

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

**Seventy-fourth Session  
April 2, 2007**

The Senate Committee on Government Affairs was called to order by Chair Warren B. Hardy II at 1:43 p.m. on Monday, April 2, 2007, 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 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

**STAFF MEMBERS PRESENT:**

Eileen O'Grady, Committee Counsel  
Tracy Raxter, Senior Program Analyst, Fiscal Analysis Division  
Michael J. Stewart, Committee Policy Analyst  
Olivia Lodato, Committee Secretary

**OTHERS PRESENT:**

Jake L. Parmer, American Strategies, Incorporated; Diamond Project, Limited Liability Corporation  
Dwight Dortch, Diamond Project, Limited Liability Corporation; City Council, City of Reno  
David Kaval, Golden Baseball League

Alfredo Alonso, Katzoff Investments; Simon Property Group, Incorporated  
Greg Smith, Administrator, Purchasing Division, Department of Administration  
James E. Keenan, Nevada Public Purchasing Study Commission  
Steve K. Walker, Truckee Meadows Water Authority  
Ivan R. Ashleman, Chair, State Public Works Board, Department of Administration  
Steve Holloway, Associated General Contractors, Las Vegas Chapter  
Gustavo Nunez, Manager, State Public Works Board, Department of Administration  
Richard Daly, Laborers International Union of North America Local 169  
Jeanette K. Belz, Associated General Contractors, Nevada Chapter  
Anne Loring, Washoe County School District  
Dale Sanderson, P.E., Plant Facilities Administrator, Washoe County School District  
Michael Mitchell, Director of Operations, Carson City School District  
Jim Wright, Chief, State Fire Marshal Division, Department of Public Safety  
Mary Walker, City of Carson City; Douglas County; Lyon County  
Dan Holler, County Manager, Douglas County  
Jeffrey A. Fontaine, Executive Director, Nevada Association of Counties  
Roger P. Van Alyne, P.E., Deputy Director, Department of Public Works, Washoe County  
David Kersh, Carpenters/Contractors Cooperation Committee, Incorporated  
Patrick T. Sanderson, Laborers' International Union Local 872  
Robin V. Reedy, Deputy of Debt Management, Office of the State Treasurer  
Pamela B. Wilcox, Administrator and State Land Registrar, State Land Use Planning Agency, Division of State Lands, Department of Conservation and Natural Resources  
Daniel J. Klaich, Executive Vice Chancellor and Chief Operating Officer, System Administration Office, Nevada System of Higher Education

Chair Hardy stated Senator Washington would introduce Senate Bill (S.B.) 203.

**SENATE BILL 203**: Revises provisions concerning local financial administration.  
(BDR 20-711)

Senator Maurice E. Washington, Washoe County Senatorial District No. 2, said the bill had two provisions. It dealt with revenue bonds issued for the construction and building of a baseball stadium and also with a reversion of monies for projects on the Truckee River for the City of Sparks. The first part of

the bill allowed the revenue bonds to be used for building the baseball stadium. There was a proposed amendment to that portion of the bill ([Exhibit C](#)). Senator Washington asked staff to review the amendment.

Chair Hardy asked Senator Washington if he had seen the amendment and he replied he had and it was acceptable to him.

Senator Raggio said when the bill was authorized the intent was that revenue generated from a fee on rental cars would be useable for servicing revenue bonds for a minor league baseball project. He said it was for a stadium for Double-A or Triple-A affiliated baseball. Senator Raggio said the stadium had not been built. He said Senator Washington, on behalf of others, presented the bill with a change of the usage for the funds and the definition of a minor league baseball stadium to include other than Double-A or Triple-A baseball. He said it was a worthy project if a Double-A or Triple-A affiliate of a major league baseball team did not occur. Senator Raggio said the project, as originally envisioned, was nearly complete. He said a Triple-A baseball team had been identified and likely would be acquired and relocated to Washoe County. However, he said, the final decision needed to be in place by adjournment of the 2007 Legislature. He said in addition to minor league baseball, there were others who had indicated they wanted to receive some of the funding provided under the rental car tax for other projects. Senator Raggio said the amendment was requested to provide a date by which a Triple-A affiliate team had to be acquired, relocated and with a site acquired. He said the amendment stated the date would be October 1. If the team was not finalized by that date, the usage of the funds would be available for other minor league projects or any other project which met the criteria determined by Washoe County.

Chair Hardy said he wanted to be sure if the date was not realized, the revenue was available for other professional baseball teams.

Senator Washington said other baseball affiliates would still be in play, but other projects deemed appropriate would also be in play.

Senator Townsend said based on the way the amendment was written, if the conditions were not met for a Triple-A franchise by October 1, the first thing in line for the money was any other professional baseball project.

Senator Raggio said he understood that was the situation. He said after that date, it would be available for all other purposes including minor league baseball. He asked Ms. O'Grady for clarification.

Eileen O'Grady, Committee Counsel, said on page 4, section 9, subsection 3 of [Exhibit C](#), the money could be used for any project approved by the Legislature or the Interim Finance Committee (IFC).

Senator Townsend clarified that the IFC and not the county commission had to approve the alternate funding. He asked why the bill needed to be changed from a minor league to a professional baseball stadium project. He said the goal was a Triple-A team by October 1, 2007. He said if a Triple-A team did not materialize, a baseball team of some kind became the priority.

Chair Hardy said he did not want language that precluded another type of professional baseball team.

Senator Townsend said the bill was a Washoe County issue. He wanted a Triple-A baseball team or nothing. He stated there were other demands on the money.

Ms. O'Grady said the first part of S.B. 203 expanded it from Triple-A to any professional baseball project. She said if everything was not in place by October 1, the board of county commissioners could impose a fee for another project approved by the Legislature or IFC.

Senator Townsend said the funds needed to be specific. He said the Reno-Sparks Convention and Visitors Authority (RSCVA) had a 20-year-old facility needing a remodel. He said the community deserved a Triple-A team. He said the money should go to the RSCVA if a Triple-A team did not materialize. Senator Townsend stated the Livestock Events Center could be a world-class equine events center. He said the remodel would include arena football and ice hockey events.

Senator Washington responded the original intent for the funds was a Triple-A baseball stadium. He said if it did not occur, other events and projects were also worthy of the money. He added an independent baseball team was currently in Washoe County and should have consideration in vying for the money. He said

the team needed the opportunity to develop a stadium. Senator Washington said he was looking forward to a Triple-A team coming to northern Nevada.

Senator Townsend said he strongly believed the bill should be narrowed to Triple-A baseball only. He added he wanted the first priority for the funds to then go to the RSCVA for the equine events at the Livestock Events Center.

Senator Washington said the members of the Committee would determine the status of the monies. He said the three Washoe County delegates were present and each had expressed their opinion.

Senator Raggio said he did not fully agree with Senator Townsend. He said there were other projects needing consideration beside the RSCVA. He said it was not an exempt bill, it needed to be processed. He said if the criteria were not met by October, the funding would be available for other purposes. He said there were several groups that deserved to be on the list for the funds.

Senator Titus asked how much money had been collected to date.

Senator Raggio said there was approximately \$3 million in the fund.

Senator Care asked what would occur if a Triple-A team was not in place by October 1, but later a Triple-A team said they want to play in Washoe County.

Senator Washington said the amendment addressed the situation and the Triple-A team would be responsible for their own funding.

Senator Raggio said the language had to be drafted to satisfy the requirements of bond counsel. The funding would be available for defraying the expense of revenue bonds. He said the funds could only be used for a Triple-A team or another worthy project.

Senator Washington mentioned a bill was passed last session allowing the Commission on Tourism to send money to the RSCVA for the projects for the Truckee River. He said the City of Sparks had problems with the Environmental Protection Agency and the Army Corps of Engineers and had to push the date from December 2006 to June 30, 2009.

**SENATE BILL 203**: Revises provisions concerning local financial administration.  
(BDR 20-711)

Jake L. Parmer, American Strategies, Incorporated; Diamond Project, Limited Liability Corporation, said he would speak on sections 1 through 6 of the bill. He said the sections replaced the term "minor league baseball stadium project" with the term "professional baseball stadium project." He said the fees generated by the car rental tax could be used to acquire, improve, equip, operate and maintain a baseball stadium used by professional baseball teams regardless of whether the team was affiliated with a major league organization. He said the bill left the car rental tax revenue dedicated to funding a professional baseball stadium project in Washoe County. He said the bill did not prevent the dedicated car rental revenue from going to a Triple-A baseball stadium project. He said S.B. 203 removed restrictive language in the existing statute to consider other stadium project options in the future.

Dwight Dortch, Diamond Project, Limited Liability Corporation; City Council, City of Reno, said the original intent was to keep the car rental tax dedicated to baseball. He said there was demand for baseball in the community. He said the RSCVA would pursue the funds only in the event professional baseball was not in Reno.

Chair Hardy asked Mr. Dortch if he was using the term professional baseball as defined in S.B. 203. He replied that was correct.

Senator Townsend asked why the RSCVA would take a position to take funds allocated for a Triple-A baseball team and not want to use the funds in a facility that would bring additional people for equine events, hockey events and arena football.

Mr. Dortch replied the RSCVA recognized the need for improvement, but the Events Center was not the best facility to improve. He said it would be better to move the Events Center. He said \$100 million was required for a new facility.

Senator Townsend asked how many games Mr. Dortch's team played in northern Nevada.

Mr. Dortch replied they played 40 home games.

Senator Townsend said if the Livestock Events Center was refurbished, the number of events was double the number of baseball games played at home.

Mr. Dortch said the intent of this bill was designated for baseball. He said a top-quality baseball league was currently in Reno. He said the team had a \$4.5 million impact on the community last year. He said there were other needs, but the money was originally designated for baseball.

David Kaval, Golden Baseball League, said his organization did not ask for preference, but they wanted equality with the other entities. He said the legislation proposed offered the opportunity for everyone to apply for the funds.

Chair Hardy asked Mr. Kaval if his testimony was in agreement with Senator Raggio's amendment as drafted.

Mr. Kaval said as long as it provided a level playing field for all parties to access the funds, he was in agreement. He said his baseball team did not require a Triple-A baseball stadium. Mr. Kaval said a Triple-A stadium costs between \$55 million and \$65 million. He said his stadium would cost between \$14 million and \$18 million.

Senator Care asked if there was a difference between a professional baseball stadium project as opposed to a Triple-A stadium. He asked if the Golden Baseball League stadium would be constructed with Triple-A stadium needs in mind.

Mr. Kaval said the seating capacity for his stadium was 4,000 to 5,000 people and a Triple-A stadium needed a 10,000 person capacity. Mr. Kaval said Triple-A required additional funds. He said it would need approximately \$45 million in other financing beyond the money available.

Senator Care said the proposed amendment section 3, subsection 1, paragraph (a) said acquire, improve and maintain, but it did not say construct. He said the bill was talking about renovation and not construction of a stadium.

Senator Raggio said \$3 million was to service the debt on the revenue bond. The cost of construction was much more than that.

Chair Hardy said the bill, as originally drafted, provided for Triple-A or Double-A baseball. He said independent baseball may replace rookie ball Single-A baseball because it made more economic sense. He said the bill was not a discussion of true professional baseball.

Senator Raggio said the bill was not complex. He said the bill set a date by which the original intent of the funding was accomplished. He said after that time the funding was still there, but it would become available for whatever projects were appropriate.

Alfredo Alonso, Katzoff Investments; Simon Property Group, Incorporated, said he had discussions with Senator Raggio and his organizations were in agreement with the amendment. He said they had an issue with respect to section 15, subsection 1, paragraphs (b), (c) and (d), [Exhibit C](#). The language said "privately purchased or acquired land." He said they wanted to make certain the team obtained approval and not the county. He said the county may not initially purchase the land. He said they wanted to include in the amendment, "the team, or the owners of the team, acquired the land."

Senator Raggio said it was the intent of the amendment that the entity was acquiring, relocating and arranging for the site for the stadium. He said Triple-A management needed to be inserted in that section.

Chair Hardy closed the hearing on S.B. 203. He opened the hearing on S.B. 307.

**SENATE BILL 307**: Revises certain provisions relating to state and local governmental purchasing. (BDR 27-782)

Senator Titus introduced S.B. 307. She said public procurement by state and local governments was mostly an evolutionary process through the twentieth century. She said the world was changing. She said the dynamics in a rapidly changing marketplace, the new global economy, continuous pressure to downsize staff and services, an increase in customer service demands and an explosion in information technology required changes in the procedure. She said changes needed to occur in procurement integrity or procurement ethics. Senator Titus said in Nevada there was a complex body of ethics laws regulating interaction between individuals, businesses and elected officials. She said there were few statutes dealing with entities doing business with

government employees or bureaucrats. She said there was a model procurement code that included the following as a guiding principle for procurement: transparency; accountability; competition; organizational alignment; human capital management; knowledge and information management; and integrity.

Senator Titus said under current Nevada statute, a person bidding on a government contract cannot solicit inside information about the contract. She said S.B. 307, sections 2 through 4 expand on the existing provision about not soliciting inside information. She said it expanded the notion of not receiving information about the competitors' bids. It put the burden on government officials to report attempts by a bidder to violate prohibited actions. Finally, it outlawed any inducements offered by bidders to the procurement officer. Senator Titus said section 5 of the bill was aimed at the revolving-door problem that allowed procurement officers to move from government agency to contractor or business. She said Congress sought to protect the government from former employees who took sensitive information when they relocated. She said S.B. 307 said any company awarded a contract of \$25,000 or more was prohibited from employing the procurement personnel responsible for the contract for one year. She said Nevada had a similar practice for state employees involved in the regulation of public utilities and gaming. Senator Titus said the bill protected proprietary information of firms doing business with state and local government. The bill protected public employees from undue pressure and attempted influence and protected the public's interest.

Senator Care said the bill appeared to apply to any offer, written or otherwise. He said it appeared in sections 1 and 3 of the bill, if the offeree, after 24 hours, realized the offer violated state law and withdrew the offer, the offer still had to be reported.

Senator Titus said the proposed amendments suggested ways to tighten the language in the enforcement.

Senator Lee asked if the private sector could go to work in the public sector and buy products from the company in the private sector where they used to work.

Senator Titus said it was like a reverse cooling-off period. She said it was not addressed in the bill. It would be difficult to enforce.

Chair Hardy asked if the prohibition was to the employer, not the employee. He asked if the phrasing should say the employee shall not accept employment. He said the employer might not know the person had previous employment with the state.

Ms. O'Grady said the Commission on Ethics had a bill amending the same section. She said it would flip the requirement to the public-office employee instead of the person who hired them.

Greg Smith, Administrator, Purchasing Division, Department of Administration, said he had prepared testimony ([Exhibit D](#)). He said he embraced this type of legislation. Mr. Smith said, as written in *Nevada Revised Statute* (NRS) 333, the current legislation left out public works, construction and anything to do with the Highway Fund, the Nevada Rural Housing Authority and the Nevada System of Higher Education. He said if the Committee elected to encompass all the procurement functions, the proposed language in the amendments would do so ([Exhibit E](#)).

Senator Titus said she wanted to include all the mentioned agencies. She said she did not want to exclude some agencies and not others.

Mr. Smith said section 5 left out employees or officers of using agencies. He explained in the request for proposal (RFP) process, the actual purchasing officer was a facilitator or coordinator of the process. He said three to seven evaluators assisted in writing the RFP, made the decision to award the RFP and set the evaluation criteria for the RFP. He said they decided to whom the contract was awarded. He said the ethical standard needed to be high.

Senator Care asked if the bill applied to a public officer who retired prior to October 1, if the bill became law.

James E. Keenan, Nevada Public Purchasing Study Commission, said he agreed with S.B. 307 and the proposed amendments from the Purchasing Division. He said Mr. Smith had addressed all of his concerns.

Steve K. Walker, Truckee Meadows Water Authority, said the board of directors of the Truckee Meadows Water Authority requested to be on record in favor of the bill.

Chair Hardy asked that a mock-up of the amendment be sent to Ms. O'Grady. He closed the hearing on S.B. 307 and opened the hearing on S.B. 387.

**SENATE BILL 387**: Revises various provisions governing public works and the State Public Works Board. (BDR 28-904)

Senator Raggio introduced S.B. 387. He prefaced his remarks by saying he sat on the Senate Committee on Finance and dealt with the issues of capital improvements and oversight provided in public works projects. He was convinced there were more efficient, better ways for the operation of an entity that oversaw the construction of public works projects. Senator Raggio added the legislation was the product of many previous sessions. He said S.B. 387 was not a punitive measure designed to be critical of previous management or members of the State Public Works Board. He said the bill was an attempt to make public works better. Senator Raggio submitted a written copy of his testimony ([Exhibit F](#)). He said the bill revised the provisions governing the State Public Works Board.

Senator Raggio said S.B. 387 changed the composition of the State Public Works Board and the qualifications of the members. He said the bill abolished the existing board and created a new seven-member board, [Exhibit F](#). The bill required each member of the Board have relevant education or experience managing or financing public or private construction projects. He said S.B. 387 created a clear division between management functions, and inspection and compliance functions.

The bill required the Board obtain prior approval of the IFC before expending money for advanced planning of projects or authorizing a change in the scope of a project if the change increased or decreased the square footage of the project by 10 percent or more.

Senator Raggio said the statutory revisions improved the skill and efficiency of the Board and its staff. He said it specified responsibility, reduced the opportunity for unnecessary, costly litigation, delays, changes in the scope of projects and provided a better framework for efficient and wise spending of taxpayer's money on public works projects.

Senator Raggio said he provided backup material referencing other states' actions in regard to public works. He said he had a summary of other states'

structures ([Exhibit G](#)). He said west of the Mississippi, the most common management of public works projects was a centralized board. He said he also furnished a summary of the Western States' approach to public works, [Exhibit G](#). He said some change was necessary for public works.

Senator Townsend asked, in S.B. 387, section 7, subsection 7, if there was a reason authorization from the IFC was not tied to cost changes. Senator Raggio replied square footage generally determined the cost. He said the key word was "prior" because they wanted to be sure before a change in the scope of the design or construction of the project, that there was prior approval.

Senator Townsend was worried a change in design or in the scope of the design substantially increased the cost of the project, but did not change the square footage.

Senator Care said he served on the Nevada Veterans Services Commission when the subject of the southern Nevada Veterans' Home was on the agenda. He asked if the mechanisms in S.B. 387 had been in place then, would it have made a difference in the handling of the southern Nevada Veterans' Home.

Senator Raggio replied there were many reasons offered as to why that project was so costly, why there was litigation and why the state lost the arbitration. He said there was discussion that the requests for bids were issued before all of the specifications were finalized. He said it was one of the reasons for the provisions in S.B. 387 requiring all specifications be firm before bids were requested.

Senator Lee asked about retrofits of buildings. He asked if it increased the cost if the project was delayed while the Governor received the monthly updates.

Senator Raggio said more timely reports could delay the project. He said if there were problems, the information would be known immediately and not a year later.

Senator Lee asked if something was substantially different and the Governor needed to know about it, would there be liquidated damages and a stop of work until the problem was solved.

Senator Raggio said there was no plan to do away with a contractual provision for liquidated damages. He said the bill provided more timely information as to anything adverse or noncompliant in the contract.

Ivan R. Ashleman, Chairman, State Public Works Board, Department of Administration, said none of the current people on the State Public Works Board were in office at the time the various designs and specifications created problems. He said the Board had experience in uncovering the problems and adopted changes to deal with the problems. He suggested staggering the replacement of people on the Public Works Board rather than replacing them all at the same time. He referred to page 3, section 4 which provided for the Board and the Governor to be involved in the appointment or discharge of a general manager. He said coordination between the Board and the Governor was a good idea. He added the deputy manager should be appointed by the Board. He said it was a new position and needed to be independent of the manager. Mr. Ashleman said monthly reporting would not cause delays of projects or increase costs. He said putting the requirement in statute had a salutary effect.

Senator Raggio said the bill changed the word "advised" to "written report" available to the Governor.

Mr. Ashleman referred to the discussion concerning overruns of 10 percent or more. He said smaller projects might need to be exempted. He said removing the current step in the procedure where the Board approved design changes could save time and money.

Senator Raggio requested Mr. Ashleman submit his suggestions in an appropriate amendment form.

Steve Holloway, Associated General Contractors, Nevada Chapter, commended Senator Raggio on S.B. 387. He said his organization supported the bill and would work with the Public Works Board on the amendments.

Gustavo Nunez, Manager, State Public Works Board, Department of Administration, said staff at the Public Works Board was in support of the new position for a deputy building official. He said there was a fiscal note submitted for the position.

Senator Lee asked what was the benefit for the state in the bill.

Mr. Nunez replied code enforcement and an independent third-party review were major benefits of the bill.

Richard Daly, Laborers International Union of North America Local 169, commented on section 7, subsection 7, page 7, concerning the 10-percent square footage. He said it was not a good measurement for cost increases. He said design flaws could cause major cost overruns without changes in square footage. He commented on liquidated damages. He said it had an impact on the state and was not always recognized. He recommended assessing a dollar amount rather than the 10-percent square footage and added smaller projects might need to be exempted.

Senator Lee asked about the appeal process for liquidated damages.

Mr. Daly said if jobs went over the contractual days, the contractor might be assessed liquidated damages. He said the contractor requested a change order to receive the money. He said change orders had an economic impact on the job.

Jeanette K. Belz, Associated General Contractors, Nevada Chapter, looked forward to working with Senator Raggio on S.B. 387. She commented on the implementation of the deputy manager serving at the pleasure of the Board and the Governor. She said she was concerned the order in which funds needed to be accessed put Highway Fund money ahead of state General Fund money.

Senator Raggio said State Highway Fund or State General Fund money required funding utilization from all other sources before those funds were used. He said a highway project required both federal and state funding.

Ms. Belz asked Senator Raggio if funds expended in the "following order" required Highway Fund money would have to be used before General Fund money.

Chair Hardy said the intent was to spend the other monies first, but the wording put the funds in an ordering position.

Senator Raggio said the intent was preserving the integrity of the Highway Fund and the General Fund.

Chair Hardy closed the hearing on S.B. 387 and opened the hearing S.B. 499.

**SENATE BILL 499**: Revises provisions governing the approval of certain plans, designs and specifications for school buildings. (BDR 22-443)

Anne Loring, Washoe County School District, said school districts were required to have school construction plans checked by the State Public Works Board. She said S.B. 499 required counties with a population between 30,000 and 400,000 have plans reviewed by local building departments and not by the State Public Works Board. She said local building departments would also inspect the construction. She said if a county did not have a building department, it was required to go to a private entity or a building department in another county for the inspections. She referenced an amendment proposed by the State Fire Marshal Division ([Exhibit H](#)). She said it offered a third option of the State Public Works Board doing the inspections in counties without a building department. She said the bill did not change the law for the Clark County school district. She said they did not want to go to their local governments for plan checks. She said in school districts with populations under 30,000, the State Public Works Board would continue to review the plans and do inspections. She said the Fire Marshal said there was a potential conflict with another statute and a small fiscal impact with S.B. 499.

Dale Sanderson, P.E., Plant Facilities Administrator, Washoe County School District, said the primary point of the bill was to eliminate duplicate plan checks. He said identical plans went through three plan checks; City of Sparks, City of Reno and State Public Works Board. He added the plans also went through three different fire department plan checks. He said duplications slowed progress. During construction, inspections were done by local building departments, not the state. He said he wanted inspections done by the same entity doing the plan checks. He said historically, there were differences in code interpretation between two different fire departments which required the school district comply with both fire departments' requirements. He said the American with Disabilities Act of 1990 (ADA) plan review was typically contracted to a local consulting entity by the State Public Works Board. He said the school districts were willing to use the same entities to do the ADA plan check.

Senator Lee asked about the amendment stating the school districts shall enter into an agreement with the State Public Works Board and a private entity. He

asked if there was revenue for passing the agreement through the State Public Works Board.

Mr. D. Sanderson said an administrative fee was assessed by the State Public Works Board in addition to the local consulting firm charged.

Michael Mitchell, Director of Operations, Carson City School District, said the duplication of plan checks was a huge issue for Carson City. He concurred with Mr. Sanderson and the bill which eliminated the duplication. He said Carson City had a fully qualified building department that wanted to plan check the facilities for the school district. He said the building department provided a complete, unified plan review, the inspections of the facilities, issued a building permit and a certificate of occupancy. He said under current legislation the school district was unable to enter into a cooperative agreement with the local building department. He said there were money savings, time savings and continuity of plan review.

Jim Wright, Chief, State Fire Marshal Division, Department of Public Safety, said he found issues that needed to be discussed. He said a fiscal impact occurred for the State Fire Marshal Division. He said the six counties involved in the bill contributed approximately \$95,000 in fees from schools to the State Fire Marshal. He said there was a conflict in the bill. He said the Fire Marshal conducted the fire review through the state public works process. He said the conflict occurred between enforcement of codes and regulations related to state buildings, hospitals and public education facilities. He said the current statute language could still be workable through a cooperative interlocal agreement. He said he needed to make sure if the duties were delegated away from the Fire Marshal's office, the entities assuming the duties had the capability and qualifications to apply the minimum state code across the state.

Mary Walker, City of Carson City; Douglas County; Lyon County, supported S.B. 499. She said there was unnecessary duplication and doubling of fees. When the community college expanded, there was difficulty receiving the plans from the Fire Marshal's office. She said when the local fire chief did not have the plans, they did not know where the fire hydrants were located. She said when the community college expanded, the Fire Marshal's office forgot to build fire hydrants. She said the local governments could provide the services. It would streamline government and eliminate duplication. She said a conflict in another statute could be resolved to assure the statutes were consistent. She

said the local governments had tried for many years to get an interlocal agreement with the State Fire Marshal. She said the agreement had been refused.

Dan Holler, County Manager, Douglas County, supported the bill for the reasons stated in terms of reducing duplication of reviews in plan checks. He said the bill would streamline the process.

Mr. Nunez said the State Public Works Board was neutral on S.B. 499. He said plan checks required the Public Works Board do a plan check on all district school projects. He said they did not do inspections. He said the nonstructural plan checks and fire suppression systems were sent to the State Fire Marshal. The Public Works Board did structural, mechanical, electrical, civil and ADA plan checks. He said his department collected a fee for those plan checks. He said all the listed services were outsourced to other entities. Mr. Nunez said whoever did the plan checks should do the inspections.

Chair Hardy closed the hearing on S.B. 499 and opened the hearing on S.B. 507.

**SENATE BILL 507**: Authorizes certain additional public bodies to negotiate with the lowest responsive and responsible bidder to obtain a revised bid on a contract for a public work in certain circumstances. (BDR 28-379)

Jeffrey A. Fontaine, Executive Director, Nevada Association of Counties, said S.B. 507 was one of Nevada Association of Counties' bills for the 2007 Session. The bill was a proposed amendment to existing public works statutes. It was intended to allow local governmental entities the same latitude available to the State Public Works Board in negotiating bid prices before formally awarding a public works project. The amendment would apply when all of the responsive bids exceed the amount budgeted for the project and the lowest bid did not exceed the budget amount by more than 10 percent. He said the intent of the bill provided local entities a tool to reduce delays and costs in completing public works projects. He said under S.B. 507, a local governmental entity and the low-bidding contractor could agree to eliminate or reduce items of work to reduce costs. He said delays had a significant impact on the project budget. He said he understood the concern about local governmental entities negotiating with contractors. He said the bill was not intended to play one contractor against another or to beat down the low contractor in order to receive lower

prices. He said it was a tool for local governments to get their public works projects delivered on time.

Chair Hardy said he recognized what the bill was not supposed to do, but he asked how it was avoided. He said the bill appeared to allow bid shopping and he needed clarification as to how it was going to be avoided.

Roger P. Van Alyne, P.E., Deputy Director, Department of Public Works, Washoe County, said the state continues to experience large population growth resulting in high levels of construction activity. He said governments struggled to keep up with the growth and provide appropriate service levels to the citizens. Mr. Van Alyne read his testimony to the Committee ([Exhibit I](#)). He said project costs did not decrease in rebid situations. He said the bill was not intended to allow an unfair advantage or circumvent good contracting practices. He said the intent was for local governments to be able to talk to the low bidder for suggestions to bring the project closer to the budget numbers.

Senator Lee said award the bid first, then the local government could go to the lowest bidder and request ways to lower the cost of the project. He said a contractor may know of ways to save money on a bid, but was reluctant to say so without some guarantee he had secured the job.

Mr. Van Alyne said the intent was not to use the contractor's information against him. He said Washoe County wanted to be able to sit down and talk to the contractor to see if there was an opportunity to find ways to change the bid price.

Senator Lee said the entity could discuss ways to lower the cost with the contractor after the bid was awarded.

Mr. Van Alyne said some contractors were reluctant to lower costs after the bid was awarded.

Mr. Walker said the board of directors of the Truckee Meadows Water Authority (TMWA) supported the bill. He said the proposed amendment he gave to the Committee needed the addition of a provision that stated "any water authority created by the interlocal agreement subject to the provisions of chapter 277 of NRS" ([Exhibit J](#)).

Senator Care asked Mr. Walker if the Southern Nevada Water Authority was exempt from statute because the TMWA was excluded.

Mr. Walker said he was confused on the difference between district and authority. He said he wanted to change the amendment to read any water utility created by NRS 277.

Chair Hardy said if a bid was let and every company came in over budget, the bill proposed talking to the lowest responsible bidder to try to lower the cost.

Mr. Van Alyne said bids had to be within 10 percent of the budget. He said that represented a minor scope change and the ability to ask the question of the lowest bidder.

Chair Hardy said it was important everybody had an opportunity to bid on work built with public dollars. He said it was more expensive sometimes, but was the ethical way to do business.

Senator Raggio asked if the bill passed, did a contract have to be awarded before seeking a revision of the plans? He said the request in the bill was for local governments to have the same opportunity as bidders on state projects. He asked if the 10 percent differential was in effect at the state level.

Mr. Fontaine said under NRS 341.145, language authorized the State Public Works Board to negotiate with the lowest responsible and responsive bidder on any contract to obtain a revised bid if the bid was less than the appropriation made by the Legislature and the bid did not exceed the budget item by more than 10 percent.

Senator Raggio asked if the law applied for higher education also. He asked if it was appropriate for the state why it was not appropriate for local government.

Mr. Keenan opened his discussion saying the Nevada Public Purchasing Study Commission was chartered by state law to make recommendations with respect to governmental purchasing to the next regular session of the Legislature. He said he was present to make purchasing recommendations. He said S.B. 507 was not a good way to solve a problem. He referred to a study done by his organization ([Exhibit K](#)). He said there were two major concerns regarding the

bill: a matter of principle; a matter of practice. He said there were concerns about the integrity of the bidding system.

Mr. Keenan said the competitive sealed bid process was the preferred process for many reasons; it was simpler, easier, less work and gave a perception of fairness rather than favoritism. Negotiation was a difficult process. He said negotiation delayed the award of a contract. A change in the scope of work required all other bidders have an opportunity to bid on the changed scope of work. He said the entire bid was based on price.

Mr. Keenan offered several suggestions to the Committee. He said if the bid contained a standard value engineering clause before the bid was sent out, negotiations could be held with the successful contractor after the award of the contract. He said there were escalation and redetermination clauses that were standard clauses. Mr. Keenan said another suggestion allowed for negotiated procurements in NRS 338, as allowed in NRS 332.

Senator Care asked about value engineering clauses and how they worked.

Mr. Keenan said the contract must be awarded first before the clause was used.

Senator Care asked what happened if the parties could not agree. Mr. Keenan said the contract reverted to the original bid price.

Senator Lee said price could be lowered with substitution of quality of materials. He said general contractors usually were the coordinators of a job. He said subcontractors assumed much of the risk when bid costs were lowered.

Mr. Holloway agreed with Mr. Keenan's positions. He said the Associated General Contractors (AGC) opposed the bill. He said NRS 341.145 justification was that the Legislature met every two years. He said the provision in the NRS was seldom used. He said the general contractor or agency could review the plans and specifications before they went to bid to see where savings might occur or if there were problems with the design. He said the AGC was also proposing allowing public works to employ construction managers at risk. He said he recognized the need to negotiate, but it needed to be in a structured setting. Mr. Holloway said a problem with public works projects was caused by design flaws. He referenced several projects where walls did not meet, and commodes were built over load-bearing beams. He said public works agencies

negotiated all of the contracts with the design professionals. He said S.B. 507 did not fix the problems and would lead to bid shopping.

Mr. Daly agreed with Mr. Holloway and Mr. Keenan and said he thought S.B. 507 would lead to bid shopping.

David Kersh, Carpenters/Contractors Cooperation Committee, Incorporated, said his organization opposed S.B. 507. He said the bill went to the integrity of the bidding process and they were opposed.

Patrick T. Sanderson, Laborers' International Union Local 872, echoed the opposition to S.B. 507. He said it was a poor bill for the state.

Ms. Belz said, on behalf of the AGC Nevada Chapter, the organization agreed with the opposition on S.B. 507.

Chair Hardy closed the hearing on S.B. 507 and opened the hearing on S.B. 509.

**SENATE BILL 509**: Makes various changes to provisions relating to state financial administration and the acquisition of property. (BDR 31-424)

Chair Hardy presented all four bills. He said discussion during the interim lead to the resulting bills. He said S.B. 509 made changes to financial administration and acquisition of property. He said the interim committee was concerned about advertising and transparency for the lease-purchase concept. He said lease-purchase was used as an alternative method. He said S.B. 509 was an attempt to provide a way for the bidding process to be advertised. He said the bill required an entity to seek advertising for proposals when the lease-purchase concept was used by an entity that wished to lease-purchase an existing building and did not own the land or the existing building. The second concept in the bill was when an entity wished to lease-purchase a building not yet constructed and the entity did not own the land. He said the Committee wanted a process that informed the public that the building was being acquired and used for a specific purpose. He said the bill recommended there be an advertising process involved. He said there was some difficulty with the lease-purchase concept brought by A.B. No. 312 of the 73rd Session. That bill required a certain number of appraisals be brought forward. He said the requirements made little sense in cases where local government wished to lease

the land as part of a financing transaction. He said the final provision of S.B. 509 provided for the State Board of Finance to delegate to the State Treasurer or chief financial officer the right to approve certain financial conditions of a lease-purchase agreement.

Chair Hardy said S.B. 515 addressed, through a declaration of legislative intent, that lease-purchase was not to be used to circumvent the bidder's preference laws, the bidding laws or prevailing wage law.

**SENATE BILL 515**: Provides a declaration of legislative intent regarding the use of certain lease-purchase and installment-purchase agreements. (BDR 31-229)

Chair Hardy said S.B. 512 was not needed if the Committee processed the lease-purchase bill from a prior hearing. He said the bill clarified the City of Las Vegas had the right to utilize lease-purchase.

**SENATE BILL 512**: Authorizes incorporated cities to enter into lease-purchase agreements for the construction or remodeling of buildings or facilities. (BDR 21-488)

Chair Hardy said S.B. 520 required changes in the scope of installment purchase agreements be approved by the Legislative Commission.

**SENATE BILL 520**: Requires the approval of certain changes in the scope of installment-purchase and lease-purchase agreements. (BDR 31-230)

Chair Hardy said the focus of S.B. 520 was transparency in the process. He said the NRS currently required the State Public Works Board obtain approval from the Legislature or the Interim Finance Committee for any change in scope. He said the requirement did not exist for lease-purchase agreements.

Chair Hardy said he wanted S.B. 509, S.B. 512, S.B. 515 and S.B. 520 brought back to the Committee in work session.

Senator Beers asked if a building purchased under a lease-purchase agreement created debt for purposes of the debt limit.

Chair Hardy said he did not think lease-purchase created debt. He said lease-purchase was a procurement process that seemed to be working. He said the lease-purchase process dealt mainly with financing.

Robin V. Reedy, Deputy of Debt Management, Office of the State Treasurer, said lease-purchase was not under the 2-percent debt limitation. The 2-percent debt limitation was not a problem. She said the 17 cents used to pay debt was the problem.

Senator Beers said the leases still had to be paid when the state took possession of the building.

Ms. Reedy said when an agency approached the Treasurer's office the funds used to pay were identified and used non-appropriation language.

Senator Beers asked why we would not expect to be able to have a total long-term cost that was less through traditional government bonds sales due to our ability to have a lower-than-market interest rate and the non-income taxability of our interest payments.

Ms. Reedy said total long-term costs were slightly higher in an interest rate, but it was still tax exempt when the certificates of participation were issued. She said there was more risk involved for the security holder. She said with the current compressed rate structure, with the lowest rates in decades, it was minimal. She said the speed with which the projects were built saved the inflation on construction.

Mr. Keenan attended all the interim study meetings. He said there was excellent participation in all the meetings. He said the Nevada Public Purchasing Study Commission supported all four bills.

Mr. Daly said he was also on the advisory group for the study on lease-purchase agreements for public entities. He said he had no issues with S.B. 509. He said S.B. 512 had timing questions. He asked for clarification that lease-purchase agreements met all the requirements, including the prevailing wage requirement. Mr. Daly said in S.B. 515, the declaration of legislative intent regarding the use of certain lease-purchase agreements, the prevailing wage was intended to be applied to any project done under the lease-purchase agreements. He said the intent of the Committee was to have the projects covered by prevailing wage.

Chair Hardy said in the future, bills could become more specific after the lease-purchase system becomes better known.

Mr. Daly said there had been questions about the term "for a public work" and the term "project contemplated under lease-purchasing finance" instead of saying a public work.

Senator Beers recommended Mr. Daly bring an amendment on his suggestion.

Mr. Daly said on S.B. 520, there were questions concerning the 10-percent square-footage amount. He said he preferred dollar amounts be substituted for square-footage amounts.

Pamela B. Wilcox, Administrator and State Land Registrar, State Land Use Planning Agency, Division of State Lands, Department of Conservation and Natural Resources, said she submitted a technical amendment ([Exhibit L](#)). She said a recommendation from the interim study said leases of state and local government land should be exempted as part of a lease-purchase agreement. She requested NRS 321 be amended that there was not a statutory conflict.

Daniel J. Klaich, Executive Vice Chancellor and Chief Operating Officer, System Administration Office, Nevada System of Higher Education, said he supported all three bills. He said he wanted to participate in the work session. He said there was a technical problem in S.B. 198 which defined the Nevada System of Higher Education as a state agency for purposes of the statute. He said language passed last session indicated the System for Higher Education was not a state agency unless the payments under the agreement were made with state appropriations. He said they supported the legislation and thought it was good public policy for the state.

**SENATE BILL 198**: Authorizes various governmental entities to enter into lease-purchase agreements. (BDR 31-231)

Mr. P. Sanderson said he attended all the interim committee meetings, also. He said prisoners working on prevailing-wage jobs were not being paid prevailing wage. He said one contractor with the lowest bid had already agreed with the prison to use prisoners and the other contractors did not realize they could use prisoners. He said there had to be open bidding. He said if one contractor was allowed to do something, everybody needed to know prior to the bidding.

Chair Hardy said the discussion in regard to prisoner labor was not germane to the discussion of lease-purchase. However, it was a valid point that prisoner labor needed to be discussed during the legislative session.

Ms. Reedy offered points of information. She said the Treasurer's Office did not have a budget for advertising lease-purchase agreements. She said lease-purchase legislation required prevailing wage.

Senator Beers said Public Works advertised bids regularly. He asked if there was a way to define, for advertising purposes, for bids.

Tracy Raxter, Senior Program Analyst, Fiscal Analyst Division, Legislative Counsel Bureau, said project budgets had been approved by the Legislature. He said projects in the capital improvement program could include a line item for advertising.

Mr. Kersh offered comments on the bill. He said the bill was expanding the procurement methods. He was concerned about losing the competitive-bidding process. He recognized prevailing wage language was included in the bill.

Chair Hardy closed the hearing on the four bills.

Chair Hardy said labor had serious and legitimate concerns. He said the Committee wanted to use the lease-purchase process for financing reasons if possible. He added Ms. Reedy was very helpful in the interim discussions. He said the Committee approached the subject from a construction-procurement perspective.

Senator Titus asked if the amendments in the procurement bill needed further work. Chair Hardy replied Ms. O'Grady would draft a mock-up amendment for the bill.

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Chair Hardy asked if there was any further business. As there was none, he adjourned the meeting at 4:57 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: \_\_\_\_\_