

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

**Seventy-Fifth Session
February 17, 2009**

The Committee on Government Affairs was called to order by Chair Marilyn K. Kirkpatrick at 8:01 a.m. on Tuesday, February 17, 2009, in Room 3143 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4406 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/75th2009/committees/. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblywoman Marilyn K. Kirkpatrick, Chair
Assemblyman David P. Bobzien, Vice Chair
Assemblyman Paul Aizley
Assemblyman Kelvin Atkinson
Assemblyman Chad Christensen
Assemblyman Jerry D. Claborn
Assemblyman Ed A. Goedhart
Assemblywoman April Mastroluca
Assemblyman Harvey J. Munford
Assemblywoman Peggy Pierce
Assemblyman James A. Settelmeyer
Assemblywoman Ellen B. Spiegel
Assemblyman Lynn D. Stewart
Assemblywoman Melissa Woodbury

STAFF MEMBERS PRESENT:

Susan Scholley, Committee Policy Analyst
Scott McKenna, Committee Counsel
J. Renee Ekleberry, Committee Secretary
Olivia Lloyd, Committee Assistant

Minutes ID: 257

CV257

OTHERS PRESENT:

Robert Larkin, Chairman, Truckee River Flood Project Coordinating Committee, Reno, Nevada
Naomi Duerr, P.G., Director, Truckee River Flood Project, Reno, Nevada
Kate Marshall, State Treasurer
Dino DiCianno, Executive Director, Department of Taxation
Gustavo "Gus" Nuñez, P.E., Manager, State Public Works Board
Richard "Skip" Daly, Business Manager, Laborers, Hod Carriers, Cement Workers and Miners, Local 169, Reno, Nevada
Paul McKenzie, Executive Secretary-Treasurer, Building & Construction Trades Council of Northern Nevada, AFL-CIO, Sparks, Nevada
Ted Olivas, Director, Government and Community Affairs, City of Las Vegas, Nevada
Mark Vincent, Acting Deputy City Manager, City of Las Vegas, Nevada
Carole Vilardo, President, Nevada Taxpayers Association, Carson City, Nevada
Robert Joiner, AICP, Government Affairs Manager, City of Sparks, Nevada
Rusty McAllister, President, Professional Fire Fighters of Nevada, Las Vegas, Nevada
Danny Thompson, Nevada State AFL-CIO, Las Vegas, Nevada
Stacy Shaffer, Political Director, Service Employees International Union, Local 1107, Las Vegas, Nevada
Lisa Gianoli, Reno, Nevada, representing Washoe County
Clara Andriola, President, Sierra Nevada Chapter of Associated Builders and Contractors, Inc., Reno, Nevada
John Madole, Executive Director, Nevada Chapter of the Associated General Contractors of America, Inc., Reno, Nevada
John Garrett, President, Pavers Plus Inc., Reno, Nevada
Mike Cate, President, Associated General Contractors, Reno, Nevada
Dave Backman, Senior Vice President, KG Walters Construction, Santa Rosa, California
Gary Milliken, representing the Las Vegas Chapter of the Associated General Contractors, Las Vegas, Nevada
Jack Jeffrey, representing Laborers International Union of North America, Local 872, Las Vegas, Nevada
K. Bart Hiatt, President/General Manager, A&K Earth Movers, Fallon, Nevada
Dave Gish, RFI Communications & Security Systems, Reno, Nevada
Patrick T. Sanderson, Carson City, Nevada representing Laborers International Union of North America, Local 872, Las Vegas, Nevada

Dennis Baughman, Chief of the Communications Office, Department of Transportation

Chair Kirkpatrick:

[Call to order. Roll called.]

We will start with a presentation from the Truckee River Flood Project.

Robert Larkin, Chairman, Truckee River Flood Project Coordinating Committee, Reno, Nevada:

To my left is Reno City Councilman Dan Gustin, Director Naomi Duerr is to my right, and there are Vice Chair Ron Smith, who is a councilman from Sparks, and Dr. Robert Dickens from the University of Nevada, Reno (UNR). Mr. Gustin, Mr. Smith, and Dr. Dickens are voting members of the Truckee River Flood Project Coordinating Committee.

I want to introduce everyone so the Committee knows that this is a united front. We have Reno, Washoe County, UNR, and Sparks. We also have sitting, nonvoting members from Storey County and throughout the community. This is a vitally important project to Washoe County and the Truckee Meadows.

Naomi Duerr, P.G., Director, Truckee River Flood Project, Reno, Nevada:

During the 1990s, I had the privilege of working for the State of Nevada managing the State Division of Water Planning. I worked with my team to develop the State Water Plan and served as your water policy advisor. It is a privilege to now be representing the Truckee River Flood Project.

I will be referring to the handout ([Exhibit C](#)). [Page 1] Our project focused on the Truckee River, which traverses about 120 miles from Lake Tahoe to Pyramid Lake. The next page shows a diagram of the river, and the area in red is the Reno-Sparks area. It is about 50 miles from the Reno-Sparks area to Pyramid Lake, and that is the focus of our project. Usually, the river looks like it does at the bottom of the page, but if you turn to page 3 and see the flooded car; you can see that sometimes the river acts up. [Read from ([Exhibit C](#)).] We do get a major flood about every 10 years. People ask me, "If it is a 100 year flood, should it not come every 100 years?" We are talking about the percentage of a chance of flooding; it is a 1 percent chance. I liken it to flipping a coin. You have a 50-50 chance of getting heads or tails, but you might get three heads in a row. We have.

Many of you are probably familiar with flooding in Clark County; the flooding here is a very different type. We have a river which flows right through our urban area, and that creates a whole different dynamic. We often have rain-on-snow events, weather like today—snowy in the mountains, but warming

up, followed by warm rains on top of snow. The rain causes the snow to melt, and it comes rushing down in one big flood, similar to the flood we saw in 1997. That is our flood of record.

We had over \$1 billion in damages in a six-county area due to that flood. We estimate that the same flood today, 12 years later, would cause \$1.5 billion to \$2 billion in damages. Climate change is exacerbating our risk of flooding in northern Nevada due to the presence of the Sierras.

We have documented flooding on page 4 going back to 1907 at the Virginia Street Bridge. There are pictures of the 1997 New Year's Day flood in east Sparks, which inundated over 900 buildings and the Reno-Tahoe International Airport.

[Page 6] The challenge is why the river floods. At the eastern end of the big bowl formed by the Truckee Meadows, there is a constriction called the Vista Narrows. The water is blocked there and backs up into the valley. In the 1960s the Army Corps of Engineers came in, at the community's request, and dredged out that blockage. The dredging was a good thing because it helped with the flooding, but it was also a bad thing. By cutting down the Vista Narrows and straightening the river, we really harmed the river. We caused an incised river channel, which means it is digging an even deeper channel. We destabilized the banks and lost a lot of habitat. In fact, over 70 percent of the river habitat and hundreds of species were lost from our region due to development and the "fixes" for flooding.

We were also impacted by the blocking of our fish passages. Area residents were very focused on agriculture in the first 100 years of our development, and in that time there were 15 to 20 diversion dams built across the river. The kinds of fish species we have in northern Nevada cannot hop these tall dams, so they cannot spawn.

[Page 8] We have many flood project partners who came together to solve some of these problems. I want to identify in particular the signatories to our Cooperative Agreement: the City of Reno, the City of Sparks, UNR, and Washoe County. Our primary federal partner is the Army Corps of Engineers. The Legislature has stepped up to be our primary state partner, through Assembly Bill No. 274 of the 74th Session, which helps with the restoration part of our project.

[Page 9] Our project is managed by a group of individuals we call the Flood Project Coordinating Committee. The group has 23 members, 8 voting and 15 nonvoting. One of the unique features of this group is that all decisions must

be 100 percent consensus. This means that we all have to agree in the direction we are going. We saw a symbol of that last week when 22 elected officials from Reno, Sparks, and Washoe County came together in a joint meeting and supported taking the next step with the Flood Project, which was formation of a joint powers authority.

We have a variety of goals, and obviously flood damage reduction is key among them, but ecosystem restoration is important with our federal partner. So is creating recreation and open space opportunities wherever there is a flood project footprint. We are already acquiring the land—why not make it available to the taxpayers? For over 10 years we have been working with a Community Coalition of interested citizens and they have designed the Living River Plan. The brochure ([Exhibit D](#)) encapsulates what is in the plan. The bottom line is that it offers a different kind of flood-planning effort. We are trying to work with Mother Nature and the river. We are trying to put our levees, which we do need, and some flood walls set back from the river. We are trying to create bridge replacements, buy land, and terrace land.

You see on the next couple of pages some of the key features of our project, which the Army Corps of Engineers has divided into three "reaches." There is the Downtown Reno Reach, where there are issues with bridges blocking water. The Truckee Meadows Reach involves issues with the river overflowing its banks, where we want to create levees set back from the river with the Living River Parkway. The Truckee Meadows Reach picture also shows our terracing, which is an important component; it creates additional storage and allows us to restore the river.

Down below in the canyon, which goes east and north for almost 50 miles, we have the Lower Truckee River Reach. We have eleven projects there; two are under way, and many more are to come. We are finishing our planning with the Corps of Engineers, developing a new governance model, and revising our interlocal agreement. To that end, we submitted a bill draft request (BDR).

The pièces des résistance, are our Truckee River Action, or TRAction projects. We are enacting these projects right now. [Page 12] The list shows we have awarded \$9.9 million to handle \$33 million worth of projects. What that should tell you—what it tells me—is that we are trying very hard to leverage our money, and work with our many partners, so that we have the least drain on our 1/8 cent sales tax that was enacted to support this program. We have been able to get out the little shovels at a number of groundbreakings, and we have turned those into working with our big shovels.

Importantly, we started with the first project you helped us co-fund, the 102 Ranch Restoration [Page 13], and the next was the Lockwood Restoration. The next page is a before-and-after of a restoration project that the cities and the county worked on in coordination with the Nature Conservancy to show what could be done in our region. It is serving as a pilot project.

[Page 15] Our third project got under way about three weeks ago. It is our first levee and flood wall. This project is a giant public-private partnership with the Reno-Sparks Indian Colony, Wal-Mart, the State of Nevada, which helped us obtain the land needed to build the levee, and ourselves. The Sparks North Truckee Drain Relocation is in the design and planning phase. This is a very big project, and the Assistant Secretary of the Army, who is in charge of the entire Corps, just came for a site visit. Again, one of the unique things about this project is that we are going to provide the fish passage. It is serving as a model for the country.

We are getting a lot of national recognition because of our work. Last year the National Association of State Flood Plain Managers held their national conference at John Ascuaga's Nugget. They wanted to showcase the Truckee River project because it is an unusual combination of managing flooding but restoring the environment.

[Page 17] Finally, people always ask, "While it sounds grand, what will it cost to achieve all of this?" Right now we are estimating our project will cost between \$1.2 billion and \$1.6 billion. We are hoping for a cost share of about 65 percent from our federal sponsor, the Corps of Engineers, and the other 35 percent from ourselves. This means we need to raise \$424 million to \$524 million. We have a 1/8 cent sales tax, which is estimated to support about \$100 million in bonds. [Page 18] So, we need about \$300 million. We surveyed the public about two years ago, asking if the project was important, and the resounding answer was yes. The comment was that we can pay now or pay later, and if we do not protect the river and prevent flooding, we will be cleaning up later. From the survey, there was a recommendation of a flood management authority or special assessment area. We are looking into implementing both.

People are also interested in what this project can do for our economy and how it can help create new jobs. We hired economists who have been working with us on our funding model and they independently estimated about 14,000 to 19,000 new jobs would be created over the life of the project, which is about 15 years. We submitted a list of about \$340 million of near shovel-ready projects. We might not get funding until the second year. We expect that our money will pay for the things we do to flow through the federal agencies, like

the Corps of Engineers and federal highways. We have been coordinating our submittals in northern Nevada to make sure we get the highest priority projects.

[Page 19] To recap our milestones, we started this effort in 1997, when we had the flood of record.

Assemblyman Spiegel:

Could you explain a little more about how the public-private partnership works on the Indian Colony TRAction Project? How much of that is drawing from the \$424 million to \$524 million you need?

Naomi Duerr:

The estimate for that project is about \$5.8 million. The Reno-Sparks Indian Colony and Wal-Mart had been talking about building a project together and had already formed a partnership. Separately we had designed our flood project. Coincidentally, both projects called for a levee and a flood wall in the exact same place. The challenge was that the levee, to meet the Federal Emergency Management Agency (FEMA) criteria, needed to meet only a 100-year flood standard. Our project is set to meet the standard of a 117- or 120-year flood, so it is a little bit larger.

What seemed crazy to us was to have them go ahead and build that levee and for us to come back later and retrofit it. So we worked with our community—this was one of our first TRAction projects—to say, could we donate some of our money, pay-as-you-go, straight out of our 1/8 cent tax, and we all committed to this project. The State of Nevada partnership came in because there is a correctional facility on part of the property. We would be protecting that facility when we build the flood wall and levee. So we worked with the State Lands Division and the Attorney General's Office to make a swap. We provide flood protection for the state, and in return, the state allows us to use the land to build the levee.

It showed that the state is getting the good end of the deal. During the last flood, the state had to move, house, and guard prisoners and then clean up their facility, which they will not have to do anymore. The Reno-Sparks Indian Colony, in 2005, had a state law passed to do a land swap so they would be able to use the current site of the correctional facility, which is not in very good shape, and they would build the state a brand-new correctional facility. On the vacated land they will build a cultural center. There are a lot of moving pieces in this project, which started with your endorsement, in 2005, of the land swap in Assembly Bill No. 299 of the 73rd Session.

The money is an outflow, but it counts as a credit to what we need to contribute to the flood project. It is amazing; with our \$1.72 million we are building a \$5.8 million project. The Corps of Engineers will match that 2 to 1, so they will give us another \$12 million in flood project construction elsewhere. How the leveraging works is: we put in about \$1.72 million, and at the end we get about \$17 million worth of project. It dramatically reduces our outflow.

Assemblyman Spiegel:

Could you explain the impact of the private sector?

Naomi Duerr:

Yes, absolutely. Wal-Mart was coming into the community and wanted to build a store. They had an arrangement with the Reno-Sparks Indian Colony, so the project is a benefit to them because they needed a flood wall built. They are contributing more than \$2 million—even more than the flood project.

Assemblyman Stewart:

Can you comment on the Mustang Ranch Restoration?

Naomi Duerr:

You may have read a number of years ago that the owner of the Mustang Ranch brothel failed to pay income taxes. The Internal Revenue Service (IRS) took over the property. The physical building was moved off-site, and the IRS transferred the property to the Bureau of Land Management (BLM). Their original intent was to have a wild horse facility, a mustang facility.

What we decided to do as a community was restore the property. One of the things I did not get into earlier was when we had the Corps of Engineers do our fix at the Vista Narrows; they straightened out about 25 miles of river. It was good for flooding but bad for the environment. What we are doing now is working with a number of partners, including the Bureau of Reclamation (BR), the State Question One Bond Fund, which transfers sewer funds to Washoe County, Reno and Sparks, and ourselves to restore that entire segment of river. There are two parts to the Mustang project. The one we are doing this summer is called the Lower Mustang, and then there is an adjoining property called Upper Mustang which we expect to restore in future years.

Assemblyman Stewart:

So you are putting curves back into the river?

Naomi Duerr:

That is correct—and planting native plants, pulling weeds, and restoring habitat and the fishery.

Chair Kirkpatrick:

I have gone tubing down the Truckee River; it is a great experience in the summer here. You stop and have lunch halfway through.

Robert Larkin:

We are more than happy to accommodate a field trip; we just did one with the Assistant Secretary of the Army last Friday.

Chair Kirkpatrick:

We are going to take the bills a little out of order; I will start with Assembly Bill 60. Is there anyone here from the State Treasurer's Office? [There were none.] In Las Vegas? [There were none.] We will recess to allow the Treasurer's Office to get here.

[Three minute recess.]

Assembly Bill 60: Revises provisions concerning the administration and investment of public money. (BDR 31-453)

Kate Marshall, State Treasurer:

Assembly Bill 60 is a clean-up bill. There are two sections. In the first section the Deputy Attorney General had identified an inconsistency between *Nevada Revised Statutes* (NRS) 355.140, which was adopted in 1989, and NRS 355.145, which was adopted in 1993. They asked us to change the language to bring those two statutes more in line with what this Legislature enacted in 1993.

In the second section of the bill we have identified an issue that is costing the state approximately \$340,000 a year. The statute currently requires that deposits be made to an in-state financial institution, but the Department of Taxation, through their contract, is using an institution which requires them to deposit their money out of state. It is costing you money.

The Department of Taxation is here to talk about their contract if you like; it is not a contract the Treasurer's Office has.

Chair Kirkpatrick:

Can you explain how depositing out of state versus in-state benefits us?

Kate Marshall:

I will ask the Department of Taxation to talk about this; it is not my contract.

Dino DiCianno, Executive Director, Department of Taxation:

About six years ago, Bank of America, which, at the time, was an in-state institution, had the contract with the Department of Taxation to deposit all of the tax revenue. At that time Bank of America indicated to us that they were going out of the "lockbox" service we were utilizing.

We went out on a request for proposal (RFP) under the Treasurer at that time. A number of banks bid to take over the "lockbox" operation. They included out-of-state and in-state banks. When we did the review of the in-state banks, they indicated they were simply going to outsource the "lockbox" operation to an out-of-state bank. That added complexities, because they would take the returns and the monies submitted by taxpayers, box them up, and send them out of state.

That was unacceptable because there would have been both a delay in the return processing and a delay in the amount of funds that were going to be distributed. The state would have lost a significant amount of float on those monies received. If the Department of Taxation were to do this in-house, we would have to hire well over 100 people. This process happens on a monthly basis and it would have been impossible for us to process all of those returns and deposit all of that money.

In this day and age, banks are liquid. Banking is electronic. To say that we cannot utilize an out-of-state bank to process our returns and monies, I think, is a disservice to the state. I know the Treasurer had indicated this is costing the state \$340,000, but the alternative would have been much more expensive.

Assemblyman Settlemeyer:

How much do you think will be saved? Do you know what the difference is between the bids of in-state and out-of-state banks?

Dino DiCianno:

I do not have the exact numbers, but I can tell you that it does cost us. The initial setup with the lockbox contract with JPMorgan Chase was approximately \$340,000. The annual cost for them to provide the service is a little over \$1 million. If I had to hire 100 employees, it would cost significantly more.

Chair Kirkpatrick:

We are just trying to establish if this is in the best interest of Nevadans.

Is there anyone here to speak against A.B. 60? [There were none.] Neutral? [There were none.] Is there anyone in Las Vegas? [There were none.] I will close the hearing on A.B. 60.

I will open the hearing on Assembly Bill 174.

Assembly Bill 174: Exempts the State Public Works Board from the requirements relating to construction managers at risk. (BDR 28-992)

Gustavo "Gus" Nuñez, P.E., Manager, State Public Works Board:

Assembly Bill 174 will allow the State Public Works Board to qualify for federal stimulus funds by removing the requirements of Chapter 338 of *Nevada Revised Statutes* (NRS). We would proceed under the requirements of Chapter 341 of NRS and Chapter 341 of the *Nevada Administrative Code* (NAC) and the oversight provided by the Board, who must approve the selection and the process.

The last time I was here [February 6], I submitted a list of projects that was on the last page of our handout. It is a list of projects that will hopefully qualify for stimulus money. When we received the request for a list of projects from the Legislative Counsel Bureau, they indicated that they wanted projects that were "shovel-ready" within 90 days.

We have several projects that are being designed under the construction manager at risk (CMAR) process. Right now that is under preconstruction services contractors: there is a two-step process, preconstruction services and construction services, which are separate contracts.

On page 10 of the bill, section 9 would amend NRS 338.1696, which, as currently written, indicates that a "public body shall enter into negotiations with the construction manager at risk for a contract to construct the public work." The key is that it says this would take place after the public body "has finalized the design" for the public work. The phrase "finalized the design" is the issue at this point. In order to be shovel-ready in 90 days, a lot of those projects that are on the CMAR list will be close to having the final design done, but they will not be finalized. So, our request is to allow us to proceed under NRS Chapter 341, which gives us that flexibility, under the Board's oversight, to enter into the contract, finish the design, have a plan check, and then move right into construction.

Chair Kirkpatrick:

I remember Senate Bill No. 201 of the 74th Session, because there were 999 amendments trying to get everyone together. I understand where we are trying to go, and I am willing to sunset it so that Nevada can participate. It is not something I am willing to do forever. As I remember, the bill was meant to apply to everyone, and now I am concerned how it will affect local government.

Gus Nuñez:

The way this bill is written, if the local governments have projects that are under design and are using CMAR, the design would need to be finalized within 90 days of receipt of the federal funds.

We looked at our projects to see if we were to receive funds in February, could we have the design finalized within 90 days and have a signed contract? There were two or three that would not be able to meet those requirements. This bill would allow us to proceed.

Before Senate Bill No. 201 took effect last session, we were operating under NRS Chapter 341, the NAC, and the oversight of our Board anytime we utilized CMAR. All this bill does, on a temporary basis, is allow us to go back to the way we used to do business.

Chair Kirkpatrick:

Does this exempt everybody, or just the state? It would be just the state?

Gus Nuñez:

In this case, yes, just the state.

Assemblyman Settlemeyer:

I appreciate the concept that we need this bill somewhat as an emergency due to the situation upon us. I would echo the Chair's desire for a sunset provision, so we can reevaluate later.

Gus Nuñez:

That definitely works for us. If you look at the NAC and our general conditions for these types of construction contracts, it is required according to our current contract documents approved by the Attorney General's Office, that the design be completed before we enter into a CMAR construction services contract. We will also have to go into our own internal contract documents and amend them to allow us to utilize the changes. It is our normal procedure to have the design completed before we enter into a construction contract.

Assemblywoman Mastroluca:

Section 5, subsection 2, paragraph (f) states "the construction manager at risk must be qualified to bid." Are there other qualifications in the bill? Why would we take out the qualifications?

Gus Nuñez:

Under NRS Chapter 341, it is already required.

Assemblyman Stewart:

Would section 12, which says this act expires on June 30, 2011, be in effect?
Would that be a sunset on the changes?

Gus Nuñez:

Yes. This bill sunsets at the end of the next biennium.

Chair Kirkpatrick:

Something I would like to see is the difference between the way the state was always doing business before we enacted Senate Bill No. 201, and how the changes helped or did not help. Since you know this issue will be revisited in the future, it would be helpful for the Committee to understand how this tool is used.

Gus Nuñez:

I would be glad to do that.

Richard "Skip" Daly, Business Manager, Laborers, Hod Carriers, Cement Workers and Miners, Local 169, Reno, Nevada:

We are in favor of the bill. The sunset provision is in it. The fact that the measure is temporary, to try to address a specific current concern, is something we need to move forward with. Local governments can still use construction managers at risk; it does not affect them at all. The "public body" is the only definition in NRS 338.010 that addresses State Public Works and Department of Transportation (DOT) for the state agencies. We have no concerns or opposition to the bill.

Paul McKenzie, Executive Secretary-Treasurer, Building & Construction Trades Council of Northern Nevada, AFL-CIO, Sparks, Nevada:

We are in favor of the bill for the reasons stated by Mr. Daly.

Chair Kirkpatrick:

Is there anyone here to speak against A.B. 174? [There were none.] Neutral? [There were none.] I will close the hearing on A.B. 174.

I will open the hearing on A.B. 44.

Assembly Bill 44: Revises provisions relating to funds to stabilize the operation of local government. (BDR 31-404)

Ted Olivas, Director, Government and Community Affairs, City of Las Vegas, Nevada:

This bill is one of the outcomes of our legislative outreach session we held over the last interim. We talked about our financial situation at each of those quarterly meetings to keep you abreast of where we stood at the City of Las Vegas. The bill came about as a result of our current economic situation and the need for local governments to create a stabilization fund and clearly define what and when the funds should be used.

Mark Vincent, Acting Deputy City Manager, City of Las Vegas:

There has been a lot of attention placed on rainy day funds. I know that the state is looking at that, too. I know A.B. 165 has been introduced to do several things, one of which would be to increase the maximum rainy day fund for the state, also known as the Fund to Stabilize the Operation of the State Government, from 15 to 20 percent. So, just as the state is trying to address its concerns, local governments are also trying to address our concerns and how to fortify ourselves from future crises.

Assembly Bill 44 is trying to do two primary things. While the City of Las Vegas has created a fund, we have not transferred anything into it because of concerns about current language in *Nevada Revised Statutes* (NRS) 354.6115. What we are trying to do with this bill is clarify and expand the uses of the stabilization funds and increase the potential balance in this fund from 10 percent to 15 percent.

Section 1 is clean-up language. There is a cross-reference from NRS Chapter 353 to NRS Chapter 354 which talks about natural disasters.

Section 2 is the meat of the bill. The current language under NRS 354.6115, subsection 8, paragraph (b) currently defines "natural disaster" as a "fire, flood, earthquake, drought." Our concern here is that there are other disasters that may not be natural. We deal with explosions, civil disturbances, and other threatened occurrences. We would like to add that language to "disaster," dropping the word "natural." Also in NRS 354.6115, subsection 1, we want to add "acts of terrorism" and we want to say that any combination of those three issues, whether it is revenue stabilization, a natural or man-made disaster, or terrorism, would allow us to access those funds. In NRS 354.6115, subsection 2, we also wanted to clarify that economic events, such as the recession we are currently in, are included in the stabilization uses if they could (1) not be reasonably anticipated, which is the language in the current law, and (2) result in the general fund balance falling more than 10 percent of anticipated general fund expenditures.

The change to NRS 354.6117 in section 3 concerns the limitation of how much, in any given fiscal year, could be transferred out of the general fund to certain funds. In this case, we would like to increase the amount of money that could be transferred for revenue stabilization in any year from 10 percent to 15 percent.

We think the bill is a good start to help local governments stabilize their financial situation.

Assemblywoman Mastroluca:

Could I get a definition of what you would consider a "threatened occurrence"?

Mark Vincent:

Any kind of civil disobedience or terrorism would fall into that category. Sometimes a threatened occurrence can have a significant impact on the tourism industry, which is why the language was placed in there.

Assemblywoman Mastroluca:

So it is something you perceive may happen based on credible knowledge?

Mark Vincent:

Yes, it would have to be something that would rise to the level of a crisis in the community where that threat had a severe impact on tourism. The September 11, 2001, incident had a devastating effect across the country. It was also an economic issue, so the "economic event" language allowing access to the revenue stabilization fund would apply in that case as well.

Assemblyman Bobzien:

How is the fund considered from the budgetary standpoint, particularly in terms of the valuation of the entity's overall budget once the fund is set aside?

Mark Vincent:

In our current resolution that we passed, the revenue that would be transferred into this rainy day or revenue stabilization fund would have a limitation of up to 25 percent of fund balance in excess of our budgeted rainy day fund balance. As a budget function it would be much like that of the State of Nevada, where we would set aside these monies into the revenue stabilization fund, and they could be accessed only if the governing body made a declaration that one of these events had happened and resulted in an impact on our ending general fund balance.

Assemblyman Christensen:

I am for stabilization funds that can be done responsibly. In reference to section 3, subsection 1 paragraph (a), it says "must not exceed 10 percent" and then in (b) "must not exceed 15 percent of the total." I was curious how you came to those numbers.

Mark Vincent:

The existing language limits the amount that could be transferred in any one year to 10 percent, and NRS 354.6117 happens to reference back to the stabilization fund as well as the to the capital project fund. Section 3, subsection 1, paragraph (b) pulls out the piece that is for revenue stabilization and allows up to 15 percent to be transferred.

We arrived at those numbers based on current experience. Many local governments today are facing operational deficits in excess of 10 percent. The logic there would, at least, address the current recessionary period we are in.

Assemblyman Christensen:

Do you feel that the 15 percent is the number to go with on a long-term basis?

Mark Vincent:

My personal opinion is that I would not want the rainy day fund or revenue stabilization fund to be a place you would go to fund special-interest projects. What I am trying to achieve is something that would be reached into only when the most grave of situations arise that we could not anticipate.

One would argue that some of the current recession could have been partly anticipated, and I think it is a responsibility of fiscal managers to plan for what we see as a reasonable revenue picture. Despite those efforts in today's economy, we are seeing revenue shortfalls exceeding our already dismal projections. I think 15 percent is a reasonable number.

Chair Kirkpatrick:

Since I try to think of "worst case scenarios" ten years down the road, I have a couple of questions. One is about the definition of disaster that is very, very broad. It could be anything. There is a big difference between a natural disaster, which is clearly defined, and a disaster. So I have some concerns.

Section 2 makes me nervous, because I bet there are a couple of Nevada cities today that could find reason to use subsection 1, paragraph (d), "to perform any combination of the activities described in paragraphs (a), (b) and (c)." I do not know how it works.

Where is the accountability? Is it something that comes in the budget that we can see as constituents? How do we check on where the money is used, and when does it go back before city council? Could you explain the process?

Mark Vincent:

In NRS 354.6115, section 2, it may be true that the definition of disaster would be expanded, but something like a chemical spill on I-15/95 is not a natural disaster, it is a man-made disaster. These are the kinds of things we are trying to address in addition to natural disasters.

Chair Kirkpatrick:

Do we not already have those kinds of things in place? Let me use the example of the Fernley flood. They did not really have any money, but they were able to get matching money. Is the stabilization fund something like a savings account that we are often going to pull money from?

Mark Vincent:

I do not foresee that funds would be pulled from it often. So, let me address all of the points. First, I think that the natural disaster definition is much too narrow; there are man-made disasters, be they civil disturbances, environmental issues like spills, or things of that nature.

Second, the way we worded NRS 354.6115, subsection 2, there would have to be two conditions: the event, which could be an economic disaster, and the end result, which would be an anticipation that the general fund balance would drop below the 10 percent mark. There would have to be two conditions, so under that scenario, one would not be able to dip into the revenue stabilization fund without significant just cause. While we may agree the definition is a little broader, those two occurrences must take place before the fund can be accessed.

Third, you asked about the process. We did create, by resolution, a revenue stabilization fund. It will be a special fund and will be identified as a special revenue fund. The resolution controls the flow of money into the fund and how the money is accessed. It currently mirrors the language in NRS Chapter 354. The problem is that we think the language is too restrictive in the definition of disaster, especially when talking about economic events. That proposed language gives us much more comfort, and we would be more willing then to transfer money into the revenue stabilization fund that we have created.

It is very transparent and open. The money that would be transferred into this as part of our budget process, and the money itself would be called out and

specified in our budget submission. We think it would lend to good government to make these changes.

Chair Kirkpatrick:

This is not a charter change, so it affects all cities and local governments across the state. While the City of Las Vegas may already have a resolution, I am looking for the part of this legislation that states what everybody else would have to do.

Mark Vincent:

That is a good question. In the section of the current law, where it talks about the local government having to make a declaration, there is nothing in the current language about how to create the fund. We decided that what we were doing was creating a special revenue fund, and we did it by resolution. I would not be opposed to that kind of language being placed in this bill. I do not know if it would be redundant elsewhere in NRS Chapter 354.

Chair Kirkpatrick:

I can have our legal staff look at that.

Assemblyman Bobzien:

I appreciate the fact that you are trying to get around the restrictive nature of the "natural disaster" language, but I think going to "disaster" is broad. I appreciate, too, that there would have to be a justifiable reason to make a withdrawal from the fund. The example of a chemical spill on the I-15 got me thinking that there is nothing in the bill that addresses the scope or scale of what would be considered a disaster. If a chemical spill is a disaster, then how about a ten-car pile-up? I am concerned that there is no scale or scope in the bill.

Mark Vincent:

A ten-car accident is not likely to cause the local government's fund balance to drop 10 percent. The controlling factor is that the event has to be significant enough that the fund balance would drop 10 percent below the anticipated fund balance. I chose 10 percent because it is on the lower end of the scale which recommends 10 to 15 percent.

Assemblywoman Pierce:

Is "act of terrorism" included in this definition of disaster?

Mark Vincent:

No, it is spelled out separately in the bill. It is in section 2, subsection 1, paragraph (c)—"To mitigate the effects of acts of terrorism"—so terrorism is not included in the definition of disasters.

Carole Vilardo, President, Nevada Taxpayers Association, Carson City, Nevada:

I am here in support of A.B. 44. As the Committee is very well aware, when this provision was enacted in 1995, we had just come out of the 1991 to 1993 era where we had seen an economic downturn. It was not as severe as this one, and we were trying to encourage local governments, if they had any excess revenue, to not only put it in a stabilization account but also put it into an infrastructure account.

Some governments were able to do that; others still have not been able to do it. The bill was expanded in the 2001 Session, and a discussion I had with Mr. McAllister [Professional Fire Fighters of Nevada] raised the issue that there were two funds suggested at that time, and what the committee did was consolidate it into one total amount.

After listening to your discussion about the definition of disaster, I imagine there are going to be some amendments put on this bill, but this is good policy. One of the reasons for the concern about the stabilization fund, which we supported and also helped work on the language for the state's rainy day fund, is the fact that in an economic downturn you do not want to have to cut essential services or essential employees.

What one finds with the stabilization funds is, by nature of their name, you hope to maintain that basic level of services. That being said, it is contingent on a government having enough revenue that is considered surplus to put into this fund. One of the safeguards put into the bill was that the funds had to be established, and the infrastructure fund also, by resolution. If you are going to transfer money, given the two situations that must occur, I wonder if it could not be done as a budget augmentation. This might be a question for Mr. Vincent as an expert in finance for local government. As such, you would have a record as to what account it was being put into, et cetera. Everyone, including the taxpayer, wants to feel that he is not being used.

I believe the double safeguard is here, in saying that local governments may use money from the stabilization funds if their budgets go below 10 percent. But assuming there is not a problem, there could be something put on the public record as to exactly why the funds were accessed, what they were being used for, and how they were being used. This would be done at a public meeting,

whether by augmentation or a method that is provided in the record. I think this would raise the comfort level.

I think you all know that the Speaker has put in a bill to increase the amount that goes into the rainy day fund. The absolute ideal would be if the Legislature could say to local and state government, you are going to take 5 or 10 percent of any revenue you anticipate and put it into the account and keep putting it into this account. With the state's rainy day fund, we also had a disaster relief fund that was separated, but there was concern that we could have too much funding building up in one fund and not have enough in the other. We asked for the legislation in the 2001 or 2003 Session to make the disaster relief fund a subaccount of the budget stabilization account. The two effectively became one account to maximize the use of the revenue being accumulated.

Chair Kirkpatrick:

Section 2, subsection 2, paragraph (a), has the word "or." So what could you not use this fund for?

Carole Vilardo:

First, the general fund would have to go below 10 percent.

Chair Kirkpatrick:

Which I think is very possible in the next biennium. The "or" makes it pretty broad.

Carole Vilardo:

I think this is a case when you would want some flexibility. If you are so restrictive, yet there is this money, sitting, then what good does it do? I know that a number of local governments since 1995 have not been in a position to set up either of these funds. Given the current economic situation, I would be hard pressed to believe anyone would have any money to put in the fund next year to help them. What you are looking at here is very long range, and it may take two to three years before there would be any thought of a surplus that could go into this fund.

Robert Joiner, AICP, Government Affairs Manager, City of Sparks, Nevada:

I wanted to speak in support of this bill. I understand there was an amendment, and after having it explained to me, we could support it. We could also support the language you have discussed today about resolutions.

You had a presentation today by our Flood Project Manager for the Truckee Meadows. You can see in those pictures the influx of flood waters into Sparks in a seasonal event. We have to deal with not only the impact to our

91,000 citizens of Sparks, but also the impact on those warehousing and distribution facilities as well as the men and women who own and work in those facilities that come from throughout northern Nevada. In those events, we could spend millions out of our funds in addition to the match or reimbursement from FEMA and other state and federal agencies.

Those are real possibilities, and as you see from the scope of that Truckee River project, it will take many years to get built, so in the meantime we are greatly impacted by that.

You had our City Manager here on February 3 explaining our budget situation, and as Ms. Vilardo stated, it will be many years before we have the luxury of having a fully funded stabilization fund. We are at the bare minimum of our fund balance now, with about 10 percent of our budget in reserve. It is something that is very real. In addition to the flooding impact, the City of Sparks has a major interwest tie for fuel—a tank farm—adjacent to Interstate 80 and the Union Pacific railroad line. So we have some real homeland security issues with the potential to affect us on a daily basis.

Chair Kirkpatrick:

I do not know about any amendments. Could you enlighten us?

Robert Joiner:

I understand there is a potential for an amendment from Washoe County. If there is going to be a working session or continuing discussions, we want to be a part of them.

Chair Kirkpatrick:

We will now go to those who are opposed to the bill.

Rusty McAllister, President, Professional Fire Fighters of Nevada, Las Vegas, Nevada:

We signed in in opposition to the bill for a couple of reasons. First, the ability of the local government to establish a stabilization fund and a fund to mitigate disasters is a noble cause. We believe they should be able to do that. Our concerns are how they are going to accomplish it.

In section 2, where it talks about disasters, I would agree with Mr. Vincent about the need to change the definition. Things other than natural disasters cause a large expense to a city or any local government. While a chemical spill on the freeway would not be our responsibility, I do know that when we go out on a chemical spill or when chemicals are left on a site, the city would either bill

the property owner or pay for the cleanup if an owner cannot be located. So there could be cost.

My concern is in section 2, subsection 2, in regards to how the governments would withdraw the money. The ability to put money aside in government stabilization funds and disaster relief funds is already there and has been since 1995. The issue was worked on again in 2001, and one of the things that came out of the committees, and was passed, was the ability to create a disaster relief fund. The final resolution was that an entity could establish a disaster relief fund as part of its stabilization fund and keep the percentage the same. At that time, not many local governments had put money into stabilization funds, and I believe that many still have not, even though they have had large amounts of revenue at various times. They chose not to put money in those funds when they could have.

I believe the reason they did not put money in the funds is because, based on current law, it is difficult to withdraw the money. I believe part of the intent in 1995 was to make withdrawal difficult. Now local governments want to make it much easier to withdraw funds. Under current statute, the money can be withdrawn when the actual revenue falls 10 percent below the anticipated revenue. This bill has added language that talks about anticipated expenditures. If I am a local government, I can set up my "anticipated" expenditures to be whatever I want them to be. As an example: some local governments tend to fund positions, or put positions in the budget for employees, while they have a hiring freeze. They never fill those positions, and at the end of the fiscal year, they yank the money back out of those positions and put it back into the general fund to use for other things. Say the money is put in the budget as part of an anticipated expenditure—for example the entity anticipates expending X number of dollars to hire people—but the general fund revenue falls below 10 percent of actual revenue. Then it would not match up with expenditures because the expenditures are so high, so we can pull money out of the fund. This is the way I interpret this bill.

My other concern is in section 3. Again, back in 2001, the resolution was that there would be one fund to both stabilize local government and mitigate disasters. They can put up to 10 percent into a fund based on NRS 354.6113—I believe that is an infrastructure fund—and an additional 15 percent per NRS 351.6115. So they could put up to 25 percent of general fund revenues into stabilization accounts.

I can speak only for the local government I work for [City of Las Vegas] but others are probably in a similar situation. I know that the city has anticipated this issue and put in its budget that it is going to put \$47 million in its revenue

stabilization fund. If we are really serious about having a fund to mitigate disasters and stabilize government, would a bill that makes it easier to withdraw funds really motivate local governments to put money in them?

Assemblyman Christensen:

I would be interested in a response from Las Vegas or to hear from Mr. Olivas regarding what Mr. McAllister states, referring to funding positions that are subject to the hiring freeze.

Danny Thompson, Nevada State AFL-CIO, Las Vegas, Nevada:

I do not have much to add. We have the same concerns that Mr. McAllister does. In 2001, Mr. McAllister was an integral part of the agreement that settled this issue. We also felt that it should be difficult to take the money back out. We are opposed to the bill as currently written.

Assemblyman Aizley:

Are there any suggestions to make it easier to get the money out?

Danny Thompson:

I thought that is what the original bill had done. We favor the language that is currently in the law.

Stacy Shaffer, Political Director, Service Employees International Union, Local 1107, Las Vegas, Nevada:

We are in agreement with the concerns raised by the previous two gentlemen.

Chair Kirkpatrick:

Is there anyone else who would like to testify in opposition to this bill? [There were none.] Is there anyone who is neutral?

Lisa Gianoli, Reno, Nevada, representing Washoe County:

Washoe County has been discussing a possible amendment with the City of Las Vegas ([Exhibit E](#)). Our concern is based on our current year in Washoe County. We actually accessed these funds by using the current language that we had fallen below budgeted revenue. The way the language is now in the bill, we would not have been able to access those funds because at year-end close, the audited actual fund balance was 11 percent below, not 10 percent. So our concern was if we could somehow put an "or" in section 2, it will still allow us to access those dollars.

We are still not completely firmed up on that language.

Chair Kirkpatrick:

Which portion of section 2 did you want to add the "or" to?

Lisa Gianoli:

In section 2, subsection 2, paragraph (a), we thought we would remove the wording "such that" and include the word "or."

Ted Olivas:

Ms. Gianoli brought the amendment to me yesterday. I informed her that we had a number of discussions about this, there were a number of concerns that were raised, and we would have to do some homework. We missed the deadline, but we would take it into consideration.

Chair Kirkpatrick:

Mr. Vincent, would you address Assemblyman Christensen's concerns?

Mark Vincent:

First, with respect to Mr. McAllister's testimony about section 2, subsection 2, paragraph (a), the way the current law reads is, "if the total actual revenue of the local government falls short of the total anticipated revenue in the general fund for the fiscal year in which the local government uses that money or..." The language that we have in our bill actually makes it more difficult to get the money. We keep the same language and add "such that the resulting general fund balance falls below 10 percent of the anticipated expenditures." Washoe County is correct that the way the bill is currently written, one would have to have both conditions. We believe our language is more restrictive.

If Washoe County feels that the "such that" should be replaced with an "or," I think the City of Las Vegas could support that.

With respect to how we are funding it, Mr. McAllister is partly correct. The City of Las Vegas has identified about \$47 million in funds in various places, none of which is in the general fund. Part of the money is capital project funds, monies for projects that we have delayed or terminated, that were funded by general fund money. Some of it is special revenue money that is fungible and can be brought back into the stabilization fund. We do not intend to fund the revenue stabilization on the backs of hiring freezes or budget cuts. The one part of Mr. McAllister's testimony that was not accurate is that while we have identified the funds, we have taken no action. We have not transferred any of those monies in the past, or in the proposed budget process, because of the concerns we have with the language in this section of the NRS, which is why we have A.B. 44.

Assemblyman Christensen:

Everyone who has addressed A.B. 44 today has discussed the issue of making it difficult to access the money in the stabilizations funds. Do I understand it correctly, about making it difficult to get at the money to just do something that is not specific to taking care of the city in bad times?

Mark Vincent:

That is not our intent, and I do not believe there is any language in this current bill that would allow it. Two things have to happen before you can access the money. The local government has to pass a resolution declaring that one of three things has happened: an economic event, a disaster, or some act of terrorism. Then, for an economic event, it has to be demonstrated that anticipated revenues have a shortfall, and as a result of the shortfall, the projected fund balance is going to drop below 10 percent of anticipated expenditures for that year. What we are trying to do is create a fund that expands the kinds of events, from a natural disaster, to include an economic one or an act of terrorism, but also requires that the conditions of section 2, subsection 2, paragraph (a) have to be met. While we are trying to expand the potential uses for the funding, we have made it more difficult to get it out.

Chair Kirkpatrick:

I will close the hearing on A.B. 44.

I will open the hearing on Assembly Bill 175.

Assembly Bill 175: Temporarily revises the provisions governing the prequalification of bidders on public works of this State. (BDR 28-1032)

Assemblyman Kelvin Atkinson, Clark County Assembly District No. 17:

I am going to review this bill briefly because I know there are some concerns regarding it, so I am going to clarify what we are attempting to do. Then I would ask your and the Committee's indulgence to iron out some differences.

I have heard from others that there are individual concerns with the bill, but I have heard from only one, the City of Las Vegas. I have not heard from anyone else.

What we are attempting to do with Assembly Bill 175, as the State Public Works Board mentioned earlier, is be ready with shovel-ready projects for the stimulus money. President Obama is going to be signing the stimulus bill into law today. Through that stimulus bill, Nevada was allocated a little over \$200 million for transportation projects and infrastructure.

What we need to do with the money is to provide some accountability. We have been given money and the opportunity to put Nevadans to work. We have over 9 percent unemployment. Is this enough money to put that 9 percent to work? No, but we are charged with the responsibility to use these dollars and use them wisely. My only goal is to make sure we are stimulating our own economy. We have the opportunity to put some of our Nevadans to work; it is our job as legislators but also our responsibility to stimulate our economy with these dollars.

The President said he hopes this stimulus package will invigorate job creation, spur spending, and boost public optimism. I am not trying to keep any local bidders out of this process, but what I am concerned about is making sure that these dollars are spent in our state. I want these projects and our stimulus money to stay here, not go to Arizona, California, and Colorado. I welcome those individuals who want to help us get to an end point upon which everyone can agree.

We will work on this bill, we will create jobs for Nevadans, and we will make sure that this stimulus money stays in our state.

Assemblyman Settlemeyer:

Can you define "living wage"? Different states have different concepts of what a living wage would be.

Assemblyman Atkinson:

That is something we are taking out.

Assemblyman Munford:

Are there going to be any stipulations for diversity?

Assemblyman Atkinson:

No, it is not considered in this bill. This was a bidder's preference bill, so we gave precedence to Nevada bidders to make sure they get these jobs and employ our citizens. We can consider diversity.

Assemblyman Munford:

Could that be considered as an amendment?

Assemblyman Atkinson:

Yes.

Chair Kirkpatrick:

I have several people signed up in opposition to the bill. What I would like you to do as you testify in opposition is to point out parts within the bill that you have issues with, so that Assemblyman Atkinson can address your concerns.

Clara Andriola, President, Sierra Nevada Chapter of Associated Builders and Contractors, Inc., Reno, Nevada:

Regarding this bill, the bill draft request could not be found as of Friday, so there was not a lot of time to prepare.

Chair Kirkpatrick:

We put the bill on the agenda, and it was available on the agenda. I do not want any misrepresentation stating that this bill was not easy to locate. While we did expedite the process, the bill was available for review last week. I take offense at your statement.

Clara Andriola:

I will take full accountability for not looking in the correct place. It was posted Friday on the Government Affairs website, and the spirit of the sponsor and everyone who wants to keep Nevadans working is shared.

One of the main problems is the prequalification. It relates only to prime contractors, so there is nothing in place that prequalifies any subcontractors. Many folks in the industry have been working quite some time to put some language together that could be presented to the Legislature. A meeting took place December 10 to work with the State Public Works Board to try to do something. It was agreed that to do a thorough job and to protect the state, we were going to wait until the next session.

The bill, if adopted as is, creates a huge burden on the prime contractors, and it may be an impossibility to accomplish some of these tasks.

Chair Kirkpatrick:

I am really disappointed to hear that because we worked very hard to have an open door policy. If you will tell me what section of the bill you want to address, I will hear it.

Clara Andriola:

Section 1, subsection 3, paragraph (b), subparagraph (6)(l) refers to the "opportunity of employment to qualified local workers." We all support that, but there already are provisions in the State Public Works law that allow for preference, such as the 5 percent preference for local bidders.

Section 1, subsection 3, paragraph (b), subparagraph (6)(II) states, "Pays to the applicant's employees a living wage." We could find no definition of a living wage, and all public works projects are subject to prevailing wage law, which is specific to counties and trades and has a process in place. If these mandates are put into place, it may hurt minority contractors, and small businesses. We are not sure what it means.

Section 1, subsection 3, paragraph (b), subparagraph (6)(III) states that the applicant "Provides an employer-paid health insurance plan for the applicant's employees and their dependents." Given the current economic climate, it is clear that everyone is struggling, so putting that into place in the worst of times is of grave concern and will have a grave impact on businesses.

Section 1, subsection 3, paragraph (b), subparagraph (6)(V) states that the applicant "Provides a pension plan that enables the applicant's employees to receive income after retirement that is sufficient to pay the living expenses of the employee after retirement." We have not been able to find any research that guarantees that any payouts will occur. The spirit is wonderful, but there is no way to guarantee that provision will work and there is no definition of the plan.

Section 1, subsection 3, paragraph (b), subparagraph (6)(V) states that the applicant "Provides a training program accredited by the State of Nevada that ensures the applicant's employees perform their tasks in a safe and efficient manner." A technicality from an accreditation standpoint is that the State of Nevada does not really accredit any training institution; it is done by a third party. We fully support apprenticeship programs. If the objective is safety, which is especially supported in the construction industry, it might be interesting to note that the Bureau of Compensation and Working Conditions, which is a unit of the Bureau of Labor Statistics, reported, "The distribution of fatalities among both union and nonunion workers is similar to the composition of the construction workforce in terms of union and nonunion workers."

One could look at the accidents in the last two years in Las Vegas, and it has been incredibly unfortunate; even to report it is disheartening. About 90 percent of the deaths occurred where there had been mandates of training.

In speaking with legal counsel, we found the bill, as written, may actually have some points of contention in it. It may be preempted by the Employee Retirement Income Security Act (ERISA). The Employee Retirement Income Security Act preempts any state law which "refers or relates" to employee benefits, including health insurance, pension, and apprenticeships to the extent

that this prequalification requirement forces employers to fully fund such benefit programs as a condition of performing work.

A recent study released in February 2008 in Worcester, Massachusetts, discussed all of these mandates. The study indicated the mandates increased the cost of construction projects and put an additional burden on the contractor.

We are opposed to the bill as written, but we will work with anyone who will keep Nevadans working.

Chair Kirkpatrick:

Now I am mad. I go out of my way to make sure we have plenty of communication. The only ones I see who will try to challenge this bill are out-of-state companies. If we are trying to put Nevadans back to work, I am willing to take that challenge. There are construction companies from Utah, Arizona, and New Mexico working in this state all the time. Do whatever you need to do to get on board with this process and help the Chairman of Transportation. There are too many people out of work in Nevada, and if we have to take a challenge from a Utah company, I am okay with taking that challenge, because in the meantime it will put a whole bunch of people back to work.

Assemblyman Claborn:

Did you suggest that the State Public Works Board will tell a general contractor which subs they can use?

Clara Andriola:

My understanding regarding the prequalification process, in the committees that we worked on, is that there is not actually an instrument in place that has any qualification for subcontractors. A subcontractor could be the prime contractor, but there is not a qualification process in place.

Assemblyman Claborn:

Do you want to change that? When I was working, the general contractor had his own subs that he could depend on to make money. I think you are going the wrong direction on this. The law works fine the way it is. If the contractors do not have the right to choose their own subs, it could get into the general contractors' pockets hard because some of them may not be qualified.

Clara Andriola:

Absolutely. We are working with contractors throughout the area, and we have for almost a year. It would be fine.

John Madole, Executive Director, Nevada Chapter of the Associated General Contractors of America, Inc., Reno, Nevada:

My concern is about employing local people. I was afraid it would just be a questionnaire, and I did not see in the bill a way to make that stick. It is a noble objective; I am simply not sure the language addressed what you were really talking about.

We have already addressed the living wage. About the health insurance: people have come into our office promoting something called a mini-med plan, and so some contractors would have only something like \$15,000 of medical care covered for their employees. I am worried that this might allow something that no one intended, because there is a whole range of medical plans, and the bill does not seem to pin down anything. There is the same concern with the pension. One person might pay \$1 into the pension and another might pay \$5. We are talking about sufficient paid living expenses, which is hard to know exactly what is meant. In some cases there may not be training programs for those who are already prequalified to do these jobs. Maybe they would not be allowed to continue to do the work. I do not think there is any intent to stop those who had already been prequalified, but I did have a concern when I read it, because it may prevent people from maintaining their prequalification.

John Garrett, President, Pavers Plus, Reno, Nevada:

I am here on behalf of local business owners. I think the process we have in place right now works just fine.

Assemblyman Goedhart:

If you had to look at a possible consequence of this legislation as currently written, would you see it costing the taxpayers more, or getting fewer projects built for the same amount of money?

John Garrett:

I think it probably would cost more. We are trying to get Nevadans back to work, but I think this would put Nevadans out of work. As a contractor, it is hard enough to get a job without having to add more expense. This would open the door to out-of-state contractors.

Assemblyman Goedhart:

So it might have the unintended consequence of not fully employing as many Nevadans under the existing regulations?

John Garrett:

Exactly.

Assemblyman Atkinson:

I knew that a lot of people would come up and talk about the health insurance, et cetera. I would like to know what these unintended consequences are. I know that in Nevada we have one of the highest uninsured rates in the nation. If we are putting people to work and they are still utilizing the public health system, we are going to offset the \$200 million that we are getting. Those people are going to need health care from somewhere. That would be an unintended consequence that would burden the taxpayers.

Mike Cate, President, Associated General Contractors, Reno, Nevada:

I think I can answer the question about some of the unintended consequences that might occur. Associated General Contractors (AGC) represents several contractors, some of which are open shop [nonunion] and some are not. My concern is, how would regulation happen, because the standards are so subjective? It is possible that the easiest route to take would be a labor agreement set up through our members that have labor agreements with the different unions. The open shop contractors, who pay high wages and have insurance benefits, may not be set up quite the same way as the union contractors are.

The possibility is that these contractors might be left out. Perhaps the easiest way to regulate is if someone already has a union agreement; then they are automatically qualified to do the work. How you qualify people between those two different groups is important. We have great open shop contractors that are very large and do every type of work. We also have specialty contractors and union contractors. They are all Nevadans; they all pay taxes and send their children to school here. That is my main concern, how to feather those groups together so it is not one side or the other.

Chair Kirkpatrick:

I invite you to be part of the process. We do not want Utah and other states taking our stimulus money, so if it costs us a little bit more, it is a huge turnaround back to our economy.

Mike Cate:

Whatever we get out of the stimulus package, we will be glad to have, but as Nevadans, we need to work together to get our own package going to make things work the way they should.

Assemblyman Atkinson:

The reason we are asking for support and help on this bill is because of instances just like this. We do not want to give anyone an unfair advantage. If

someone is a Nevada company, maybe union and maybe nonunion, the goal is to make sure Nevadans get a part of this.

Dave Backman, Senior Vice President, KG Walters Construction, Santa Rosa, California:

I am a general engineering contractor, and I am an out-of-state contractor. This might be a little strange. I am a signatory contractor; we have been working in this state for more than 20 years.

I am working on the wastewater project in Minden, an arsenic treatment plant in Carson City, the Marlette water project that furnishes water to Carson City, the water treatment facility in Fernley—several important projects in the state. We are a qualified contractor.

This bill probably benefits my company. Mr. Cate is my friend, and we are both in the AGC, so as a businessman I hate to see the exclusiveness that would come about from this bill. There are provisions in the Public Works statutes for equal pay whether or not you are a signatory. Maybe a provision could be that part of a non-signatory contractor would have to pay at least a certain amount, that maybe a part that would go to the required health care. I know this bill would put a lot of local people out of work. The provisions and safeguards are already there. The bill seems nebulous, and I do not see what it really accomplishes.

Chair Kirkpatrick:

I bet you employ a lot of Nevadans.

Dave Backman:

All Nevadans; in fact there is not one Californian on any of our projects. I am a partner in the company. I am the only out-of-state guy.

Assemblyman Claborn:

We have criteria for the qualifying list. Usually a lot of the criteria are job performance. This is why we have a list. I do not think this is the time or the place to change the qualifying list.

Dave Backman:

I think the qualification system that is in place is a good one. Through this bill or amendments to this bill, I do not want to see that only union companies can be prequalified. I say this because of the parameters. The wages are not a problem because of the prevailing wage law; I am referring more to the benefit packages and such. It would be difficult to see what the open shops pay for health and welfare and so forth.

Assemblyman Claborn:

Well, you are supposed to do that. You file reports on the people you employ and how much you pay in for benefits, et cetera. There is a penalty for not paying the proper prevailing wage.

John Garrett:

We all pay prevailing wage. I pay prevailing wage plus benefits; I do not take benefits out of the wage. There is a difference in how everyone does it.

Gary Milliken, representing the Las Vegas Chapter of the Associated General Contractors, Las Vegas, Nevada:

Assemblyman Atkinson's explanations have answered the questions I was going to raise. I did speak with the Chairwoman several times about the bill, and I apologize for not contacting Mr. Atkinson.

Richard "Skip" Daly, Business Manager, Laborers, Hod Carriers, Cement Workers and Miners, Local 169, Reno, Nevada:

I am in favor of the bill. I will give my two cents about several of the concerns that have been brought forward.

I do not believe this will increase anyone's costs. We already have a prequalification process, and everyone has to pay prevailing wage anyway.

I am a trustee on our trust fund, and I am not aware of any ERISA implications. This is not a union versus nonunion issue from the language that I can see. Some people may want to confuse the issue, but I do not see it that way. There is a provision for subcontractors to prequalify which is already in the existing regulations.

There is a specific need to put Nevadans to work, and there is some urgency with the stimulus and the money coming to Nevada. The changes sunset, and we will all learn over the course of time whether this works and there are improvements to be made. We need to move forward with the bill.

I think it all boils down to how the State Public Works Board is going to score applicants. In their regulations they refer to a score, and I do not know how that is going to be integrated. Hopefully those questions will be answered as we go through this.

Jack Jeffrey, representing Laborers International Union of North America, Local 872, Las Vegas, Nevada:

I, too, am in favor of the bill. I understand that the bill needs some work, and we will be happy to work with those who are working toward a solution for this problem.

There is an existing problem with health insurance. Assemblyman Atkinson talked about the high uninsured rate. What happens with the prevailing wage, the money that would ordinarily go to health insurance goes on the worker's check, so when there is an injury, the worker goes to whatever publicly financed system that is available.

Paul McKenzie, Executive Secretary-Treasurer, Building & Construction Trades Council of Northern Nevada, AFL-CIO, Sparks, Nevada:

The bill brings some very important issues to light. As the secretary-treasurer for an organization whose affiliates are facing 30 percent unemployment, we are in favor of anything that puts local construction workers to work.

We appreciate the chance to address the issue of health care because it is very important that workers on a job are secure in the fact that their families are insured. That way he can focus at work. It makes him a safer worker. We also appreciate the fact that the bill is addressing retirement, because retirement is an essential part of one's work life. That is the thing that most of us are working toward: the golden years.

Assemblyman Goedhart:

[To Mr. Jeffrey] Any employer is required to have workers' compensation, so if there is an injury suffered on the job, he will automatically be taken care of by the underwriter with the workers' compensation.

Jack Jeffrey:

That is true, but workers' compensation does not cover the family and does not cover illness.

Chair Kirkpatrick:

Is there anyone else who would like to speak against the bill?

K. Bart Hiatt, President/General Manager, A&K Earth Movers, Fallon, Nevada:

We are a family-owned business, and we just funded an employee stock ownership plan (ESOP) for our employees. We are a member of the Associated Builders and Contractors (ABC) and the Associated General Contractors (AGC). I do not oppose what the bill is trying to accomplish; it is just so vague.

First, we are a nonunion contractor. We had been a signatory in the 1970s and decided that was not the direction we wanted to go. We are mostly a rural general engineering contractor. We hire only qualified, willing, and able people, union or nonunion, ex-military, student, no matter.

In the bill, I do not understand the local work force issue; we have no applicants from California. Maybe there are some in the south. The living wage is a moot point. I do not understand what the paid health insurance has to do with keeping money locally in the state. That language caught me off guard. We pay our employees and offer health insurance to them and their families. I think it is hard to regulate insurance and hard to draw something up that covers everything fairly. I know that some of the union agreements have their own provisions.

When we pay employees prevailing wage, and when we are paying the benefits to them, we take out a minimum amount approved by law because we are supplying their health insurance. For a pension or retirement program, we offer a 401(k) plan and a union Davis-Bacon 401(k). We also have ESOP funds going into a retirement program for when our people retire from the company. You cannot regulate companies and say one can do this and another cannot do that, because you may end up discriminating against different contractors and companies.

We spend hundreds of thousands of dollars on safety training every year. We are monitored by the Occupational Safety and Health Administration (OSHA) the Mine Safety and Health Administration (MSHA), and all federal, state, and local agencies. We have contractor's licenses in six Western states. We have not had to leave the state in the past 20 years, but we have the ability to look for work outside the state.

I think contractors already are judged by their fines, citations, and workers' compensation claims. There are so many other ways that agencies can track contractors and how well they perform. I do not think we want to create an excess burden on contractors, because you are taking money away from their ability to be efficient and do what they need to do for their people.

Chair Kirkpatrick:

I support the health care part of the bill, and if you are one of the good guys that provide health care, good for you. I will tell you, in Clark County, the county has to make up \$160 million for folks who have no insurance. In the end, the state picks that up. I think it is great that you offer health care as a service to your employees. I am hoping you will be proactive, because I think

our goal is very clear. We are trying to make sure that Nevadans have jobs, health care, and money to spend locally.

Health care is a huge issue in southern Nevada. I have seen the trucks that do not pay the business license fees and take their tags off at night. That is not fair to you, either, because you are trying to do the right thing.

K. Bart Hiatt:

Are there not other avenues to stop that kind of activity? If people are not paying their fees, then why are they still in business?

Chair Kirkpatrick:

I would love to ask the Department of Taxation why there are \$163 million of uncollected business taxes.

Dave Gish, RFI Communications & Security Systems, Reno, Nevada:

It is encouraging to see that there is some workability in this bill. As it is written, the bill is very exclusionary. It requires contractors to take part in employer-provided health care, pension, and training. As the bill stands, it could pose a real problem and eliminate many contractors from the process. To fit the bill, one would have to remodel his business just to bid on a public works project. I am not sure that a lot of contractors would consider that a viable business proposition.

We provide health care for our employees; it is an employer-employee funded program. We also offer choices so the employee can get the coverage he wants. We also offer a 401(k) pension plan, which is employee-employer funded. The way this bill is currently written, it appears that the plan would be completely employer funded. We participate in an in-house safety training program. Many of the technologies we deal with are not commonplace, so there are no real trade programs for training available.

We are a specialty contractor, and we directly engage with the state as a prime contractor on specialty projects. There are small contractors that specialize in services that the state needs. But deciding whether to remodel my business for a very small portion of my business would be difficult. The question becomes, "Do I retool my business for 15 or 20 percent of my revenue, or do I back away from public works?"

Danny Thompson, Nevada State AFL-CIO, Las Vegas, Nevada:

I do not think people have a good handle on how dire the job situation is in Nevada and where specifically we are heading. You heard Mr. McKenzie state that unemployment among building tradesmen in Reno is 30 percent. That

number is based on the number of people sitting on the bench. In Las Vegas, we have the largest privately funded job in the world currently under way with some 12,000 workers. When that job is completed, those people will be out of work, and there are not any jobs for those people to go to. As these big jobs finish, the problem is going to get worse.

I understand the union—nonunion argument, but that is not what this is about. It is not why the health care provision is in the bill. One of the biggest problems we face as a community, certainly in southern Nevada, is the condition and availability of health care. The county hospital, which takes all people, is bankrupt. The county consistently has had to infuse money into it. This is driven by people who do not have health insurance. It is to the point that with Medicaid reimbursements, as you heard from the Nevada Hospital Association, a number of hospitals are considering doing away with emergency rooms and becoming boutique hospitals so they are not required to take all comers. Again, that is not me saying that, it is the president of the Nevada Hospital Association.

If you do pass this bill, which I hope, and if you pass it without some of those protections, to ensure that people have the health benefits that everyone else has, you would be compounding a problem countywide and statewide.

I offer my assistance to make this bill something everyone can support.

Patrick T. Sanderson, Carson City, Nevada, representing Laborers International Union of North America, Local 872, Las Vegas, Nevada:

Ever since the end of the 2007 Session, I have been here for the interim committee meetings, going over the problems listed in this bill. The issues come up time after time: health care, training, and jobs. Everyone has had the opportunity to see what the problems are in Nevada and how we can help solve them. We did not come up with a good answer for everything we went over, but this is the best that I have seen in terms of working towards these goals, and I hope that we take a look at this. I hope that we will look at the history and remember why we are bringing this bill up and how we can improve the lives of the workers in the State of Nevada.

I worked with Mr. Cate and Mr. Backman, and I think one of the things they do not understand is the complexity of this bill and how many things it covers. I hope we move forward on this bill because we have been working on it for the past two years.

Assemblyman Atkinson:

I would like to thank everyone who testified. I am a little disappointed that I made my remarks and advised everyone where we were going with the bill, but it is clear that many people were going to give their responses no matter what.

I will say this one more time: My goal is to make sure that the money we receive from the stimulus package goes to our Nevada residents. These jobs need to stay local. If you are a company that is already doing the things in the bill and employing Nevadans, then amen, we invite you to be a part of this. If you are not and you want a part of this package, you are not going to be included.

We have a problem. Every state has a problem. Every state is trying to stimulate its own economy and put jobs back into its own communities. Our citizens will not be happy with us if we get stimulus money and it goes out of state. This is what is right for our state, to spend our money within our state. There are a million ways we can tackle this issue, and we can make sure that it happens.

Chair Kirkpatrick:

Is there anyone who is neutral?

Dennis Baughman, Chief of the Communications Office, Department of Transportation:

I talked with the Chief Deputy Attorney General, and he says there appears to be some conflict in the bill with the Code of Federal Regulations. We are more than willing to work with Assemblyman Atkinson to iron out those differences.

Gustavo "Gus" Nuñez, P.E., Manager, State Public Works Board:

We are beginning to look at this bill in detail to see what it would take to implement and enforce the regulations. Presently, we have one full-time clerk to qualify contractors, and we may have a fiscal note depending on how the bill ends up in final passage. It will take us a little time to actually visualize how the regulations would be written and enforced. We would like to get together with Assemblyman Atkinson and the stakeholders and listen in so we know where the amendments will take the bill. It would help us understand what the intent is behind the words, and help us implement and enforce the regulations.

Chair Kirkpatrick:

There would be a fiscal note on A.B. 174?

Gus Nuñez:

I am addressing A.B. 175.

Chair Kirkpatrick:

You are stating there is the possibility of a fiscal note on A.B. 175? Then I would like to ask if there is going to be a fiscal note on A.B. 174, because we already qualify projects, so I do not understand where there would be an additional fiscal note. Would you please verify that?

Gus Nuñez:

Yes. Overseeing the regulations, we have to sit down and review the requirement of the bill, and we have to make regulations. We have to determine what the regulations would look like, how to enforce the regulations and who would do the enforcement. The who is the question. Someone has to be there to look at these areas when we prequalify contractors. At the present time, we have only one person in charge of qualifying contractors, so it may take an additional person or some help.

Chair Kirkpatrick:

I would ask that you work with Assemblyman Atkinson, because even if we used a temporary regulations process, by the time they were adopted, it will be too late.

Gus Nuñez:

Definitely.

[A letter ([Exhibit F](#)) in opposition was put into the record from Ray Bacon, representing Nevada Manufacturers Association.]

Chair Kirkpatrick:

I hope to have this bill on our first work session. Things are going to move a lot faster this session. I will close the hearing on A.B. 175. Is there any public comment or anything from the Committee? [There was none.]

We are adjourned [at 10:45 a.m.].

RESPECTFULLY SUBMITTED:

J. Renee Ekleberry
Committee Secretary

Emilie Reafs
Transcribing Secretary

APPROVED BY:

Assemblywoman Marilyn K. Kirkpatrick, Chair

DATE: _____

EXHIBITS

Committee Name: Committee on Government Affairs

Date: February 17, 2009

Time of Meeting: 8:01 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
	C	Naomi Duerr, Director, Truckee River Flood Project	PowerPoint Presentation
	D	Naomi Duerr, Director, Truckee River Flood Project	Brochure: The Living River Plan
A.B. 44	E	Lisa Gianoli, Washoe County	Proposed Amendment
A.B. 175	F	Ray Bacon, Nevada Manufacturers Association	Letter in opposition