

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

**Seventy-Third Session
May 19, 2005**

The Committee on Government Affairs was called to order at 8:32 a.m., on Thursday, May 19, 2005. Chairman David Parks presided in Room 3143 of the Legislative Building, Carson City, 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:

Senator Warren B. Hardy II, Clark County Senatorial District No. 12

STAFF MEMBERS PRESENT:

Eileen O'Grady, Committee Counsel
Susan Scholley, Committee Policy Analyst
Nancy Haywood, Committee Attaché

OTHERS PRESENT:

John P. Sande III, Legislative Advocate, representing Nevada Franchise Auto Dealers Association

Michael Alastuey, Legislative Advocate, representing Clark County, Nevada

Madelyn Shipman, Legislative Advocate, representing The Mills

Mary Walker, Legislative Advocate, representing Carson City, Douglas County, and Lyon County, Nevada

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

Anne K. Loring, Legislative Advocate, representing Washoe County School District

Pat Zamora, Legislative Advocate, representing Clark County School District

Carole Vilardo, President, Nevada Taxpayers Association

Daniel J. Klaich, Vice Chancellor of Legal Affairs, University and Community College System of Nevada (UCCSN)

Jeanette Belz, Legislative Advocate, representing the Associated General Contractors of America, Nevada Chapter

Ted J. Olivas, Chairman, Nevada Public Purchasing Study Commission

Paul McKenzie, Organizer, Operating Engineers Local Union No. 3, Reno, Nevada

Chairman Parks:

[Meeting called to order and roll called.] We have several bills on the agenda for the work session. The first bill on our list is S.B. 62.

Senate Bill 62 (1st Reprint): Clarifies provisions governing duties of State Engineer concerning water rights. (BDR 48-681)

Susan Scholley, Committee Policy Analyst, Legislative Counsel Bureau:

[Read from work session document, Exhibit B.] Senate Bill 62 concerns the appropriation of water rights when they are conveyed and a conflict in the chain of title exists. The bill clarifies that the confirmation of a report of conveyance is not a determination of ownership and that only a court can adjudicate conflicting claims to water rights. The measure also requires that the State Engineer take appropriate administrative action to conform necessary records if a court confirms or resolves a conflict over a chain of title.

[Susan Scholley, continued.] Many people testified in support of the bill, including Mike Howell, a rancher who had been involved in court case that illustrated the need for clarification of the law; Gordon DePaoli for the Truckee Meadows Water Authority; Andy Belanger for the Southern Nevada Water Authority; and Hugh Ricci, the State Engineer.

Senator Rhoads presented an amendment. Assemblyman Sherer presented an amendment as well, which affected a different section of Chapter 533. The amendments are attached in the work session packet ([Exhibit B](#)).

Senator Rhoads' proposed amendment was to add, in Section 1, subsection 2, the words "or changing ownership of." This affected *Nevada Revised Statutes* (NRS) 533.024. Assemblyman Sherer's amendment was in NRS 533.370, dealing with the issue of someone moving water rights from one side of their field to another and to streamline that process.

Gordon DePaoli, a water rights attorney, raised an issue with respect to the bill language. Stating that only a court may resolve conflicting claims might be interpreted to preclude a settlement of the issues by the party. As a potential amendment to address that issue, you may wish to consider some direction to the Committee Counsel when drafting the bill. It may be that such clarification is unnecessary.

As a note, both amendments were not opposed on the record by any of the parties in attendance that day.

Assemblyman Grady:

In regard to Gordon's issue, if they settle it, then there is no conflict. I don't think it would be necessary to put his working in there.

Susan Scholley:

Committee Counsel and I have gone around on that. We both raised the same concern. If it is resolved, then it is no longer conflicting. Eileen [O'Grady] raised the point that, in terms of the process with the State Engineer's Office, we would want to be sure that if they did resolve their claim, somehow that would fit into the report of conveyance process, and he would be able to acknowledge that resolution, given the language in the statute. It is important to recognize there is an issue there, give direction to Committee Counsel to discuss it with others, and decide what additional clarification might be needed.

Assemblywoman Parnell:

I noted something that might be a suggested amendment. On page 3, line 25, after the word "final," I wrote in "or until conflict is resolved." Is that noted?

Chairman Parks:

I also have that same note written in. Ms. Scholley says that is the same issue. The wording I had was "or until the conflicting claims are finally resolved."

Ms. Scholley cautions us that it may muddy the water and that it may not really be necessary. I am suggesting that Legal can look at that further and consult with the State Engineer, if necessary, and make a determination.

Assemblyman Goicoechea:

These changes in manner and use occur all the time. The State Engineer makes those changes. The way I read the amendment, it is not to quiet title unless there is a conflict. I know what Gordon DePaoli was trying to ensure in this. This covers it. It is in existing law; if you have an issue, you take it to court. It is a good bill with both amendments. It goes a long way in protecting water rights in the state of Nevada.

Chairman Parks:

Does anyone have any concern relative to Assemblyman Sherer's amendment?

Assemblyman Claborn:

Are we talking about both amendments?

Chairman Parks:

Yes, both Senator Rhoads' and Assemblyman Sherer's amendments.

ASSEMBLYMAN GOICOECHEA MOVED TO AMEND AND DO
PASS SENATE BILL 62.

ASSEMBLYMAN GRADY SECONDED THE MOTION.

THE MOTION CARRIED. (Assemblyman Atkinson and Assemblyman Sibley were not present for the vote.)

Chairman Parks:

Let us now consider S.B. 67.

Senate Bill 67 (1st Reprint): Establishes certain mechanisms to protect assets of local government under certain circumstances if local government is involved in litigation or threatened litigation. (BDR 31-880)

Susan Scholley, Committee Policy Analyst, Legislative Counsel Bureau:

[Read from work session packet, [Exhibit C.](#)] Senate Bill 67 allows the governing body of a local government, when experiencing a severe financial emergency as a result of litigation or threatened litigation, to request the Nevada Tax Commission to issue an order directing the Department of Taxation to take over the management of the local government. If, due to the hardship, a creditor of the local government is allowed by law to commence or maintain an action of an attachment or garnishment, the action must be stayed until the creditor meets with the Department to set forth a program for the liquidation of debt and the Department adopts the program. The Department must formulate the program not later than 60 days after the meeting with the creditor.

Jim Wadhams testified in support; the example that was used was the Overland Water District bankruptcy. His testimony was that the bill would, in effect, provide some bankruptcy-like protection to local governments who are seeking the protection of the severe financial emergency provisions that already exist within the statutes.

There were no amendments proposed. The measure passed in the Senate. There was no identified fiscal impact at the State or local level.

Chairman Parks:

We have a good bill.

ASSEMBLYMAN HARDY MOVED TO DO PASS
SENATE BILL 67.

ASSEMBLYMAN GRADY SECONDED THE MOTION.

THE MOTION CARRIED. (Assemblyman Atkinson and
Assemblyman Sibley were not present for the vote.)

Chairman Parks:

Senator Hardy is here. We will skip to S.B. 466. Welcome, Senator Hardy.

**Senate Bill 466 (1st Reprint): Makes various changes concerning sale or lease
of water rights by local governments. (BDR 20-1351)**

Susan Scholley, Committee Policy Analyst, Legislative Counsel Bureau:

[Read from work session packet, [Exhibit D.](#)] Senate Bill 466—sponsored by the Senate Committee on Government Affairs—was heard on May 11. The bill, in

its original form, set priorities and limitations on the sale of water rights by local governments. At the hearing, Senator Hardy proposed an amendment that deleted the priorities but continued to limit disposal of water rights to the appraised value of that right.

[Susan Scholley, continued.] Testimony was fairly varied. Perry DiLoreto spoke in opposition to Senator Hardy's amendment and then in support of the bill in its first reprint. The Southern Nevada Water Authority and the town of Minden supported the compromise amendment proposed by Senator Hardy. Former legislator Mark James spoke in opposition, as did representatives from Churchill, Eureka, and Nye Counties; the Truckee Meadows Water Authority; and the Carson Water Subconservancy District. Gordon DePaoli testified regarding general concerns about the bill.

After the hearing, Mark James submitted an amendment to delete the bill as a whole and substitute language which would require certain findings by a public entity before disposing of water rights. Harley Kulkin from Nye County proposed an amendment at that hearing. The most recent amendments from Mr. James and Mr. Kulkin are attached ([Exhibit D](#)).

The measure did pass in its first reprint form unanimously in the Senate. It may have fiscal impact at the local level but none at the State level.

Chairman Parks:

This is a bill that has ended up going in a lot of different directions.

Assemblywoman Kirkpatrick:

Is it proper to ask Senator Hardy if he is agreeable with the amendments or as he first presented the bill?

Chairman Parks:

It is permissible to ask Senator Hardy whatever is appropriate about this bill.

Senator Warren B. Hardy II, Clark County Senatorial District No. 12:

The amendment that was proposed by former Senator James was one I asked him to present based on our conversation. Because of concerns expressed and my non-familiarity with the purveyance of water in rural Nevada, I decided to step back, propose this amendment by Senator James, and see how it would work.

The proposed amendment sets up determinations that a public body must make by public hearing before they can sell the water. That has two purposes that are desirable from my perspective. It sets up in statute some legislative declaration

that these things need to be considered for the long-term management of water. It also sets up an opportunity to have something actionable in court if a party feels aggrieved by the actions of the local government.

[Senator Hardy, continued.] This is a friendly amendment. It doesn't go as far as I'd like, but I don't want to create circumstances that would be problematic for our rural water purveyors. There is one clarification that needs to be made. The language that you have in the proposed amendment should be modified to say, "For purposes of this section, public body shall not include a water district or water authority created pursuant to a special act of the Legislature." I will provide that language to your legal counsel.

Assemblyman Christensen:

For clarification, are we putting aside the bill and only looking at the proposed amendment?

Senator Hardy:

Yes. This will replace the bill as a whole and provide the language that is in your work session packet ([Exhibit D](#)). In addition, there is a new subsection that states the language, "For purposes of this section, public body shall not include a water district or water authority created pursuant to a special act of the Legislature."

Assemblywoman Parnell:

From the notes, it was mentioned that the Carson Water Subconservancy was opposed. Is there anyone here who could give their views on this amendment? Since I represent Carson City, I need that information before I can vote on this, or I will abstain until I get it.

Chairman Parks:

Is there anyone here from the Subconservancy District?

Senator Hardy:

I won't speak for them, but I will indicate that the language in regard to "shall not sell or lease for a term more than 5 years..." was intended to take care of their concerns. Their leases are all short-term leases. That is why we included that to resolve their concerns.

Assemblyman Goicoechea:

I assume this covers all irrigation districts, with the exemption of water districts. This means that Pershing County, Lahontan Valley, and every water district would be exempt.

Senator Hardy:

That is the intent.

Assemblyman Goicoechea:

The concern I have with the exemption of water districts is that Lincoln County Water District is exempt also.

Senator Hardy:

That is correct.

Assemblyman Goicoechea:

That raises another concern. What are we going to do with these counties if, in an attempt to circumvent the law, they all create water districts?

Senator Hardy:

We'll consider that problem when it comes up. This has not been an issue for water districts. There has not been an instance where a water district has sold water. They are doing their best to acquire it. I am sensitive to the situation in Lincoln County and we will be watching that like a hawk. We have to trust that water districts will stick to their purpose of acquiring water and not selling it for development of infrastructure.

Assemblyman Goicoechea:

I agree with the terms that are listed. The public hearing process will open this so we don't see abuses. I see nothing in the bill to preclude a local jurisdiction from selling or leasing water if they could prove to their constituents that it was in their best interest to do so.

Chairman Parks:

In regard to the findings, should they be in the form of a resolution by the local governments?

Senator Hardy:

We discussed that briefly. It would be appropriate if the findings were written. That would help accomplish the purpose of having something actionable in court if someone felt aggrieved. Those findings should be published.

I was just reminded of something that did not make it into the draft. In the findings portion, subsections 1 through 4, we need to add, after sale, "or lease." Your legal counsel may have caught that, but I wanted to be sure that was clear. Subsection 1 should say "sale or lease of a water right," and subsection 2 should be "the sale or lease of a water right" to be consistent with the provision in Section 1.

Assemblyman Goicoechea:

Would you have to meet all the criteria in subsections 1 through 4? There is an issue in White Pine County—as they work with LS Power—that necessitates the ability for them to do a long-term lease at something that would be less than the true value of the water. It fits under subsection 2, for growth and development of infrastructure in that particular county. I want to make sure there is nothing that would preclude a county, for the economic benefit and development of that county, from entering into a lease agreement that was for less than the true value of that water.

Senator Hardy:

It has never been the intent to prevent the sale or lease of water for less than actual value. If there is an economic reason, then they should have that right.

Assemblyman Goicoechea:

I believe it fits clearly under subsection 2, but it might violate subsection 4. Do you have to meet just one of the conditions? If they held a public hearing, I am sure that the people in White Pine County would support and the findings would be such. I don't see anything that says you have to meet all four criteria or just one.

Senator Hardy:

The intent would be that you have to meet all four criteria. If we need to do something with subsection 4 in regard to the actual value of water, I would be happy to do that. I don't think any of these tests, even as inclusive tests, is beyond the burden of anyone to do for all of the reasons I have been given for why we need to sell water to fund infrastructure.

Assemblyman Goicoechea:

What if we didn't put it in subsection 4, and it is said you can't sell the water without getting the actual value of the water? The lease language would only be on the first three criteria.

Senator Hardy:

If that is more comfortable for the Committee, we could remove subsection 4. Subsection 1 is the primary factor, the findings. The main objection to the bill has been what you sell the water for, and that the public body comes up with a finding. The other three are important. If it causes Mr. Goicoechea discomfort, we could delete it. Subsection 1 is the most important to sell water consistent with a prudent, long-term management of water resources in the jurisdiction of the public body.

Assemblyman Goicoechea:

I just wanted to ensure that we gave the ability to lease for more than 5 years if it is an economic benefit of that jurisdiction.

Senator Hardy:

That is the absolute intent of this bill.

Assemblyman Goicoechea:

As long as that is on the record, we are fine and I won't oppose any other language.

Senator Hardy:

It would be important for Ms. O'Grady to look at subsection 4 to be certain we have the intent of the Legislature not to prohibit it from being sold or leased at less than fair market value. There are economic incentives that water can be a part of.

Assemblyman Goicoechea:

As long as we have the maker's intent on record that this language is not to preclude sale or lease, if it proves to be an economic benefit to that jurisdiction to do so.

Chairman Parks:

Then, my question would be to staff, do you have everything you need for that? Can you work with them?

Susan Scholley:

I just wanted to clarify that the action is on Senator Hardy's amendment that was submitted by Mr. James. It is in your work session packet ([Exhibit D](#)).

The subsections will be numbered 1, 2, 3, and 4. There will be a revision to subsection 4 to include the concept of both money and other comparable benefits either economic development or of non-monetary benefit. Finally, it does not include Mr. Kulkin's amendment and the additional lease language stated today by Senator Hardy.

ASSEMBLYMAN HARDY MOVED TO AMEND AND DO PASS
SENATE BILL 466 WITH THE AMENDMENT BY MR. JAMES AND
SENATOR HARDY'S ADDITION OF THE WORD "LEASE."

ASSEMBLYWOMAN KIRKPATRICK SECONDED THE MOTION.

THE MOTION CARRIED. (Assemblyman Atkinson and Assemblyman Sibley were not present for the vote.)

Chairman Parks:

We will now take up S.B. 110.

Senate Bill 110 (2nd Reprint): Makes various changes concerning Airport Authority of Washoe County. (BDR S-545)

Susan Scholley, Committee Policy Analyst, Legislative Counsel Bureau:

[Read from work session packet, [Exhibit E](#).] Senate Bill 110, sponsored by the Senate Committee on Finance, was heard in this Committee on May 10, 2005. The bill changes the name of the Airport Authority of Washoe County to the Reno-Tahoe Airport Authority. It also exempts the Authority from various competitive bidding requirements, if the project is financed either by revenue bonds or through certain installment contracts. The bill does require prevailing wages to be paid on all projects and requires the Authority to adopt regulations establishing a competitive bidding procedure, using a process similar to *Nevada Revised Statutes* (NRS) Chapter 233B.

Testimony in support of the bill was given by representatives of the Authority and several labor organizations. There was testimony expressing concern by Steve Holloway regarding the proliferation of similar bills and loss of the benefits of standardized bidding or design/build procedures.

No amendments were proposed. The measure passed in the Senate. There is no fiscal impact at the State or local government level.

Chairman Parks:

There was some concern relative to organized labor. Are they now in support of this bill? I am getting a nod from the labor representatives, and Mr. Holloway has expressed his support as well. We received backup information from Krys Bart [Director, Airport Authority of Washoe County]. With the rack closures, I wondered if the additional capacity for the Air National Guard couldn't be accommodated in some way, since they said they couldn't expand at the airport.

ASSEMBLYMAN HARDY MOVED TO DO PASS SENATE BILL 110.

ASSEMBLYMAN SIBLEY SECONDED THE MOTION.

THE MOTION CARRIED. (Assemblyman Atkinson and Assemblyman Sibley were not present for the vote.)

Chairman Parks:

The next bill we have on our work session list is S.B. 356.

Senate Bill 356 (1st Reprint): Revises provisions governing amount of sales and use taxes due on retail sales of vehicles for which used vehicles are taken in trade. (BDR 32-1106)

Susan Scholley, Committee Policy Analyst, Legislative Counsel Bureau:

[Read from work session packet, [Exhibit F](#).] Senate Bill 356 was sponsored by Senator Townsend and first heard on May 6. This bill provides for an allowance against the selling price of a vehicle for the value of a vehicle taken in trade, or a "trade-in." The bill keeps the current exemption from local sales and use taxes until the question of a full sales tax exemption can be placed before the voters, which would remove the 2 percent use and sales taxes at the state level.

Testifying in support of the bill were John Sande for the Nevada Franchise Auto Dealers Association and Michael Lee from Lee Brothers Sales and Leasing in Reno. The Department of Motor Vehicles was at the hearing but declined to comment on the loss of revenue.

There were no amendments were proposed. The measure passed in the Senate. It may have a fiscal impact at the local government level; it has an identified fiscal impact at the State level.

I attached the Floor statement prepared by the Fiscal Analysis Division for the Senate Committee on Taxation ([Exhibit F](#)), to give you a little more information on the provisions of the bill.

Assemblyman Hardy:

Looking at the bill history, is Senate Taxation the same as Senate Finance or our equivalent of our Ways and Means?

Chairman Parks:

No, it is not the same. There are both Senate Finance and Senate Taxation.

Assemblyman Hardy:

Are we obligated to send this to our Ways and Means Committee after we pass it out?

Chairman Parks:

We are not obligated. Normally, both Senate Finance and Assembly Ways and Means look for these bills. Looking at the fiscal note, the fiscal impact appears to be de minimis. It appears to be the typical \$13,000 per year, as Ms. Parnell indicated.

Assemblyman Hardy:

Does this fit into our streamlined sales tax so we can be consistent with that?

Chairman Parks:

It is my understanding that it would fit in with the streamlined sales tax initiative that we put in place two years ago.

John P. Sande III, Legislative Advocate, representing Nevada Franchise Auto Dealers Association:

That is the reason for a vote of the people in 2006. You have to be consistent as far as any exemptions. Currently, the exemptions only affect the local portion of the sales and use tax. In 2006, it goes to the voters and it will be only one question so that they clearly understand it. It will be yes to continue the exemption and expand across the board to the state and local portions of the sales and use taxes, or no to increase the taxes when they trade in their cars.

The Department of Taxation was at the Senate hearing. Afterward, I talked with them and they had no problem with going forward with the legislation.

Chairman Parks:

Did Taxation tell you that it was de minimis?

John Sande III:

No, they didn't tell me that. Addressing the sales and use tax—that simplification—they felt this bill would fit in with that. The delay until the vote of the people was not a problem.

ASSEMBLYWOMAN PARNELL MOVED TO DO PASS
SENATE BILL 356.

ASSEMBLYMAN SIBLEY SECONDED THE MOTION.

THE MOTION CARRIED. (Assemblyman Atkinson and
Assemblyman Sibley were not present for the vote.)

Chairman Parks:

That takes us to S.B. 389.

**Senate Bill 389 (1st Reprint): Creates chapter relating to tax increment areas.
(BDR 22-815)**

Susan Scholley, Committee Policy Analyst, Legislative Counsel Bureau:

[Read from work session packet, [Exhibit G](#).] Senate Bill 389 was sponsored by the Senate Committee on Taxation and was first heard on May 12, 2005. It allows a city or county to establish a tax increment area for certain undertakings. In the case of cities or counties in counties other than Clark County or Washoe County, tax increment areas may be established for economic development projects. That is due to the population cap.

Testifying in support were Mary Walker, Linda Ritter, and Dan Holler. Representatives from Reno, Washoe County, Washoe County School District, City of Las Vegas, Clark County, and the Nevada League of Cities and Municipalities also supported the measure, as did Madelyn Shipman and Michael Alastuey. The Nevada Taxpayers Association supported the bill in general but did oppose portions of the amendments proposed by Dan Musgrove.

Proposed amendments are attached ([Exhibit G](#)). The measure passed in the Senate. There was no identified fiscal impact at the state or local government level.

There are two pages of amendments. Mr. Alastuey will explain the amendments to you in detail. The amendments in blue ([Exhibit G](#)) were received after Mr. Alastuey's amendments. They are substitutions for some of the language originally proposed by Mr. Alastuey after review by John Swendseid, a bond counsel. There is also a revised Clark County amendment.

Mr. Musgrove would like to clarify that even though there was discussion at the hearing, underpass and overpass would include both pedestrian and vehicular. He is also proposing a revision to the amendment relating to power facilities to narrow it to distribution or transmission facilities.

I also included the friendly amendment from the Washoe County School District. Mr. Alastuey will clarify that this amendment has been incorporated into his comprehensive amendments. I would defer that to him to put on the record.

Chairman Parks:

Several representatives were helpful in crafting the revisions to this bill. They are seated at the table.

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

I am also a consultant with the Nevada Association of School Boards. Following testimony at the original hearing, we felt that the questions and concerns sorted themselves into two areas. One area hinged on the types of projects permitted under the bill and what was economic development. It was felt that some of the provisions were too wide open.

Another area of concern arose primarily around existing and prospectively approved school levies and protecting school levies from the tax increment financing contemplated under the measure.

Ms. Walker, Ms. Shipman, and I met in order to clear up the confusion between what would happen in the larger counties, the smaller counties, et cetera. We asked ourselves what kinds of definable and well-understood improvements to infrastructure would be allowed under the measure. The list that was initially included for the larger counties had street projects, water projects, underpasses, sewage projects, drainage and flood control, and most any kind of legitimate project that could be contemplated in support of the tax increment tax financing and paid with it.

What we are proposing to do in the first page of amendments following your work session cover sheet ([Exhibit G](#)) is to make the provisions apply uniformly to all counties and cities and specifically define projects or undertakings. Secondly, it provides to protect statewide school operating property tax levies and all school capital levies from the effects of tax increment financing.

We are offering two alternatives for executing the first objective, making the provision apply uniformly. There are clearly shown (page 3 of [Exhibit G](#)) as Alternative 1 and Alternative 2. As suggested by Ms. Shipman, Alternative 2 may be a more streamlined way of referring to the definitions in the county bond law.

You see a change in type style on the second page (page 4 of [Exhibit G](#)). The Roman-style lettering in blue is the supplemental language that was provided by John Swendseid in his capacity as bond counsel. You can select either of the alternatives, but we strongly recommend that you supplement that choice with the language provided from Mr. Swendseid.

In the middle of the second page (page 4 of [Exhibit G](#)) begin the changes suggested to provide protection for the school levies. The block-style lettering is wording I suggested, followed by the Roman-style lettering, which is substitute language suggested by Mr. Swendseid.

[Michael Alastuey, continued.] As to the other amendments, Ms. Shipman helped us research the definition of "street project" that we have in our amendment. It includes underpasses and overpasses, something to note as you go over Mr. Musgrove's amendment. Our amendment subsumes the proposed friendly amendment from the Washoe County School District.

That details the three amendments before you. Our amendment is intended to include the suggestions of each in terms of definition of street projects and in terms of protection for school levies.

Assemblyman Hardy:

Does this mean we won't need, in the blue-bold, an underpass or overpass for pedestrian or vehicles? Or, does "street project" include pedestrian overpass particularly?

Madelyn Shipman, Legislative Advocate, representing The Mills:

Our research indicates that the definition, in both city and county bond law, for street project is significantly very broad and includes underpass and overpass—
—not specifically as pedestrian, but it could serve that purpose. It also includes the onramp and offramp as an approach under that definition. That would subsume the need for any specific defining of a pedestrian underpass or overpass project as part of the Clark County amendment.

Mary Walker, Legislative Advocate, representing Carson City, Douglas County, and Lyon County, Nevada:

I would like to thank Assemblywoman Pierce and the staff for working with us after hours last night to come up with a resolution in regard to the concerns that were expressed. All we are trying to do is eliminate the term "economic development" from here, so what we are talking about is truly public work types of projects.

Basically, this is an excellent financing tool to provide various types of public works and facilities when you are expanding or developing your areas, particularly for the rural areas, where you don't have the funding for roads, sewers, water, and other types of infrastructure. In the rural areas, this is more costly because a lot of our services are so far away that we have to spend more money to bring them toward the area we wish to develop. This is extremely important. It is a first step toward taxing to permit financing. It also takes care of all the concerns that were expressed by the schools and this Committee.

Assemblywoman Parnell:

What is the policy difference between Alternative 1 and Alternative 2?

Michael Alastuey:

There is no policy difference. It is simply stylistic.

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

I appreciate the comments made by Mr. Alastuey. Regarding the underpass and overpass for pedestrians, I feel comfortable it is covered under the existing amendments. I wanted to make sure that it was clear and on the record that we still wanted that. I appreciate the Committee's indulgence in that regard.

The next reference is to the power issue (page 2 of [Exhibit G](#)). I took great note of the concerns by the Committee regarding the broadness of the initial language we proposed. I asked Nevada Power to help craft this language. They are taking a neutral position. In reflecting the concerns of the Committee, they crafted the language to look at very limited things we would do in terms of retrofit projects. Personally, I don't know what a duct bank system is—I am sure Mr. Goicoechea knows—but power lines, poles, and masts are self-explanatory.

I did send this language to Ms. [Carole] Vilardo last night with no response. She may still have concerns. I will not reflect those on her behalf. This is a valuable tool in trying to retrofit some of the older areas we have in Clark County that we are trying to redevelop. I hope the Committee sees that it is something important to add to the bill.

Chairman Parks:

The concern we have is that we want to narrowly define this so it is electrical transmission to a particular facility for a particular facility, and that it does not cover additional areas or provide services to additional areas. Limiting it to this particular finance area should do it. We may have to look at that more, but I am supportive of including the electrical generation. We cannot do some of this without electrical service to the affected area.

Assemblyman Goicoechea:

You did say electrical generation, and that is false.

Chairman Parks:

That's correct. I meant electrical transmission strictly. The next issue relative to this bill is school funding. Ms. Loring, have you had an opportunity to look at the wording provided by Mr. Swendseid?

Anne K. Loring, Legislative Advocate, representing Washoe County School District:

It appears that if these are two options in terms of style, they both seem to address all of the concerns and look fine to us.

Pat Zamora, Legislative Advocate, representing Clark County School District:

We believe with these amendments we are held harmless.

Assemblyman Hardy:

On Alternative 1 or Alternative 2, does anybody have any feelings which one we want to do?

Chairman Parks:

We are told that both achieve the same purpose. I propose that we leave it up to Legal as they draft amendments to decide which.

Assemblywoman Pierce:

I want to be clear as to what I'm looking at. Alternative 1 and Alternative 2 continue on with this language on the second page (page 4 of [Exhibit G](#)) that has "Page 12, after line 8, insert: ..." Is that correct?

Chairman Parks:

Yes, that is correct.

Assemblywoman Pierce:

So, this goes with both of them?

Chairman Parks:

Yes. That is also correct. The bottom half of the second page does make the other particular changes. Mr. Alastuey, are we correct on that?

Michael Alastuey:

Yes, Alternative 1 and Alternative 2 are both intended to address changes to only pages 2 and 3 for the definitional part of the bill. The part having to do with protection of school levies begins on page 12 of the bill. You have two ways of doing that. I would suggest to Legal that either one or a combination of both, whichever best expresses the intent, would be appropriate.

Assemblyman Hardy:

The bold type on page 2 (page 4 of [Exhibit G](#)) applies to everything. That is included in whatever alternative we use.

Michael Alastuey:

That is correct. The bold type on page 2, the suggested changes to protect the school levies, is followed by two different expressions of that same intent.

Assemblyman Goicoechea:

Could staff have a mockup of this amendment by tomorrow so we can move this out? Right now, it is a bit confusing for me to walk through these. Can staff even do that?

Chairman Parks:

Are you proposing that we just hold this until tomorrow?

Assemblyman Goicoechea:

I would like it see it, once all put together, to try and make sense of it. I am not sure. Let staff determine which one is the best and flows the easiest. We all agree with the concept. We could be voting on something that could change considerably or not.

Assemblywoman Parnell:

If we take 1 or 2, then we are not addressing the Clark County or the Washoe County issues, because they have been taken care of in Alternative 1 and 2.

Michael Alastuey:

The bond issues start on page 12 of the bill. Definitions are on pages 2 and 3 of the bill. The alternatives shown here (page 4 of [Exhibit G](#)) only address pages 2 and 3 of the bill. Pick whichever you want, and then go to page 12 and look at the alternatives there. Because of his expertise, Mr. Swendseid's advice should prevail, and pick one of the two options there. That's it.

Assemblywoman Parnell:

In answer to my question, we are not looking at the Clark County amendment from Dan Musgrove or the Washoe County amendment from Anne Loring and Dotty Merrill.

Michael Alastuey:

The Anne Loring-Dotty Merrill intent is included in our composite amendment. With respect to Mr. Musgrove's amendment, the term "street project" includes all the pertinences thereto. In legal terms, Ms. Shipman's research shows that a street project, broadly defined in county bond law, includes the street elements of Mr. Musgrove's amendment. The power is a separate issue.

Chairman Parks:

The one thing we need to give staff direction on is whether the power element in or is it out. Everyone says in; does anyone wish to say out? This is for the mockup of the amendments.

Assemblywoman Pierce:

Mr. Musgrove, could I get some clarification on what this does? Is this normal for this to be financed in this way? Is this a completely different thing, a new departure?

Dan Musgrove:

Our intent would be that we would have the ability to use the tax increment financing to entice someone to come into an older area and develop it. We would be able to use this to essentially retrofit the existing power structure as an option to finance its going forward. Tax increment financing has not been used in these kinds of power issues.

Assemblywoman Pierce:

We are then talking about doing retrofit projects, helping the core of this?

Dan Musgrove:

That is our intent, absolutely.

Assemblywoman Pierce:

That makes me more comfortable. Thank you.

Mary Walker:

An example of how this could be helpful in the rural areas is the Douglas County airport. It has been trying for many years to get light industrial near that airport. They have not been able to do so, because if someone is interested, Douglas County informs them that it will cost them millions of dollars to bring in the infrastructure, including power.

If we were able to use this tax increment financing, we could take the funds generated from that development to pay for the infrastructure improvements, which could be power. It can be very expensive in the rural areas. A lot of your services are so far away, to bring in power could be very costly. This would be very helpful in the rural areas also.

Assemblywoman Parnell:

Obviously, this has to pencil out. If it doesn't pencil out, it is not something that is going to happen.

Mary Walker:

Absolutely. Another thing is that there could be an avenue of getting economic development grant funds that you could match with your tax increment. There could be additional sources that could be used with this to make a project work.

Chairman Parks:

We will ask for the draft to include the power distribution. Any further questions or comments on S.B. 389? We are going to ask for a mockup before any further consideration at tomorrow's hearing. Ms. Vilardo, is there any comment at this time you'd like to make?

Carole Vilardo, President, Nevada Taxpayers Association:

I just looked at the amendments. With the exception of the electrical, the Committee has tightened that up considerably. Thank you.

Chairman Parks:

There is nothing further on S.B. 389; we'll trail this until we get a chance to look at the mockup tomorrow.

We have three bills on work session left for this morning. Those are S.B. 426, S.B. 428, and S.B. 467. We will proceed with S.B. 426.

Senate Bill 426 (1st Reprint): Clarifies certain provisions relating to public works. (BDR 28-1032)

Susan Scholley, Committee Policy Analyst, Legislative Counsel Bureau:

[Read from work session packet, Exhibit H.] Senate Bill 426 was sponsored by the Senate Committee on Government Affairs on behalf of the Legislative Commission's Audit Subcommittee and was first heard in this Committee on May 12, 2005.

Senate Bill 426 clarifies that, as to the University and Community College System of Nevada (UCCSN), a "public work" is defined as a project, rather than a building. The definition further sets forth that an appropriation by the Legislature, rather than the State or any federal money received, must provide 25 percent of the costs of such a project before it may be considered a public work. Annual energy savings from the retrofit of a public building must meet or exceed the total contract payments made by the State or local government. The bill also provides that certain documents given to a public body by a bidder on a public work may be transmitted and stored electronically if the transmission ensures that the documents are exclusively accessible to the bidder.

[Susan Scholley, continued.] Assemblyman Marvel and Paul Townsend, the Legislative Auditor, testified in support of the bill, as well as Senator Hardy. Also testifying in support, based on their proposed amendments to the bill, were Assemblywoman Giunchigliani and Danny Thompson from the AFL-CIO.

Testifying in opposition to the amendments proposed were Mary Walker, representing Carson City, Lyon County and Douglas County, and Nancy Howard on behalf of the Nevada League of Cities.

There are four proposed amendments for the Committee's consideration as set forth in the attachment ([Exhibit H](#)). As far as the Senate goes, it did pass unanimously. There is no identified fiscal impact.

Ms. Giunchigliani proposed two of the four amendments. The first (page 2 of [Exhibit H](#)) was to amend NRS 338.010, Section 15, subsections (a) and (b). This is Section 1, on page 4 of that bill, lines 13 through 17. It deletes subsection (b), taking out the 25 percent trigger for what is a public work as it refers to the UCCSN. It puts in a trigger of a project costing \$100,000 or more.

Her second proposed amendment was to amend into the bill A.B. 304, which died on the Chief Clerk's desk in April. That was Assemblyman Hardy's bill, which addressed performance contracts for cost-saving measurers.

Danny Thompson from the AFL-CIO and several other labor representatives proposed an amendment to add a new section, which is essentially Section 2 of A.B. 552, which this Committee heard in the first half of this Session. I have reprinted Section 2 for you to refresh your memory. I will qualify this by saying that there has been discussion, and LCB [Legislative Counsel Bureau] Legal agrees, that this section needs to be reworked to accomplish the same purpose of clarifying and eliminating the string site to the NRS sections. Thus, as the NRS is amended over time, this section will become incorrect or obsolete. The same intent would still be there.

The fourth amendment (page 2 of [Exhibit H](#)) was proposed by Renny Ashleman, who was speaking on his own behalf and not for the State Public Works Board. He pointed out that in Section 4 of the bill—page 10, lines 7 through 13—there may be situations where a change order comes late in a project. Even though the change order may violate the standards set forth here, it might make more sense from an economic standpoint to go ahead and approve the change order. He suggested this clarifying language be added to allow that discretion to recognize the economic realities of the situation, depending on where the project was.

Assemblywoman Parnell:

With all the amendments, how far have we strayed from the intent of the audit report? That was the bill submitted by the Audit Subcommittee.

Susan Scholley:

I am not sure I can answer that question directly. What I can tell you is that the bill was the result of an intensive audit of the UCCSN and identified a number of areas that needed to be addressed. One of those was the definition of a public work. There are amendments proposed that would change the definition of a public work. I see a representative of UCCSN who could address any concerns they may have about the amendments.

The amendments are related to the bill and are germane. Dr. Hardy's bill is a different subject. It was passed out of this Committee and did not have a problem with that portion of it. In terms of meeting intent, your question would be better answered by UCCSN.

Chairman Parks:

Is there any member here that served on the Audit Subcommittee?

Daniel J. Klaich, Vice Chancellor of Legal Affairs, University and Community College System of Nevada (UCCSN):

We worked with Legislative Counsel on the original drafting of this bill. It came up because we were cited in audits for failing to comply with certain standards on remodels, essentially, or add-ons where the statute was unclear. If we had a \$10 million building that was constructed with public money appropriated by the Legislature, and there was a \$1 million remodel that was done with private funds, was that a public work or not? The statute was just unclear. That is where this all started.

I agree with your staff that these amendments have remained in the same solar system as the bill started, but not too close to the center of it. There has been considerable concern that the University is trying to undermine its obligations with respect to paying prevailing wages on its projects. I would like to assure the Committee that is not the case.

This issue has come up in connection with a number of bills that the University has presented. We have tried to take the opportunity every time we could to assure whoever it was that was not our intent, and we have supported amendments to bills to clarify that, which would include the amendment from Mr. Thompson.

[Daniel Klaich, continued.] We do have concerns with the first amendment proposed by Ms. Giunchigliani. The current formula for determining what is a public work—essentially a 75/25 mix—is an appropriate policy decision, as opposed to the new definition of a public work, which is everything over \$100,000.

Chairman Parks:

It doesn't look too much like the initial bill. Further questions or comments from the Committee? Did labor have something else they were proposing that we do not have as yet?

Jeanette Belz, Legislative Advocate, representing the Associated General Contractors of America, Nevada Chapter:

We wanted a clarification of the proposed amendment from Ms. Giunchigliani to amend the bill A.B. 304. It did not specify if it was the first reprint of the bill. That bill had the contentious Section 22 provision in it, where the inmates would be exempt from prevailing wage. It is unclear if that would be in or out of this proposed amendment. That is our only question.

Chairman Parks:

We all presume that it was the revision of A.B. 304 that was inadvertently left on the Chief Clerk's desk without having the exemption placed on it. Dr. Hardy nods affirmatively.

Assemblyman Grady:

I am going to vote for the bill but reserve the right to change my vote. There are 24 sections under the one amendment. I want to look at what those sections are. I want to look at those. We got crossed up on a vote when all the sections were in there, and we didn't have a chance to look at the NRS.

ASSEMBLYMAN HARDY MOVED TO AMEND AND DO PASS ON
SENATE BILL 426 WITH ALL FOUR AMENDMENTS NOTED IN THE
WORK SESSION DOCUMENT.

ASSEMBLYWOMAN PIERCE SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

Chairman Parks:

That takes us now to S.B. 428.

Senate Bill 428: Prohibits admission of certain persons as parties to certain administrative proceedings. (BDR 18-987)

Susan Scholley, Committee Policy Analyst, Legislative Counsel Bureau:

[Read from work session packet, [Exhibit I](#).] We addressed S.B. 428 a couple of days ago. There were some questions about contested cases and the scope of the amendments in the bill. I will quickly review that this bill prohibits the admission of a party to an administrative proceeding in a contested case involving grant or denial or renewal of a license, if the person does not have a direct financial interest in the license. "Direct financial interest" is defined in the bill.

This bill also requires a district court to dismiss any party in a petition or cross-petition for judicial review of such a matter, if that person was not a party to the administrative proceeding.

Jim Wadhams testified on behalf of this bill and indicated that their concern was to unnecessarily keep competitors out of some of these licensing hearings where they didn't belong. No amendments were proposed. In discussions with Committee Counsel, there is a suggestion to add "in a contested case" to line 16 on page 3 of the bill, after "hearing officer," to make a link between the two sections of the bill.

There were some no votes in the Senate, and as we discussed, there is no fiscal impact.

To answer some of your questions, I have provided excerpts from NRS 233B, which is the Nevada Administrative Procedures Act (pages 2, 3, 4, and 5 of [Exhibit I](#)). The Administrative Procedures Act, which is something every state government has, primarily addresses rule making—how you enact regulations by State agencies and how you deal with contested cases or hearings involving matters affecting State agencies.

I want to clarify that this bill only applies to State agencies. It does not apply at the local level. Licensing hearings at the Clark County Commission are not subject to the Nevada Administrative Procedures Act. Eileen [O'Grady] and I felt there might be some misconception that a contested case would involve a licensing of a business in Clark County; that would not come within NRS 233B.

You have highlighted on page 2 (of [Exhibit I](#)) the definition of a "contested case." It is pretty broad. Moving down, there is the definition of "license," which means the whole or part of agency permit, certificate, approval,

registration, charter, or similar form of permission granted or required by law. "Party" is simply defined as a person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party. If you do a word search of the statutes, you will find "contested case" pops up in a number of chapters throughout the NRS in relation to specific entities. It is hard to give a simple, comprehensive definition or list of what would be encompassed within the impact of the two sections of the bill.

[Susan Scholley, continued.] NRS 233B.039 exempts a number of agencies and actions from the Administrative Procedures Act. Those are listed here (page 2 of [Exhibit I](#)). Continuing to the next page (page 3 of [Exhibit I](#)), the exemptions continue.

I need to point out that NRS 233B.127 is one of the sections amended by S.B. 428. This section only applies when the grant, denial, or renewal of a license is required to be proceeded by notice and an opportunity for hearing. It does not apply to the granting, renewal, or denial of a license where the statute does not give that person the right to come in and have a hearing before the board.

There are some licenses and permits that are simply granted or denied on the basis of an application and the person does not have an opportunity to come in and present evidence, et cetera. This section that Mr. Wadhams is proposing to amend for the direct financial interest wouldn't affect those.

Turning to NRS 233B.130: currently, judicial review is available to any party who is identified as a party of record by an agency in an administrative proceeding and aggrieved by a final decision in a contested case.

It is impossible to come up with a nice, neat list or idea of what might be impacted by the change that this bill would make. It would limit the discretion of a hearing officer or a judge to determine standing with the admission of a party of a contested case in these situations.

There is a large body of law on what constitutes "standing" or what makes a party "aggrieved" so a hearing officer or a judge would let them intervene in an action in a contested case. A contested case is like a mini-trial, where you have the hearing officer decide who is a party, who is aggrieved, who has standing, who is able to come in and bring their witness, their evidence, and make their case to the hearing officer. He issues a decision very much like a court decision. If they don't like that, they have the option to go up to the district court. The judge then has the discretion to go through the same process. The bill will

change “may” to “shall.” There is a narrowing down of the concept of standing in these matters by this bill.

[Susan Scholley, continued.] We cannot answer your questions about what scope of interests and proceedings might be affected by limiting the parties to those, other than by right, who are the licensee and the agency involved, or what other parties might be negatively impacted and kept out of a contested case, where today they might have an argument that they should be in.

Assemblyman McCleary:

This doesn’t affect local city ordinances or business licensing?

Susan Scholley:

Let the record show that I am nodding yes. That is correct. It does not affect local governments. The chapter applies to State agencies.

Assemblyman McCleary:

Does it only pertain to a person, not entities or businesses, being licensed by the State? Professional licenses like for real estate, doctors, et cetera. I am not aware that the State licenses businesses.

Susan Scholley:

It could include companies, corporations, and not necessarily a natural person. It could include a business entity who was seeking a permit, certificate, approval, registration, charter, or similar permission required by law. So, license would not necessarily be limited to a “natural person.”

Assemblyman McCleary:

That is the only place that I might have some problem with this at the local level. If a business—for example, a topless bar—is going to be located in your neighborhood and you don’t have a financial interest in it, you still want to be able to protest it. You don’t want it in your neighborhood. A citizen might object to a business being licensed to practice a certain type of business.

I have no concern with this if it were just a person, like a real estate license. But if it is a business that someone might find objectionable or doesn’t want it located in their neighborhood and they can’t object, then I have concerns with this bill.

Chairman Parks:

You have an email from Mr. Wadhams, dated May 18, 2005, at 6:00 a.m. Reading the last line of that, this bill may keep the hearing officer from harming someone’s right to a fair proceeding. He does give an example regarding a

license hearing of a mortgage broker. It is a pretty good explanation of the function of the Hearings Division. They hear various issues, and not all the hearings officers are judges or attorneys, although their actions are comparable to a judge or an attorney in deciding a dispute.

[Chairman Parks, continued.] Injuries brought through the industrial insurance process are good examples of contested cases—whether somebody's injury was job-related or not and whether they are due eligibility for the benefits they are seeking.

Assemblyman McCleary:

Where I am confused on this is what particular problem or concern we are fixing with this bill. Why are we doing this? Can someone explain what this fix is so I can be comfortable enough to vote for this?

Susan Scholley:

In answering that question, I would refer you to Mr. Wadhams' email, the second paragraph from the bottom. He is suggesting that the bill gives directions to hearing officers—who are not lawyers—as to who they should admit or not admit as parties. He indicates that the bill writes existing decisions into the statute, and he has an argument about going into a hearing without a lawyer.

Chairman Parks:

I was hoping Mr. Wadhams would be here to provide some additional input.

Assemblyman Hardy:

This bill would not preclude normal people from going through normal channels to contest or prevent a particular business from being in a particular place in the local jurisdiction.

Susan Scholley:

The bill does not affect hearings at the local, county, or city level. It applies to State agencies that would be issuing licenses, certificates, charters, et cetera. It is just State agency licenses or permits.

Assemblyman McCleary:

I would like the Committee to go ahead and move it. I will vote no, but I will accept the collective wisdom of this Committee. I just have too many concerns with this bill.

Chairman Parks:

We will hold this for the second bill tomorrow morning after S.B. 421. We will have an answer that we can understand in lay language. I want everyone to be comfortable with this and not just simply take a vote to get the bill moving.

We have one further bill before us, and that is S.B. 467. It should be a real simple one.

Senate Bill 467 (1st Reprint): Makes various changes to laws governing public works projects. (BDR 28-816)

Susan Scholley, Committee Policy Analyst, Legislative Counsel Bureau:

[Read from work session packet, [Exhibit J](#).] Senate Bill 467, sponsored by the Senate Committee on Government Affairs, was first heard on May 12, 2005. This bill makes various changes to provisions related to public works and contracting. I have attached the bill summary (page 2 of [Exhibit J](#)), which goes through the first reprint in detail.

Testimony in support of the bill came from Jim Keenan and Justine Chambers, on behalf of the Nevada Public Purchasing Study Commission. Gary Milliken, representing Associated General Contractors, also gave testimony in support. A number of representatives from various labor organizations, as listed in the work session packet (page 1 of [Exhibit J](#)), testified in opposition to the bill. There were proposed amendments; they are attached (pages 3, 4, and 5 of [Exhibit J](#)). The measure passed the Senate, and there was no State or local fiscal impact.

There is a double-sided, one-page list of amendments proposed after the hearing by the Nevada Public Purchasing Study Commission (pages 3 and 4 of [Exhibit J](#)). There were some amendments that were proposed by labor in an email (page 5 of [Exhibit J](#)) from Paul McKenzie to various people, and there is a response from Jim Keenan as to their amendments.

There may have been some further discussions. Mr. Olivas and Mr. McKenzie are in the audience to testify to that.

Ted J. Olivas, Chairman, Nevada Public Purchasing Study Commission:

The bill before you is a collaborative effort with the Associated General Contractors and the Associated Builders and Contractors. The intent is to clean up some of the language in NRS 338 and streamline some of the processes. It has taken two years to go through this process. There will be new people we will include in this process over the next two years.

[Ted Olivas, continued.] NRS 338 is a complex chapter. It relates to the State in certain sections and to the State and local governments in other sections. You have to be very clear as to who is taking the action within that section. In addition, there are three sections covering three bidding processes. One is the traditional process, another is a prequalification process, and the third is the design/build process. There are also sunset provisions. We will make changes in various sections of this bill that are similar to sections preceding that. That is because there are duplicate sections in NRS 338 due to the sunset provisions.

We do have an amendment that is in your packet. I will go over briefly what we need to change. We looked at the particular section that was provided in this bill and asked whose section this was? Is it the local government's, is it the state and local government's, or is it just the state's? We made sure that the terms were appropriate for that given section.

On page 3 of the bill, in subsection 10, there is a term "a governing body." That relates to local governments. There is a definition for a local government, which is subsection 11. In subsection 14, there is a definition of "public body," which relates to state and local governments. If it is a general term that is used for state and local governments, you use "public body." If it is just the local government, you would then use "governing body." It is confusing. We wanted to make sure that the terms used in these sections are appropriate.

We have had some additional discussions with Mr. McKenzie. We have some additional changes that are appropriate for NRS 338. Other than the cleanup language, we wanted to be sure that sections that were changed got on the record appropriately.

The first change is on page 10 of the bill, subsection 7, line 4. This is a process we talked about during the initial hearing. This is the process where you did not receive any initial bids for an advertised project. We wanted to clarify two things. On line 5, it says "no responsive, responsible bids." Those terms, "responsive" and "responsible," need to be deleted. In addition, we added a provision to clarify that if you do receive bids through this process, you award it to the lower responsive and responsible bidder. It is in your amendment as item 6. That is one of those provisions in various parts of NRS 338. So, we are making the same change in Sections 15 and 16.

The next change—not on the amendment—is one that relates to design/build. We wanted to make sure that the public body, before the project started, made a determination that this was the way to go on that project. We proposed to add a new provision in Section 21 that says the public body must approve the

design/build method for a public works project. That happens prior to the process of soliciting proposals.

[Ted Olivas, continued.] We agreed to change the estimated cost, which is on page 23, subsection 2(b), line 37, from a \$5 million to a \$10 million project. We know there are a lot of changes here and we would be willing to work with staff to make sure all of this gets into a final draft.

Assemblyman Hardy:

When I look at your email, it says a change from \$5 million to \$20 million. So, are you now agreeing on \$10 million?

Ted Olivas:

That is correct.

Assemblyman McCleary:

When you have disqualified builders because of problems in the past, they still can't participate in this? I think I saw that in here, but I just wanted it clarified.

Ted Olivas:

That is correct.

Assemblyman Hardy:

Mr. McKenzie, are all the things you had in your email incorporated into what Mr. Olivas has said?

Paul McKenzie, Organizer, Operating Engineers, Local Union No. 3, Reno, Nevada:

Yes, those are covered by items 10 through 13 of the proposed amendment. Those reinstate language that addresses the issue that Mr. McCleary brought up. On the other issues, I have agreed that the changes are not needed in the bill because of clarifications that were made to me. An example would be my point 4, of changing "or" to "and." Also, above that, the change on page 23, lines 24 through 31, that qualification language is elsewhere in NRS 338 and is tied to this section through referral. I am very comfortable with the amendment as proposed by Mr. Olivas.

Assemblyman Hardy:

If we make a motion to amend and do pass with Mr. Olivas' amendments, with the change of \$10 million instead of the \$5 million, would you be okay with that?

Paul McKenzie:

Yes. We are comfortable with the change to the \$10 million, given the other restrictions that are currently in the bill.

Assemblyman Goicoechea:

I want to be perfectly clear, Mr. McKenzie, in your amendments, the language said if the bid is not awarded, which is higher than the engineer's estimate for the project, that isn't in here.

Paul McKenzie:

The clarification Mr. Olivas made about the "responsive bidder" language, my concern was that a bidder may not be considered responsive because his bid was above that engineer's estimate by a certain percentage, and a public body didn't award it because they had too high of a bid. They then turn around and give it to somebody for higher than the engineer's estimate. By removing that language of "responsive bidder" from the bill, that alleviates the problem. They have to have no bids at all to go into that process.

Assemblyman Goicoechea:

Thank you. In the rural areas, we sometimes accept bids that exceed the engineer's estimate. I had some concern about that.

Assemblywoman Pierce:

When we make a motion, it should refer to an amended amendment from Mr. Olivas, not just as we are seeing it in front of us.

Ted Olivas:

Yes, and we would want to be very clear. It basically represents the amendment dated May 17 from the Nevada Public Purchasing Study Commission, with the change in Sections 7, 15, and 16 that removes the words "responsive" and "responsible." The wording would be "no bids received." Also, we are adding a potentially new provision in Section 21—I would leave that up to Legal—which says that the public body approves the design/build method for a public works project. Finally, on page 23, line 37, the change from \$5 million to \$10 million.

Chairman Parks:

Mr. McKenzie, in your email dated May 12, you had made some indication on some recommended changes on pages 10 and 14 and some additional proposed wording. Does that all go away, or is that to be included?

Paul McKenzie:

That section of my proposed changes is addressed by Mr. Olivas' amendment where we remove the "responsive bidder," so that there is no bidder there.

[Paul McKenzie, continued.] They would add language, as outlined in item 6 on their amendment dated May 17, that says, "The contract is awarded to the bidder who has submitted the lowest responsive, responsible bid." That is repetitive throughout the bill, and those are the sections I outline there with the different pages and lines. That is addressed by the changes Mr. Olivas has offered.

Chairman Parks:

From the day of the hearing on this, my notes indicate that David Kirsch talked about a second Section 7, a "brother-in-law syndrome." Has that been addressed to everyone's satisfaction?

Paul McKenzie:

That is the same issue we had on the bid-awarding section. Yes, it has been addressed.

Chairman Parks:

Mr. [James] Keenan spoke on this bill. Are all of his concerns taken care of as well? [Mr. Keenan nodded affirmatively.]

ASSEMBLYMAN HARDY MOVED TO AMEND AND DO PASS
SENATE BILL 467 WITH ALL AMENDMENTS AND THE NEW
LANGUAGE PROPOSED BY MR. OLIVAS.

ASSEMBLYWOMAN PIERCE SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

Chairman Parks:

I have one other item before we conclude. We have passed out S.B. 409, which deals with lease-purchase agreements. What we were looking for was a study in the area of design/build, which we looked at in S.B. 467 for the study. Now, we realize that it is lease-purchase and not design/build. The Committee should reconsider S.B. 409 to add in the issue of lease-purchase for a recommendation of a study.

Senate Bill 409: Revises definition of "state agency" for purposes of installment-purchase and lease-purchase agreements. (BDR 31-1346)

ASSEMBLYMAN GOICOECHEA MOVED TO RECONSIDER
SENATE BILL 409.

ASSEMBLYMAN SIBLEY SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

Chairman Parks:

We will add that to our list for tomorrow. We are adjourned [at 11:26 a.m.].

RESPECTFULLY SUBMITTED:

Paul Partida
Transcribing Attaché

APPROVED BY:

Assemblyman David Parks, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Government Affairs

Date: May 19, 2005

Time of Meeting: 8:32 a.m.

[illegible]