at this point, so I am recommending eliminating that language. That would then reduce any fiscal impact that would exist in that situation. More importantly though, is the issue of notification to individuals in neighborhoods. I'm going to be suggesting including a radius of 750 feet. If you've ever gotten calls from constituents who said, "I didn't even get a notice about this coming up," it's because it's done on a linear model. The concept is to do more notices via radii so that you can reach those property owners that will definitely be impacted by a project. I noticed that in state law, we also don't define "mixed use" and "mixed development." So, I'm going to be suggesting some amendments. I've gotten some language from Clark County and from the Truckee area. In addition to that, I'm adding "schools" in a couple places where it was not referenced in statute. As development is considered, they may need to look at the need and impact on the potential school facilities that are going to be considered as well.

That's really the heart of the intent. I've looked at Arizona; San Antonio, Texas; Austin, Texas; and Oregon. They all have smart growth projects that try to look at what to do as you develop your land, to make sure that it's being used to its best advantage. You also need some protections for environmental and conservation areas, as well as seeing that things are properly constructed too,

as far as responsibly managing growth. That's the intent of A.B. 425. It's not "stop growth" legislation. It was not to stop high rises. It was simply just to have us define where urban cores should properly be located. I will give you my assurance that I will continue to meet with the various groups to make sure I can work out amendments for this Committee to consider.

Joe Johnson, Legislative Advocate, representing the Toiyabe Chapter of The Sierra Club:
We are in support of this bill, and will work with the Assemblywoman.

Derek Morris, Deputy Executive Director, Planning Department, Regional Transportation Commission of Washoe County (RTC), Reno, Nevada:
We see great ideas in a piece of legislation like this. There are, however, two particular sections that we find objectionable as written. The first one has to do with Section 6 of the bill, which talks about incentivizing certain types of developments. We support that principle. The regional transportation commissions are specifically identified in this process. We feel that it should be broadened to include all effective entities, simply because there are others that, in certain circumstances, can have far more influence and leverage in terms of incentivization of these types of developments.

Section 24 deals with impact fees and using impact fees as incentives. The Regional Road Impact Fee in Washoe County, which covers the urban areas of Washoe County, Reno, and Sparks is the largest and oldest impact fee in the state. I believe it was established in 1995. When we developed that impact fee, we did have rather extensive discussion about incentives for certain types of usage. We discussed this with the local governments, with the development community, and certainly with the folks at the RTC. There was desire to incentivize the low—income housing industry, which did not use much water, the high—tech industry, and the list got longer and longer as these discussions ensued. What was realized at that time is that every entity had a desire to incentivize different types of uses, and those desires might change over time. Using incentives with an impact fee process is extremely problematic.

There are legal and constitutional constraints dealing with nexus proportionality and disparate treatment. The very practical issue is that impact fees have to generate sufficient revenues to build the needed infrastructure. The consensus that was reached in Washoe County was that there would be no subsidies within the fee structure or the process for the impact fees, but that every government could, if they chose, using general funds, pay a portion or all of the impact fees for a particular project or use what they wanted to incentivize along those lines. We would suggest a similar treatment in this bill. I have prepared an amendment which was forwarded to Assemblywoman Giunchigliani on Friday.

There was one typo, a sentence I wanted stricken and that I just made a pen correction on.

Irene Porter, Executive Director, Southern Nevada Home Builders Association:
We are opposing A.B. 425. Assemblywoman Giunchigliani knows our position on the bill. It is philosophical in nature. We believe a majority of the things that are proposed in this bill can already be done under the broad authority of planning laws. It's at the option of the local government, and we believe that's where it belongs.

As you pointed out, nexus development is already being done in southern Nevada. We have defined it and there are multiple projects going on today. We don't believe it needs to be redefined into state law. We have a long history of being opposed to urban growth boundaries. Frankly, we already have one in Las Vegas. It's called the BLM [Bureau of Land Management] Land Disposal Boundary. That land shortage, that boundary, and that process is one of the reasons that we have such extraordinary land prices in southern Nevada today. You will find that anywhere where they've done an urban growth boundary—an example would be Portland—you'll find much the same thing has occurred. So, we would oppose any reference, even on a progressive basis, to urban growth boundaries on local governments.

As we process through the bill, the things being added to the Master Plan Act are, more appropriately, things that can be put into a zoning ordinance at the local government level. This bill applies to anything over 100,000 in population or over 400,000 in population, so it applies to a lot of areas in our state. We can do transit-oriented development now, which is why we don't believe that is necessary. Referencing the notification sections, we are already doing neighborhood meetings on job changes. Then we go to town boards, then we go to planning commissions, and then we go to local county commissions. We have a lot of master-planned communities that take years to put together. There is extensive notification in advance of everything that goes on in those master-planned communities. Those were all done without state law, so we believe it is not necessary.

On the variance section, where you were asking for neighborhood meetings on variances, I want to point out that I know that Ms. Giunchigliani was probably talking about height restrictions, but variances are used for other things. As an example, if you are building a new garage onto your house and your required setback is six feet and you want to go four feet, then you're going to have to apply for a variance. Therefore, you as an individual would have to go through this process of having a neighborhood meeting just to do the variance for your own home. It isn't just large projects. Variances apply to a lot of things.

[Irene Porter, continued.] Regarding impact fees, I appreciate the fact that the Assemblywoman was trying to help and give us some incentives on the partial abatement of impact fees. Unfortunately, the impact fee law, even though we've been very supportive of it over the years, has not been used by our local governments, probably because they can get more out of fees, taxes, and exactions. If you really want to get at abating something, you would have to include fees, taxes, and exactions in this process. Because of the law, local governments would have to make up the difference in the impact fee, so there is a fiscal impact to this bill for local governments as well. We would be in favor of something that could abate fees, taxes, exactions, and impact fees, which is really what goes on in southern Nevada. Of course, that would all have to be handled; local governments would have to make up those taxes, and you can't just abate something. They have to be taken care of constitutionally. We believe that the bill is not necessary. We can do these things at the local government level, and we are working with it.

As far as limiting the heights of buildings, we find that that could be counterproductive to the whole issue of affordable housing. The amazing thing here is I can't think of someone more supporting of the idea of affordable housing than Assemblywoman Giunchigliani. She has a long history of supporting affordable housing projects. You have to remember when you do these things, they add to the cost of housing. So, what you end up doing is counterproductive. You increase the cost of housing by adding the various things that are contained in this bill.

Chairman Parks:
Ms. Porter, you didn't have any amendments that you were recommending?

Irene Porter:
No.

Christina Dugan, Director of Government Affairs, Las Vegas Chamber of Commerce, Las Vegas, Nevada:
In the interest of time, we would just echo the Southern Nevada Home Builders' concerns with respect to the bill. We represent about 200,000 employees through the employers that we represent, and certainly, affordable housing concerns are very important for them.

Michael Pennington, Public Policy Director, Reno-Sparks Chamber of Commerce, Reno, Nevada:
I didn't sign in for support or opposition, but I did want to raise some concerns that haven't been addressed yet and that we've been working with Ms. Giunchigliani on. Our preference would be to have some of these issues

addressed at the local level. In northern Nevada and the Truckee Meadows, we are working with the community, government officials, the environmental community, the housing community, and other stakeholders to see if we can process a number of these issues that have come up over the past couple of years, relative to many of the community members' concerns about sprawl in the area. One of the concerns that we did have addressed, and Ms. Giunchigliani spoke to, was the definition of the "urban core." One of the things that was not said was that in a community like Carson City, downtown Sparks, downtown Reno, South Meadows and Meadowood, around the university area, or new growth and development out in Sparks and Stead, these are all areas where you would want to make sure that you have the proper development, and some of that may encourage concerns relative to the height component.

David Ziegler, Director, Truckee Meadows Regional Planning Agency, Reno, Nevada:

[Distributed Exhibit T.] The Regional Planning Governing Board hasn't taken a position on this bill, and therefore, I'm neutral on the measure. I did want to make a couple of comments, though. Sections 13, 14, 15, 16, 17, and 29 would affect our statutes directly. I thought it best to let the local governments and others speak to those. One thing that I think needs to be cleaned up is in Section 6 and is just a drafting detail. Our Regional Planning Commission in Washoe County is identified in NRS [*Nevada Revised Statutes*] 278.0262. There are also in statute other regional planning commissions. I call them "generic" or "statutory" planning commissions, like the Humboldt County Regional Planning Commission. That's a different section of NRS 278.090. I think the bill needs to be clear which section of the NRS it's talking about.

Assuming that Section 6 is referring to our regional planning commission, I would like to make a couple of comments about what we are already doing. The most recent version of our regional plan was adopted in 2002, and it did identify some corridors as transit-oriented development (TOD) corridors and the desired future conditions for those corridors. Reno and Sparks are in the process of amending their plans to achieve the desired conditions. We picture those corridors as infield target areas, and we envision a robust mix of uses in those corridors. In our plan, we actually call for much higher—than—average residential densities and nonresidential intensities. I guess we're already well along the way on TOD corridors.

At this point in time, we are studying incentives for infill, and local governments are required to investigate incentives and pull those into their master plans. We also have a recent agreement with the RTC to look at TOD incentives in their next update of the regional plan. I know there's been some testimony on

whether impact fee abatement is a good idea, or even a legal or realistic idea. I don't want to engage the others in an argument on that, but we are familiar with one metropolitan area, Albuquerque. We've heard from speakers just recently that they've gone to graduated impact fees, where impact fees increase as you get further and further out onto the fringe, because the nexus is there. The cost of developing out on the fringe is generally higher. I guess I would urge you to keep an open mind on such issues. Would it be difficult? Yes. Perhaps it might be very difficult, but I wouldn't reject it out of hand.

[David Ziegler, continued.] As to Section 16 of the bill, which is enabling language that would authorize us to do urban growth boundaries, in our regional plans we do have an urban service boundary. It's technically called a Truckee Meadows Service Area, and I think it's functionally equivalent to what the bill would authorize. We're happy with it. It's in the plan, basically, to try to control the spread of low—density development and try to maintain a relatively compact urban form.

Chairman Parks:
Ms. Giunchigliani, did you have any concluding remarks that you would like to make?

Assemblywoman Giunchigliani:
I will work with the individuals to bring back an amendment as best as I can work out; hopefully, reaching complete agreement, but sometimes that's not the case. I feel very comfortable that I should bring something that should set the policy. I understand local governments wanting their turf, and I'm one of those who actually supports home rule. However, state land use and zoning law is written by the state, and the local governments give them the guidance they need to make sure that they're equitably and consistently handling the issue of planning and zoning. I had already recommended deleting the impact fee issue in my amendments that I'm working on, because there were issues raised by the locals, and it made sense. I do not want to increase the cost of affordable housing. Even though we authorized impact fees many years ago, the local governments are really not addressing it or utilizing it in many instances.

I was just trying to find a way to help businesses, developers, and local governments doing smart growth. I will try to get you something back in the next day or so.

Chairman Parks:
We'll go ahead and close the hearing on A.B. 425, and we will open the hearing on Assembly Bill 509.

Assembly Bill 509: Revises Charter of City of North Las Vegas concerning procedure for enactment of ordinances. (BDR S-514)

Kimberly J. McDonald, M.P.A., Special Projects Analyst and lead Lobbyist, City manager's Office, City of North Las Vegas, Nevada:
This is a proposed charter change. It would certainly assist the city with enabling language to allow us to operate a little bit more efficiently administratively, regarding the ordinances that we process. Currently, when an ordinance is introduced, it has to be considered and voted upon—or postponed—by the city council at their next regularly scheduled meeting. What we would like to do is take action up to the second regularly scheduled meeting. This would certainly enhance our productivity and efficiency. It would enable us to have more time to discuss with our residents, the staff, our neighborhoods, and developers, particularly on very complex zoning issues. As our city starts to grow, we are experiencing dynamic growth, and we certainly need more thoughtful and comprehensive deliberation on these types of issues. Again, this flexibility and the ability to take action no later than the second regular meeting would certainly help us in doing that.

We've also found that it will increase our communications, as well as more accurately notice the public. On page 2 of the bill, Section 1, subsection 2, line 1, you'll see the proposed amendment language where it states, "Not later than the second regular meeting of the city council." Again, that would certainly assist them in those types of proceedings.

Chairman Parks:
I'm troubled. There's nobody else who has signed in to speak on this bill, either for, against, or neutral. Mrs. Kirkpatrick, help us.

Assemblywoman Kirkpatrick:
Just for clarification, Ms. McDonald, is it not true now that you have to introduce it, it has to be held for a meeting, and then it takes three or four meetings for it to actually come back? In essence, what you're trying to do here is move quickly on it so the residents don't keep coming back. Is that correct?

Kimberly McDonald:
Yes. In summary, that is correct. An ordinance must be introduced, and then action has to be taken on it. Sometimes, we have experienced delays because we need more deliberation to get neighborhood input.

Assemblywoman Kirkpatrick:
For clarification, although it takes about four times currently for it to be heard, the citizens actually only speak once on it, so this would actually keep them from coming back out. They would actually have their say sooner rather than much later.

Kimberly McDonald:
Yes, and I really thank you for your clarifications. The intent is to give the public more of an opportunity to discuss these items, and again, we have a lot of very complex zoning issues, so this will certainly help us out.

David Fraser, Executive Director, Nevada League of Cities and Municipalities, Carson City, Nevada:
I don't have anything of substance to add, but I wouldn't want the Chair to be troubled that no one else spoke on the bill. I would just like to indicate that the League of Cities certainly supports this bill for all the reasons enunciated by Ms. McDonald and Mrs. Kirkpatrick.

Chairman Parks:
Is this a common thing in other city charters?

David Fraser:
Without doing the research, I can only generalize, but in all cases, they're given the best opportunity for the public input.

Chairman Parks:
We'll go ahead and close the hearing on A.B. 509 and open the hearing on Assembly Bill 511.

Assembly Bill 511: Provides requirements relating to release and use of certain publications and certain information in files and records of Commission on Tourism. (BDR 18-382)

Bruce Bommarito, Executive Director, Nevada Commission on Tourism (NCOT):
[Summarized from Exhibit U.] In regard to A.B. 511, our primary purpose is to protect the privacy of persons who have contracted or submitted inquiries to the Nevada Commission on Tourism relating to travel and tourism in this state, by restricting access of their personally identifiable information and any other information expressly authorized by those persons for the Commission's use only. There are two different types of information. The personally identifiable information—name, address, phone number, email address, fax numbers—is one

side of it. The other side of it is travel behavior, preferences, trip characteristics, spending patterns, and things that are directly related to marketing to those people. There is similar legislation, A.B. 188, but it is truly different. It has already been heard by this Committee, but it doesn't provide for the protections that we are looking for. It does provide for the protection of confidential databases, but in our case, we are trying to protect our other information also.

[Bruce Bommarito, continued.] NCOT is in an unusual position in that we are a State agency, but we are also a marketing agency. We generate information that's of value to our competitors, and we are truly trying to protect that for the benefit of the state of Nevada and no one else. Currently, other state tourism offices can request our information. Other state competitors and private companies in other states can compete with our Nevada companies and can request the information. Because of our state laws, we would be obliged to provide it to them. We want to be able to sell data. The average list sells for $75 to $200 per thousand. Our intention is not to sell it to the providers of taxes to Nevada, but to use it free of charge for the rural areas and to market Nevada, not for private, for-profit companies to be able to sell it. We also want to be able to restrict those sales so we don't have to provide it to our competitors.

In general, we strongly support this legislation, which will allow us to protect that information and to sell it, where necessary, to people who will only help Nevada. I do have an amendment that I would like to suggest. We have worked with the media, because the initial writing of this bill was a little broader than we originally intended. We don't intend to protect any information that shouldn't be protected.

[Read Exhibit U.]

> The Executive Director may deny a request for personally identifiable information from people who have submitted a request for marketing materials or who have participated in marketing surveys. An executive director may also deny a request for internal documents and communications relevant to the development of a marketing strategy that, if released, would enable competitors to gain a competitive advantage.

In summary, we're just trying to protect our marketing information and the people who have trusted us with their information and have allowed us to use it, so it can't use it for purposes that they didn't intend.

Assemblywoman Parnell:
I just have a question about page 1 of A.B. 511, line 3. Currently, statute reads that you may charge reasonable fees. Now you're adding "and collect." Where does that money currently go?

Nancy Dunn, Deputy Director, Nevada Commission on Tourism:
It's deposited into an existing fund for the promotion of tourism.

Assemblywoman Pierce:
You've provided the bill on the last pages (Exhibit U) , and Section 3 had brackets around it. Is the amendment you're proposing to replace all of that language?

Bruce Bommarito:
Yes, we want to replace Section 3 with the other amendment.

Assemblywoman Pierce:
We don't have the amendment that you just read.

Bruce Bommarito:
We will provide that to you.

Chairman Parks:
We'll go ahead and close the hearing on A.B. 511 and open the hearing on A. B. 535.

Assembly Bill 535: Authorizes county fire protection district, under certain circumstances, to annex all or part of fire protection district receiving federal aid. (BDR 42-456)

John Slaughter, Management Services Director, Office of the County Manager, Washoe County, Nevada:
I have with me today Pete Anderson, the State Forester; Jim Leonardo, Chief of the North Lake Tahoe Fire Protection District; and Mary Walker, with Walker and Associates. All of these individuals have been involved with Washoe County on this particular issue.

Mary Walker, Legislative Advocate, representing Carson City and Douglas County, Nevada:
In this capacity, I have been a consultant with regard to fire protection for Washoe County. Assembly Bill 535 is before you today in order to facilitate

potential consolidation of a [NRS Chapter] 474 fire district and a [NRS Chapter] 473 fire district. The 473 fire district is operated through the State through the Nevada Division of Forestry (NDF), although it is actually paid for by local tax dollars. A 474 fire district is actually governed by local elected officials. For the past couple of years, we have studied the feasibility of consolidating a 473 State-operated fire district and a 474 locally operated fire district in order to provide more efficient and effective firefighting operations. During our studies, we found in the law that a 473 fire district, which is operated by NDF [Nevada Division of Forestry], could eliminate properties from their district, but the locally operated 474 fire district did not have a mechanism to accept those properties being annexed. Assembly Bill 535 provides the mechanism to allow a 474 fire district to annex into the 473 fire district properties. When we looked at fire service consolidation in the Truckee Meadows area, it was extremely beneficial. When we consolidated the Truckee Meadows Fire Protection District and the City of Reno, we were able to decrease the response times by 27 percent, and in the first three years alone, we saw a $5 million savings to the taxpayers. The concept we're looking at here is for the locally operated fire district to provide EMS [emergency medical service] and structural fire service, particularly in the valley of the Truckee Meadows, and then the 473 district, which is NDF, would provide the wildland fire service. That has worked well.

[Mary Walker, continued.] Looking at the Waterfall Fire we had here, that fire lasted approximately four days. Firefighting alone was over $4 million; that was $1 million a day. One of those fires could bankrupt a smaller jurisdiction. For example, Douglas County and Carson City both have 473 districts within their boundaries, but within a few days' period you can bankrupt a small local government. We feel it's very important that, working in cooperation with the State, we will be able to provide the best service we can to our citizens—most efficiently, cutting those response times, and looking at savings that we can provide to our citizens. It has been a very, very good cooperative effort. We've had fire chiefs and local governments throughout Washoe County and Douglas County involved in these efforts, and it's been a very cooperative effort.

Assemblyman Goicoechea:
What you're trying to do is take some of the 473, which is truly NDF lands, and roll them into your 474. You're not attempting to shove any back on the NDF in 473, or are you going to make some trades?

Mary Walker:
The concept is that the 474 district, which is locally controlled, would annex the area of the 473 district, but the 473 district would retain only the wildland fire service. What we're talking about is merging the operations of the EMS and the instructional fire services with the 474 district. The 473 district, through

NDF, would still provide the wildland fire service. When we were researching this, when the 473 district was enacted about 50 years ago or so, the original intent was that they would provide wildland fire service. Through the growth in the wildland interface boundaries, they began providing structural fire support as well. We feel that that's probably best left to the local jurisdictions so you can eliminate a lot of redundancy in services. You don't have six or seven fire engines at one place. You can actually leave the engines home where they need to be left and divert what resources you need to the fire rather than duplicating a lot of those efforts, which is currently happening.

Assemblyman Goicoechea:
Then, in this scenario, Washoe County would compensate NDF for some salary for that protection that was being afforded into the 474 district?

Mary Walker:
Yes, absolutely. You can't really physically annex until the tax rates are equalized, because the Truckee Meadows Fire Protection District is a few cents higher than the Sierra Forest Fire District, so what we would do is at some point, is decrease the Truckee Meadows tax rate to the point where they're equal. Once they're equal, they can do a long-term merger. In the interim, before we can actually get those tax rates merged, we'll have a cooperative agreement, an interlocal agreement, with NDF. We have been working on it and have done scenarios on it for the last few years, and everyone is in concurrence with this option.

Assemblyman Goicoechea:
That's fairly typical of what you have across the board in other regions of this state, is it not? I guess in most counties, especially in northeastern Nevada, you function as a 373 and are compensated by the county?

Pete Anderson, State Forester, Nevada Division of Forestry, Department of Conservation and Natural Resources, State of Nevada:
We do have a mix of funding here in the west. We have an established tax rate. In some of the eastern districts, we actually compete with the general fund of the county for funding. There are different ways of financing it. Because of the urban development—the rapid growth—we're really in a transitional mode here, where the local governments along the Sierra front truly are transitioning the ability to take care of all risk, and the Division of Forestry can take care of the wildland fire. That's the partnership we're striving for. We have that in Douglas County now. We do that via contract. We do that in Carson City as well.

Assemblyman Goicoechea:
And this will be pretty much a contractual arrangement until the tax rate balances out between Washoe and NDF. Is that correct?

Mary Walker:
That is correct.

Assemblywoman Parnell:
When a 474 takes over a 473, how does the face of that 473 change? In other words, would Carson City's fire department look different or would their responsibilities change? I need to understand that a little bit.

Pete Anderson:
Basically, our push would be to operate a seasonal wildfire program, which is what we are doing in Douglas County and Carson City now. For example, Douglas County East Fork Fire Protection provides the all-risk 24/7 service: structured fires, hazmat vehicles, and those types of things. We take on a seasonal role as far as fire suppression, and we strongly emphasize fuels reduction, utilizing seasonal fire crews when there are no fires, for example. Right now, we're bringing crews on that will be doing fuels work all through the spring up until fire season actually starts.

Assemblywoman Parnell:
It may mirror what happened during the Waterfall fire, where you come in and took over part of the responsibility?

Pete Anderson:
Actually, on Waterfall, there were three entities because the U.S. Forest Service had about a third of the lands, and then ourselves and Carson City. So, it was a three-way approach to the fire.

Assemblyman Grady:
I support this, but for the record, there are no 474s that are not in agreement with this. Everyone has agreed to it.

Mary Walker:
All of the 474 districts—Douglas County, Washoe County, and Incline—have all agreed to this. There is no 474 in Carson City, so this bill would not affect Carson City.

I should mention that we have a cleanup amendment (Exhibit V). It pertains to when the governing board of a county fire protection district provides a request or a resolution to the State Forester or Fire Warden. We'd also include an

operational plan, which would basically detail the financial analysis, personnel requirements, equipment requirements, and those types of things, plus some cleanup language.

Assemblyman Hardy:
To follow-up with Assemblyman Grady's question, the 474s exist somewhere else in the state. Is this or isn't it going to affect them?

Pete Anderson:
There are other 474s across the state—for example, in Lincoln County and several other counties too. We have only 474s and 473s. We have a common boundary exception in Elko County. They have city fire departments in Elko. I can't think of any other 474s that directly border in this situation, but there are other forms and fire districts across the state.

Assemblyman Goicoechea:
Elko County is Elko County Volunteer; Ten Mile, I believe, is an NDF station. It's not a 474; it's a 473.

Pete Anderson:
That's correct. We have the balance of Elko County, Eureka, and White Pine, and the cities are different fire districts, so the city of Ely and the city of Elko are different, and we have the balance of the county. Those all operate under 473.

Assemblyman Goicoechea:
So, they're all 473s? Is that what you're saying?

Pete Anderson:
You're correct.

Assemblyman Goicoechea:
You mentioned Lincoln County. They're having some problems there with the 474 and trying to fund that, Pete, so while we're on the subject, I'll raise it. Why don't they have the ability of coming back as a 473? It's my understanding that as a 474, they can't afford to cut this deal—similar to what you are doing here—and have NDF pick up the wildland exposure and allow them to have their own volunteer services in those communities. I don't represent them, but I have been contacted. They say they cannot afford to go from a 474 to a 473. Can you tell me why or what happens there? What is that funding mechanism? What is going to be the impact for Washoe County?

Pete Anderson:
The bill simply puts another tool in the toolbox, so to speak. It gives a 474 district the ability to bring lands that are currently in a 473 district into the 474. It's simply another mechanism that is not afforded to those districts now. Lincoln County has a 474 established district around the town of Pioche. The balance of the county has no district at all. We have tried to work with Lincoln County since the Pioche Fire to establish a 473 district for the balance of the county. If that had moved forward, we would have had a 473/474 relationship throughout the entire county. The problem that the county commissioners had in Lincoln County was that the tax cap and the low population limited their ability to raise enough funds to operate the 473 district plus continued operations of the 474s. Now, that is changing. There have been land sales and a tremendous amount of growth occurring, but at this point in time, that has been their struggle.

Assemblyman Goicoechea:
When we talk about wildland threats, State lands are protected, private property. It was my understanding that the State at least shared in the responsibility to protect that private property—especially that outside a 474 district—by considering the appeals. I was very concerned when Lincoln County came to me and said that they couldn't afford to acquire the NDF 473 protection in Lincoln County. To me, that's an issue. We're all deserving of at least some fire protection, especially wildland fire protection, if you happen to be in a rural area. I will continue to work with you on that Pete, but I was just trying to clarify it in my own mind and for this Committee. It's fine if you could afford, but it can be unaffordable in some of these rural communities, and I don't think that's fair or right.

Vice Chairwoman Pierce:
Mr. Anderson, did you have some testimony other than what you've already spoken to?

Pete Anderson:
I just wanted to go on the record as being in support of A.B. 535 with the amendment, and I look forward to working with this Committee in the future.

Jim Linardos, Fire Chief, North Lake Tahoe Fire Protection District, Incline Village, Nevada:
We are in support of this bill as amended. We would like to see this bill go forward. Fire service has a highly cooperative nature in this state. The counties and other agencies all have worked together for a lot of years to do what we need to do. This gives us another tool in the toolbox, as Pete stated. We'd like to see that happen. We think it allows for logical and new adjustments for fire

districts. As communities grow, it helps keep things going what we believe is the right direction.

Assemblyman Parks:
Chief, are you a 473 or a 474?

Jim Linardos:
For the record, we are a 474. The Nevada Division of Forestry is basically on three sides, and then a state boundary is on the other side, and it is a 473.

Mary Walker:
It's up to the 474 district to decide whether they want to do that. If they want to be annexed, then they do go through the petition process with the 473 district, so A.B. 535 is enabling language. One other thing: there is a lot of talk about concepts and working something out more globally, as far as NDF taking the wildland fire services as Mr. Goicoechea spoke about. We believe in potentially going into a wildland fire service in conjunction with NDF to do that—not just for the strips that are over here along the mountain range, which is our 473 district, but our whole counties.

We are looking at expanding that and working with NDF to expand the wildland fire service. What we're getting into now is far beyond what local governments have gotten into before. We've never done forestry-type fuels management or fuels reductions. That has never really been a function of local government, and it's extremely expensive. Chief Linardos has done a fantastic job up at Incline, and NDF has done a fantastic job along this western interface. What we want to do eventually is hiring them to do all the wildland fires, which would include the presuppression efforts that are so greatly needed. We will be working on some other long-term efforts.

Vice Chairwoman Pierce:
I'm closing the hearing on A.B. 535.

Assemblyman Grady:
We have sixth, seventh, and eighth grade students from Fernley visiting us today, and I would like to welcome them to the Assembly.

Chairman Parks:
We're going to go into what's called a work session. We've heard testimony on a bill in the past, and we've had opportunity to study and analyze it, and then we're going to start to have a work session, where we will decide as a Committee whether or not we wish to send this bill to the Floor of the

Assembly. The Floor is the full Assembly, and they have to vote the bill out. With that, we'll go ahead and start with Assembly Bill 31.

Assembly Bill 31: Makes confidential certain records of local governmental entities relating to use of recreational facilities and participation in certain instructional and recreational activities and events. (BDR 19-602)

Susan Scholley, Committee Policy Analyst, Legislative Counsel Bureau:
Assembly Bill 31 was sponsored by the Assembly Committee on Government Affairs on behalf of the City of Las Vegas and was heard in this Committee on March 9. The bill, in its original form, declared that the name, address, and phone numbers of persons who provide that information while registering themselves or a child for a recreational facility or event are not public records. The bill allows this information, however, to be released in response to a court order to protect public safety or to prosecute a crime. There was significant testimony in support of the bill from a number of entities, which I've listed in the summary (Exhibit W). Testimony in opposition was received from the Nevada Press Association, the Incline Village General Improvement District, and the Nevada Trial Lawyers Association. In response to the concerns raised during the hearing, the City of Las Vegas worked with the parties to propose amendments, and a mockup of the proposed resolution is attached. There was no fiscal impact identified on this bill at the state or local level. Turning to the mockup, you will see that the reference to "Social Security number" has been deleted. The word "person" has been clarified to be a "natural person," not a corporation or other entity. Turning to page 2, on line 3, the records described "shall be disclosed by a local governmental entity," and then there are now three exceptions. The two new exceptions are "in response to a subpoena" and "pursuant to an affidavit relating to an investigation in anticipation of litigation." The trial lawyers proposed this to avoid unnecessary lawsuits.

Assemblyman Sibley:
The two new exceptions that were added for (b) and (c). Should it be (b) or (c)? Does that mean that it has to meet both a subpoena and an affidavit from the attorney related to the investigation?

Susan Scholley:
I'm advised by legal counsel that it should be "or."

Chairman Parks:
We'll let our record reflect that, rather than an "and," it will be an "or."

Assemblyman Hardy:
Will we still have confidentiality after we release it to the attorney for purposes of investigation and litigation, or is that even a reasonable thing to expect?

Susan Scholley:
Once it's released to the attorney, it's not a public records issue at that point. Presumably, it would be part of a case file, but I couldn't really tell you under what circumstances they might publish that information. I think there would be no need to.

Assemblywoman Parnell:
I had concerns when this bill was heard initially, and one was the Social Security number issue. It has now been taken out. I would just like to clarify with Ms. Scholley or Legal that this group, as many others, already has the right to deny releasing those records. Is that true?

Susan Scholley:
Are you asking that question in connection with the Social Security number?

Assemblywoman Parnell:
No—with or without the Social Security number. If you look at the Legislative Counsel Digest on this bill, based on *Donrey v. Bradshaw* [106 Nev. 630 (1990)], this government entity right now could make the decision not to release information under certain circumstances.

Eileen O'Grady, Committee Counsel, Legislative Counsel Bureau:
Assemblywoman Parnell, that is correct. Other than these certain things that remain confidential, any other kind of information in the records would be subject to that balancing test.

Assemblywoman Parnell:
Thank you; that answers my question. I will probably be voting no on this.

Susan Scholley:
Eileen O'Grady pointed out to me that I missed a reference to "Social Security number" on line 9, page 1, which should also come out of the bill.

Assemblyman Christensen:
I would just like to say that I've had all of my questions answered both in the Committee and after. It seems like people came together to make sure the right amendments happened. I like it. I'll be voting yes. If you would like to entertain a motion, I'll make one.

Assemblyman Hardy:
Did we get the concerns addressed by the media people? Were those addressed adequately?

Chairman Parks:
It was my understanding that while they had some concerns, they were not overly strong. They wanted to make sure if the information was of a private nature it could be adequately preserved.

Susan Scholley:
I have not spoken independently with the Nevada Press Association, so I could not answer that question. If you'd like to ask the City of Las Vegas to respond to that, I see that Mr. Olivas is back there.

Ted J. Olivas, Director of Government and Community Affairs, Las Vegas, Nevada:
I believe Chairman Parks is correct. They had some concerns about confidentiality, but they wanted a mechanism by which they could get that information, which I believe is adequately covered here now. This bill actually relates to the children and seniors of our community.

Assemblyman Sibley:
I did receive an email from the Nevada State Press Association. They feel that they're not going to be able to get access to the information with this amendment as proposed, because subsection 2(c) is only for anticipation of litigation. They feel that they will be blocked from getting information, and they are happy with the balancing test that the city currently uses. I will probably be voting no on this as well. Another issue is that I am a member of the Nevada State Press Association. I just wanted to disclose that.

Chairman Parks:
Mr. Sibley, the comment that you read a few moments ago, did that come out during testimony or was that something you just received?

Assemblyman Sibley:
It was something I received, because we just got this amendment this morning.

Chairman Parks:
Further questions? Further comments? Let's just hold this and continue this in a subsequent work session. We'll move to Assembly Bill 165.

Assembly Bill 165: Revises provisions governing continuances of matters before planning commissions in larger counties. (BDR 22-843)

Susan Scholley, Committee Policy Analyst, Legislative Counsel Bureau:
Assembly Bill 165 was sponsored by Assemblywoman Kirkpatrick and heard in this Committee on March 30. Assembly Bill 165 clarifies the limitation on the number of continuances that may be granted by a planning commission, and further defines the phrase "just cause." Testimony on the bill was received from Clark County; Southern Nevada Home Builders Association; Henderson, Nevada; a member of the North Las Vegas Planning Commission; and Jennifer Lazovich, an attorney who practices before planning commissions. There was no testimony in opposition to the bill. Amendments were proposed by a number of entities, including Clark County, Ms. Lazovic, Linda West Meyers, and Ed Gobel. After the hearing, Assemblywoman Kirkpatrick compiled those amendments and proposed a mockup, which is attached (Exhibit W). There's no fiscal impact.

Turning to the mockup, you will see on page 1, lines 11 through 14, a definition of who the "applicant" is. Also, on line 16, there is an expansion of "when an applicant requests a continuance on a matter on behalf of another person." Instead of "another person," it specifically lists the staff, the commission member, or a neighbor. Turning to page 2, the other amendment is lines 13 through 15, which indicates that if an applicant requests a continuance on behalf of someone other than staff, the commissioner, or a neighbor, the applicant must make every effort to fulfill the tasks for which he requested the continuance.

ASSEMBLYMAN HARDY MOVED TO AMEND AND DO PASS ASSEMBLY BILL 165.

ASSEMBLYWOMAN PIERCE SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

Chairman Parks:
Our next bill is Assembly Bill 231.

Assembly Bill 231: Requires construction and maintenance of certain sidewalks. (BDR 22-262)

Susan Scholley, Committee Policy Analyst, Legislative Counsel Bureau:
Assembly Bill 231, was sponsored by Assemblyman Atkinson and was heard in this Committee on March 31. Assembly Bill 231 requires the construction and repair of sidewalks within a one-mile radius of public schools. Testimony on the bill was received from a number of entities, who expressed concern about the impact of the bill in urban and rural settings, the timing of construction, retrofitting, and the potential fiscal impact on municipalities. There were no school districts testifying at the hearing. Amendments were proposed at the hearing by Mr. Atkinson to address several of the concerns. After the hearing, Assemblyman Atkinson submitted a proposed resolution, which is attached to the work session document (Exhibit W), in substitution for the measure.

The resolution, as proposed, would direct the regional planning agencies in Washoe and Clark Counties to study this issue and report back to the 74th Session of the Nevada State Legislature. It indicates that the reports would include a review and evaluation of the programs in place to ensure safe walking paths to schools, and recommendations for improvements within one mile of the school sites where local governments have right-of-way access. In terms of fiscal impact, it was identified to have a fiscal impact at the local level but none at the state level. I presume, with the conversion to a resolution, that the fiscal note would go away.

Assemblyman Grady:
I would like to thank Mr. Atkinson for the work on this because it's a bill I definitely could not support in its original form. I think he has something we can all work with now.

Chairman Parks:
It appears that this would only have applicability in the larger counties. Is this a problem in Lyon County? I guess not.

Assemblyman Claborn:
Does this apply only to new construction, or are we going to have to go back and do the old sidewalks as well?

Assemblyman Atkinson:
That's why we took a look at this and changed it. We really wanted to focus on new construction, which is the reason why I brought it. I talked to Mr. Goicoechea, Mr. Grady, and even Mr. Carpenter, who's not on this Committee, about the problem that this would be for them with schools that were built over 20 or 30 years ago. The focus was on new construction.

Assemblywoman Pierce:
I also wanted to thank Assemblyman Atkinson for bringing this forward. We should focus on the safety of children walking to school. That's really very important. I look forward to the report and seeing if any progress has been made.

ASSEMBLYMAN McCLEARY MOVED TO AMEND AND DO PASS ASSEMBLY BILL 231.

ASSEMBLYWOMAN PIERCE SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

Chairman Parks:
The next bill is Assembly Bill 306.

Assembly Bill 306: Provides for consolidation of certain local governments and services. (BDR 20-892)

Susan Scholley, Committee Policy Analyst, Legislative Counsel Bureau:
Assembly Bill 306 was sponsored by Assemblywoman McClain and was heard in this Committee on March 28. Assembly Bill 306 is a skeleton bill that would consolidate certain city and county governments in areas with a minimum defined density. The testimony on the bill indicated that, while many acknowledged the need for further consideration of the issue, testimony was generally in opposition to the bill. Amendments were proposed by Assemblywoman McClain at the hearing. After the hearing, Ms. McClain submitted a proposed resolution and substitution for the measure. The bill was identified as having a potential fiscal impact at the local government level, which I believe would go away with the resolution. No fiscal impact was identified at the state government level. The attached resolution (Exhibit W) would call for the appointing of an interim study, composed of three members of the Senate and three members of the Assembly, to study consolidation of local government services within urbanized areas of the county and recommended registration be submitted to the 2007 Nevada Legislature.

Chairman Parks:
As you realize, there was quite a bit of negative discussion on this bill. Ms. McClain did ask that it be turned into a proposed resolution for an interim study committee.

ASSEMBLYMAN CLABORN MOVED TO AMEND AND DO PASS ASSEMBLY BILL 306.

ASSEMBLYWOMAN PARNELL SECONDED THE MOTION.

Assemblyman Christensen:
I'm having a hard time supporting additional studies, so I'll be voting no on this.

Chairman Parks:
Let me say that we won't know until the end of the session how many requests there will be for interim studies. Whether or not this is one of those that is selected, we normally have too many studies. I think we normally do six interim studies, and a fair number of them have already been requested.

THE MOTION CARRIED, WITH ASSEMBLYMAN CHRISTENSEN, ASSEMBLYMAN HARDY AND ASSEMBLYMAN SIBLEY VOTING NO.

Chairman Parks:
The next bill is Assembly Bill 323.

Assembly Bill 323: Requires Bureau of Consumer Protection in Office of Attorney General to conduct audit and investigation of rate-setting practices of Truckee Meadows Water Authority. (BDR S-137)

Susan Scholley, Committee Policy Analyst, Legislative Counsel Bureau:
Assembly Bill 323 was sponsored by Assemblywoman Gansert and was heard in this Committee on April 6. Assembly Bill 323 requires the Bureau of Consumer Protection in the Attorney General's Office, also known as the Consumer Advocate, to conduct an audit and investigation of the rate-setting practices of the Truckee Meadows Water Authority (TMWA). The audit will be paid for by TMWA, and the cost shall not exceed $100,000. The audit report will be submitted to the TMWA Board and the 2007 Legislature. Testimony in support of the bill was received from the Consumer Advocate; Assemblywoman Debbie Smith; a representative of Caughlin Ranch; and several TMWA customers. TMWA testified on the bill and noted its disagreement with several of the bill's findings. It also disputed the requirement that TMWA pay for the audit. Amendments were proposed by the Consumer Advocate to reduce the fiscal impact of the bill and to address administrative concerns regarding the payment process. A mockup of the proposed amendments is attached

(Exhibit W). Local government may have a fiscal impact; state government would have no fiscal impact.

[Susan Scholley, continued.] Turning to the mockup: on page 1, lines 8 and 9, the Consumer Advocate believes that the list of items to be studied may not fit within the $100,000; so the "must" has been changed to a "may" in line 8. In Section 6 on page 2, they have proposed that the $100,000 be deposited into an account for the Consumer Advocate by TMWA up front, so that they can deal with the payment process administratively more easily.

ASSEMBLYWOMAN PARNELL MOVED TO AMEND AND DO PASS ASSEMBLY BILL 323.

ASSEMBLYMAN HARDY SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

Chairman Parks:
Our next bill is Assembly Bill 347.

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

Susan Scholley, Committee Policy Analyst, Legislative Counsel Bureau:
Assembly Bill 347 was sponsored by Assemblyman Goicoechea and was heard in this Committee on April 7. The bill provides an exemption from sales and use taxes for farm equipment and machinery, and it further provides for a submission of the sales tax exemption to the voters during the 2006 general election. There was testimony in support of the bill received from a number of individuals, who I have listed, and also the Nevada Taxpayers Association. The Nevada Department of Taxation testified on the fiscal impact of the bill but was neutral. Amendments were suggested by the Nevada Department of Taxation and the Taxpayers Association to Sections 3 and 10 of the bill, to incorporate language to ensure compliance with the streamlined sales and use tax agreement. The bill may have a fiscal impact on local government but would have none on the State government.

Turning to the next page (Exhibit W), you'll see that the language that would be added to Sections 3 and 10 as noted—right before the definitions in the bill, in blue italics—and reads, "A legislative act prescribing any tangible personal property or temporary period for the purposes of subsection 1:

- (a) Must comply with the requirements of any interstate agreements regarding the administration of sales and use taxes to which the state is a member.
- (b) Shall not be deemed to amend, annul, appeal, set aside, suspend or in any way make inoperative any provision of this act or require a direct vote of the people to become effective."

Assemblyman Goicoechea:
I had a question on the amendment, which does not seem to require a direct vote of the people to put it in place. That's clearly the intent. It places this measure on the ballot for the people of the state of Nevada. I guess I'm a little concerned about the amendment.

Susan Scholley:
While Eileen O'Grady is looking that up, we did check with Legislative Counsel Brenda Erdoes, who recommended that this is language recommended by the Nevada Department of Taxation and the Nevada Taxpayers Association. We may not be able to explain much more than that.

Assemblyman Hardy:
As I look at the amendment, I think it is relating to the streamlined sales tax. I may be mistaken there, but do I have that right?

Assemblyman Goicoechea:
It does pertain to the sales tax, and it becomes kind of confusing when you see that language in there.

Assemblyman Sibley:
There's also one other correction with the amendment, where it says, "A legislative act prescribing any intangible personal property or temporary period ...." "Temporary period" shouldn't be in there. That was language that was used for the sales tax holiday bill, and it just got carried over onto this.

Assemblyman Goicoechea:
I also believe they wanted to ensure that that language was in there, in case there was any recurrence to a sales tax holiday, that it was also incorporated in this.

Chairman Parks:
I think we have a question on this bill, and rather than try to address it at this point, let's trail this one and come back to it when we've concluded the others. Maybe we'll have a better answer at that point.

Assemblywoman Parnell:
If you are going to do that, I'd like to remind everybody we did want to make sure it was a standalone question on the ballot. I don't know if that needs to be in the language or just intent, but that also didn't show up as an amendment.

Chairman Parks:
Right. On last year's ballot, it was decided to make it all one comprehensive question as opposed to twelve or fourteen potential ballot questions. We'll trail A.B. 347 and proceed on. Hopefully, by the time we conclude the next three bills, we can have an answer. We'll go to A.B. 371.

Assembly Bill 371: Makes various changes concerning financial practices of local governments. (BDR 31-605)

Susan Scholley, Committee Policy Analyst, Legislative Counsel Bureau:
Assembly Bill 371 was sponsored by the Assembly Committee on Government Affairs on behalf of the Association of County Treasurers of Nevada. It was heard in this Committee on April 8. Assembly Bill 371 does a number of things. It adds criteria for approval of investment advisors, it makes qualified trusts eligible to the local government's securities, it limits finder's fees, it clarifies the legal standards for attacking certain deeds, and it raises fees that may be retained by county treasurers from tax sales. Testimony was received from Clark County, the Nevada Taxpayers Association, and the Nevada League of Cities and Municipalities. The Nevada Bankers Association supported Section 2 of the bill, but they were neutral on the remainder. Several amendments were introduced, including one by the county treasurers, an amendment from the State Treasurer, and an amendment proposed by Clark County, as part of the Taxpayers Association and the Nevada League of Cities, to add a section that is not included in the original bill. A mockup of the proposed amendment was attached (Exhibit W), and there was no fiscal impact at the state or local level.

On page 2 of the mockup, lines 20 through 23, is the amendment proposed by the State Treasurer relating to the investment advisors. Starting in Section 2, on line 40, there are a number of additions of the phrase "or trust," which was to include qualified trusts as also eligible to hold securities. You'll see those changes continue on page 3—line 3, and line 6, and line—12, and then in subsection 4, lines 20 through 25. These amendments were proposed by the county treasurers to address the fact that the criteria of qualification had to be rewritten when "trusts" were added. Turning to the very last page of the mockup—page 6, line 1—this is an amendment that is in here for discussion purposes. You will recall that Mr. Kramer, when presenting the bill, indicated he

was interested in raising the cap on the amount of money that could be retained by the county treasurers for a sale. In the bill itself, it proposes no limit on the 10 percent and simply would read, "Ten percent of the excess proceeds." He did, however, invite a smaller amount, so $10,000 was proposed for the Committee's consideration. That is strictly up to the Committee, and again, as noted, that is strictly for discussion purposes.

[Susan Scholley, continued.] I'm going to ask you to turn one more page to the amendments proposed by Clark County. This was the add-on amendment that was meant to address the problems local governments are having with their audits being considered to be proprietary material of sorts, and the auditors requiring permission before the findings could be published or disseminated. So, this amendment, as you'll see on page 2 here in the blue italics, is the new language that will be added to the existing language in the statute, NRS [*Nevada Revised Statutes*] 354.624. Going back to the mockup on page 6, an amendment would be made to Section 6, the effective date of the bill, so that the amendment relating to the audits being able to be published without the consent of the auditor would become effective immediately and would apply to all contracts that are in effect on or after the date of the bill.

Chairman Parks:
On the top of page 6 of the mockup (Exhibit W), I think what we intended to do there was delete the $2,000 and just put in $10,000, because I think we need the words, "All the excess proceeds." So, just changing that would be appropriate. I know that that was a best guess. In discussions, we thought we wanted to put a cap on it.

Assemblyman Sibley:
I just wanted to address that similar section on page 6, number 1. I think putting a cap on it is reasonable. With no cap, it could be thousands of dollars. After a person has just lost their house, I think that they should be entitled to as much of the surplus funds as are there. It was their house that they lost. I think $10,000 gives it a reasonable cap so that the local government can get a fee for processing, yet the person who just lost their house would still get their surplus funds. With that, I support this bill.

ASSEMBLYMAN HARDY MOVED TO AMEND AND DO PASS ASSEMBLY BILL 371.

ASSEMBLYWOMAN PARNELL SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

Chairman Parks:
The next bill was A. B. 475.

Assembly Bill 475: Makes various changes relating to general improvement districts. (BDR 25-39)

Susan Scholley, Committee Policy Analyst, Legislative Counsel Bureau:
Assembly Bill 475 was sponsored by the Assembly Committee on Government Affairs and was heard in this Committee on April 8. Assembly Bill 475 makes several changes to the statutes related to general improvement districts, (GIDs) including changing a publication requirement, raising the cap on annual compensation for board trustees, adopting regulations prescribing when a bill becomes delinquent, and limiting the power of the county to dissolve or merge certain general improvement districts, which according to the testimony would be the Incline Village General Improvement District (IVGID), the Sun Valley General Improvement District (SVGID), and the Canyon General Improvement District. Testimony in support of the bill was given by the Nevada League of Cities and Municipalities and also by representatives from IVGID and SVGID. No amendments were proposed.

By way of background, this bill was presented in nearly identical form in 2003 as Assembly Bill 241 of the 72nd Legislative Session, which died in Committee. The bill was later resurrected in Senate Bill 229 of the 72nd Legislative Session and the Assembly Committee on Government Affairs at that time reduced the annual salary cap for the board of trustees to $9,000. Senate Bill 229 of the 72nd Legislative Session ultimately also died. There is no fiscal impact at the state or local government level.

Chairman Parks:
I think there was some controversy dealing with salaries, which was on page 3, line 20. I think Assemblywoman Smith sent us an email relative to this.

Assemblywoman Parnell:
Dealing with education issues, we had a bill presented in the Education Committee last week to possibly raise the salaries of our school board members from $80 a meeting. If you look at how many people are on the Clark County School Board of Trustees, it's lot of people. My guess is it's probably going to stay at $80, or it may be slightly increased. I've thought about this, and I can't justify the $12,000 a year. We have so many people putting in tremendous hours studying and going to other meetings. For that reason, I will be voting against this bill.

Assemblyman Grady:
It is my understanding that they have agreed to drop from $12,000 to $9,000.

Susan Scholley:
No, Mr. Grady, I did not have any agreement, but the background information was provided to give you a reference point for where the bill was at the end of last session.

Assemblywoman Kirkpatrick:
I believe that at the end of the hearing, they said that they were negotiable on that portion of the bill as opposed to the rest of the bill. Maybe there's a friendly amendment that can come our way.

Chairman Parks:
Mr. Hillerby, would you care to comment?

Fred Hillerby, Legislative Advocate, representing Sun Valley General Improvement District:
In regard to Section 3 of the bill, I've had conversations with some of the Committee members. One possibility was to leave the $6,000, except for those who provide the services outlined in Section 5, which were the ones that provided the majority of the three major services. Perhaps they would be given the opportunity to go to the $12,000 per year. However you want to handle this section is up to you. We would not want to lose the bill over this section. If you can't agree to splitting it, $6,000 for all of the general improvement districts, and $12,000 only being applicable to those who provide water, sewage, and garbage, who would meet more frequently, as explained during the hearing. We are certainly willing to live with what the Committee feels on that. We would urge you not to lose the whole bill over this issue.

Assemblyman Hardy:
I don't want to lose the whole bill either. When we got backup information on the $9,000 to $12,000, there was discussion about that, and I wondered if there's an appetite on our Committee. People would have anxiety about the $12,000 if we went down to a specific number. As I understand it, they can go up to $6,000 already. Is there any appetite to go up further?

Assemblyman Grady:
I agree very much with Dr. Hardy. I can tell you in my previous life—working with some of these folks, especially the three larger general improvement districts—they handle multiple tasks. It's not like going to a meeting once a month. They serve on numerous boards, and I will support the $9,000 also.

Assemblyman Goicoechea:
I would prefer, if we were going to make a raise, that the only ones to get a salary increase would be those three majors that are providing water, sewer, and garbage. Clearly, they have a $24 million budget. Their capacity is probably greater than many boards of county commissioners in this state. I would hate to even raise the $6,000 to $9,000, because I think it does open up the opportunity for some abuse by some smaller GIDs that might be functioning out of control. I would prefer that we held it at the $6,000 and extend it to the three large GIDs, if we are going to amend it.

Chairman Parks:
I guess this is a question for staff. I'm presuming that it's possible to have a higher amount put into Section 3 for those specific general improvement districts that satisfy the other criteria.

Susan Scholley:
That would not be a problem, Mr. Chairman.

> ASSEMBLYMAN GRADY MOVED TO AMEND SECTION 3, SUBSECTION 5, TO CHANGE THE $6,000 TO $9,000 FOR GENERAL IMPROVEMENT DISTRICTS THAT PROVIDE WATER, SEWER, AND GARBAGE SERVICES.

Chairman Parks:
So I understand that, it would be an added section. The $6,000 would stay in place for other GIDs, and the $9,000 would be for…

Assemblyman Grady:
Districts that supply water, garbage, and sewage.

Assemblyman Christensen:
In Section 3, subsection 5, where it reads, "Each member of the board must receive the same amount of compensation itself." For these three boards we're looking at, if we go from $6,000 to $9,000—I'm talking about all the members of three GID boards.

Chairman Parks:
The wording will be $9,000, and it will strictly apply to what is currently only three GIDs that provide all three of those services.

Assemblywoman Kirkpatrick:
I was just trying to clarify the three GIDs. Would it be the ones that are on page 6, subsection 3, line 13? Those are the three we're talking about?

Assemblyman Grady:
That would be Incline Village, Sun Valley, and Canyon.

Chairman Parks:
Those would be the three it would apply to.

ASSEMBLYMAN GOICOECHEA SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

Chairman Parks:
We'll proceed on to A. B. 477.

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

Susan Scholley, Committee Policy Analyst, Legislative Counsel Bureau:
Assembly Bill 477 was sponsored by the Assembly Committee on Government Affairs on behalf of the Nevada Association of Counties, and heard in this Committee on April 1. Assembly Bill 477 is intended to address the decision by the Ninth Circuit Court of Appeals in *Webb v. Sloan* [330 F.3d 1158, (9th Cir. 2003)], which found liability for Carson City based on the actions of a deputy prosecutor. The bill is intended to clarify that deputies are not policymakers, whose decisions create official policies of the office or entity who employs them. Testimony in support of the bill was given by Wayne Carlson from the Nevada Public Agency Insurance Pool, Steve Balkenbush, the Douglas County Assessor, the County Fiscal Officers Association, and the Nevada District Attorneys Association, as well as the Nevada Sheriffs' and Chiefs' Association. Amendments which I have attached (Exhibit W), were proposed to the bill by Mr. Carlson, because he wanted to make it abundantly clear in the statute that the deputies of the elected officials were not policymakers. I did not attempt to do a mockup because it would have been too many pages. I have discussed this with Eileen O'Grady, and I can represent on her behalf, and on the Legal Division's, that they are okay with incorporating the stronger language into the bill. There are fiscal impacts both at the state and local government levels. I'm not exactly sure why there's a fiscal note. Most of the counties showed no fiscal impact. However, Washoe County felt it would be a $10,000 fiscal impact per year, and White Pine identified a $4,000 fiscal impact, but they did decline to identify from what source.

Chairman Parks:
I, too, am a little surprised on a fiscal impact. You indicated Washoe County? Do we have a representative to come forward?

Andrew List, Executive Director, Nevada Association of Counties:
I spoke with some folks at Washoe County, and I think that initially, at least in the Clerk's Department, they misunderstood the bill and the intentions of the bill. They thought they would have to re-deputize all of the folks in all of their departments. Maybe that's what the fiscal impact is. I'm not sure if their fiscal note will disappear once they understand the bill, but I did speak with them and I did clarify the language of the bill.

Jon Slaughter, Management Services Director, Office of the County Manager, Washoe County, Nevada:
I apologize. I'm at a loss too. I'm going to have to do quick research and find out what was reported.

Chairman Parks:
I guess that's one of the hazards when you get a fiscal note that has little if any explanation or justification with it. As I read it, A.B. 477 is just clarification language.

> ASSEMBLYMAN GOICOECHEA MOVED TO AMEND AND DO PASS ASSEMBLY BILL 477.
>
> ASSEMBLYMAN HARDY SECONDED THE MOTION.
>
> THE MOTION CARRIED UNANIMOUSLY.

Chairman Parks:
Let's backtrack for a moment to A.B. 347. We have Mr. DiCianno from the Nevada Department of Taxation here.

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

Dino DiCianno, Deputy Executive Director, Compliance Division, Department of Taxation, State of Nevada:
Upon listening to the testimony and Ms. [Carole] Vilardo's suggestion, I do not believe it is necessary. That language pertains to another situation, which has to

do with sales and use tax. It has no bearing to this particular bill, as far as this going to a vote of the people.

Chairman Parks:
You're saying A.B. 347, as drafted, is satisfactory and will satisfy all needs?

Dino DiCianno:
Yes, that is correct.

> ASSEMBLYMAN GOICOECHEA MOVED TO DO PASS ASSEMBLY BILL 347.
>
> ASSEMBLYMAN GRADY SECONDED THE MOTION.

Assemblyman McCleary:
I just need to make my feelings heard on this. I have trouble when we start exempting specific industries from taxation. I know this is a ballot initiative, but I also feel we have to scrutinize things before they go to the ballot to make sure they are good policy before we have the people give their say on it. I'm going to have to vote no on this.

Chairman Parks:
I will say that this is putting something back in place that was debated several years ago when it was put in place. I don't want to repeat the testimony we had on that, but we're trying to bring everything in line with the streamlined sales tax. Any further questions on the motion?

> THE MOTION CARRIED, WITH ASSEMBLYMAN McCLEARY VOTING NO.

Chairman Parks:
That should take us up to A.B. 508.

Assembly Bill 508: Makes various changes to provisions relating to notaries public. (BDR 19-574)

Susan Scholley, Committee Policy Analyst, Legislative Counsel Bureau:
Assembly Bill 508 was sponsored by the Assembly Committee on Government Affairs and by the Secretary of State. The bill was heard in this Committee on April 8. It makes various changes relating to notaries public, including requiring mandatory training for notaries; setting a fee to become a licensed sponsor of

notary education; making it a felony to notarize a signature in certain situations, or to aid and abet such action; and also allowing an action by the Attorney General's Office against a person who is impersonating a notary. The original bill also proposed separate fee increases. There was no testimony on the bill other than from the Secretary of State's Office. The Secretary of State's Office, in its presentation, proposed several amendments as set forth in the attached mockup (Exhibit W). The three amendments proposed by the Secretary of State's Office are:

- To delete Sections 10 and 11 of the bill, which raised fees for certain things.
- To add a definition of "authentication," which may or not be a new Section in Chapter 240 of NRS.
- The third amendment is to go into NRS 240.165, and change the word "apostille" to "authentication." It would also provide another basis for which the Secretary of State may turn down a notarized document, if they have information the document may be used for fraudulent or criminal purposes.

Assemblyman Hardy:
I took advantage of our staff and asked them to do some research on the felony issue of the notaries public. After searching through the laws of several states, I found this is usually considered a misdemeanor. For example, Pennsylvania does not assess any criminal penalty for notarizing a signature without actually being in the presence of the person whose signature is being notarized. However, they are subject to revocation and civil penalties. New York has a felony forgery statute. They have a misdemeanor, and general misconduct is a misdemeanor for notaries. In Georgia, the appointing officer can revoke the commission or deny reappointment of a notary public, though no criminal punishment is provided by law. South Carolina considers this to be a misdemeanor. Oregon, likewise, considers this to be a misdemeanor. Louisiana provides imprisonment of 60 days for misconduct and fines of no more than $500 for similar misdeeds for notaries public. I express concern on the felony issue, and I still prefer to look at this as a misdemeanor.

Chairman Parks:
Ms. O'Grady, can you explain the Category D felony?

Eileen O'Grady, Committee Counsel, Legislative Counsel Bureau:
A Category D conviction results in a minimum imprisonment of not less than one year to a maximum term of four years, or a fine of not more than $5,000.

Chairman Parks:
Dr. Hardy, do you have further comment?

Assemblyman Hardy:
I still prefer misdemeanor.

Chairman Parks:
We have a suggestion for further amendment. What's the pleasure of the Committee? Just for reference, the next level down is a Category E felony. What's the pleasure of the Committee? My understanding was that this was new language. What was the previous penalty?

Eileen O'Grady:
It's just creating a new violation. There wasn't anything before.

Chairman Parks:
I'm inclined to defer to the requestor. I'm talking about page 4, line 4.

Susan Scholley:
The Secretary of State's Office explained that they were proposing this bill and a specific definition of this crime, because previously, when the situation arose, they had to fit it into some other kind of criminal statute. The idea here was to clarify it and make it simpler. I can't tell you what the other criminal statutes would be, in terms of whether they would be Category A, B, C, D, or F. That was, I believe, the intent in making this a specifically referenced crime, in regard to the Secretary of State's Office.

Assemblyman Hardy:
Which is simpler, a felony or a misdemeanor?

Assemblyman Goicoechea:
Just for disclosure, my wife is a notary.

Assemblyman Sibley:
I'm also a notary.

Assemblywoman Kirkpatrick:
I want to support the bill the way it is, because a lot of times, when negotiating sentences, a felony tends to be negotiated down to a gross misdemeanor. I believe as a notary, you take the oath to get those documents. I believe you have a responsibility to do what you are supposed to. With that, I would support it the way it is.

Chairman Parks:
What's the pleasure of the Committee?

ASSEMBLYMAN HARDY MOVED TO AMEND AND DO PASS ASSEMBLY BILL 508 WITH THE FELONY BECOMING A MISDEMEANOR

ASSEMBLYMAN SIBLEY SECONDED THE MOTION.

Assemblywoman Parnell:
I would be a little more comfortable with "gross misdemeanor" if it's more stringent.

Eileen O'Grady:
The gross misdemeanor has a possible term of imprisonment for up to a year, versus six months for the misdemeanor. It has a higher fine as well, so it is different.

Chairman Parks:
Would you like to amend your motion?

Assemblyman Hardy:
I can go with the Committee's suggestion on "gross misdemeanor."

THE MOTION CARRIED, WITH ASSEMBLYWOMAN KIRKPATRICK AND ASSEMBLYMAN McCLEARY VOTING NO.

Chairman Parks:
That takes us to 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)

Susan Scholley, Committee Policy Analyst, Legislative Counsel Bureau:
Assembly Joint Resolution 16 was sponsored by the Assembly Committee on Elections, Procedure, Ethics, and Constitutional Amendments, on behalf of the Legislative Committee for Local Government, Taxes and Finance. It was heard in this Committee on April 8. The resolution proposes a constitutional amendment that would set criteria for legislative exemptions from the property tax or sales tax as follows:

- The sales tax would have to have a social or economic purpose, and the benefits would have to exceed any adverse impacts.

- The exemptions would not be able to adversely impair the ability of the state or local governments to repay a bonded indebtedness.

[Susan Scholley, continued.] The Nevada Taxpayers Association testified in support. There was no other testimony. No amendments were proposed, and there's no fiscal impact at the state or local government level.

Assemblyman McCleary:
I think I like where this bill is going, but how will we enforce something like this? I can see just about every industry in Nevada being able to put up a good argument for exempting itself from sales tax, which is why I was the only person voting in opposition to the bill earlier today. I'm worried about a flood of exemptions coming in if we start doing this. I think this is trying to address my concern, but it won't stop me from proposing a bill next session. Is LCB [Legislative Counsel Bureau] going to set the criteria and say, "Bob, I'm sorry. I can't accept this BDR because it goes contrary to this amendment?"

Susan Scholley:
If the constitutional amendment were enacted, then the Legislature would have to make these two findings before it could adopt any exemptions from the property tax or sales tax. If someone felt that the Legislature had not made valid findings and had not put evidence on the record to support those findings, then the recourse would be to file suit and challenge the exemption. It would be effectively challenged through a court of law by persons who felt that the Legislature had taken an unconstitutional action, which, as you know, has occurred in the past. That would be the method of enforcement. It would not be LCB.

Assemblyman McCleary:
It would not be LCB. So, LCB, before accepting a BDR that's going to change a tax status for somebody, would have to write a written opinion why it thinks that would be in its constitutional parameters. Is that correct?

Eileen O'Grady:
The Legislature, in considering a bill that proposes an exemption, would have to make findings. It wouldn't be the LCB. It would probably be part of the legislation enacting a particular exemption.

Assemblyman McCleary:
Then drafting my own bill, I could put in the preamble why I think it should be exempt from the *Constitution*, correct? And the Legislature would just agree with me—and vote for this—or not agree. If they agree with me, could that be

challenged? Eventually, the courts are going to have to determine whether or not any future bill would qualify under these parameters.

Chairman Parks:
If you look at page 2 of A.J.R. 16, it basically says that we as legislators may enact an exemption. We have to give evidence that these two criteria are satisfied. That's basically what this will do. In other words, it will put in the *Constitution* that before we pass an exemption on any test, no matter who brings it, we have to be able to demonstrate that the requirements for claiming the exemption are similar and practical for similar classes of taxpayers and provide the specific data for when the specific exemption would cease to be effective. In other words, we're putting a sunset on these exemptions. We have some things that have enjoyed exemptions in years past, and they just continue whether the benefit of that exemption can no longer be demonstrated.

Assemblywoman Parnell:
I'm trying to identify why this is important. If I look and see that this is on behalf of the local government taxes and finance, it's my guess that the problem is now, especially with the property tax, that local governments are having their tax base eroded by one thing or another, and this is an attempt to stop that erosion.

Susan Scholley:
At the hearing, Carole Vilardo testified that the intent of the bill was that they felt there needed to be some checks on the exemptions that were granted. If the limits on exemption were simply placed on a bill in a statute, the Legislature could ignore the statute. So, the Committee decided to go with a constitutional amendment, because if the standards were in the *Constitution*, the Legislature would not be able to avoid them. Those are more or less her words, not mine.

Chairman Parks:
Having been on the S.B. 557 Committee for a number of years, it was one of the issues we looked at. As I mentioned to Mr. McCleary, we want to make sure that if an exemption continues to be offered and enjoyed by particular individuals, there is some other benefit to the state. I think the best example we had earlier this morning concerned farm machinery. We look at all the other states that surround us and find we are putting an undue burden on our own farm equipment machinery dealers. We're actually forcing our farmers and ranchers to buy their equipment out of state, which in turn, has a severe effect on our economy.

> ASSEMBLYWOMAN KIRKPATRICK MOVED TO DO PASS ASSEMBLY JOINT RESOLUTION 16.

ASSEMBLYMAN ATKINSON SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

Chairman Parks:
We are adjourned [at 12:06 p.m.].

RESPECTFULLY SUBMITTED:

_____
Paul Partida
Transcribing Attaché

APPROVED BY:

_____
Assemblyman David Parks, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Government Affairs

Date: April 11, 2005 **Time of Meeting: 7:49 a.m.**

Bill	Exhibit	Witness / Agency	Description
N/A	A	********	Agenda
A.B. 355	B	Jon L. Sasser / Washoe Legal Services	Forwarded Email from Assemblywoman Buckley Regarding A.B. 355
A.B. 355	C	Jon L. Sasser / Washoe Legal Services	Proposed Amendment to A.B. 355
A.B. 355	D	Anna Marie Johnson / Nevada Legal Services	Information Package including Letter to Chairman Parks, Article from the Office of the Secretary of HUD, Minnesota statutes for Eviction, New Mexico Statutes for Eviction, and Agreement with Nevada Public Housing Authorities
A.B. 355	E	Ernest Nielsen / Washoe County Senior Law Project	Written Testimony in Support of A.B. 355
A.B. 355	F	David Olshan / Nevada Fair Housing Center	Written Testimony in Support of A.B. 355
A.B. 355	G	David Morton / Reno Housing Authority	Revised Agreement between Nevada Legal Services and the Nevada Housing Authority
A.B. 355	H	David Morton / Reno Housing Authority	Letter from Saul Ramirez, Executive Director, National Association of Housing and Redevelopment Officials, in Opposition to A.B. 355
A.B. 355	I	David Morton / Reno Housing Authority	Letter from Lori Boies, Executive Director, Pacific Southwest Regional Council, National

			Association of Housing and Redevelopment Officials in Opposition to A.B. 355
A.B. 355	J	David Morton / Reno Housing Authority	Letter from Julius Scoggins, Executive Director, Housing Authorities Risk Retention Pool in Opposition to A.B. 355
A.B. 355	K	David Morton / Reno Housing Authority	Letter from Denise Muha, Executive Director, National Leased Housing Association in Opposition to A.B. 355
A.B. 355	L	Judith Lopez / Private Citizen	Written Testimony in Opposition to A.B. 355
A.B. 355	M	Diana Dilcher / Resident, Tom Sawyer Village	Written Testimony in Opposition to A.B. 355
A.B. 355	N	Clara Gee / Resident Council President, Silverada Manor	Written Testimony in Opposition to A.B. 355
A.B. 355	O	Joyce Collins and Patti Williams / Residents of Silver Sage Courts	Written Testimony in Opposition to A.B. 355
A.B. 355	P	Amelia Coulston / Private Citizen	Written Testimony and Picture in Opposition to A.B. 355
A.B. 425	Q	Assemblywoman Giunchigliani	Proposed Amendment to A.B. 425
A.B. 425	R	Assemblywoman Giunchigliani	*Las Vegas Sun* Article regarding a Megaresort Development in Las Vegas
A.B. 425	S	Assemblywoman Giunchigliani	*Las Vegas Review-Journal* Article
A.B. 425	T	David Ziegler / Truckee Meadows Regional Planning Commission	Information Package Impacts of Environmentally Friendly Building
A.B. 511	U	Bruce Bommarito / Nevada Commission on Tourism	Written Testimony Describing the Nevada Commission on Tourism's Stance on A.B. 511

A.B. 511	V	Mary Walker / Representing Carson City and Douglas County	Proposed Amendment to A.B. 511
	W	Susan Scholley / LCB	Work Session Document