

**MINUTES OF THE
SENATE COMMITTEE ON GOVERNMENT AFFAIRS**

**Seventy-third Session
April 11, 2005**

The Senate Committee on Government Affairs was called to order by Chair Warren B. Hardy II at 2:13 p.m. on Monday, April 11, 2005, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Warren B. Hardy II, Chair
Senator Sandra J. Tiffany, Vice Chair
Senator William J. Raggio
Senator Dina Titus
Senator Terry Care
Senator John Lee

COMMITTEE MEMBERS ABSENT:

Senator Randolph J. Townsend (Excused)

GUEST LEGISLATORS PRESENT:

Senator Steven A. Horsford, Clark County Senatorial District No. 4
Assemblyman John W. Marvel, Assembly District No. 32

STAFF MEMBERS PRESENT:

Kim Marsh Guinasso, Committee Counsel
Michael O. Spell, Audit Supervisor
Michael Stewart, Committee Policy Analyst
Paul V. Townsend, Legislative Auditor
Tonya Cort, Committee Secretary

OTHERS PRESENT:

Robert E. Shriver, Executive Director, Division of Economic Development,
Commission on Economic Development
Lawrence Weekly, Ward 5, City Council, City of Las Vegas
Donovan Chambers, Operations Director, Urban Chamber of Commerce
John Wilson, Executive Partner, Southwest Ambulance, Las Vegas; Chairman,
North Las Vegas Chamber of Commerce
Otto Merida, Executive Director, Las Vegas Latin Chamber of Commerce;
Commission on Economic Development
Luis F. Valera, Las Vegas Latin Chamber of Commerce
Russell Rowe, Nevada Development Authority
Kimberly McDonald, City of North Las Vegas
George A. Ross, Hospital Corporation of America
Michael Pennington, Reno-Sparks Chamber of Commerce
Pat Coward, Economic Development Authority of Western Nevada
Mary Lau, Executive Director, Retail Association of Nevada
Rose E. McKinney-James, Clark County School District
Berger "Buzz" Nelson, Assistant Vice President, Facilities Services Department,
University of Nevada, Reno
Josh Griffin, University and Community College System of Nevada
James T. Richardson, Nevada Faculty Alliance
Richard Daly, Laborers International Union of North America Local 169
Trudy A. Larson, University and Community College System of Nevada
Helen A. Foley, Pardee Homes
Marvin A. Leavitt, Urban Consortium
Steve Heaney, Stone and Youngberg Limited Liability Company
John O. Swendseid, Swendseid and Stern; City of Sparks
Janine Hansen, Nevada Eagle Forum
Elizabeth Sorenson, American Federation of Labor - Congress of Industrial
Organizations
Robert E. Romer, State of Nevada Employees Association; American Federation
of State, County and Municipal Employees/Local 4041
Jim Keenan, Commission to Study Governmental Purchasing; Purchasing Agent,
Purchasing, Douglas County
John L. Balentine, Commission to Study Governmental Purchasing; Douglas
County Purchasing
Fred L. Hillerby, American Council of Life Insurers; Verizon Wireless
Juanita Cox, Citizens in Action

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Patrick T. Sanderson, Laborers Local No. 872

Ted J. Olivas, City of Las Vegas; Commission to Study Governmental Purchasing

Justine Chambers, Contract Coordinator, Contracts Division, Development Services, City of Carson City; Commission to Study Governmental Purchasing

Gary E. Milliken, Associated General Contractors, Las Vegas Chapter

Mary Henderson, City of North Las Vegas

Greg Salter, City of Sparks

John Slaughter, Washoe County

Neil A. Rombardo, Senior Deputy Attorney General, Office of the Attorney General

Randall C. Robison, City of Mesquite

Madelyn Shipman, Nevada District Attorneys Association

P. Forrest Thorne, Executive Officer, Board of the Public Employees' Benefits Program

A. Stanyan Peck, Chief Legal Counsel, Regional Transportation Commission of Washoe County

Carole Vilardo, Nevada Taxpayers Association

Michael Bouse, Director, Building and Fire Safety, City of Henderson

CHAIR HARDY:

We will open the hearing on Senate Bill (S.B.) 229.

[SENATE BILL 229](#): Creates certain tax incentives for economic development.
(BDR 21-910)

SENATOR STEVEN A. HORSFORD (Clark County Senatorial District No. 4):

I would like to discuss the purpose of S.B. 229. I have provided a packet ([Exhibit C](#), original is on file at the Research Library) and a proposed amendment ([Exhibit D](#)) reviewing the intent of this bill. Senate Bill 229 is intended to address the issue of urban blight in several of our communities throughout the State of Nevada. The Commission on Economic Development (Commission) administers many programs intended to foster economic development and diversification in the State of Nevada. Many of the programs provide economic incentives to stimulate business expansion and retention as it relates to entrepreneurial enterprises. Several of these programs allow for purchases to advance development in manufacturing, warehousing and distribution, and back-office operations. These programs also allow for attraction of business

facilities such as corporate headquarters and research and development enterprises, which may qualify for abatement of sales and use taxes, sales and use tax deferrals and personal-property tax abatement.

For the Property Tax Abatement program, the following criteria must be met: a company's average hourly wage must equal or exceed 100 percent of the average wage established by the Department of Employment, Training and Rehabilitation (DETR); a company must provide 75 full-time, permanent jobs in counties with 60,000 or more in population and at least 15 full-time, permanent jobs in counties with 60,000 or less in population; and a company that is expanding must increase the number of employees by 10 percent or 6 employees, whichever is greater.

For the Sales and Use Tax Deferral Program, the following criteria must be met: a company must provide a medical insurance plan for all of its employees, including dependent coverage, and they must commit to maintain the business in Nevada for 5 years; a company must provide at least 10 permanent jobs in Nevada with an average hourly wage that will meet or exceed 80 percent of the statewide average according to DETR; and a company must purchase a minimum of \$100,000 worth of capital equipment.

SENATOR HORSFORD:

For the Sales and Use Tax Abatement program, the following criteria must be met: a company must provide a medical insurance plan for all of its employees, including dependent coverage, and they must commit to maintain the business in Nevada for 5 years; a company must provide 75 full-time jobs in counties of 60,000 or more in population and at least 15 full-time jobs in counties of 60,000 or less in population; a company that is expanding must increase the number of employees by 10 percent or 6 employees; a company in counties of 60,000 or more in population must make a capital investment of \$1 million and in counties of 60,000 or less in population must make a capital investment of \$250,000. All but 2 percent of the taxes can be abated.

In addition to the criteria currently established and administered by the Commission on Economic Development, S.B. 229 provides for economic development programs to be administered specifically in one of the following geographic boundaries: the Southern Nevada Enterprise Community (SNEC) in Las Vegas, an area within the Community Development Block Grant or an area within redevelopment boundaries.

The programs currently administered by the Commission, while successful, need to be adjusted to allow small businesses to meet eligibility criteria. The goal of S.B. 229 is to nurture more small businesses in order to qualify for economic incentives. This would enhance job creation, economic growth in underserved communities, entrepreneurship and expansion. There are underserved communities facing challenges such as poverty, unemployment and low economic investment which prevent economic growth and development. A specific case in point is the SNEC, within Senate District No. 4, which is a designation approved by the federal government more than 10 years ago. It includes ten census tracts and encompasses five neighborhoods in two cities and unincorporated Clark County. The SNEC has a population of 51,027, of which 33.3 percent live below the poverty level in nearly 10 square miles. Of the 51,027 people that reside in the SNEC, 41 percent are African-American and 28 percent are Hispanic. Therefore, you can see the need for S.B. 229. While we have had tremendous economic growth in southern Nevada, there are certain communities that have not enjoyed the same level of prosperity. Attracting large or small businesses to locate, relocate or expand within the SNEC is a challenge. It is difficult for small business in underserved communities to meet the criteria.

SENATOR HORSFORD:

For businesses that meet the Commission's requirements and are located within one of the underserved areas as indicated within the bill, S.B. 229 causes the following to occur: it lowers the capital investment required from \$1 million to \$500,000 for abatement and to \$250,000 for deferral; it lowers the average wage of placement from the statewide average, currently \$15.98, to 100 percent of poverty, currently \$9.39; and it allows for the sponsorship of the Commission's program to come from the municipality in which the business is located.

There is an important provision in the bill that states any business that hires dislocated workers, who reside in any of the underserved community boundaries, may be eligible for one of the abatements or referrals. The reason why this is so important is because in these communities, the unemployment rate is so much higher than in the rest of the county or the State. The 2000 census data indicated that the Clark County unemployment rate was 6.6 percent. For Hispanic residents in Nevada, it was 8.8 percent and for African-American residents in Nevada, it was 11.5 percent. Hispanics and African-Americans make up most of the population in underserved communities.

There is also a provision in the bill that encourages the Commission to prioritize applications for a retail grocery store within the SNEC and to provide up to \$1 million in abatements or deferrals. Currently, there is not a full-service grocery store within a five-mile radius of the SNEC, which poses many obstacles for seniors and low-income residents.

The overall goal of S.B. 229 is to allow the same level of economic growth that has occurred throughout southern Nevada and this State to occur in these underserved communities. By adopting S.B. 229, the following goals will be achieved: job creation and lower unemployment; the attraction of private capital to underserved communities; and entrepreneurship and small business expansion. These are all goals I know this Committee supports and I ask for the Committee's support in this bill.

SENATOR TIFFANY:

It looks like the abatement you are talking about is property tax. Most grocery stores do not normally own the property nor the building, instead they have a long-term lease. What would you do in that case?

SENATOR HORSFORD:

The provision, under section 6 of the amended bill, allows for all types of property, sales and use tax abatements or deferrals, it is either deferral or abatement, depending upon the level of threshold of investment that the company is willing to make. It would be property tax abatement if a grocery store, for example, decides they do not want to be a tenant, but actually own the facility.

SENATOR TIFFANY:

Why could they not get this right now, without the law passing?

SENATOR HORSFORD:

Currently, the plan administered by the Commission of Economic Development does not include retail. Retail is not one of the industries allowed to apply for any of these exemptions.

SENATOR TIFFANY:

Does the Nevada Tax Commission decide what you get as far as deferral, abatement or which combination?

SENATOR HORSFORD:

The Commission reviews the application and makes the decision whether or not to grant the deferral or abatement. Then they notify the Department of Taxation of the Commission's approval for that application.

ROBERT E. SHRIVER (Executive Director, Division of Economic Development, Commission on Economic Development):

The Commission on Economic Development, under the State industrial plan and the way we administer our abatement programs, is mainly for primary employers that are people who create jobs in your community by bringing new revenue into the State. Therefore, by definition, retail does not qualify because it is secondary income. Retail stores are there due to population base and they serve the community, but they do not bring in new dollars to the community. The idea in this bill is to create an opportunity to attract a grocery store or superstore specific to that area. The way we have the bill written allows the local governments to actually do the work and the monitoring because it is in their federally designated districts in which they have staff. If they think it is a worthy project, they must endorse the project, and then the Commission will take action.

SENATOR TIFFANY:

Does the Commission have a ceiling and/or a floor for the amount of the rebate, or is there money set aside to do this? Then we would know what the maximum would be going out.

MR. SHRIVER:

The Commission does not have a dollar amount limit nor a number of projects they must fund. It is based upon whether or not they meet the criteria of the law, whether it is in the *Nevada Revised Statutes* (NRS) or regulations. If they meet those qualifications, they are entitled to that abatement. For the deferral, they must post a bond or a financial instrument in the amount of the tax due or owed in advance of receiving a deferral. Because of the value of the dollar, we are seeing it is cheaper to pay the deferral of 2 percent up front and go for an abatement program. We do not have limits in the manner of which you were speaking, as it is limited strictly by the qualifying criteria. The statewide average wage we now operate under is \$16.49 per hour which translates to a little over \$33,000 a year.

SENATOR TIFFANY:

If the grocery stores are pulled out in the area we are talking about, is it all due to the fact they do not have the business or because they cannot make the model work economically? Have you seen where this type of abatement would be enough incentive to bring that retail back?

SENATOR HORSFORD:

The Retail Association of Nevada and the International Council of Shopping Centers provided us a report that discussed the method in which local and state governments needed to work in attracting retailers to underserved communities, such as the SNEC. This recommendation is used in other states as a model of attracting retailers to underserved communities.

SENATOR TIFFANY:

Mr. Shriver, from what you have seen in the past, how much of the abatement tax is the State, city, county and schools?

MR. SHRIVER:

Most of the tax we abate is local because of the constitutional prohibition of the 2-percent sales tax. We make sure all local governments, school districts and everyone else understand how the process of abatement works. We have had overwhelming approval of local governments for this. Last year, we did about 45 or 50 abatements, and we hope to have the opportunity to do more in the defined areas that need our help.

SENATOR TIFFANY:

Is this preemptive or do we actually have someone in mind who has been looking at it?

SENATOR HORSFORD:

This is a bill based upon the goal of attracting businesses. We are looking at every possible avenue that would bring resources to underserved communities. The model we are proposing has already been adopted in ten other states.

SENATOR LEE:

In regard to the map on the last page of [Exhibit C](#), does the dislocated employee or worker have to work within the blocked area?

SENATOR HORSFORD:

The blocked or shaded areas on the map of [Exhibit C](#) are the actual SNEC in Las Vegas. If an individual resides in any of the shaded areas and was dislocated, based upon the definition provided by DETR, and any employer hired them, regardless of where that employer exists, then that employer could apply for the exemption and/or abatement.

SENATOR LEE:

In this particular instance, if the grocery store was built within the shaded or blocked area on the map, the employee would also have to be within the shaded area, is that correct?

SENATOR HORSFORD:

The employee would need to reside within one of the shaded areas on the map, but the employer could be from anywhere within the State of Nevada.

LAWRENCE WEEKLY (Ward 5, City Council, City of Las Vegas):

I appreciate what Senator Horsford has presented to the Committee today in reference to S.B. 229. My district desperately needs S.B. 229. In 1992, when former Councilman Frank Hawkins was in office, he brought to the table a grocery store for the area. At that particular time, although many people were excited about having a grocery store in the neighborhood, there were concerns that a grocery store of high caliber would be too pricy for the neighborhood. In the fall of 2004, the grocery store broke their lease and pulled out of the neighborhood. We now have an empty shell where the grocery store and pharmacy once stood.

A couple of years ago, we approved a senior development center, and the only way you could live in this type of facility is if you were a grandparent taking care of your grandchildren. We were excited about this facility with a pharmacy adjacent to their complex, until the grocery store and pharmacy pulled out of our area. With something like S.B. 229 coming into our area, and in working with Senator Horsford, we are addressing every avenue that we possibly can offer for incentives to attract this type of service back into our community. Our area faces many challenges, such as a high population of elderly persons, transportation issues and the high unemployment rate. Since I have been in office, we have worked hard on the infrastructure of our community. We have been able to increase the population back into our neighborhood which always entices businesses to start coming back into the area.

SENATOR RAGGIO:

In looking at the proposed amendment to S.B. 229 on page 5, in order to qualify for the abatement or deferral, a business must employ one or more dislocated workers for one year. Is that going to accomplish what you are after? Do they only have to employ one person from this area and then they qualify?

SENATOR HORSFORD:

It does allow for at least one or more dislocated workers to be employed from the underserved area prior to the business being able to apply. It allows the Commission to develop regulations in the implementation. We do not anticipate many employers will hire just one or two people who are dislocated from this area. Some small businesses want to hire people who have come out of training, and this would help those businesses consider these applicants in a way they are not doing now. That is the intent of S.B. 229.

SENATOR RAGGIO:

What does any business need to do to qualify under S.B. 229? Does this only have applicability within your Senatorial District?

SENATOR HORSFORD:

The property tax or sales tax abatements or deferrals would be for any business in an enterprise community, a historically underutilized business zone or a redevelopment area. These are the three determinants for the property or sales tax abatements. The provisions that deal with the dislocated worker and retail apply only to an enterprise community.

MR. SHRIVER:

The idea is to make sure the dislocated workers get back to work. If we can promote a company to take on these people, then let us see if it works. Companies need to apply through the local governments. This is a new idea, and therefore, we need to craft the language carefully in the amendment.

SENATOR RAGGIO:

The language on page 5, section 4, subsection 2, paragraph (d) of the proposed amendment, [Exhibit D](#), states:

The business employs for at least one year one or more dislocated workers who reside in a specifically benefited zone, a redevelopment area created pursuant to NRS 279.382 to 279.685,

inclusive, an area eligible for a community development block grant pursuant to 24 C.F.R. Part 570 or an enterprise community established pursuant to 24 C.F.R. Part 597.

Does this mean the business has to wait one year after it has hired a dislocated worker before it can apply for a partial abatement?

SENATOR HORSFORD:

A business would have to meet all written criteria under paragraphs (a) through (d) before they could apply for a partial abatement. The business would need to employ at least one dislocated worker for one year in order to qualify for the abatement or referral.

SENATOR RAGGIO:

I am seeing a problem with how this will be implemented as the way it currently reads is confusing. A business hires a dislocated worker and then after one year of employment by that dislocated worker, the business applies for either an abatement or referral. Let us say the dislocated worker is not doing a good job, would that business also be afraid to fire the dislocated worker because they had filed for an abatement or referral?

SENATOR HORSFORD:

That is an important point, but if you look at the current programs in place, a business has to create ten jobs, for example, in a rural area before they can apply and ask for the abatement or referral. Based upon the goals of the bill, it mirrors what is currently in place.

SENATOR RAGGIO:

I understand what you are saying, Senator Horsford, and the goal is worthy. This bill has a new wrinkle in it because the business has to wait one year before it can apply for the abatement or referral. In the Senate Committee on Finance, we saw the record of people who qualify under the general criteria for abatements and referrals, and it is not a pretty record. We have had a lot of them qualify and then drop out.

CHAIR HARDY:

Mr. Shriver, how would you implement the criteria you are requesting of these businesses?

MR. SHRIVER:

The businesses would actually sign a contract which states they were granted the abatement or referral, and these businesses will also be audited by the Department of Taxation.

CHAIR HARDY:

Why is the length of the dislocated worker's employment only required to be one year in order to receive the abatement or referral? Why not state that the business must have the dislocated worker work longer?

SENATOR HORSFORD:

The reasoning behind the one year was we did not want businesses hiring dislocated workers for one month and then applying for the abatement or referral. Once the business receives either, they could fire the dislocated worker.

CHAIR HARDY:

I would take the opposite view. If the language says one or more dislocated workers, the business would need to have the dislocated worker in perpetuity, and the audit would bear that out. That would resolve the concern of Senator Raggio. If you put the business under contract that they will employ a dislocated worker as a condition, the language of the amendment is less confusing. The audits need to be done anyway to make sure the business is complying.

MR. SHRIVER:

I agree with your statement, Chair Hardy, because if a business only hires one dislocated worker and the dislocated worker does not work out or quits, what does the business do?

SENATOR HORSFORD:

I also agree with your proposed suggestion. If we need to create a threshold of more than one dislocated worker, I would be fine with that. I do want to note for the Committee there are a lot of small businesses that hire one, two or three people. And for that small business to hire them at \$9.30 per hour, plus medical benefits, is a huge commitment on their behalf. That is why we kept the threshold as low as it is and mirrored some other programs in the rural communities.

CHAIR HARDY:

The hiring of one dislocated worker is fine; the language of the proposed amendment is confusing. Senator Horsford, you should be congratulated for your creativity because the Commission on Economic Development usually focuses on bringing new business into the State of Nevada, and sometimes we forget about our more mature areas that need economic development as well.

SENATOR LEE:

In looking at the map in [Exhibit C](#), a portion of the shaded area is some of the most highly prized industrial land in the area. If that area is given the abatement, it is naturally going to grow and become fertile for the city of North Las Vegas. Can you tell me the reason why that area is included in the SNEC, Senator Horsford?

SENATOR HORSFORD:

The designation on the map you refer to is where the technology corridor for Las Vegas exists. It is part of the SNEC based upon the level of poverty, unemployment and other socioeconomic issues. A business would have to meet all the other criteria in order to be given the abatement in the area you referenced. Some of the businesses in this corridor, because they are manufacturing businesses, have applied for an abatement or deferral and meet the criteria currently established. In my opinion, S.B. 229 will attract revenues to local governments in the long run because there are businesses looking at every other available land in southern Nevada, other than this locale, to open a business. By addressing some of the criteria, we can attract more businesses and thereby bring additional revenue in the long term.

CHAIR HARDY:

It also creates synergy when there is highly desirable land thrown into the mix.

DONOVAN CHAMBERS (Operations Director, Urban Chamber of Commerce):

Our organization is in support of S.B. 229 as amended. We feel the bill, when enacted into law, will serve as a needed economic development incentive in targeted areas of our State. From a personal perspective, it would be a welcome addition to the revitalization and the public or private initiatives presently planned or under development in the SNEC of Las Vegas. Since what is contained in the bill reflects a number of things we have been championing as an organization for a number of years, we will not take up the Committee's time

by reinstating specifics, many of which are in the bill. Please refer to my written testimony ([Exhibit E](#)). We hope you will pass the bill in its present state.

JOHN WILSON (Executive Partner, Southwest Ambulance, Las Vegas; Chairman, North Las Vegas Chamber of Commerce):

I am speaking to this Committee as an owner of a local company that serves all of southern Nevada, and specifically a number of our economically challenged areas. I am also speaking to you as the chairman of the North Las Vegas Chamber of Commerce. The North Las Vegas Chamber of Commerce, along with the city of North Las Vegas, has made major efforts to foster economic development in all parts of our city through our North Las Vegas Business Development Alliance. Our members have strongly supported S.B. 229 as a major foundation to revitalize our inner-city areas.

North Las Vegas has been a challenge because it is viewed as two cities within one. We have the newer part of the city, north of Cheyenne Avenue, and then we have what is nicely referred to as the mature city, which has been around for a long time and needs our help and commitment. This legislation is good for all of Nevada, not just Las Vegas and Clark County.

We would like to make some suggestions that will mirror many of the issues Senator Horsford addressed. The first item we would like to suggest is the utilization of local jurisdictions and their economic development departments which conduct the initial review of the application for abatement or referral. We would also like the local jurisdictions to send that application to the State for final approval. This is important for a few reasons, as it shares the burden of review and ensures the local and State efforts on economic development are coordinated. We also concur with Senator Horsford's amendment to lower the threshold for incentives, as we believe in a sliding scale to encourage investment.

MR. WILSON:

For example, if a company is adding between 1 and 4 qualified positions, we believe the investment level should be lowered to \$500,000 from the \$1 million. If the company is adding 5 or more qualified positions, we believe the investment level should be lowered to \$250,000. We really want quality jobs in our community, and we want companies that will be here for the long haul. We recognize many companies looking to our redevelopment areas may not be able to reach the \$1-million threshold. The reality in North Las Vegas is

we no longer have cheap land as we are competing not only with each other, but with communities in Utah and Arizona; we need to be able to draw other businesses to stay in southern Nevada and in North Las Vegas. We recognize most companies attracted will be small manufacturing businesses looking for the most cost-effective place to start or relocate their businesses and receive the best benefits they possibly can. We would also like to echo the proposed plan to include retail and service companies in the redevelopment area as our communities need and deserve the help, and retail and service companies deserve to be included. We look forward to reviewing Senator Horsford's amendments.

SENATOR TITUS:

The JC Penney store in Ely became a cooperative (co-op). Is there anything in the amendment that gives some incentives to co-ops, and how would that idea fit with the proposals?

MR. SHRIVER:

The Commission on Economic Development did not give incentives to the co-op in Ely in any way. They had the generosity of JC Penney's, which left all of the fixtures in place for them to use. Would we like to see that happen in other parts of the State in communities? Absolutely. I am not sure how we would place incentives for a co-op, but we could look into including that.

SENATOR RAGGIO:

Mr. Shriver, if the Legislature processes this bill for the SNEC, is there any concern on your part that the incentives for abatement and referral may be compromised? The law was originally placed to provide incentives to attract businesses into our State, and we want to attract high-paying jobs and a minimal capital investment. Companies have come to Nevada and met those criteria throughout the State. If we process this bill, are we opening the floodgates to soon discover we are not attracting major investment nor providing high-paying jobs?

MR. SHRIVER:

When we first instituted the abatement program, we had the outcry from business in general, and they were all asking, "what about me?" That is why we came back and included expansions if you meet the State industrial plan. The whole idea is to create a synergism in an area that has been bypassed. If we get to the point that it becomes a problem, it will be a welcome problem we

never had in those areas. If we can get one or two companies to come into these areas and provide employment and new tax revenues, then this bill has done its work which is the most important thing to me.

MR. WEEKLY:

I am fortunate to have the opportunity to work with local, State, and federal officials in addressing these types of issues. We understand that we all have to work together to minimize the gap between the haves and the have-nots. Contrary to popular belief in understanding this, many citizens in these areas really want a better quality of life, and they depend on all of us. As far as opening floodgates, many businesses have a choice as to where they want to start or relocate their business. We are in full support of Senator Horsford and this bill.

OTTO MERIDA (Executive Director, Las Vegas Latin Chamber of Commerce; Commission on Economic Development):

I am member of the Commission on Economic Development and the Las Vegas Latin Chamber of Commerce, which are in full support of S.B. 229 as amended. We are certain this bill will help the blighted and disadvantaged areas in Nevada. It will also bring opportunities to businesses that want to move into these zones. Many organizations support revitalization efforts and support for those areas with high unemployment. We hope this bill passes with its amendments, including those proposed by Mr. Shriver.

LUIS F. VALERA (Las Vegas Latin Chamber of Commerce):

I am here to voice our support for S.B. 229, and I will make my comments brief by simply echoing Mr. Merida's comments. Adding to that, given the limited availability of land in southern Nevada, we would see this as an efficient use of business dollars and reinvesting as well as good, general public policy to encourage economic expansion.

RUSSELL ROWE (Nevada Development Authority):

We fully support this legislation.

KIMBERLY McDONALD (City of North Las Vegas):

We fully support this legislation also.

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GEORGE A. ROSS (Hospital Corporation of America):
Sunrise Hospital serves many of the people who are located in these areas, and we wholeheartedly support S.B. 229.

MICHAEL PENNINGTON (Reno-Sparks Chamber of Commerce):
This is a statewide bill, and we want to let the Committee know we support it. Christina Dugan, who is the director of Government Affairs of the Las Vegas Chamber of Commerce, asked me if I would let you know that there was a letter submitted by her organization in support of this bill also. Please refer to her written testimony ([Exhibit F](#)).

SENATOR RAGGIO:
What areas would you see this benefiting in Washoe County, Mr. Pennington?

MR. PENNINGTON:
We have not given it full exploration, but we think the western part of downtown Reno, over by Keystone Avenue, would benefit. This bill would also benefit areas near northeast Reno and western Sparks where a lot of people are moving out. Those areas could definitely benefit from this.

SENATOR RAGGIO:
What section of this bill would those areas fall under?

SENATOR HORSFORD:
Under section 2 of S.B. 229, the historically underutilized business zone, the redevelopment area and the area eligible for a Community Development Block Grant. Those three provisions affect two-thirds, if not the entire State, in some way. Businesses willing to relocate or expand to those underserved communities, within those designations, could qualify under the provisions of this bill.

PAT COWARD (Economic Development Authority of Western Nevada):
We support this bill as well. If you look at the goals laid out by Senator Horsford, it is another economic tool for all of Nevada.

MARY LAU (Executive Director, Retail Association of Nevada):
We are in full support of Senator Horsford's bill and the amendments, including the retail provisions.

ROSE E. MCKINNEY-JAMES (Clark County School District):

The Clark County School District is in an unusual position because we certainly support the intent of this bill; we simply want to bring to the Committee's attention that one source of the funding for these incentives is the local school support tax. I have had many conversations with Senator Horsford and others who support this bill, and they all indicated this bill should be revenue neutral. To the extent they can substantiate this, we can remove any concern. Mr. Shriver has indicated that when a project which falls under these provisions affects the school district, we are given the opportunity to determine the impact. It is important to preserve the record, and I have indicated to Senator Horsford we would do that today.

CHAIR HARDY:

This bill is unique in that respect, because when we normally talk about economic development, we talk about revenue that does not exist unless the business comes in. This may have an impact in that area because businesses could go across the border. We will ask Senator Horsford to work on the revenue-neutral portion of the bill.

MS. MCKINNEY-JAMES:

We would then be interested in removing any reference to NRS 374, which specifically speaks to the local school support tax.

CHAIR HARDY:

Senator Horsford, what would that do to your bill?

SENATOR HORSFORD:

I appreciate the comments of Ms. McKinney-James; I think the school district just became aware of the potential impact this bill may have. I would be willing to work with them on this issue. The areas we are talking about are struggling as it relates to Title I schools and having the resources to provide for a quality education. It would not be our intent to take any revenue away from the local school support tax. However, as I stated earlier, it will be a shift from a business relocating from this particular area into another area and more than likely an expansion which will increase revenues in the future. As we continue to analyze those provisions, I will work with the school districts to make sure we maintain the revenue-neutral stance.

CHAIR HARDY:

This is one of those areas you do not know until you try. Hopefully, new businesses will come to the State, but the potential exists to have businesses relocate or expand.

SENATOR TITUS:

The relationship between a school and a community is key, and we need to work on this together. I see schools as the anchor to the communities because people want to live in areas where there are good schools. If the school goes down, the neighborhood goes down, and people start to move out. It all works together, so if there is some way we can partner on this, it will benefit both sides.

MS. MCKINNEY-JAMES:

That would certainly be our preference. There is a reciprocal aspect of this, and we simply want to make sure it is acknowledged. We are happy to work with Senator Horsford.

MR. SHRIVER:

One of the things we might look at, in light of Ms. McKinney-James' question, would be if a company within the school district boundary moves into this area, in essence, they are getting a break from not paying, and they could be exempt from a portion of the local school support tax.

CHAIR HARDY:

Please work on that portion of the amendment with Senator Horsford. It looks like we have a general commitment from all concerned parties to address that somewhere in the State process. We will close the hearing on S.B. 229 and open the hearing on S.B. 426.

SENATE BILL 426: Clarifies certain provisions relating to public works. (BDR 28-1032)

ASSEMBLYMAN JOHN W. MARVEL (Assembly District No. 32):

I think you are all aware we had a rather intensive audit of the University and Community College System of Nevada (UCCSN) during the interim. During the audit, they came up with some areas that needed a better definition. If you read the preamble of the bill, it gets to the center of what they are trying to do.

PAUL V. TOWNSEND (Legislative Auditor):

This issue arose during the audit of the capital construction projects contracting and bidding procedures. One of our recommendations was to have the UCCSN request legislation to clarify the definition of a public work as contained within the NRS 338.010. We do support their effort to seek clarification, and we are neutral on the bill itself. The problem stemmed from the terms, large repairs or reconstruction. The law, as currently written, makes it difficult, and sometimes impossible, to determine if a project is a public work. This is critical because laws address requirements for competitive bidding, and payment of prevailing wage hinge on whether it is a public work or not. To ensure we apply the correct interpretation, we did request a legal opinion from our Legislative Counsel Bureau, and the opinion stated the source of funding for the cost of the building as a whole needs to be considered when determining if a job is a public work. Therefore, as worded now, the NRS 338.010 provides a project is a public work if 25 percent or more of the cost of the building, as a whole, is paid from money appropriated by the State or from federal money.

The difficulty we encountered when looking at these large maintenance cases at the University of Nevada, Reno was many of the buildings were over 50 years old. Accounting records have not been maintained to determine the costs of the buildings, as a whole, and then we, in turn, were not able to determine if it was a public work and whether the laws dealing with competitive bidding and prevailing wage had been complied with. This bill would clarify that problem as it moves the definition to the project, as a whole, and away from the building, as a whole. This is especially important on the energy retrofit projects as a number of those included many separate buildings, and our definition only applied to a single building; some may be public works building, and some may not. The bill also does a couple of other things as it deals with energy retrofits and calls for them to be cost neutral. In some of our cases, we found the savings of the energy retrofit project was not sufficient enough to satisfy the annual loan payments, so this issue has also been clarified in the bill.

CHAIR HARDY:

Mr. Townsend, have you had a chance to review S.B. 409? I do not know if S.B. 426 is going to conflict with S.B. 409, which also revises the definition of state agency for UCCSN. I want to be sure this is not a global definition of state agencies. And I wanted to be sure it is not globally defining UCCSN projects as public works projects in conflict with S.B. 409.

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

KIM MARSH GUINASSO (Committee Counsel):

Senate Bill 409 relates to the NRS 353, and in that provision it is talking about lease-purchase or installment-purchase contracts. These are not the same items discussed here in the NRS 338.010. Therefore, S.B. 426 and S.B. 409 are not related issues.

SENATOR RAGGIO:

For years I have been trying to get a handle on this issue. We entered into an agreement or contract of this kind for the Legislative Building, and I am concerned as to how we implement this. When we entered into the contract for the Legislative Building, I persisted in asking how we are going to know if we will save that much money over the length of this contract. They replied they knew it was going to happen. Now the State Board of Examiners, in this case and throughout this bill, have to ensure the dollar value of the annual energy savings will meet or exceed the total annual contract payments, including finance charges. How does the State Board of Examiners ensure this will happen?

MR. TOWNSEND:

This issue did come out of the audit subcommittee meeting, and we did have a number of findings where the savings, which were initially associated with the retrofits based on engineering reports, were in one instance \$122,000, and the loan payments were \$157,000. It indicated, that in some cases, it was used as a financing vehicle to go beyond the energy retrofit projects and make other improvements. The issues you raised on verification would best be answered by Mike Spell, audit supervisor for the Legislative Counsel Bureau.

MICHAEL O. SPELL (Audit Supervisor):

Through new legislation, specifically the NRS 333A, there are requirements now for annual verification. We have not seen any recent retrofit projects go through the older process contained in the NRS 338.1906, and in fact, we question whether any projects have fully been approved through the NRS 338.1906 process. At this stage, I doubt we will see any other projects go through the older process with the advent of the NRS 333A. But, since the NRS 338.1906 does not expire until 2013, by limitation, we basically have two sets of statutes on the books for retrofit energy projects. If you look at S.B. 409, State agencies

can also use that for a retrofit project as well. It is a mixed bag as far as which statutes we are going to follow. I know UCCSN has chosen to use the NRS 333A for most of their recent projects, so as long as these projects still go through the NRS 333A, we will have the measurement and verification requirements.

SENATOR RAGGIO:

Are these measurement and verification requirements conducted at periodic intervals?

MR. SPELL:

I believe they have to do an annual evaluation report.

SENATOR RAGGIO:

The language referred to throughout S.B. 426 refers to the dollar value of the annual energy savings, and that has to be less than the total annual contract payments. At what point do you know you are not getting your money's worth?

MR. SPELL:

In our audit, we found projects that did not make the return the first year.

SENATOR RAGGIO:

It is usually said that the savings will not be realized until after the course of the contract. I am not sure how you implement this language and guarantee that the contract entered into is going to result in a savings. If it does not, what would be your recourse?

CHAIR HARDY:

If I was a contractor, I would not take one of these jobs on—not with the kind of absolute certainty in the law with regard to what you have to guarantee contractually. Is there a compelling reason to go beyond the current language that would likely justify the cost?

ASSEMBLYMAN MARVEL:

How far back did you go to check for any type of savings?

MR. SPELL:

We went back to 1992, as that is when the first project commenced through UCCSN and Sierra Pacific Power Company. We cannot tell you what the annual

savings were after the original installation because there were no measures and verification requirements. Also, at that time, UCCSN did not have a process in place to do measurement and verification. One of the more recent projects they have implemented is to start metering more buildings at the University of Nevada, Reno (University) so they could get better computations for their annual savings. We cannot tell you what the savings were after the first year.

BERGER "BUZZ" NELSON (Assistant Vice President, Facilities Services Department, University of Nevada, Reno):

I wanted to address a couple of the concerns specifically related to S.B. 426. There have been questions raised with respect to whether or not the savings actually exist on projects that the University completed ten or five years ago. I would like to use a simple example; if you buy a new vehicle and it gets 20 miles per gallon, and you measured that performance over the first year of that vehicle, knowing this vehicle is capable of 100,000 miles and 10 years, as long as you maintain the vehicle, the vehicle will continue to get 20 miles per gallon. The University has not verified a lot of the energy projects done since 1992; however, we have a staff tasked with maintaining all of the equipment to support those energy conservation measures. We verified them after the first year, and, in fact, the buildings were getting the "20 miles per gallon" from the example, and we are now implementing equipment so we can verify it on an annual basis. The largest portion of our savings on projects is in changing the light bulbs to fluorescent bulbs.

When we started these projects at the University, it was through a shared savings program, or peak performance program, established by Sierra Pacific Power Company. We were tasked with demonstrating savings based on electricity alone, because that was their only concern. When we say some of these projects did not meet the total savings requirements, sometimes it was because we did not include the natural gas savings. And we never included the labor and maintenance savings that come about from buying, for example, a new car performing at a much higher level from the start. Hopefully, that explains a little bit about what the University has done as far as energy conservation. The University of Nevada, Reno is the leader in the State in energy conservation, as far as the number and the quantity of projects we have done. At today's rates, we show a savings of about \$2.5 million a year. Senate Bill 426 duplicates measures and verification found under A.B. No. 398 of the 72nd Session. We believe the measure and verification should be

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lightened a bit because we pay a premium to have a contractor guarantee a project for 15 years. We need to verify these projects for three or five years.

CHAIR HARDY:

We will close the hearing on S.B. 426 and open the hearing on S.B. 409.

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

JOSH GRIFFIN (University and Community College System of Nevada):

The UCCSN is currently not able to engage in public-private partnerships for construction, and S.B. 409 changes that. We support the bill so we can explore further and more immediate options to meet our construction needs.

JAMES T. RICHARDSON (Nevada Faculty Alliance):

We are strongly in support of this bill because we need adequate buildings built on our campuses in Nevada. It is a simple bill, but it could mean a lot to the UCCSN, and we urge the Committee's support.

CHAIR HARDY:

Could either Mr. Griffin or Mr. Richardson give the Committee a real-life example of what you are anticipating if this bill were to become law?

MR. GRIFFIN:

I cannot quickly come up with a real-life example. This bill is purely enabling, and it would allow the UCCSN to explore opportunities to pursue a private agreement. In terms of the outcome and product, the method of financing these projects would be a unique opportunity.

CHAIR HARDY:

For purposes of the NRS 353.550, it would remove the UCCSN from the definition of state agency unless using State funding or State-appropriated funds. Then it falls back into the definition of a public works project.

RICHARD DALY (Laborers International Union of North America Local 169):

I originally signed into this Committee meeting in opposition to S.B. 409, but in talking to the proponents of this bill, I think we can live with the language as proposed. We are handing out a proposed amendment to S.B. 409 ([Exhibit G](#)) that deals more with the NRS 353.550 and the whole concept of the lease

purchase. Some issues have come to our attention that we hope can get corrected. The Committee can see these issues of concern in the proposed amendment to S.B. 409 in [Exhibit G](#). *Nevada Revised Statute* 353 does not just apply to University projects; a project on Stewart Street in Carson City is being built under these provisions. According to the State Public Works Board, which is in charge of this project, they applied the NRS 338 for the payment of prevailing wage. The Board stated they did this because they felt it was the proper thing to do and not because they had to do so. We are hoping this Committee will say we can, through regulation, develop some type of selection procedure.

CHAIR HARDY:

Mr. Daly, you have suggested systemic changes to the NRS 353. Those all would merit a policy discussion with this Committee at a later time. You are talking about systemic changes to the NRS 353 unrelated to what the UCCSN and S.B. 409 are trying to do.

MR. DALY:

With all due respect, Chair Hardy, I would disagree that now is not the appropriate time or place to address these issues.

CHAIR HARDY:

This is a significantly different subject matter than what S.B. 409 intends to do.

MR. GRIFFIN:

I have had several conversations with Mr. Daly about this issue. I want to make sure we reiterate for the record that the intent and purpose of this bill is not to change the current statutes and the mechanics of how we go through the bid process and how we address wages. I told Mr. Daly we will continue to work with him and his organization.

CHAIR HARDY:

Mr. Daly's issues are appropriate for the Legislature to consider, but his issues are much broader than what is before us in S.B. 409.

SENATOR CARE:

I want to assure Mr. Daly that when we had the discussion during the interim on what is now S.B. 409, the discussion was confined to the UCCSN.

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CHAIR HARDY:

We will close the hearing on S.B. 409 and open the hearing on S.B. 410.

SENATE BILL 410: Exempts University and Community College System of Nevada from requirement to purchase prescription drugs, pharmaceutical services, or medical supplies and related services through Purchasing Division of Department of Administration. (BDR 27-156)

TRUDY A. LARSON (University and Community College System of Nevada):

We are asking for this Committee to pass S.B. 410 as we did not realize how efficient it was to buy those specific supplies, as mentioned in the bill, through our School of Medicine. This bill will ensure that we can be more effective and efficient.

CHAIR HARDY:

Is it efficiency or effectiveness that the UCCSN is looking at with this bill? Do you have an estimate of how much money the UCCSN will save?

MS. LARSON:

We are hoping to capture both efficiency and effectiveness with the passing of this bill. I do not have an estimate of how much the UCCSN would save.

CHAIR HARDY:

We will close the hearing on S.B. 410 and open the hearing on S.B. 411.

SENATE BILL 411: Revises provision governing payment by installment of assessment for local improvement. (BDR 21-1293)

HELEN A. FOLEY (Pardee Homes):

I appreciate this Committee introducing this legislation. Pardee Homes was looking at one simple change to local improvement districts, and that was to extend the period of time from 21 to 30 years. After this bill was introduced, I was informed by John Swendseid and Marvin Leavitt that they had formed an urban coalition which looked at many different issues dealing with local improvement districts over the last year. They wanted to use this bill as a vehicle for instituting those issues. From what I understand, their amendments have been widely circulated and supported by everyone. Pardee Homes fully supports what they and this bill intend to do.

CHAIR HARDY:

Will you speak to the portion of the bill that deals with changing the year span from 21 to 30?

MS. FOLEY:

It extends the length of time for which you can have this assessment and would correspond with many mortgages. If there are projects that are quite extensive, this would also enable the amount of the annual assessment to be dramatically reduced for the homeowner.

CHAIR HARDY:

Do you have any idea why it was 21 years to begin with?

MS. FOLEY:

Many states do have the 30-year span, and I am not sure why it began with 21 years. I am sure John Swendseid would be able to tell you.

MARVIN A. LEAVITT (Urban Consortium):

We are amending substantial portions of S.B. 411 as you can see in the handouts ([Exhibit H](#)) and ([Exhibit I](#), original is on file at the Research Library).

STEVE HEANEY (Stone and Youngberg Limited Liability Company):

We are an investment banking and underwriting firm, and we have been involved in the vast majority of NRS 271 local improvement district issues. We have been working with Urban Consortium to identify the parts of the law that would be beneficial to the bond markets, and hence, beneficial to the issuers. The amendments, [Exhibit H](#) and [Exhibit I](#), are ones that all of us came up with. All these amendments would be beneficial to the bond markets in terms of increasing the comfort level and understanding of exactly how NRS 271 works.

JOHN O. SWENDSEID (Swendseid and Stern; City of Sparks):

We represent many of the entities in Nevada that deal with and issue local improvement bonds. The proposed amendments to S.B. 411 generally intend to simplify and make the internal procedures more consistent for issuing general improvement bonds by increasing the permitted term of the assessments from 21 to 30 years and the term of the bond from 21 to 30 years also. I can go over [Exhibit H](#) and [Exhibit I](#) section by section, but I do not want to make it too tedious.

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CHAIR HARDY:

Let the Committee have the chance to review [Exhibit H](#) and [Exhibit I](#) since the amendments are of such large size. We will put S.B. 411 back on the agenda for a later meeting. Will that meet with your approval?

MR. SWENDSEID:

That is fine with me.

CHAIR HARDY:

We will close the hearing on S.B. 411 and open the hearing on S.B. 350.

SENATE BILL 350: Prohibits state agencies and local governments from outsourcing purchasing contracts to foreign countries. (BDR 27-65)

SENATOR TITUS:

I will be handing out a couple of articles, maps and lists of information about outsourcing ([Exhibit J](#)). Have you purchased a new computer lately, but could not figure out how to download the software? No problem. You telephone the help desk and reach a friendly, knowledgeable customer service representative. The voice on the line, however, does not have a Southern drawl or a sharp New England accent. The service representative is not from Atlanta or Boston or anywhere else in the United States. He is far away in Bombay, India. In some states, the same thing happens to people applying for food stamps or other state services. What we are talking about in S.B. 350 is the issue of outsourcing, not just American jobs overseas, but outsourcing by state agencies. This is a big issue and getting bigger all the time.

You also heard a lot about this issue during the last Presidential election, and it was really made into an issue by Lou Dobbs and a whole series done on Cable News Network in regard to outsourcing. Opposition to limiting outsourcing comes primarily from the National Foundation for American Policy that has issued a book outlining all the arguments against any restrictions on outsourcing. These arguments range from the fact that it is hard to implement to the fact it violates free trade agreements. Neither of these arguments hold any truth.

As a result of outsourcing, 35 states have introduced measures banning state agencies from entering into contracts with companies that would send jobs outside of the United States. This legislation has taken a variety of forms as

there are bills that specifically state contracts can be awarded only to companies that use domestic labor. Legislation in Colorado, New York and West Virginia would limit a company's ability to obtain state contracts and restrict grants to companies that send public or private jobs overseas. Indiana and Virginia have introduced legislation offering preferences on state contracts to companies that operate in-state or in-country, while other bills have focused primarily on private companies.

Seven states – Arizona, Connecticut, Hawaii, New Jersey, South Carolina, Washington and Vermont – introduced consumer-right-to-know legislation. This legislation would require a customer-service, call center employee to identify who they are and their location. California, Colorado and West Virginia proposed legislation requiring a company to notify the state of job losses when they send work overseas. Arizona, California and South Carolina have bills limiting confidential medical or financial information from being sent to offshore locations.

Senate Bill 350 would prohibit local governments and the State from contracting with companies that outsource jobs, and a measure such as this is appropriate. Outsourcing is bad for the State, and I will not go into the arguments on the negative impacts it causes the economy or the nation. I would argue that it is negative for the State in some specific ways. Labor savings are often offset with hidden costs, such as general operations of the facility and the cost of closing domestic facilities. Companies which have moved their operations overseas and then later came back to the United States cite problems of culture, language and expertise differences. There are also social service costs to a state since a state calculates unemployment insurance, worker retraining and other related costs for people whose jobs have moved overseas.

Free trade enthusiasts often cite the benefits to American workers because they say outsourcing encourages retraining to higher-paying jobs, and that it can help dislocated workers prepare for new jobs. Is that really true? Opponents of outsourcing see no guarantee that dislocated workers will find equivalent or secure work, even with retraining. There are other problems with the outsourcing of jobs, such as liability, accountability and security of confidential medical and financial information. If this measure, which is an outright ban on companies that outsource jobs, is too much for some people, ask that you at least consider an amendment to S.B. 350. The amendment would mandate that operators identify their locations in some manner. The other part of the

amendment would limit confidential medical and financial information from being sent to offshore locations. I would also point out that 40 states use outsourcing for their food stamp programs with Nevada among those states.

CHAIR HARDY:

Senator Titus, how would this impact companies that purchase their equipment from other countries because that is the only place it is available?

SENATOR TITUS:

I have talked to representatives from the regional transportation commission (RTC) from both the southern and northern parts of Nevada, as the RTC buys buses from France. If you only limit this bill to medical or financial information and to operations disclosing their location, that will take care of the problem altogether.

JANINE HANSEN (Nevada Eagle Forum):

Outsourcing is a growing problem, and the National Eagle Forum has been involved with exposing some of the problems with this issue. Much of this has developed because of the North American Free Trade Agreement and now the Central American Free Trade Agreement (CAFTA). In 2003, United States Trade Representative, Ambassador Robert B. Zoellick sent a letter to the governors of all 50 states and asked them to sign onto the government purchasing regulations in all trade agreements. More than half of the governors sent a letter of consent back to him, but when the draft text of CAFTA was made available on January 28, 2004, these states discovered they were bound by a 2400-page agreement and specifically listed in chapter 9 of the text.

One-third have since rescinded their support of CAFTA, as indicated by the article, "States' Rights vs. Free Trade" ([Exhibit K](#)). The governors are hearing from their state legislators who are being bombarded and coming to understand how these foreign trade agreements usurp the states' constitutional and legislative powers. These agreements take away state legislative authority over regulating utilities, control of land use and taxpayer funding. Outsourcing has far-reaching implications, and we need to see where our State is standing in regard to these things. We encourage this Committee to take the first step in protecting our citizens and our jobs in the United States.

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ELIZABETH SORENSON (American Federation of Labor - Congress of Industrial Organizations):

I am here on behalf of Danny Thompson of the American Federation of Labor - Congress of Industrial Organizations (AFL-CIO). Mr. Thompson was unable to be here this afternoon to testify on S.B. 350. Mr. Thompson would like to have the AFL-CIO go on record in support of S.B. 350.

ROBERT E. ROMER (State of Nevada Employees Association; American Federation of State, County and Municipal Employees/Local 4041):

We are here in support of S.B. 350, as we think the issue of outsourcing is important. Speaking on my own behalf, I am an American; I was born and raised in this country, and I want my money to stay here. We encourage this Committee to pass this bill.

JIM KEENAN (Commission to Study Governmental Purchasing; Purchasing Agent, Purchasing, Douglas County):

Our appearance here is in opposition to S.B. 350, but only to the wording of the bill. All members of the Commission to Study Governmental Purchasing interpreted this bill to read as saying the State could not purchase any items you see here in this room. For example, the projector that has the label SANYO could not have been purchased if S.B. 350 were to pass. The idea of not outsourcing labor and protecting medical records is not a change of our Commission, but nevertheless, all of our members would agree to it. Our interpretation of this bill is that we cannot purchase, nor enter into a contract, with any contractor or subcontractor who performs any type of outsourcing. We feel this interpretation would be impossible to enforce. We would be in full agreement with the idea behind not outsourcing labor and protecting those things Senator Titus mentioned, but our interpretation would stop the purchasing function in many respects. The remainder of my testimony in opposition to S.B. 350 can be read in our written statement ([Exhibit L](#)).

CHAIR HARDY:

Mr. Keenan, are you in agreement with the amendments suggested to S.B. 350?

MR. KEENAN:

The amendments we have heard are fine, and we would be willing to work with Senator Titus to get the purchasing function out of this bill.

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JOHN L. BALENTINE (Commission to Study Governmental Purchasing; Douglas County Purchasing):

I am also speaking on behalf of Washoe County and how this bill would put us in a bind, unless we can amend it.

FRED L. HILLERBY (American Council of Life Insurers):

I am in opposition to S.B. 350 and its amendments. The United States Constitution clearly states in Article I, section 8, "To regulate commerce with foreign nations, and among several states, and with the Indian tribes." When states start making independent decisions about how foreign trade is going to be handled, it becomes problematic. The President, along with the consent of the Senate, in agreement with the U. S. Constitution and the U. S. Supreme Court, enters into trade agreements because that is their authority and jurisdiction. In Nevada, if we begin to say we are not going to do business with foreign countries, while at the same time those are the same foreign countries we send our trade delegations to in order to encourage business to come to Nevada, that will have a negative impact on the State of Nevada. There are currently measures in effect that would protect the medical and financial information from being sent overseas, and the companies doing this would be held accountable.

JUANITA COX (Citizens in Action):

I am in full support of this bill. Any person with legal knowledge who looked at S.B. 350 and its intent would understand and not have a problem with any legality of this bill.

PATRICK T. SANDERSON (Laborers Local No. 872):

I am testifying in favor of S.B. 350. There is nothing more disgusting than to see an American flag made in China or Hong Kong. We should require the American flag come from a company within the United States. This Committee might take that recommendation and make an amendment that the American flag should be made in the United States.

CHAIR HARDY:

We will close the hearing on S.B. 350 and open the hearing on S.B. 467.

SENATE BILL 467: Makes various changes to laws governing public works projects. (BDR 28-816)

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TED J. OLIVAS (City of Las Vegas; Commission to Study Governmental Purchasing):

Senate Bill 467 is our cleanup bill to NRS 338. It is a collaborative effort with the Associated General Contractors of America of southern Nevada and the Associated Builders and Contractors (ABC) of southern Nevada. There are 3 separate and distinct procurement processes in NRS 338, so this Committee will see a lot of duplicate changes made. Please refer to the handout ([Exhibit M](#)) which includes our comments by section and an amendment we are proposing.

CHAIR HARDY:

Please note for the record that in my capacity as president of ABC of southern Nevada, I did work with Mr. Olivas on this issue in the interim.

MR. OLIVAS:

One of the major changes we have for S.B. 467 is that we originally proposed to change the prevailing wage threshold from \$100,000 to \$250,000. We are now going to amend that wage back to the original \$100,000. The remainder of the amendments can be read in [Exhibit M](#).

CHAIR HARDY:

Mr. Olivas, does this impact circumstances where a prevailing wage is paid or under a collectively bargained wage in which benefits are associated? For example, let us say you pay \$10 an hour, of which \$6 is cash and the remaining \$4 is a fringe benefit. Sometimes, in the open-shop industry, they will opt to pay the \$10 in cash. Would this bill prohibit that procedure in any way?

MR. OLIVAS:

No, it would not. What we care about is that the worker gets the appropriate wage, however it is paid.

CHAIR HARDY:

We have placed burdens on contractors with regard to doing public works. In today's environment, it is hard to imagine a circumstance under which there would be no bids received to do a public works project, but it is happening everyday.

SENATOR TITUS:

Mr. Olivas, are you saying you can now use contractors who were previously disqualified?

MR. OLIVAS:

We created two sections. One relates to the State Public Works Board where they are not allowed to use disqualified contractors. We also created a separate section for the local governments under which they are allowed to use disqualified contractors. Keep in mind that sometimes the contractor may have a problem with the State, but the local governments may not have a problem with the contractor. We are asking for the ability to decide that.

SENATOR TITUS:

Mr. Olivas, can you tell me what you are doing with the prevailing wage?

MR. OLIVAS:

This bill originally proposed to change the threshold on the payment of prevailing wage from \$100,000 to \$250,000 because this amount had not been changed in 20 years. After some detailed discussion with the labor community, we decided to not propose to do that at this time, so we are amending it back to the original \$100,000. A couple things were left out of our proposed amendments I would like to go over now. First of all, we want to address the definition of a "construction manager as agent" and a "construction manager at risk," which are found on the last page of [Exhibit M](#). Those two definitions were to be included in our proposed amendments because they have two different meanings, and those individuals are hired in different ways. In addition, we propose a change to NRS 338.1378, which made some changes from governing body to local government, as the governing body does not perform these duties. Finally we propose, a change to NRS 338.139, which is a minor change that relates to the hiring of specialty contractors.

CHAIR HARDY:

Mr. Olivas, this Committee appreciates the work you and your committee did during the interim to bring us a clean piece of legislation. You have worked extensively with the industry to make that happen, and you and your committee should be commended for that.

SENATOR CARE:

Mr. Olivas, let us go all the way back to section 1 of [Exhibit M](#) which deals with the authorized representative. The summary to the amendment states to expand the definition of authorized representatives to reflect what they really do. The way NRS 338 reads is an "authorized representative" means a person

designated by a governing body to be responsible for the development and the awarding of contracts. Now, authorized agents will be responsible for the development, awarding of contracts, solicitation and administration, which to me sounds like an enhancement of power. Could you please elaborate on that?

MR. OLIVAS:

We realized each of the authorized representatives do different things. For instance, the Clark County School District does not do the bidding process; instead, it is the person who administers their contract, and while he is involved in the process, he does not necessarily award the contract. Therefore, we need to expand the definition of authorized representative to include those duties for which the various jurisdictions' authorized representatives are responsible.

SENATOR CARE:

Should the language state, instead of award and administration, award or administration? I can see some entities thinking, "The statute says I can do all of the above, but I really do not want to do solicitation and I will let someone else handle it, but I choose to do the remaining three."

MR. OLIVAS:

Senator Care, you are absolutely right, as I did miss that. It is in our amendment to change the word "and" to the word "or."

SENATOR CARE:

Mr. Olivas, I have a similar question for you, but this time about section 12 of [Exhibit M](#). The current language of this section says a public body or its authorized representative would award a contract for a public work. Now it would read the State Public Works Board awarding the contract for public work. Is that already the practice?

MR. OLIVAS:

In section 12 of NRS 338.13895, we had to create two different sections—one that relates to the State Public Works Board and another that relates to local governments. We took out the wording of a "public body or its authorized representative." The reason we had to create a new section is because this section addresses subcontractors and how they have to be properly licensed and must not be disqualified from the State Public Works Board list. Local governments do not follow that requirement, so we added a different section pertaining to local governments only. We did not include the term "authorized

representative" in the new section because that is not a decision an authorized representative would make.

CHAIR HARDY:

Mr. Olivas, you have done a wonderful job of defining what "construction manager as agent" or "construction administrator" are, but there is no place in current statute where we reference a "construction manager as agent" or "construction administrator." Current statute also does not define a "construction manager at risk." We are defining something not used in NRS anywhere. Is there a place you intend to add those terms or a place that those terms will have some applicability?

MR. OLIVAS:

You are correct, it is not currently noted anywhere in NRS 338. When we had the discussions with the various organizations, the thought process was that we had to get something in NRS 338 to define the person called a construction manager. We did not know where to put it, but we thought if we put it into S.B. 467, we could define how we go about the process of hiring the construction manager.

CHAIR HARDY:

Ms. Guinasso, does it really make any sense for us to define these terms in the NRS if it is not used?

JUSTINE CHAMBERS (Contract Coordinator, Contracts Division, Development Services, City of Carson City; Commission to Study Governmental Purchasing):

Nevada Revised Statute 332.115 has an Attorney General's Opinion, dated August 1, 1986, we have been using to define how we do this type of work. But, there is a lot of discussion within the industry on how each various agency is performing this work and they wanted to put it solidly, somewhere in statute, and this bill was the best way to do it.

CHAIR HARDY:

Are the terms "construction manager as agent," "construction manager at risk" or "construction administrator" used in NRS 332?

Ms. GUINASSO:

We are trying to add these terms in NRS 338 and not into NRS 332, which is another reason why it would not work. In order to have a defined term, you must have the defined term used somewhere substantively in the NRS. If those terms are not used anywhere substantively in the chapter, there is no point to define them. If there is an issue in NRS 332, where the definition would be helpful, it would still apply to S.B. 467, which is amending NRS 338.

CHAIR HARDY:

We will put that issue on hold until there is a reason to define it in statute.

Mr. OLIVAS:

Based on the comments made, there is a section in NRS 338 called general provisions. Perhaps, these terms could be modified and incorporated into that section of NRS 338.

CHAIR HARDY:

According to what Ms. Guinasso indicated, I still do not think it is applicable.

GARY E. MILLIKEN (Associated General Contractors, Las Vegas Chapter):

We have worked with ABC and the local entities over the last 2 years on NRS 338. We support the original bill and the amended version proposed by Mr. Olivas.

Ms. MCKINNEY-JAMES:

The Clark County School District supports S.B. 467 as amended.

MARY HENDERSON (City of North Las Vegas):

The City of North Las Vegas would love to come to the table and support this bill, but unfortunately for us and other local governments, we have not had a chance to review the proposed amendments to S.B. 467. I would ask that we see the amendments and be sure our purchasing department has approved of these.

CHAIR HARDY:

We will close the hearing on S.B. 467 and open the hearing to the work session. We will start the work session with S.B. 306.

SENATE BILL 306: Authorizes pledge of certain sales and use tax proceeds and state funding for certain projects for promotion of economic development and tourism. (BDR 21-1286)

MR. SWENDSEID (City of Sparks):

The City of Sparks and Washoe County School District are proposing an amendment to S.B. 306 ([Exhibit N](#)). This amendment would allow them to create districts where no retail business has been maintained on the property for a period of 120 days. It would also require certain reports be prepared for the benefit of both the school district and the entity creating one of these districts. These reports would address the fiscal impact of the district on local government finance, including school finance, operational maintenance and capital costs. It would also prohibit use of the star bond monies to operate or maintain a project as the star bond monies could only be used for the capital costs of a project.

GREG SALTER (City of Sparks):

The City of Sparks does support S.B. 306 with the proposed amendment.

SENATOR TIFFANY:

Is this revenue already considered as part of the promise for the bonds?

MR. SWENDSEID:

This is tax increment revenue, which is revenue from facilities no longer in existence. When sales and use taxes have been litigated in court, the courts have said it is not an impairment to allow the incremental property tax revenues in redevelopment agency bonds, instead of going to the school district bonds. Your question has been litigated in courts in regard to property taxes, where it is more common.

SENATOR TIFFANY:

Is this revenue getting redirected?

MR. SWENDSEID:

The courts have said the increment taxes, arising out of newly assessed evaluation in redevelopment areas, are not revenues already pledged to any bonds.

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SENATOR CARE:

Nothing in this bill nor in the amendment would allow the power to take by eminent domain, correct?

MR. SWENDSEID:

That is correct.

JOHN SLAUGHTER (Washoe County):

The Washoe County Board of Commissioners did review the proposed amendment, and there are some issues they have asked us to look into.

SENATOR TIFFANY MOVED TO AMEND AND DO PASS AS AMENDED
S.B. 306.

SENATOR LEE SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR RAGGIO ABSTAINED FROM THE
VOTE. SENATOR TOWNSEND WAS ABSENT FOR THE VOTE.)

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CHAIR HARDY:

We will close the discussion on S.B. 306 and discuss S.B. 6.

SENATE BILL 6: Grants subpoena power to Attorney General to enforce Open Meeting Law. (BDR 19-101)

SENATOR TIFFANY:

What are some other circumstances in which the Attorney General has subpoena power?

NEIL A. ROMBARDO (Senior Deputy Attorney General, Office of the Attorney General):

The Attorney General has subpoena power in the Deceptive Trade Practices Act, which is NRS 598.

SENATOR TIFFANY:

Due to the seriousness of subpoena power, what made the Office of the Attorney General (OAG) go in this direction for the Open Meeting Law?

MR. ROMBARDO:

The OAG actually ran into a situation where we have twice requested some documents in regard to an alleged violation from a public body. This public body has refused to provide the needed documents and twice ignored our requests. This is not the first instance of this type of situation; in fact, this has happened numerous times to the OAG. In doing investigations, we find people who work for the public bodies are reluctant to talk to us about their bosses or those in higher positions. To have a criminal statute, along with the civil remedies we have, and not be able to properly investigate, requires us to file lawsuits without the necessary facts.

SENATOR TIFFANY:

What type of criminal behavior would there be in relation to the Open Meeting Law?

MR. ROMBARDO:

Nevada Revised Statute 241.040 states that a known violation of the Open Meeting Law on behalf of a public member is a criminal violation. It is a misdemeanor offense, and there has been one successful prosecution with the penalty being 6 months in jail, a \$1,000 fine and loss of position.

SENATOR RAGGIO:

This bill makes me nervous, as I was a former prosecutor, and it is appropriate for a subpoena to be issued for formal matters. A subpoena is an invasion of privacy, and I am not convinced this rises to the level we need to give this power to the OAG. There is too much abuse of subpoena power, unless it is in connection with a court or a formal hearing.

CHAIR HARDY:

Committee, please look at the letter from the OAG ([Exhibit O](#)) and the letter from the Douglas County District Attorney ([Exhibit P](#)), as these both have information on S.B. 6. I would like to give the Committee a couple of days to absorb the information given to them in these exhibits. Therefore, we will close the work session on S.B. 6 and move onto S.B. 30.

SENATE BILL 30: Authorizes certain cities to establish wireless enhanced 911 service and impose surcharge for certain telephone services to pay for such service. (BDR 21-740)

RANDALL C. ROBISON (City of Mesquite):

I and the City of Mesquite submitted the amendment to S.B. 30 in response to some of the concerns raised at the last hearing on this bill. We revised S.B. 30 in order to grant Mesquite the same authority granted to 16 other counties across the State. The revision would allow the city of Mesquite to impose a surcharge, but they first have to devise an advisory committee that develops a 5-year master plan, which includes estimated costs of the enhanced 911 system. The only difference with this amendment is the 25-cent surcharge in NRS 244A; we instead proposed a 40-cent surcharge. We determined this surcharge is equitable given the size of Mesquite and our estimated growth. The other provision that remains in the bill is this surcharge will also apply to the wireless companies servicing the Mesquite area. Unfortunately, we could not take the wireless companies out of this provision.

SENATOR TITUS:

Does this provision mirror the other 16 counties; except for the fact the surcharge is 40 cents instead of 25 cents?

MR. ROBISON:

That is correct.

SENATOR TITUS:

Why does Mesquite need the 40 cents instead of 25 cents?

MR. ROBISON:

Mesquite is currently at 16,000 to 17,000 in population, and we have about 8,000 lines. With the 25-cent surcharge, we were looking at an additional \$24,000 a year to offset the cost of this system. Therefore, by raising the surcharge from 25 cents to 40 cents, we were able to offset the cost to Mesquite.

SENATOR TIFFANY:

Why would Mesquite not want to wait for Las Vegas or the metropolitan area to provide this service? They did come and testify that Mesquite is on the radar screen for wireless 911 service, and it would happen in a year or two, and they thought they could deliver this type of service cheaper.

MR. ROBISON:

I do not recall that exact testimony from Las Vegas. However, I do know that in the past, we had discussions with Las Vegas, and those talks were not successful. The current feeling, from the city of Mesquite's standpoint, is a dispatcher from Las Vegas would not be as familiar with Mesquite as we are.

CHAIR HARDY:

Does this provision establish a committee to review and track this new service?

MR. ROBISON:

Yes, the city council of Mesquite may not impose a surcharge unless they first adopt a five-year master plan for the enhancement of the telephone system for reporting emergencies in the city. The five-year master plan is developed by an advisory committee appointed by the city council.

CHAIR HARDY:

The advisory committee would make the recommendations on the surcharge and the 40-cent cap.

MR. ROBISON:

This amendment to S.B. 30 specifically prohibits a councilperson from sitting on the advisory committee. The advisory committee would consist of citizens and representatives from the industry who are knowledgeable about how these systems work.

SENATOR RAGGIO:

What is the current surcharge amount on this bill?

CHAIR HARDY:

The original surcharge amount is 75 cents, and it is now proposed to change to 40 cents.

SENATOR RAGGIO:

Is this for all cities or for Mesquite only?

CHAIR HARDY:

The 40-cent surcharge would be for Mesquite only, and it works differently in Clark County, rural counties and Washoe County. Mesquite is part of

Clark County, but they are more along the lines of a rural community which is why it is set up this way. The 40-cent surcharge is a cap.

SENATOR RAGGIO:
Where is the 75-cent surcharge applicable?

CHAIR HARDY:
The 75-cent surcharge would not be applicable anywhere, as it is proposed to be amended out. The 75-cent surcharge cap is being changed to a 40-cent surcharge cap.

SENATOR RAGGIO:
Does this surcharge for the enhanced 911 service only apply to wireless phones?

MR. ROBISON:
This would apply to both land-based and wireless phones.

FRED L. HILLERBY (Verizon Wireless):
The surcharge in Washoe County is 25 cents. Clark County pays for their enhanced 911 service through property taxes, and I do not understand why some of that property tax money is allocated to Mesquite. Also, this is the first time we have talked about individual cities assessing the surcharge for enhanced 911 services. As long as we have had wireless services in Clark County, we still do not have an enhanced 911 service for wireless, and the technology is there to track the caller, given the caller does not have a blocked number, but the technology is not there to determine where the wireless caller is calling from. I do not know how long this will be collected from wireless customers before we ever get this technology in an area like Mesquite. If they are paying for it, they should also have some assurance that one day they will have this service.

CHAIR HARDY:
When will the enhanced 911 service be mandated by the federal government?

MR. HILLERBY:
I do not recall an exact date.

MR. ROBISON:

It is my understanding that under the current statutes governing enhanced 911 services, an entity has to request and place a question on the advisory ballot specifically for their entity. For instance, in the last election cycle the township of Bunkerville placed an advisory question on the ballot to vote on whether they should be assessed the property tax to pay for the enhanced 911 services. It is our understanding that until we do that, we are neither participating in paying nor participating in the revenue specifically designated in Clark County for the enhanced 911 services, which is one reason Mesquite is proposing this bill. We tried to exclude wireless users from having to pay a surcharge for this service, but the issue the local telephone company had was one of equality between wireless and land-based customers.

CHAIR HARDY:

Is wireless service excluded in Washoe County?

MR. ROBISON:

No, wireless is not excluded from surcharges in Washoe County.

CHAIR HARDY:

The policy decision is: Do we want to allow Mesquite to develop a system for financing their enhanced 911 services or do we want to compel Mesquite to use the current Clark County services? By proposing this bill, the city council of Mesquite has determined Mesquite needs to develop their own 911 services, as this is more beneficial to their residents. Another policy decision before this Committee is the question of the amount of the surcharge and if we should keep it at 40 cents or change it to 25 cents.

SENATOR LEE:

I would like to see the surcharge capped at 25 cents for all parties involved, including Mesquite.

SENATOR LEE MOVED TO AMEND AND DO PASS AS AMENDED
S.B. 30.

SENATOR TITUS SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR TIFFANY VOTED NO. SENATOR TOWNSEND WAS ABSENT FOR THE VOTE.)

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CHAIR HARDY:

We will close the work session on S.B. 30 and discuss S.B. 83.

SENATE BILL 83: Makes various changes relating to conduct of closed meeting by Board of Regents of University of Nevada to consider character, alleged misconduct, professional competence, or physical or mental health of person. (BDR 19-43)

MICHAEL STEWART (Committee Policy Analyst):

The Committee will recall that last Monday we heard S.B. 83, sponsored by Senator Coffin. This bill requires the Board of Regents to allow a person, who is the subject of a closed meeting to consider the character, alleged misconduct, professional competence, or physical or mental health of that person, to attend that meeting and present testimony and written evidence during the hearing. Senator Care and Daniel Klaich, who serves as the chief counsel of the UCCSN, noted that language could be offered to expand the bill's concept to all public bodies. Mr. Rombardo explained during the hearing that limiting the language to one agency may suggest the Legislature does not specifically intend to apply the language to other agencies. As a result, Mr. Rombardo did offer an amendment, which recommended that S.B. 83 be applied to all public bodies. We also noted there are a number of boards and commissions represented by the OAG. For the Committee's future discussion, we might consider the OAG's representation on any matter relating to Nevada's Open Meeting Laws.

CHAIR HARDY:

Committee, it is my understanding the Board of Regents has adopted this bill as a matter of policy. The question is: Do we want to codify this in statute and extend it to other boards?

SENATOR CARE:

I agree with Chair Hardy, but this bill does not go far enough. However, with what we have before us, I do agree with this bill, and I would accept that this be extended to all public bodies.

SENATOR CARE MOVED TO AMEND AND DO PASS AS AMENDED
S.B. 83.

SENATOR TIFFANY SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR TOWNSEND WAS ABSENT FOR THE
VOTE.)

SENATOR RAGGIO:

Senate Bill 83 refers to NRS 241; if you extend this bill to all public bodies, do you have to address other chapters?

Ms. GUINASSO:

Nevada Revised Statute 241 deals with the Open Meeting Law, and this can be applied to all public bodies.

CHAIR HARDY:

We will close the discussion on S.B. 83 and discuss S.B. 415. This bill was brought forth by the OAG, and it allows them to hold closed meetings in certain situations involving individuals and does not really involve public business.

SENATE BILL 415: Authorizes public bodies to hold closed meetings for certain purposes relating to examinations. (BDR 19-100)

SENATOR CARE:

Mr. Rombardo, if we need a statute for this now, what is the current practice of these situations in the OAG?

MR. ROMBARDO:

We are requesting S.B. 415 to clarify that some public bodies state this type of consideration has to do with someone's competence or alleged misconduct and therefore falls under the Closed Meeting Law. I also believe these types of situations fall under the Closed Meeting Law, and this bill is a further clarification of these situations.

SENATOR RAGGIO MOVED TO DO PASS S.B. 415.

SENATOR TIFFANY SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR CARE VOTED NO. SENATOR TOWNSEND WAS ABSENT FOR THE VOTE.)

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CHAIR HARDY:
We will now discuss S.B. 416.

SENATE BILL 416: Revises provisions governing violations of Open Meeting Law. (BDR 19-102)

MR. STEWART:
Senate Bill 416 was brought to the Committee by the OAG. This bill authorizes the Attorney General to recover attorney fees and court costs in lawsuits concerning violations of the Open Meeting Law. This bill also sets forth civil penalties for repeated violations. There were some conceptual amendments offered, and these have been included in the work session document. The first amendment, offered by Mr. Rombardo, refers to a lawsuit brought against a public body to require compliance with the provisions of the statute and revises this compliance to be commenced within 60 days. The OAG would like to replace that time frame with 120 days and change the next reference from 120 days to 240 days. The second amendment, offered by Madelyn Shipman, states the District Attorneys Association believes the current language in NRS 241.047, which allows the discretion of the court on awarding attorney fees to a person denied a right, is appropriate with regard to the lawsuits brought about by the OAG. The third amendment, offered by the District Attorneys Association, objects to the civil penalties authorized under this bill.

CHAIR HARDY:
As one member of this Committee, I agree with the District Attorneys Association with regard to redistributing monies from one governmental agency to another. I am also concerned with the precedent this bill would set.

MADELYN SHIPMAN (Nevada District Attorneys Association):
My comments were more directed towards S.B. 244 and S.B. 267, both of which open up lawsuits for violations by private persons. We feel if this Committee is going to provide attorney fees as an option at the discretion of the

courts, which already exists in a limited sense, the same discretion should be allowed by actions brought by the Attorney General.

SENATE BILL 244: Makes various changes regarding Open Meeting Law.
(BDR 19-344)

SENATE BILL 267: Makes various changes regarding Open Meeting Law.
(BDR 19-77)

SENATOR CARE:

The OAG and I are on the same page. But, my problem with this bill is the provision which states if the OAG prevails, they are entitled to fees and costs, but there is no corresponding language for the prevailing public body. If a complaint is filed against a public body, I can appreciate it becoming public knowledge, but at some point the public must do its own research also.

MR. ROMBARDO:

Senator Care, if I understand you correctly, are your comments in response to section 1 of S.B. 416, and are you opposed to section 1?

SENATOR CARE:

That is correct. I am also troubled by section 2, with the availability of fees and costs for the OAG or the prevailing party, but there is not any mention of fees and costs for the public body.

SENATOR RAGGIO:

I would also like to indicate my nonsupport of this bill.

MR. ROMBARDO:

After reviewing section 1, our office is willing to withdraw that section. Our office would not be opposed to adding the new language in section 2, which would allow either successful side to recover attorney fees and costs. I cannot stress enough how important the extension for the statute of limitations is to our office. We often do not get complaints until the 40th day, which leaves us 20 days to respond. By the time I can collect information, and if the public body refuses to respond to that request, we are not able to go any further. With regard to the civil penalties, our office would not prosecute a violator if they are admitting to a violation. We would only apply the civil penalties when a public

body refuses to comply, and it is required for us to go to court. These are the teeth we need to get those public bodies to comply.

CHAIR HARDY:

Committee, let us turn our attention to the amendment on the extension for the statute of limitation; does that require separate policy discussion?

MR. ROMBARDO:

The extension on the statute of limitation is asking this Committee to double our timelines from 120 days to 240 days and then from 60 days to 120 days. I cannot imagine the District Attorneys Association being opposed to this request as they were the ones that originally requested it.

MS. SHIPMAN:

The District Attorneys Association stated we would be willing to work on some timelines on responses, and I do not believe we talked about this statute in particular. The real issue, and I understand the problem for the OAG, is there should be a timeline in which a person has to either file or not file a violation. If a person believes a violation has occurred in a public body, there should be a strict timeline for that person to file the violation. The concern is if we stretch the timeline from 60 to 120 days, you are potentially holding up a public body for 120 days. These situations require quick action and the District Attorneys Association would like to assist the OAG, but we need to have a cutoff point as to when a complaint can be filed.

SENATOR RAGGIO:

I am still not convinced about the request for the extension of the statute of limitations. The law should not be changed, and the timelines should be kept as they are.

MR. ROMBARDO:

The people filing violations against public bodies are members of the public attempting to enforce the Open Meeting Law. Unfortunately, most of these people do not even understand the law. The OAG receives phone calls in regard to this, and we try to guide them over the phone, but we cannot offer them legal advice. The problem we run into is members of the public are trying to decipher a statute that most lawyers cannot decipher. The people the Open Meeting Law is meant to protect do not even understand it, and it takes them a long time to figure it out.

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SENATOR CARE:

A possible solution would be to have the OAG file the complaint, instead of waiting on the complaint from the private citizen. I understand the problem the OAG is facing, but there has to be an agreed-upon timeline.

SENATOR RAGGIO MOVED TO INDEFINITELY POSTPONE S.B. 416.

SENATOR TIFFANY SECONDED THE MOTION.

THE MOTION CARRIED. (SENATORS CARE AND TITUS VOTED NO. SENATOR TOWNSEND WAS ABSENT FOR THE VOTE.)

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CHAIR HARDY:

We will close the discussion on S.B. 416 and open discussion on S.B. 421.

[SENATE BILL 421](#): Requires public bodies subject to Open Meeting Law to make audio recordings of their meetings. (BDR 19-99)

MR. STEWART:

A couple of amendments to S.B. 421 include one from the District Attorneys Association. They have expressed the concern that audio recording every meeting of a public body may be erroneous and result in unintentional violations. A possible defining language as an amendment to this bill might read, "each public body that is a final decision maker shall record on audio tape or any other means of sound reproduction each of its meetings, whether public or closed." The second amendment is from Charles Chinnock, who is the executive director of the Department of Taxation. Mr. Chinnock indicates the Nevada Tax Commission and the State Board of Equalization already make formal certified transcripts of their meetings. Mr. Chinnock proposed an amendment to section 15, subsection 1 of this bill ([Exhibit Q](#)), which basically states audio recordings are not required if a certified transcript in accordance with NRS 656 is taken of the entire meeting.

SENATOR LEE:

If you are having a meeting and someone gets there five minutes late with the recording device, does that affect this bill?

CHAIR HARDY:

If we were to adopt this bill into law, they would not be able to start the meeting until the responsible party arrived with the recording device.

SENATOR LEE:

If the recording device does not work at the start of the meeting, would the meeting still go through?

Ms. GUINASSO:

That would be a reasonable interpretation of this bill and consistent with the plain meaning of the statute as written. The board would have to pause until the recording device was functional.

SENATOR RAGGIO:

Let us suppose that, unknown to the body or board, the recording device does not function for a couple of minutes during the meeting; then what would happen? This Committee had a long discussion on this topic in the 72nd Session. Some of the bodies or boards we are talking about are small and may not have this type of recording equipment available to them.

MR. ROMBARDO:

We have to use reasoning when interpreting this bill. Although it says "shall," the body or board is required to make its best effort to record the meeting. Although the tape may have failed for a couple of minutes, as in your example, minutes would still be available to determine what occurred during the two-minute lapse. I doubt it would be a violation, and our office would not pursue something like that. Our office will look for a public body that simply refuses to record their meeting, and we will examine why. It becomes difficult to investigate violations such as this.

SENATOR TIFFANY:

I like the fact that information is recorded where possible. Do you have any language for this bill that would encompass all situations?

MR. ROMBARDO:

We could copy or mask the language we use for the Internet Web site, where we require public bodies to place an agenda on the Web site, unless there is some type of malfunction of the Web site. Therefore, if something goes technically wrong in a meeting, the taping would not be required. The problem

with the language as proposed by the District Attorneys Association is how to define a final decision-making body. How would you define that term, and who would you define it as? We can add the technical language, but I do not see how you can exempt certain boards from this bill without exempting others. I can try to craft some type of language for this bill and get it back to the Committee.

SENATOR TIFFANY:

I am thinking of situations where the purchase of the equipment would be a financial burden or where it is a small board, maybe three or four people; what would you do in situations like those?

MR. ROMBARDO:

We could limit the purchase of the equipment per budget. If a board has a budget below \$5,000, for example, they would not be required to comply with this bill.

SENATOR RAGGIO:

I am assuming most boards we are talking about already have this type of recording equipment. Have you experienced a situation where this type of equipment was not available?

MR. ROMBARDO:

The smaller agencies are where we have been unable to get some type of recording, but even some larger public bodies choose not to tape at all because it is not required by the law.

SENATOR CARE:

I would like to make a motion with an amendment on this bill. The amendment would be that there must be a good faith effort to record, but in the event of any failure, it would not be a violation of the statute.

CHAIR HARDY:

What about the certified transcript request of the Department of Taxation and the State Board of Equalization? These two requests seem reasonable.

SENATOR CARE:

That would be added to the amendment.

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SENATOR LEE:

I am still not sure how we would identify final decision makers as worded in the District Attorneys Association amendment.

CHAIR HARDY:

Mr. Rombardo has addressed his concerns to that amendment, and it would be difficult to define the final decision makers.

SENATOR RAGGIO:

What about a board that does not have any funds available to purchase recording equipment? I would support Senator Care's motion if we can also add that there would be no violation of the statute if funds to purchase the recording equipment are not available.

CHAIR HARDY:

Mr. Rombardo, would these suggestions to the amendments meet with your approval?

MR. ROMBARDO:

Yes, they would.

P. FORREST THORNE (Executive Officer, Board of the Public Employees' Benefits Program):

In regard to the second amendment proposed by Mr. Chinnock, I expected his proposal to come through in a more generic form, instead of only the Department of Taxation and the State Board of Equalization. I request we change the amendment to any public body that utilizes certified transcription.

CHAIR HARDY:

That would definitely be my intent.

SENATOR CARE MOVED TO AMEND AND DO PASS AS AMENDED
S.B. 421.

SENATOR RAGGIO SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR TOWNSEND WAS ABSENT FOR THE VOTE.)

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CHAIR HARDY:

We will close the work session on S.B. 421 and open discussion on S.B. 423.

SENATE BILL 423: Revises provisions relating to certain meetings and hearings concerning prisoners and persons on parole and probation. (BDR 19-242)

MR. STEWART:

Senate Bill 423 provides that certain meetings and hearings, concerning prisons and persons on parole and probation, are not subject to the Open Meeting Law. However, according to the bill, such meetings and hearings must be open to the public, and the bill also prohibits a prisoner from bringing legal action in response to the release of certain information. No amendments have been submitted for this bill.

CHAIR HARDY:

There was no opposition to this bill, which was on behalf of the State Board of Parole Commissioners.

SENATOR CARE MOVED TO DO PASS S.B. 423.

SENATOR RAGGIO SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR TOWNSEND WAS ABSENT FOR THE VOTE.)

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CHAIR HARDY:

We will close the discussion on S.B. 423 and move onto S.B. 465.

SENATE BILL 465: Makes various changes regarding meetings of public bodies. (BDR 19-103)

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The OAG has suggested the definition "consider" to mean a collective acquisition of facts which includes questioning people and obtaining reports, papers, documents and other materials necessary to an individual member of the public body's understanding of the item to be considered. The term "consider" does not mean deliberation.

SENATOR RAGGIO:

I request we hold this bill until Wednesday, April 13, as this is the first time I have seen this bill, and we should have a full Committee for this bill.

CHAIR HARDY:

That is an excellent suggestion. Committee, please review the documentation submitted on S.B. 465 for Wednesday's meeting. We will close the work session on S.B. 465. Would the Committee like to begin making motions?

SENATOR CARE MOVED TO DO PASS S.B. 409.

SENATOR TIFFANY SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR TOWNSEND WAS ABSENT FOR THE VOTE.)

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SENATOR RAGGIO MOVED TO DO PASS S.B. 410.

SENATOR TIFFANY SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR TOWNSEND WAS ABSENT FOR THE VOTE.)

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SENATOR LEE MOVED TO AMEND AND DO PASS AS AMENDED S.B. 467.

SENATOR CARE SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR TOWNSEND WAS ABSENT FOR THE VOTE.)

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CHAIR HARDY:

We will now open the work session on S.B. 244 and S.B. 267. I would like to give the Committee the opportunity to review the comparison chart ([Exhibit R](#)), which Mr. Stewart has prepared for us, before we have our discussion.

A. STANYAN PECK (Chief Legal Counsel, Regional Transportation Commission of Washoe County):

There are a number of things that Gregory H. Krause, the executive director of the Regional Transportation Commission of Washoe County, and I would like to address with this Committee. My primary concern relates to the change in the Open Meeting Law in relation to the public body and its counsel. Currently, under the existing statute, a nonmeeting can occur between the board and its members, either collectively or individually, and they can meet with counsel to discuss pending or threatening litigation. We would like to have that provision remain in the current statute, as it was a long time coming and we have only had it for a short period of time. In the case of the Regional Transportation Commission of Washoe County, we deal with millions of dollars, and we do a lot of condemnation work. As things progress with litigation, we often do not have the opportunity, nor the time, to notice and conduct a meeting in order to meet deadlines that may be imposed by opposing counsel.

CHAIR HARDY:

Based on the meetings I have had subsequent to this hearing, your position, Mr. Peck, will be well represented on Wednesday. This Committee apologizes for any inconvenience for moving this bill until Wednesday.

MR. RICHARDSON:

I gave copies of documentation on S.B. 465 for distribution to the Committee. The UCCSN selected three major points to address with this Committee on Wednesday, April 13. I also handed out copies of the memorandum, on behalf of the Nevada Faculty Alliance, to discuss on Wednesday.

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CHAIR HARDY:

One last bill, S.B. 184, was not posted on the agenda, but I would like to discuss. Is there anyone present who cannot be here on Wednesday, April 13, to further discuss this bill?

[SENATE BILL 184](#): Revises provisions relating to enterprise funds. (BDR 31- 23)

CAROLE VILARDO (Nevada Taxpayers Association):

We were previously asked to leave the room and work on an amendment to S.B. 184. The local governments that were concerned about the bill and I did just that, and you have before you the agreed upon amendment ([Exhibit S](#)).

CHAIR HARDY:

You would present this as a consensus amendment to Senator Care's bill, S.B. 184, is that correct?

MS. VILARDO:

Yes, I would.

MICHAEL BOUSE (Director, Building and Fire Safety, City of Henderson):

We did work with Ms. Vilardo on the amendment to this bill, and with the revised language to enumerate section 7, paragraph 6 of [Exhibit S](#), we can support this bill.

MS. VILARDO:

I do not know if there is an all encompassing word or some type of terminology on this amendment, so I would leave the correct terminology, [Exhibit S](#), to Committee Legal Counsel. The bill originally submitted was not standard and problems were identified before the bill was heard. When the bill was heard, I offered amendments, which were indicated in the purple type in [Exhibit S](#), and these changes were sent out to all the local governments involved. Additional changes made after the first meeting on this bill are shown in large green type in [Exhibit S](#).

CHAIR HARDY:

Committee, please take a couple of days to review [Exhibit S](#), and then we will process S.B. 184 on Wednesday, April 13. We will close the work session on S.B. 184 and try to complete the remainder on Wednesday.

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There being no other issues before us today, the Senate Committee on Government Affairs is adjourned at 6:21 p.m.

RESPECTFULLY SUBMITTED:

Catherine T. Barstad,
Committee Secretary

APPROVED BY:

Senator Warren B. Hardy II, Chair

DATE: _____