

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

**Seventy-fourth Session  
March 28, 2007**

The Senate Committee on Government Affairs was called to order by Chair Warren B. Hardy II at 1:37 p.m. on Wednesday, March 28, 2007, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412E, 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 in the Research Library of the Legislative Counsel Bureau.

**COMMITTEE MEMBERS PRESENT:**

Senator Warren B. Hardy II, Chair  
Senator Bob Beers, Vice Chair  
Senator William J. Raggio  
Senator Randolph J. Townsend  
Senator Dina Titus  
Senator Terry Care  
Senator John J. Lee

**GUEST LEGISLATORS PRESENT:**

Senator Maurice E. Washington, Washoe County Senatorial District No. 2  
Senator Valerie Wiener, Clark County Senatorial District No. 3

**STAFF MEMBERS PRESENT:**

Eileen O'Grady, Committee Counsel  
Michael J. Stewart, Committee Policy Analyst  
Olivia Lodato, Committee Secretary

**OTHERS PRESENT:**

Randy Robison, Virgin Valley Water District  
Martin Johnson, Financial Advisor, Virgin Valley Water District  
Carole A. Vilardo, Nevada Taxpayers Association  
Kim R. Wallin, State Controller, Office of the State Controller  
Paul Enos, Nevada Motor Transport Association

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Josh Hicks, General Counsel, Office of the Governor  
Maud Naroll, Chief Planner, Budget and Planning Division, Department of Administration  
Crystal Jackson, Commission Secretary, Public Utilities Commission of Nevada  
Ted J. Olivas, City of Las Vegas  
Scott D. Adams, Director, Office of Business Development, City of Las Vegas  
Rita Brandin, Newland Communities  
Susan Fischer, City of Reno  
James E. Sala, Southwest Regional Council of Carpenters  
John E. Jeffrey, Southern Nevada Building and Construction Trades  
Steve Holloway, Associated General Contractors Las Vegas Chapter  
Peter Krueger, Construction Industry Coalition  
Crystal D. Soderman, Associated General Contractors, Nevada Chapter  
Adam Rutherford, Spanish Springs Construction, Incorporated  
Clara Andriola, Associated Builders and Contractors of Sierra Nevada Chapter  
James E. Keenan, Nevada Public Purchasing Study Commission  
Dan Marran, Manager, Purchasing, City of Sparks  
Aldo Aguirre, National Association of Minority Contractors  
Marikay Finne, Nevada Minority Business Council, Incorporated  
Andy Belanger, Southern Nevada Water Authority  
Thomas A. Morley, Laborers Local 872  
Patrick T. Sanderson, Laborers' International Union of North America 169

Chair Hardy called the Committee to order. He said Senate Bill (S.B.) 498 was the first bill he wanted to hear.

**SENATE BILL 498**: Revises the authority of the Virgin Valley Water District to borrow money and incur indebtedness. (BDR S-964)

Randy Robison, Virgin Valley Water District, said S.B. 498 was proposed by the Virgin Valley Water District. He said the bill allowed the Water District the same ability other similar entities had in issuing bonds. He said it allowed the Water District to use their pledged revenues as additional security against a bond when they issued one. It increased the bond rating, decreased the cost of the bond and ultimately decreased the cost to the taxpayer. He said when legislation was enacted forming the District, the ability to pledge the revenues was overlooked.

Chair Hardy mentioned the same concept had been done earlier for another district.

Mr. Robison said S.B. 498 gave the Virgin Valley Water District the same authority as other water districts.

Chair Hardy asked if language in the bill was from another district's enabling legislation.

Mr. Robison said Martin Johnson informed him the language was reviewed by the District's bond counsel prior to submission for drafting, and the language came from existing statutory language.

Martin Johnson, Financial Advisor, Virgin Valley Water District, said the language in the bill was modeled on language from the Moapa Valley Water District.

Senator Beers had a question on page 3, lines 18 through 32, about striking out the section indicated. He said it appeared to eliminate the requirement of a vote of the citizens prior to incurring indebtedness.

Mr. Johnson said that was what happened. He said most local governments in Nevada had the ability to attach a general obligation pledge to bonds if they had pledged revenues, such as water and sewer. He said the decision had to go to the Debt Management Commission and a 90-day petition period. It was not a unique situation to Virgin Valley Water District. He said the bonds were paid from water revenues. Water revenues were pledged to the bond; the District covenanted the bond documents to maintain rates and charges to repay the bonds and operate the system. He said there was no intent to levy property taxes to repay the bonds.

Senator Beers had a question concerning ad valorem taxes.

Mr. Johnson replied if the District issued general obligation bonds paid by property taxes, it would have to be voter-approved.

Senator Beers was concerned about the phrase "general ad valorem taxes."

Chair Hardy said the language was taken directly from other water districts. He said it was an authority in other districts.

Senator Beers asked whether not requiring an election to borrow money would lessen the debt.

Mr. Martin was unsure of the question asked.

Senator Beers said Mr. Martin stated the point of the bill was saving ratepayer's money by pledging revenues that reduced the cost of the bond.

Mr. Johnson said the District was able to issue revenue bonds secured only by revenues. He said if they additionally attached the general obligation pledge, it ultimately saved money.

Senator Beers asked the relationship between the pledged revenue and not having an election prior to incurring debt.

Chair Hardy asked Ms. Vilardo to testify on S.B. 498.

Carole A. Vilardo, Nevada Taxpayers Association, said the language "general obligation payable from general ad valorem taxes, the payment of which obligation is additionally secured by a pledge of and lien on designated revenues" was added by the issuer. She said the schedule of debt showed the revenue, and the revenue was sufficient to pay off the bond. She said the advantage was the lending institutions and purchasers of the bonds had an additional safety net by knowing it appeared as a general obligation bond. The entity was being paid with revenues dedicated to retiring the debt.

Senator Beers asked if there was a nexus between eliminating the requirement of having an election and decreasing the cost of the debt.

Ms. Vilardo said there were two costs involved: the cost of an election; and in the time frame required to hold an election, an opportunity to secure the best rate in the market might be lost. She said if a bond issued at the lowest possible interest rate, without buying insurance to ensure the lower rate, would be a savings to the taxpayer.

Senator Beers said it seemed two separate issues were involved in the discussion.

Mr. Johnson said the election did not result in the lower interest rate. He said it was the general obligation pledge that ensured the lower rate. He said there were two ways to receive a general obligation pledge on bonds under current Nevada law. The first was having an election in November of even-numbered years and June of odd-numbered years. He said the second way was to go to the Debt Management Commission, receive approval to issue the bonds and go through the 90-day petition period. He said the petition period allowed people to petition and have an election on the bonds. He said the legislation allowed Virgin Valley Water District the option of general obligation revenue bonds. He said Senator Beers was correct. It was not the election that resulted in lower costs, it was the general obligation backup to revenues that lowered the rate.

Chair Hardy said the bill could be held for further discussion.

Senator Beers said he understood the bill eliminated the requirement for approval from citizens before incurring debt. He said it was a separate issue from structuring pledges to reduce the cost of bonds.

Chair Hardy said section 1 of the bill specifically required an election before incurring the general obligation payable solely from the general ad valorem taxes.

Senator Townsend asked Mr. Johnson what problem the bill was trying to fix.

Mr. Johnson said Virgin Valley Water District was only able to issue revenue bonds. He said the credit rating, cost and interest rates were based solely on revenue bonds. The Water District wanted the ability to attach the general obligation pledge.

Chair Hardy closed the hearing on S.B. 498. He opened the hearing on S.B. 297.

**SENATE BILL 297**: Authorizes the establishment of measures of performance for certain state agencies. (BDR 18-55)

Senator Valerie Wiener, Clark County Senatorial District No. 3, introduced S.B. 297. She said she served on the Legislative Commission for several sessions and in the interim. Senator Wiener said she learned the importance of accountability. She said S.B. 297 created the opportunity for the State

Controller to establish performance measures creating greater efficiency for state agencies and a more fiscally responsible agency for taxpayers. She said the Controller's Office would work with agencies that already had a relationship with accountants in the Controller's Office. The bill created greater efficiencies in government.

Chair Hardy welcomed Ms. Wallin to the Committee. He said the Committee preferred to recognize a problem that needed fixing and how the bill fixed the problem.

Kim R. Wallin, State Controller, Office of the State Controller, said she ran for office of Controller on a platform that looked for waste and inefficiency in state government. She said under *Nevada Revised Statute* (NRS) 227.120, the Controller was charged with recommending plans deemed expedient for the support of public credit promoting frugality, economy, better management and more perfect understanding of the fiscal affairs of the state. She said S.B. 297 fulfilled the requirements of NRS 227.120. She stated Senator Wiener and she discussed means of establishing government accountability. She said S.B. 297 accomplished government accountability.

Ms. Wallin said her office needed to be proactive helping agencies become more efficient. She said audits were not timely. She said several years could pass before a problem was discovered. The bill allowed analysis of results on an annual basis. It was a collaborative effort between the Controller's Office and the agencies. She said her office was not performing audits but assisting agencies to operate more efficiently.

Ms. Wallin said the state had performance audits providing information to improve program operations and facilitate decision-making abilities. She said most performance measures the agencies had were not relevant, objective, meaningful or designed to change performance to attain goals. She said there was room for improvement, and S.B. 297 helped achieve better performance audits. She said the bill was the best use of government resources because it helped agencies improve government accountability. The Controller's Office needed to be involved in the project because it had highly qualified accountants with working relationships to the agencies.

She said her original goal was to eliminate waste and inefficiency. Ms. Wallin said the Comprehensive Annual Financial Report (CAFR) accountants were busy

from August to December performing the annual audit and year-end financial reporting. During the remainder of the year, the accountants could assist the agencies in performance management.

Ms. Wallin said the accountant's role had changed from historian to part of the team. She said her office would help the agencies develop consistent standards with flexibility to meet each agency's needs. She said performance management was an important part of the bill. The CAFR accountants would assist in developing a new, more relevant vision and mission statement. She said by implementing performance management, the agencies became more efficient, cost-effective and accountable. Ms. Wallin said an amendment needed to be added to the bill. Senate Bill 297 required the report by the first of February; she wanted that changed to the first of March. She also wanted a clause in the bill stating the agencies shall provide the Controller's Office with results of their measures by October 31.

Chair Hardy asked Ms. Wallin what prevented the Controller's Office from performing the actions she proposed. He asked why a statute was required.

Ms. Wallin said it was better to have a proposal in the law.

Chair Hardy said there was no fiscal note. He said additional responsibilities, almost without exception, required additional funds. He asked Ms. O'Grady to research any statutory limitations on the Controller. He asked if Ms. Wallin's office was able to accomplish her goals without passing S.B. 297.

Senator Care asked Ms. Wallin what would occur if a state agency and the Controller's Office did not agree on the relevant objective and effective measure for performance.

Ms. Wallin replied her office's goal was to assist a state agency in performing the job. She said a proactive role would help agencies provide an increase in their performance through efficiency.

Senator Care said the way the bill was drafted indicated the Controller's Office had the discretion of producing an annual report for some agencies but not for others. He asked if the word "may" as opposed to "shall" was appropriate.

Ms. Wallin replied the original draft said "shall."

Senator Lee asked about a single audit required by the United States government.

Ms. Wallin said the single audit was an audit performed by outside auditors on the Controller's Office.

Senator Lee asked what agencies the Controller's Office did not have purview over at this time.

She said the Controller's Office did not have interaction with the university system or any of the boards. The office had interaction with all the agencies.

Senator Lee asked if her office could go into all the agencies and utilize the proposed legislation.

Ms. Wallin said they were not doing audits. The goal was to help the agency improve their practices. She said the word "auditing" was inappropriate because it implied an adversarial relationship.

Senator Lee said he supported Senator Wiener.

Senator Townsend asked how many people worked in her department.

Ms. Wallin replied she had a staff of 45 people.

Senator Townsend asked how much time would be used working with state agencies.

Ms. Wallin replied the first time spent on performance measures would be approximately seven months. She said after her CAFR accountants completed the financial report, they tried to find ways to help other agencies work more efficiently.

Senator Townsend asked how many of the 45-member staff were auditors.

Ms. Wallin replied she had eight CAFR accountants.

Senator Townsend asked if the remaining employees met a certain financial standard.



Ms. Wallin replied there were 11 information technology professionals, 8 certified and degreed accountants, and different levels there on down.

Senator Townsend said the purpose of the questions related to the lack of a fiscal note. He said there was only one of two conclusions possible: the office did not receive notice they needed to turn in a fiscal note or her staff was currently underutilized.

Ms. Wallin said her CAFR accountants spent time on the school funding report, budgeting issues, vendor services areas and helping other agencies.

Senator Townsend asked if her agency planned to absorb the costs involved.

Ms. Wallin replied yes. She said her office would benefit.

Senator Townsend asked what percent of her time and staff would be used to accomplish reviews.

She estimated one-third of staff time would be used.

Senator Townsend asked if her efficiency levels would make up one-third of the time.

Ms. Wallin replied he was correct.

Senator Townsend asked if the Controller's Office was operating at a 66-percent rate efficiency level before Ms. Wallin arrived.

She replied her CAFR accountants said states have 46 percent more people performing financial transactions than corporate America. She said 61 percent more time was spent on transaction processing than corporate America.

Senator Townsend asked if the CAFR accountants were highly trained only for government auditing purposes or capable of doing different things in the private sector. He said he did not know the qualifications of CAFR accountants.

Ms. Wallin replied the CAFR accountants had a broad range of experiences. The CAFR accountants were not performing audits they were performing the financial reporting.

Senator Raggio said his concern involved the requirement that the agencies provide performance indicators. He asked what was the necessity and desirability that the State Controller's Office determines the performance indicators and measurements.

Ms. Wallin cited her statute under NRS 227.110. She said the Controller was charged with recommending such plans as deemed expedient for the support of public credit. She said S.B. 297 fulfilled the requirement of NRS 227.110. She said agencies were required to have performance measures, but the measures were inadequate and not measurable.

Senator Raggio asked how the Controller's Office planned to accomplish reviews without taking an adversarial position with agencies.

Ms. Wallin said her agency would work in a collaborative effort with the other agencies. She said the goal was to develop a good understanding of the goals and processes.

Senator Raggio asked if she requested the additional function in her budget.

Ms. Wallin said she mentioned the Controller's Office was planning on doing performance management.

Senator Beers asked if there were testifiers on behalf of S.B. 297.

Ms. Vilaro said she supported having accurate performance standards. She said they did a service to the taxpayer. She said she was contacted by the Governmental Accounting Standards Board on new service standards and wrote a letter in support of the standards. She said if agencies, the Controller's Office and the Legislature worked together creating standards with meaningful measurements, it gave a comfort level to taxpayers. She said Nevada Taxpayers Association supported the bill.

Paul Enos, Nevada Motor Transport Association, said performance measurements were essential in creating accountability. He said a reporting standard made successes and deficiencies more transparent which gave the taxpayer more comfort in how their government was performing.

Senator Beers asked Ms. Wallin to get the Committee a copy of the amendment she wanted to bring forward.

Senator Titus said the proposal and doing performance standards to help government do a better job with taxpayer dollars were good things. She mentioned it appeared to agree with Senator Beers' proposal for zero-based budgeting.

Senator Beers asked if there were testifiers in opposition to S.B. 297.

Josh Hicks, General Counsel, Office of the Governor, said the Governor had concerns with the bill. He said it was a performance review by one Constitutional Officer over departments that reported directly to the Governor. He said another concern was performance evaluations already conducted by the Budget Division under NRS 353.205. He said there was a performance evaluation of the Executive agencies every two years. He said, as an example, there were evaluations of the percent of projects completed on time, percent of projects completed within the budget and average percentage saved on purchases. He said for the Department of Motor Vehicles, there was an evaluation of average wait time in line. Mr. Hicks said there were a variety of evaluations required. If the bill passed, he said another concern was the establishment of two different evaluations which seemed wasteful. Another concern was the Controller would have discretion to define the performance standards. He said the Department of Administration had been doing evaluations since 1991. The Governor's Office did not see the need for another track of evaluations on Executive agencies.

Senator Beers asked Mr. Hicks if all performance indicators were available to the public.

Maud Naroll, Chief Planner, Budget and Planning Division, Department of Administration, said she worked on strategic planning and performance measures since 1993. She said not a single book had all the performance measures. She said agencies were limited to six performance measures per budget account. If an agency had multiple budget accounts, it could have more than six measures.

Senator Beers said he usually saw three to four measures per budget account. He asked if the Finance Committee saw all measures in the budget.

Ms. Naroll said Senator Beers saw six of the measures. She said the fiscal staff saw additional performance measures. She said she told agencies to list the six most important measures.

Senator Raggio said he was concerned about the potential for political mischief. He said, hypothetically, a controller of one political party and governor of another party could occur. He said the controller would have full discretion to go in at any time and determine an agency had not met performance goals. He said the controller could decide an agency showed lack of performance just before an election. He said as laudatory as the goals of the bill might be, the opportunity for mischief could occur.

Crystal Jackson, Commission Secretary, Public Utilities Commission of Nevada, said her organization was opposed to the bill. Her agency conformed to existing statutes and performance measures. She said S.B. 297 further complicated the process. She said it was time-consuming developing performance measures. She said the Public Utility Commission (PUC) currently had over 100 performance measures. She said ten of the measures were included in their budget and provided to the Governor's Office and Legislature. She said remaining measures were in the PUC's strategic plan which was a public record. She said the existing statute allowed agencies to objectively track progress towards achieving their mission and goals. She said another law requiring state agencies establish, track and report performance measures to a second state agency was redundant and inefficient.

Chair Hardy closed the hearing on S.B. 297 and opened the hearing on S.B. 234.

**SENATE BILL 234**: Provides exception to competitive bidding procedures for certain contracts relating to redevelopment areas. (BDR 28-490)

Ted J. Olivas, City of Las Vegas, was joined by Scott Adams, the director of Business Development for Las Vegas. Mr. Olivas said S.B. 234 was intended to resolve a development issue inside the boundaries of the Las Vegas Redevelopment area. He said the projects were within the exclusive jurisdiction of redevelopment. He said developers were responsible for various on and off-site improvements as part of their development agreements. Mr. Olivas said in downtown Las Vegas, improvements included curbs, gutters, sidewalks and other improvements to the half-street. He said the existing off-site

improvements were often damaged during construction or incompatible with the developer's project. Mr. Olivas said the local government matched improvements on the other side of the street. He said it required the local government contract with an architect or engineering firm in accordance with the Local Government Purchasing Act. He said it required the City develop the plans and specifications to match the developer's off-site improvements. Mr. Olivas said the plans and specifications were then advertised for bids through NRS 338, the public works process. He said the contract was then awarded to a contractor. The bill eliminated two steps in the process. He said local government would have the developer, through their architect or engineer and the general contractor, design and construct improvements at the same time. Additional work was recognized and acknowledged as a public work subject to prevailing wage laws provided in NRS 338.

Mr. Olivas said work beyond the scope of the developer was the City of Las Vegas's responsibility. Local government would reimburse the developer for additional costs incurred for the architect and engineer, contractor and administering those functions on behalf of the City. He said the bill would expedite development of improvements by eliminating a redundant, costly process the local government was required to perform under statute. He said it would increase efficiency, minimize construction disruptions for the community and save taxpayers money.

Mr. Olivas summarized the bill for the Committee. He said the main part of the bill was in section 3. He said four elements in the section were: the project was within a redevelopment area; the legislative body determined, at a public hearing, the benefit went directly to a redevelopment area and mitigated any adverse effect upon a redevelopment area; it would otherwise qualify as a public work; and the City would reimburse the developer for costs associated with the City's portion of the construction project. He said they used the provisions in NRS 338.0115, which gave local governments an exemption for oversizing water and sewer lines. He said the Legislature provided the exemption for future development. He said the City would pay the difference between the immediate size required and the future projected size.

Chair Hardy said the bill appeared to be clear and understandable.

Scott D. Adams, Director, Office of Business Development, City of Las Vegas, said the bill would be used for large-scale projects. He said there was a need to

coordinate the City infrastructure with on-site private improvements by the developer. He used an example of two large condominium projects in Las Vegas. He said the City had to rebuild the streets and sidewalks recently installed by the developer. Mr. Scott said a third time was projected when the City would have to tear up the new improvements. He said the advantage of the proposed bill was the street was only torn up once.

Senator Lee said a smaller contractor would also be affected. He said it would increase the review process and could exceed the small contractor's bond limit. He said the contractor would then be out of work.

Mr. Adams said the use of the bill on larger-scale projects would have a definite and obvious effect on public improvements. He said in some circumstances with smaller contractors, the City would do a standard public bid process to rebuild the street. He said a contractor was not compelled to complete the projects; it was a voluntary tool the City could use to better effect coordination in the redevelopment process on larger-scale projects.

Chair Hardy said Senator Lee brought up a valid point, and the language in the bill was drafted more broadly than needed. He said the bill made sense.

Senator Care asked if the contemplated public hearings were required each time the developer tore up a road.

Mr. Olivas said the public hearing would take place when a major development required off-site improvements beyond the normal developer's agreement. He said it was not the case for every project in a redevelopment area.

Rita Brandin, Newland Communities, said her company served as development managers for a City of Las Vegas project. She said her company supported the bill. She said her project did not tear up existing improvements but allowed negotiations with individual developers for timely construction of street and infrastructure improvements that serviced their parcels. She said it was a multiphased project covering 10 to 12 years.

Susan Fischer, City of Reno, said she supported the bill.

Chair Hardy asked for opposition testimony. He said there was concern with the broadness of the statute.

James E. Sala, Southwest Regional Council of Carpenters, said the bill had been discussed in concept with Mr. Olivas. He said he was surprised the City did not have the ability to work with the developer to allow improvements through a contract. He said the language in the bill was too broad in several different areas. He said he did not want to fix one problem and create three new ones. He referenced section 3, subsection 1, where the bill referred to the legislative body. Mr. Sala wondered if it referred to the government agency of the local government or Legislature. He said it appeared in section 3, subsection 2, when combined with section 6, to completely undermine the prevailing wage on the project.

Chair Hardy said Mr. Sala raised valid points. He said in conversations with the sponsor of the bill, they did not intend to circumvent the prevailing wage laws.

John E. Jeffrey, Southern Nevada Building and Construction Trades, said the concept of the bill made good sense to put in the infrastructure while the streets were torn up. He said the language was broad, and he had concerns about circumventing the prevailing wage laws.

Steve Holloway, Associated General Contractors Las Vegas Chapter, agreed the concept of the bill was good and needed. He said he agreed with Senator Lee the bill needed definition of when to use the authority. He said the authority needed to be limited to major redevelopment projects. He said an amendment that limited the bill was needed.

Peter Krueger, Construction Industry Coalition, said he agreed with Mr. Holloway.

Crystal D. Soderman, Associated General Contractors, Nevada Chapter, said her organization supported the intent of the bill. She said the language of the bill was too broad.

Chair Hardy closed the hearing on S.B. 234. He opened the hearing on S.B. 256.

**SENATE BILL 256**: Revises provisions governing preferences for bidding on public works. (BDR 28-776)

Senator Maurice E. Washington, Washoe County Senatorial District No. 2, said S.B. 256 was a bidder's preference bill. He said the bill changed existing law to do away with the 5-percent bidder's preference on state and local government public works projects. He said the bill retained the certificate of eligibility. Senator Washington said the bill had merit.

Adam Rutherford, Spanish Springs Construction, Incorporated, said S.B. 256 allowed greater equality and opportunity for Nevada business owners and workers while lowering the taxpayers' burden to build public projects ([Exhibit C](#)).

Mr. Rutherford said the bidder's preference law for public work contracting in NRS 338.1389 was outdated and no longer a safeguard to businesses. He said the preference law required contractors pay \$5,000 in sales and use taxes for five years in order to receive the certificate for a 5-percent advantage, [Exhibit C](#).

Mr. Rutherford continued to read his testimony to the Committee. He said the National Association of State Procurement Officials claimed purchasing preference laws increased state government expenditures. Mr. Rutherford said a study by economists Steven G. Craig and Joel W. Sailors showed nine states with percentage preference laws paid \$1.6 billion more than they would without percentage preference laws, [Exhibit C](#). He said the same study showed 11 states with reciprocal preference laws had no significant impact on state expenditure.

Mr. Rutherford said S.B. 256 used inverse preference logic as used by the Purchasing Division. He said the bill would help Nevada taxpayers, businesses and employees. He urged the Committee to pass the bill.

Senator Lee asked Mr. Rutherford what type of contractor's license he held. Mr. Rutherford replied he was a heavy civil construction contractor.

Senator Lee remarked a 2-percent or 3-percent profit on jobs was too low. He said Mr. Rutherford's company qualified for the 5-year bidder's preference if he had been in business for 12 years.

Mr. Rutherford stated his company was two years old. He had lived in Nevada for 12 years. He said the 2-percent to 3-percent number was a national average for profit-based contractors.



Senator Lee said businesses choose the level of risk they want to take. He said many contractors in Nevada did not want to do public works. He said most public works jobs were big jobs requiring sophistication and cash flow. He said the 5-percent preference helped the state maintain communication with contractors based in Nevada. Senator Lee said the five years of confirmed experience for contractors protected both the state and the contractor.

Mr. Rutherford said the State Contractors' Board went through numerous financial statements provided by the contractor to limit a bidder's contractor's license in Nevada. He said a contractor had to provide a bond for public work. The bond would protect the state if the contractor failed.

Senator Lee said a good performance bond was needed. He said a \$50,000 bond could be used to bid on a job, but the contractor might have several \$50,000 jobs. He said it was not the aggregate of all the jobs that equaled the bond.

Mr. Rutherford said bonding companies had a one-time bond size and an aggregate bond.

Senator Lee said cash flow could become a problem. He said prevailing wage payrolls were a tremendous burden. He said experience in the jobs and time of contractor performance was valuable.

Senator Raggio said he was impressed by the study Mr. Rutherford referenced by Craig and Sailors. He mentioned the nine states with percentage preference laws that paid \$1.6 billion more than states without the preference. He asked Mr. Rutherford to provide the study to the Committee.

Clara Andriola, Associated Builders and Contractors of Sierra Nevada Chapter, supported S.B. 256. She said the support was based on core principles of free enterprise and creating a level playing field for true competition. She said the bill created the lowest responsible bid. She said the study Mr. Rutherford referenced was done by the Center for Public Policy at the University of Houston. The study indicated states with bidder preference actually increased costs by a minimum of 3 percent.

Senator Raggio said the information provided was from 1980. He said he was interested in updated information.

Ms. Andriola said it would eliminate undue advantage, and current law does not prevent some of the examples discussed. She reiterated her support for the bill.

James E. Keenan, Nevada Public Purchasing Study Commission, said no purchasing manager he knew liked bidder's preferences of any kind. He said the integrity of the bidding system was all bidding be free, open, aboveboard and available to anyone. He said he understood the reasons for the preference. He said the integrity of the bidding system must not be sacrificed. He said his organization had anecdotal evidence from contractors who learned of the bidder's preference and declined to submit a bid. He said the bidder's preference was one of the obstacles he perceived to maximizing the number of potential bidders. Mr. Keenan said it was against good procurement practice to limit the number of bidders. It was not allowed in federal procurement. If federal funds were involved, there cannot be a bidder's preference. He said the state was not receiving an adequate number of public works bidders. He submitted a written summary of his specific concerns about current law ([Exhibit D](#)).

Dan Marran, Manager, Purchasing, City of Sparks, said he agreed with Mr. Keenan on several points. He said the concept of preferences was not good public purchasing practice. He said the City of Sparks supported the bill.

Mr. Olivas said he did not want to hurt local contractors. He said the goal was to reduce barriers in doing business. He echoed the need for a level playing field. He said if other states applied a preference against Nevada contractors, then Nevada should apply the same preference against out-of-state contractors.

Senator Lee referenced several problems with the construction at Las Vegas City Hall. He said an out-of-state contractor had the contract for the job and failed to complete it. He said a local Nevada contractor would have been easier to control. He said he found comfort in knowing a local contractor headed the job, lived in the state and had a vested interest in the community. He said people could open a business, work for five years and then apply for the bidder's preference.

Aldo Aguirre, National Association of Minority Contractors, said he supported S.B. 256. The language of the bill rectified current issues impacting minority-owned and women-owned construction companies by eliminating the 5-percent bidder's preference. He said current preferences provided a contractor could obtain up to a 5-percent preference in bidding on state or local

government public works projects for which the estimated cost exceeded \$250,000. He said the certificate of eligibility prevented some small- and medium-sized contractors from bidding on public works projects because they had not been in business long enough or become large enough to pay the requisite taxes.

Marikay Finne, Nevada Minority Business Council, Incorporated, said she supported S.B. 256.

Andy Belanger, Southern Nevada Water Authority, said his organization found the bidder's preference could increase the cost of their projects. He said his engineering director suggested additional costs could be as high as \$30 million due to the bidder's preference. He said because of the cost of construction and complexity of some issues, he supported S.B. 256.

Chair Hardy asked Mr. Belanger to substantiate the \$30 million in additional costs for the Committee. He said there was potentially a bidder's preference in S.B. 256 in inverse form. Chair Hardy opened the discussion in opposition to the bill.

Mr. Holloway said he wanted to clear up some misstatements. He said bidder's preference only applied to general contractors. He said there were 18,000 licensed contractors in Nevada, and most of them were subcontractors. Most of the general contractors in this state, who do business in the state, had bidder's preference certificates. The preference was never applied to subcontractors. Mr. Holloway said S.B. 256 changed one bidder's preference statute for another statute. The current bidder's practice was fair and worked well. He said the State Contractors Board issued the certificates, and that eliminated the one remaining problem with bidder's preference. He said the current 5-percent preferences replaced reciprocal bidder's preference approximately 20 years ago. The reciprocal bidder's preference did not work. He said S.B. 256 will not save cities, counties or the state money.

Senator Raggio said Mr. Holloway appeared to be making a case for doing away with all bidder preferences.

Mr. Holloway said he did not want to do away with the bidder's preference currently in place. He said it was fair and worked well. He said he could sympathize with people who did not want to wait five years and pay the taxes

for five years as the other general contractors. He said the courts upheld the 5-percent bidder's preference.

Senator Raggio asked Mr. Holloway if the preference cost state and local bodies a lot more money. He asked if it was costing too much for some reasonable assurance that Nevada employers and workers would benefit.

Mr. Holloway said 3 percent, if accurate, was not too much to pay Nevada employers and workers who paid taxes. The construction industry was the second largest taxpayer in Nevada.

Chair Hardy said S.B. 256 did not address reciprocal preference for local bidder's preference.

Mr. Holloway said he was correct. He said local preferences frequently required the establishment of an office in the area to qualify for the preference.

Senator Lee said Mr. Rutherford brought up a point about out-of-state companies buying a Nevada company that had a bidder's preference certificate. He asked if the company immediately received the bidder's preference when they bought the company.

Mr. Holloway said the preference only applied to general contractors. However, if a company purchased a general contracting firm with the preference, it would immediately receive the benefit.

Mr. Jeffrey said he remembered when the bidder's preference bill was introduced. He said the statute was changed approximately 20 years ago to encompass the bill as it was today. He said there were concerns among local purchasing agents that all the bids would escalate 5 percent because of the 5-percent bidder's preference. He said it did not occur. The existing law met constitutional requirements. He said he did not support S.B. 256.

Thomas A. Morley, Laborers Local 872, said his organization was strongly opposed to the bill.

Mr. Krueger said his organization, Construction Industry Coalition, was a subcontractors group. He said the current system worked well and he strongly

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opposed S.B. 256. He said the five-year wait acted as a "gatekeeper and winnowing process."

Mr. Sala said he opposed the bill for several reasons. He said in regard to the market and cost of construction, the 5-percent preference did not escalate bids, even by 3 percent. He said what raised the price was lack of bidders. He added the cost of materials and land, lack of bidders and dollar amount of projects had excluded bidders.

Chair Hardy closed the hearing on S.B. 256. He asked if there was any further business. As there was none, he adjourned the meeting at 4:02 p.m.

RESPECTFULLY SUBMITTED:

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Olivia Lodato,  
Committee Secretary

APPROVED BY:

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Senator Warren B. Hardy II, Chair

DATE: \_\_\_\_\_