

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

**Seventy-Fifth Session
March 6, 2009**

The Committee on Government Affairs was called to order by Chair Marilyn K. Kirkpatrick at 8:03 a.m. on Friday, March 6, 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
Assemblyman Lynn D. Stewart
Assemblywoman Melissa Woodbury

COMMITTEE MEMBERS ABSENT:

Assemblywoman Ellen B. Spiegel (excused)

STAFF MEMBERS PRESENT:

Susan Scholley, Committee Policy Analyst
Cynthia Carter, Committee Manager
J. Renee Ekleberry, Committee Secretary
Olivia Lloyd, Committee Assistant

OTHERS PRESENT:

Sabra Smith-Newby, Director, Administrative Services, Clark County, Las Vegas, Nevada
Denis L. Cederburg, Director, Clark County Public Works, Las Vegas, Nevada
Jeff Fontaine, Executive Director, Nevada Association of Counties, Carson City, Nevada
Anne Loring, representing Washoe County School District, Reno, Nevada
Randy J. Brown, Director, Regulatory and Legislative Affairs, AT&T Nevada, Reno, Nevada
Bob Gastonguay, Executive Director, Nevada State Cable Telecommunications Association, Reno, Nevada
Allen Lichtenstein, representing American Civil Liberties Union of Nevada, Las Vegas, Nevada
Brian McAnallen, representing EMBARQ, Las Vegas, Nevada
Debra Gallo, representing Southwest Gas Corporation and Paiute Pipeline, Las Vegas, Nevada
Jack Jeffrey, representing Laborers International Union, Local 872, Las Vegas, Nevada
Richard "Skip" Daly, Business Manager, Laborers, Hod Carriers, Cement Workers and Miners Local Union 169, Reno, Nevada
Dan Musgrove, representing NAIOP Commercial Real Estate Development Association, Southern Nevada Chapter, Nevada League of Cities and Municipalities, and Nevada League of Cities and Municipalities, Las Vegas, Nevada
Madelyn Shipman, representing Southern Nevada Home Builders Association, Reno, Nevada
Steve K. Walker, representing Truckee Meadows Water Authority, Minden, Nevada
Derek W. Morse, Interim Executive Director, Regional Transportation Commission, Reno, Nevada
Ted Olivas, Director, Government and Community Affairs, City of Las Vegas, Nevada

OTHERS PRESENT (Continued):

Paul McKenzie, representing Building and Construction Trades Council of Northern Nevada, AFL-CIO, Sun Valley, Nevada

J. David Fraser, Executive Director, Nevada League of Cities and Municipalities, Carson City, Nevada

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

Michael J. Willden, Director, Department of Health and Human Services
Dino DiCianno, Executive Director, Department of Taxation

Chair Kirkpatrick:

[Roll taken.] Let the record reflect that Assemblywoman Spiegel is in the Judiciary Committee this morning presenting her bills. We are going to go ahead and get started.

We are going to open the hearing on A.B. 51 with a presentation by Sabra Smith-Newby.

Assembly Bill 51: Authorizes counties to adopt by ordinance fees for conducting certain activities that result in the disruption of vehicular and pedestrian traffic on public roads and rights-of-way. (BDR 20-447)

Sabra Smith-Newby, Director, Department of Administrative Services, Clark County, Las Vegas, Nevada:

Good morning. I am joined in Las Vegas by Denis Cederburg, Director of Clark County Public Works. Thank you for the opportunity to present A.B. 51 to you today. On its surface, A.B. 51 allows the Board of County Commissioners to adopt an ordinance to collect a fee for activities that result in the closure of public roads, medians, sidewalks, or rights-of-way.

Rather than going straight into the language of the bill, I thought I would begin by explaining the two problems that this bill seeks to address. The first problem A.B. 51 seeks to address is the issue of traffic congestion due to lane, sidewalk, median, or right-of-way closures in unincorporated Clark County. Congestion due to lane closures costs us all in the time we spend in traffic and the increased number of accidents, in our blood pressure rate, and in the pollution added to the environment by the stop-and-go traffic pace through these barriers.

In 2008 the rights-of-way were disrupted for construction 1,783 times in unincorporated Clark County. In a study of those closures, during the first six months of that year, over 533 miles or 8,534 blocks were restricted. We

understand that work in the right-of-way needs to happen, and ultimately it benefits the taxpayers and the public, so there is some limited amount of time that roads will need to be disrupted in order to do this necessary work. However, these projects should be finished as soon as possible so that the tax-paying motorists can regain the use of the roads they paid to construct.

The second problem that A.B. 51 seeks to address is that of parity among local governments in southern Nevada. Cities in southern Nevada already have the ability to address a fee for closure of lanes. In fact, both the City of Las Vegas and the City of North Las Vegas currently have ordinances establishing fees for the closure of roads within their jurisdiction. Clark County does not have that ability because Dillon's Rule, which limits the powers of local government, precludes the county from exercising authority not explicitly stated in the *Nevada Revised Statutes* (NRS). This uneven ability to establish lane closure policies among local governments has led to varying policies in each local entity, and in Clark County no policy for lane rental fees at all.

It is important to note that in A.B. 51, Clark County simply seeks the ability to enter into a public process at the local level for adopting an ordinance. The local ordinance process involves the item being brought before the public at least twice and public input provided before the Board of County Commissioners. In addition to that process, we in Clark County are absolutely committed to making that process inclusive of the stakeholders that are affected by the ordinance. If this ability is granted, we commit to gathering these stakeholders, including other local governments if they wish to participate, in a larger discussion of how to incentivize speedy completion of construction work and the rights-of-way through the use of fees and other necessary means.

I feel as if this is one of those prescription drug commercials, where at the end they tell you all the provisos, so here goes. This bill is intended to apply only to roads in unincorporated Clark County, not to roads under other jurisdictions. We understand that other entities own their own roads, and it was never our intent to include those roads, although some have interpreted it that way. This bill also does not apply to parades or protests. It is intended to apply to construction activities within the rights-of-way or on sidewalks. It is for the disruption of traffic due to construction, not related to activities where people may be marching or conducting a parade.

With that, I would be happy to accept any questions, and any questions that I cannot handle can be answered by Mr. Cederburg.

Chair Kirkpatrick:

Mr. Cederburg, did you want to add to this now or take questions later?

Denis L. Cederburg, Director, Clark County Public Works, Las Vegas, Nevada:

Madame Chair, Ms. Smith-Newby did a very good job describing the bill's goals, and I am just here to support her and to answer any questions the Committee may have.

Assemblyman Settlemeyer:

Ms. Smith-Newby, you indicated that the cities already have this power. How similar is this law to that of those cities? Is it word-for-word, or does it vary a fair amount?

Sabra Smith-Newby:

Actually, this bill is more specific with respect to the ability to do this function. My understanding is that the cities—either through their charters or perhaps through NRS Chapter 268—have just brought authority to adopt these ordinances. In this bill, however, we did get more specific in saying what things are supposed to be considered when developing such an ordinance.

Assemblyman Settlemeyer:

The concern I have is that if we put a fee on, the contractors will just add that fee onto the job, and that will increase the cost of getting the project done, so we may be playing a shell game in many respects. What about stating that if the job is scheduled for eight days, then for the first eight days, there is no fee; on day nine there is a big fee. Something of that nature would become an incentive to get the job done in a quicker time frame.

Sabra Smith-Newby:

You are absolutely correct, and that is a good point to bring up. This concept was actually pioneered by the Federal Highway Administration (FHWA). They went through a testing period of five years with five different states. At the end of that period this technique went from being experimental to operational. They found in their testing that there are many ways to structure such a fee. We would rather go through a public process with the stakeholders and talk with them about it.

In the development of its policy, the FHWA looked at varying the fees by time of day, by location, and by number of lanes affected. For example, closing Las Vegas Boulevard southbound in the middle of rush hour would probably have a much higher fee than closing a residential street from midnight to 2 a.m. There are different ways to structure the fees. One way is to work with the contractor, allow him the allotted time to complete the job, and then apply fees

which would exponentially increase after that time or just kick in at a flat rate. Again, that is something we would need to review with the stakeholders.

To address the question of passing along the costs, the FHWA developed a procedure taken from its experiences with its own projects and its work with state departments of transportation where the department was the project owner. The agency would structure its contracts so that the contractor—the person responsible for extending the time by which the work was supposed to be done—would incur the cost. We would suggest, if this bill is passed, that the owners of projects may look into that procedure as a way to incentivize contractors to get the work done quickly. All this is essentially intended to be an incentive for contractors to get into the right-of-way, get the work done, and get out of the right-of-way so that the traveling public can regain that space.

Assemblyman Settlemeyer:

I appreciate that, and I would like to see some form of amendment discussed so this approach would not affect the normal course of a project—that the project would take so many days, and this would not affect that job or that time frame. I am a little worried about giving broad power to the county to say, "Okay, we can institute this fee." I would like to see a little more restrictions, myself.

Assemblywoman Mastroluca:

Ms. Smith-Newby, I noticed in section 1, subsection 1, it addresses the conduct of planned activities. I know, in theory, we would like to have every construction project planned, but there are also times when there is a sinkhole or a flood, and those projects are not planned. I am concerned that someone working on that job is not going to have to pay this fee and therefore could take as long as he would like to finish the job. Can you address that?

Sabra Smith-Newby:

I understand what your question is addressing. Perhaps Denis can answer this particular question. I imagine the permitting process has to happen even with emergency projects. There must be a current process for that type of situation.

Denis L. Cederburg:

Yes, currently we have a procedure in place for emergency work. If there is a water-line break or a sewer sinkhole emergency, the contractor can respond immediately, and after the work is done, the contractor comes in and obtains the encroachment permits and pays the fee. He is able to respond to emergencies without coming in first for permits. The same would hold true for lane rental. For emergency work, it is not a planned activity, and we could discuss whether the fee would even be assessed for emergency repairs if they

are done in a timely manner and only to the extent that the contractor took longer than necessary.

Assemblywoman Mastroluca:

I have just one more comment to toss out there and it probably will not go anywhere. When there is a construction project and there is an issue of dust control, is a sign required indicating who is doing the project and who to call when there is a lot of dust? There are times when cones are set up for days and days and days, and lanes are blocked for no apparent reason. It would be great if there was a sign so the public would know who to call to ask why the lane is blocked. That is my two cents for a Friday.

Assemblyman Stewart:

I get frustrated with the same things as my colleague. We talked about emergency repairs, but what about emergencies that occur after the contract has been let. For example, when there is sewer line work and we have one of our famous Clark County floods, or an accident occurs, will there be provisions to protect the contractor when things occur beyond his control?

Denis L. Cederburg:

It would be similar to the contracts that we currently let with our own contractors. If there are major weather events or floods or any other events, beyond the contractor's control, we do not count those as days of rental. Those would be exceptions, as I see the ordinance being written, because those types of events are beyond the contractor's control.

Assemblyman Stewart:

And they would see it the same way, I would hope.

Assemblywoman Pierce:

You say that this bill is not about rallies and parades and that kind of thing, but I do not see anything in the language that states that.

Sabra Smith-Newby:

Assemblywoman Pierce, you are correct. We understand this is not the best language and will need to be fixed. I think all of us have a concept of a bill, yet later when reading it, it is apparent that there may be unintended consequences from the language. So, yes, I do realize this language needs to be fixed with respect to that. I am willing to work with legislators and stakeholders, both here and at the local level, because that was certainly not the intent to disrupt any sort of protest or parades or other activities that involve people marching and fulfilling their civic duties.

Assemblywoman Pierce:

So you are suggesting that this version is entirely about construction and traffic blockage caused by construction projects of one sort or another.

Sabra Smith-Newby:

Yes, and I believe the bill might be fixed by striking "activities" and putting in something more descriptive. It is not always construction—it is sometimes repair—but I am sure we can think of words that would describe all of those things that might take place in the right-of-way.

Chair Kirkpatrick:

I am going to tell you why I do not like this bill. I will start with line 1. Perhaps the Chairman of Transportation can weigh in on my concerns. My job is in sales; I drive 600 miles a week. I drive from one end of Clark County to the other end. I get frustrated with the cones and the construction. I do not understand why we cannot control this through the request for proposal (RFP) process when we let the initial contract out. I complained about Lone Mountain Road being torn up 18 or 19 different times. Part of the problem is that we do not communicate what we are trying to do. I do not know how to legislate communication. I have not figured that out yet.

When a subdivision is being built, the off-sites are always handled first. Time is money to the developers. Why does the building department or the planning department not say contractors are allowed X amount of time to get their off-sites in. Is the reason because they are being tied up in planning? Is it because something is changing? When we are building a subdivision, we know exactly what we are building. Is it because the utilities do not work together? Is it because we are too busy? When it comes to public roads—and let us just use downtown as an example because Main Street is torn up more often than I can imagine—is there not a bid process to give that work out?

I know that if you tell me I am supposed to be in Laughlin every single Wednesday at 9:30 in the morning, and I am not finished there at a specific time, there is a problem. I am held accountable. I know the rules going into the job. Why are we not a little more stringent at specifying the rules on our big highways and major thoroughfares—anything that is more than 80 feet. I would think there is an easier process to do this.

Subsection 2 talks about setting fees and that the fees can be changed from time to time by a resolution of the Board of County Commissioners. My problem with this—and this is consistent with what I always say—I do not want to give local government the ability to generate fees to offset some of the departments. I can see the fee being set at \$20 in Esmeralda County and

Clark County charging \$200 for the very same type of work. I do not understand the fee provision.

The bill says "based on the volume." We talk about the volume of the streets. Is that 10,000 trips on a 60-foot right-of-way because the school is open on a Monday? I am just throwing it all out there because I am honestly tired of hearing about this bill. I have my own issues with this bill. This bill deserves a fair hearing. I think there are a lot more problems than the sidewalk issue. I think it needs to be better thought out going forward. How is that going to be generated? I am asking, are we going to pay for a traffic study on Lone Mountain Road to determine what the volume is of the streets? That is an additional cost that someone has to pay.

How is it any different when the rodeo is in town and it takes 40 minutes to drive from Las Vegas Boulevard and Tropicana down to Maryland Parkway? How is that disruption any different than a disruption by construction? I do not understand the difference. The bill says planned activities. How is it determined that all those cars can be accommodated? One night at the rodeo, I can get out in 20 minutes, but the next night it could take 50 minutes. Do you charge people more because they may choose to linger and spend some sales-tax dollars? I think this language is too broad. How is the duration of the impact on the public road during special events going to be determined? I personally think this bill is not well thought out.

The fees go to the road fund for what? The bill does not say. Are the fees going into the road fund for—and how I am asking this is probably out of turn—a slush fund? How does that work? How is the money accountable?

Thank God there is only one section to this bill. Those are my questions on the first part of the bill. I have not spoken with anyone. I think the problem with this bill is much bigger than to simply agree to take sidewalks and parades out. I see this bill needing a lot of work. I understand the parity issue. I would be curious to see how cities across the state do this. I would be curious to see what their ordinances say. In this session, more than ever, I am sticking up for counties because I think the cities have a lot more latitude to generate fees, but I did not change their city charters. I just want to understand. Denis, maybe you can answer some of these questions.

Denis L. Cederburg:

I am going to take a shot at answering most of your questions. Regarding contractors and contracts, there are two types of contractors who work in the roadways. One is under public contracts that the Board of County Commissioners may award. Under our public contracts we do have time frames

for performance. If the contractors do not perform in the time established in the contract, then we assess liquidated damages to the contractors for each day they go over the contract time. On the private contractors working within the public rights-of-way, we do not dictate their performance or their contract terms.

Chair Kirkpatrick:

Okay, what would be an example of that?

Denis L. Cederburg:

What kind...

Chair Kirkpatrick:

Are you talking about home development? Who are those people?

Denis L. Cederburg:

That would be anyone but the county and some of the public agencies such as the water district. We do not interfere with their contracts. The county can establish terms in the contracts we award, but we cannot establish contract terms in contracts awarded by other public or private agencies.

Chair Kirkpatrick:

I want examples. If it is the home developers, then why do we not address this when issuing their building or other permits? If this is one case, who are the other ones?

Denis L. Cederburg:

The home builders establish their own schedule. It has a lot to do with the absorption and the purchasing of the homes. They may do their projects in multiple phases. They have to have approved off-site improvement plans. If they are building subdivisions, the subdivisions alone would not have an impact. New roads are not impacted by this ordinance we would pass; it is only existing lanes that are under use. A home builder building new roadways generally in a subdivision would not pay any type of fee for this because they are not blocking any existing lanes. If they are building off-sites that do not block lanes, there is no fee. There is no additional fee to home builders building new roads. The bill relates only to those roads that are blocked by new construction. For example, if a home builder needs to extend a sewer line to his subdivision, and he has to go down Rainbow Boulevard and take out a lane of traffic to do that, he would under this ordinance be assessed a fee for the time he blocks that roadway beyond a certain time frame. That is an incentive to get in and get out of the roadway as soon as possible when they are taking down a lane. However,

when they get onto their property, there is no fee associated with building new roads.

Chair Kirkpatrick:

Is Rainbow Boulevard an unincorporated Clark County road?

Denis L. Cederburg:

Rainbow runs through the jurisdictions of Las Vegas and Clark County. From Sahara south, Rainbow is a Clark County road; from Sahara north, it is in the City of Las Vegas; there is portion from Sahara to Tropicana that is maintained by Nevada's Department of Transportation (NDOT). However, south of Tropicana, it is an owned and maintained road. Therefore, three different jurisdictions maintain different portions of Rainbow as it crosses the valley.

Chair Kirkpatrick:

In reality you are saying two of those jurisdictions get their fair share, and therefore the county should also get their fair share?

Denis L. Cederburg:

The City of Las Vegas has a lane rental fee. I am not aware of the fee from the Nevada Department of Transportation. I do not believe they have a lane rental fee.

Chair Kirkpatrick:

What would be another example? This is not just about home building, there is not any going on right now. I would like know what the other examples would be.

Denis L. Cederburg:

Right now, for instance, the Convention Center is under construction with an expansion. The Convention Center is now taking down one lane of westbound traffic on Desert Inn Road from Joe W. Brown Street to Paradise Road. In addition to that construction, they are taking down one lane of a dual left turn lane 24 hours a day from Paradise to Desert Inn. They also have another dual left turn from northbound to westbound that has been shut down. They work in those lanes, and then at night they plate their trenches. The lanes are still barricaded, and the public does not have the use of that roadway. Normally the traffic on Paradise Road does not back all the way up to Convention Center Drive. With the shorter length of the left turn lane available, in the afternoon, traffic on Paradise now backs all the way beyond Convention Center Drive, almost halfway to Riviera. In those types of situations, contracts are let by the Convention Center, and the county, through the building permit process, does not have control of the schedule or how long they are in there. The county

charges a \$50 fee for a traffic control plan review. Then we charge a \$75 fee to review the encroachment plans. On top of that, there is \$225 for inspection fees. So for \$350, the contractor can go into the Desert Inn super arterial roadway and take out a lane for as long as they want. That is all they have to pay.

Chair Kirkpatrick:

Let me ask you another question. I am not defending any side of this. They are not just going out and closing the roads. It has to be hooked to some other type of development. Let us use Decatur Boulevard between Cheyenne Avenue and Craig Road, for example. Years ago that was a dirt road and now there are a lot of businesses trying to tie in to that road. That area went from ranch estates to an office and professional area. Now they have to tie into the city sewer in the middle of Decatur. Of course, lanes have to be closed down. That construction is tied to some type of development, so I do not understand the whole private contractor thing. You would think it would be tied to the original development because your public works department reviews all those plans. They cannot just go out and dig, right? Am I missing something?

Denis L. Cederburg:

A utility can come in and pay a \$75 fee for an encroachment permit. They can dig up the road for up to 300 feet to extend a sewer line, a water line, a power line, a telephone line, a gas line, and any other utility to the site. That is what they pay. For the traffic control plan, they will come in and let us know they need 30, 60, or 90 days to perform the work, and that is what they want approved for their traffic plan. That is what we approve. We cannot dictate their time frames. Many times, after they start working on a road, they will be called to another job site and, while working somewhere else, they leave the cones and barricades in position because their permit is good for 90 days. To extend their permit from 30 days to 60 days would cost only an additional \$50.

Chair Kirkpatrick:

Could you not just change that fee schedule in-house? Fees are changed all the time for many things. I am trying to use real-life experiences. If I get a temporary plate for my car, it is good for three days at \$10 a day, and then I can come back to extend it. Could you not already do that through the public works department? You set the fees; we do not.

Denis L. Cederburg:

We can only set fees that would allow us to cover our costs to administer the traffic control plan. If it costs us \$50 to review the plan, that is all we can charge. We cannot charge \$150 to review the plan if it cost us only \$50 to do that. We can charge only to recover our costs.

Chair Kirkpatrick:

Do you figure in a customer service cost when you get a lot of complaints from constituents? That goes to neighborhood services.

Denis L. Cederburg:

We have not arrived at the point where we are required to respond to all the calls we receive regarding cones and barricades and establish that as part of the fee schedule. No, we have not done that.

Chair Kirkpatrick:

I could start a telephone tree and get tons of people to call when they see cones in the road when no one is working. Do you ever get calls from the public safety department? For example, they might be answering a call off of Durango, and the road ends, and they have to go two miles out of their way because they were not notified of the construction. Do you get those kinds of calls?

Denis L. Cederburg:

Yes, we do get those kinds of calls. We get calls from public safety, the Las Vegas Metropolitan Police Department (METRO) and the Nevada Highway Patrol (NHP) when they go through a construction zone and there are cones or barricades that are misaligned or out of position. We respond to those calls, or we call the contractors to respond.

This allows me to comment on the signing issue. We currently require individuals who operate within the public right-of-way to install a sign informing the public of the contractor in the right-of-way and a phone number to call for drivers who may have a complaint. Those signs are put up most of the time although sometimes they are lacking or missing. That is an enforcement issue on our part, to get those signs in place; however, that is currently required.

Sabra Smith-Newby:

May I jump in here? I think you picked up on a really important point with your question about whether we get calls and complaints and who is accounting for the frustration of the traveler. This technique of the lane rental fee was pioneered because of that issue. There is a cost to review plans, a cost to tear up the road, but who pays the cost of the frustration of the motorists who are stuck in traffic and have to go through the aggravation of driving through these areas? The whole concept of the lane rental fee addresses exactly your question about the lost time and money to the traveling motorist. It also will incentivize the work to be done correctly. Denis can speak more to what the road fund is. The road fund can go back to help the motorists by providing better roads elsewhere. I think you picked up on a really good point. That is the nexus of why this was pioneered with the FHWA and others.

Chair Kirkpatrick:

I think this language is too broad, and I think you will see that 17 counties have 17 different plans. No disrespect intended, but I hate to let you do things by ordinance because the calls start coming in because each jurisdiction is different. It is not just you. I think I beat up on Mr. Slaughter's agency three times this week about that, so I am not picking on one county or another. It does not address the true problem. The public works seem to take the longest. I do not see the private projects out there too long. The person who subcontracted for my cable was in and out in a few days. It took the Rancho project three years, and they are still working on it. That was all public works.

I am trying to understand. If it is geared to get at the home builders, could local governments change their ordinance to do things differently?

Sabra Smith-Newby:

This ordinance is not geared toward the home builders or new construction in those areas. It is geared toward areas where you have an established road with a lot of traffic on it and traffic must be disrupted. I cannot necessarily speak for Rancho because I do not think it is within our jurisdiction. I think, as Mr. Cederburg mentioned, that within the greatest extent possible, we try to address those issues with our own construction. The problem is we do have the ability to do that with the contractors who report to us, but if they do not, then we do not have any authority at all, like the example of the Desert Inn Roadway.

I think we have addressed most of your questions; I believe there were seven of them. We have not addressed how to determine lane trips and where the money goes in the road fund. Would you like us to address that now or get back to you after the hearing? Either way is fine.

Chair Kirkpatrick:

Can you give me some kind of documentation? Most schools are an 80-foot right-of-way; there are times where it is very busy for about 20 minutes and the rest of the time it is not busy. I was wondering how that works. Rush-hour traffic is any time after 2 p.m. in Clark County. It takes an hour and a half to drive 17 miles. I feel like I live in California or something. I think this is a huge piece of how we determine a consistent formula to address this problem.

Sabra Smith-Newby:

You are correct. Many jurisdictions have different standards, and we were hoping that through this process we could alleviate that situation. In North Las Vegas, traffic lane rental costs \$50 per lane for a 24-hour period. The City of Las Vegas uses a formula that includes the number of weeks and the number of lanes. The cost varies depending on the kind of lane being closed. There are many ways that this can be structured. We could enter into legislation what the lane rental fee would be. We believe there is more flexibility at the local level. If it would please you to have the fees in the legislation, we would be open to working on that.

Chair Kirkpatrick:

I would rather see something set. Thank you for addressing my concerns. We are going to take some testimony on this. We will start with those who are for this bill.

Jeff Fontaine, Executive Director, Nevada Association of Counties, Carson City, Nevada:

We are here to support Clark County in their intent to try to address local traffic issues by using the concept of lane rentals that has been developed and used nationally. We are all frustrated about having to drive down streets—whether they are NDOT highways, county-owned facilities, or city-owned streets—and there is work being done with or without workers present. Sometimes there seems to be prolonged construction zones, and we all understand that frustration. This bill is simply an attempt to address that issue by providing some way to insure that those projects—whether they are construction contracts or permit work through the encroachment permit process—get done in a timely manner.

We agree that the current language is probably too broad. I heard and appreciate the concerns expressed. Certainly across the state, every county is different, and I can understand the concern about having different methodology and a perhaps a different fee. There are formulas and methodology around the country that are used by public works agencies to answer the very questions that you raised, Madame Chair, about setting the fees based on the level of traffic and other factors. I do not think the answers to those questions are ones that we have to sit down and develop on our own. The information is already out there. We would like to work with Clark County and this Committee to rework this bill to make it palatable for the Legislature.

Chair Kirkpatrick:

Thank you, Mr. Fontaine. Let me tell you my reasoning. I do not live up north, but this applies especially to the north, where a driver can be in four different

counties in one day. In the Las Vegas area, Lone Mountain and Decatur are examples. On the right side of the street, the jurisdiction is Las Vegas, and on the left side of the street the jurisdiction is North Las Vegas. It almost takes an act of Congress to get the jurisdictions to work together to make road projects work smoothly. I would hate to see work stop at the county line in the north because the price was different. That is why I am asking for consistency. I think Ms. Smith-Newby is going to need your help and have everyone work together to fix this. Does anyone have any questions for Mr. Fontaine? [There were none.]

We will start with those who would like to testify against the bill.

Anne Loring, representing Washoe County School District, Reno, Nevada:

We were looking for a box on the sign-in sheet that said, "We think we are opposed." We spoke with Ms. Smith-Newby before the meeting, and it has been clarified today that this relates to construction only. I just learned that perhaps that is not the only word—digging up roads might be better. We read the bill along the same wave length as Assemblywoman Pierce, and we were concerned because there are activities related to the School District that would come under the prevue of this bill as it is written. Some of our schools have neighborhood "fun runs." We typically do not stage parades, but we do have schools that are invited to participate in parades, and the students may use streets near their schools to practice. We have a very large "Run for Education" in our community, so we were thinking along the same lines as Assemblywoman Pierce but perhaps even broader than parades and rallies. If the bill is processed, we would certainly hope that the language makes clear that this bill relates to digging up streets and roads as opposed to other activities broader than parades. Thank you.

Chair Kirkpatrick:

I would like you all to speak, and then we will see if there are any questions.

Randy J. Brown, Director, Regulatory and Legislative Affairs, AT&T, Reno, Nevada:

We are opposed to A.B. 51 for several reasons. We already pay a permitting fee to place utilities in the ground. We pay a fee for submitting a traffic plan, as Ms. Smith-Newby mentioned. We also pay a fee for the crafting and development of that traffic plan. Additionally we pay an encroachment fee, and we also pay a franchise fee. Most of counties charge 5 percent of our gross revenue as a fee for being in the public right-of-way. We view this as an additional fee that really should be covered in the fees we are already paying.

Bob Gastonguay, Executive Director, Nevada State Cable Telecommunications Association, Reno, Nevada:

My member companies are also in opposition to this bill due to its broadness. Everything that was just referenced holds true for my member companies. We hope that this bill would not pass. Thank you. I will answer any questions.

Chair Kirkpatrick:

Mr. Bobzien has a question.

Assemblyman Bobzien:

Mr. Brown, you mentioned the creation and development of traffic plans and that you pay for them. Could you tell us how those traffic plans document your activities?

Randy Brown:

I am not the expert at that. I can tell you that it largely relates to things like safety—where the cones will be placed, the distance of the cones, and how traffic will be controlled to create a safe environment at the construction site. If you would like more detail, I would have to get information from someone with more expertise.

Chair Kirkpatrick:

Would you be opposed to determining the duration of the project on that same form? Most people know AT&T. People have to schedule workers, right?

Randy Brown:

I would not agree with what was stated before about us putting employees out on a job and then just leaving everything in place while going to work at a different site. It is our intention to cause minimal disruption at all times. We schedule our workers. We want them to finish the job and move on.

Chair Kirkpatrick:

How would we explain to the public why cones are gradually placed perhaps 200 feet along the roadway before the actual work site? Is that a safety requirement? People do not understand why the cones have to be in place on the weekends, when no one is working. How do we explain to the public why the cones stay there?

Randy Brown:

I understand your question. Unfortunately, I am not a traffic safety expert. I would hate to give you the wrong information. Does anyone else have any questions?

Assemblywoman Mastroluca:

You do not want to pay more fees. I understand that. What would get the work done faster?

Randy Brown:

I am not hearing from our people or from the counties in which we operate that this is a problem specific to AT&T. We go out and place the facilities. If a repair is necessary, people's services are impacted, and it is in our best interests, for customer service and public safety reasons, to complete that work as quickly as possible. Specific to AT&T, I am not hearing that lingering in the public right-of-way is an issue.

Assemblywoman Mastroluca:

I appreciate that and it is wonderful that AT&T has that level of customer service, but not every company has that level of customer service, and perhaps they sometimes stretch out the job because they want a couple more days of pay. Outside of the purview of AT&T, what do we need to do to get the work done in a timely fashion and get the cones off the road so people can get through? If the answer is not a fee, can you tell us what it is?

Bob Gastonguay:

Assemblywoman Mastroluca, from the perspective of the private sector, time is money. The quicker we can get in and do whatever needs to be done, the quicker we start making money. I echo Mr. Brown's commitment to customer service. We have spent countless hundreds of thousands of dollars on training and customer service standards, et cetera. Time is money. We want to be in and out as quickly as we possibly can. I hope that helps you.

Chair Kirkpatrick:

Are you in the private sector or do you do public work or do you do both?

Bob Gastonguay:

To answer the question, we do both. We are in the private sector for the video services. We are in the public sector for the telephones. We hold a certificate of convenience.

Chair Kirkpatrick:

Are the requirements different? You pay the same fees. When you apply for a permit, do you receive a time frame of when the project has to be completed in the same way for the public sector as for the private sector?

Bob Gastonguay:

No, it is viewed as one and the same. We are basically installing fiber-optic type cables, and one works for both.

Chair Kirkpatrick:

When you go to get your permitting—and perhaps this is different in Washoe County—when you are contracting to put the major infrastructure in for the first time for a major right-of-way, does the local government give you a duration that you are allowed to be out there?

Bob Gastonguay:

There is one filing for encroachment permits within the franchise fee issue; it is one and the same. The engineers work out the time frame that the project will require for completion, and they submit that accordingly. The private and public sectors are the same with regard to cable telecommunications and video services.

Chair Kirkpatrick:

Thank you. Next we will have Ms. Gallo. Mr. McAnallen—are you in Clark County and want to testify against? Is there anyone else in Clark County or southern Nevada who wants to testify in opposition to A.B. 51?

Allen Lichtenstein, American Civil Liberties Union of Nevada, Las Vegas, Nevada:

I would like to testify against this bill. What caught our attention was the specific language mentioned by Assemblywoman Pierce and others. Regardless of what has been stated as the intent, as written, this bill would allow charging a fee for a lone protestor standing on the sidewalk. Ordinances and statutes are judged on their language, not their particular intent. For First Amendment activities the question of charging fees for parades and whatever is an area of law that is fairly complex. Any rewrite of this, and even enabling legislation such as this, that would not explicitly exempt First Amendment protective activities would, I believe, run into constitutional problems. We would be happy to work with anyone working on this bill. We have seen this issue before in items that we have litigated against Clark County, relating to attempts to limit protest activities on the sidewalks. We urge that any passage of this bill have an explicit exemption for anything covered by the First Amendment.

Chair Kirkpatrick:

Does anyone have any questions? Thank you. Could I get Mr. Daly and Mr. Jeffrey to join Ms. Gallo here in Carson? Mr. McAnallen, we will start with you.

Brian McAnallen, representing EMBARQ, Las Vegas, Nevada:

We oppose A.B. 51 for some of the same reasons that previous speakers have mentioned. Obviously, I think everyone agrees that this language is a little broad. We have some significant concerns about the way this bill will open up the fees. As we approach budget years, it is important to know and budget appropriately for what we will pay. As AT&T testified, we pay a pretty significant franchise fee to local government. Then we pay individual permit fees when we have to be in the right-of-way. Some previous speakers—and possibly even yourself—have alluded to simply increasing the permit fee as opposed to having this fee on the back end. I know that some members of the Government Affairs Committee have wondered what kind of an incentive would help us get out of the lanes faster. Having spoken with numerous employees at EMBARQ, and the workers who go out on these sites, I can tell you only that we do not want to be in a right-of-way any longer than we absolutely have to be.

These permits may have a 30-day window to get a project completed, but that does not mean that we are hanging around on the 29th and 30th day. We try to complete projects as quickly as possible. That being said, sometimes we run into issues that will extend our time even longer than we have planned. If it is supposed to be a couple of days, it may end up three or four days. I can assure you that we do not encourage our folks to linger in the right-of-way areas any longer than they must. If this bill is going to go through, we would like to see some structured fee amount—not that we are supportive of this bill at all. That way we would have a better idea of what we could expect to pay for budgeting purposes.

I would like to inform everyone here that our customers at EMBARQ are your constituents, and I can assure you that any additional fees—especially in the current economic situation—are in some way going to be passed through to the customer. This is a significant concern for our company, and we hope this bill will go away. We are not aware of any issues where the county reached out to us and indicated that on X project, we were obstructing a right-of-way for a longer time frame than we had hoped. If we were aware of such situations, we would address them as best we could. If this bill is out to incentivize us to get work done faster, there are other ways for us to do that. We have a good working relationship with the county, and if the county reached out to us on those specific projects, that would be helpful. That is all I have to speak on today, but I am open to questions, Madame Chair.

Chair Kirkpatrick:

Within the next week, could you please provide me the amount you pay in the City of Las Vegas for a permit to do work? I would like to compare the cities. I

am wondering if their permit fee is lower. I would like to see the difference in fees; that would be helpful to me.

Brian McAnallen:

I will be glad to supply you with that information. For the last two days, I have been trying to get a breakdown on the exact number of all the permits we have within the local governments in the south. I will supply you with that information as quickly as I can.

Chair Kirkpatrick:

Does anyone else have any questions? Ms. Gallo, Mr. Jeffrey, Mr. Daly, and then we will ask questions.

Debra Gallo, representing Southwest Gas Corporation and Paiute Pipeline, Las Vegas, Nevada:

I would like to echo what AT&T and EMBARQ have stated. We are opposed to the bill as it currently stands. We do appreciate the county saying that it is their intent to work with the stakeholders in developing an ordinance. We also support the goals of getting in and out of the right-of-way as quickly as possible. Our concern is the same as some of the other utilities, and that is that Southwest Gas already pays franchise fees. Our customers pay franchise fees—up to 5 percent of revenues throughout the state. For the fee that our customers pay, we are allowed to work in the right-of-way. We do pay cost-based permit fees. We have no problem with that. My concern grew a little bit as we were listening to some of the testimony this morning because it is somewhat obvious that these fees would not be cost-based. That concerns us since our customers already are paying franchise fees. I could get you information on our permit fees which I do not have here today. We do serve throughout the state, so that information would reflect various counties other than Washoe. We also serve Incline Village, but otherwise not a lot in Washoe County.

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

My concern with A.B. 51 is the same as cited by the ACLU. If this bill is to proceed, we would like to ensure that all First Amendment rights are to be protected.

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

We are opposed to A.B. 51 as written. We understand there is a potential for amendments. I will not say too much about the First Amendment issues or that

it should apply to all counties and not just Washoe County. We have other issues and concerns. I want to bring these things to your attention.

Lane closures and tapers are all dictated and studied under a document titled, *The Manual on Uniform Traffic Control Devices*. From what I understand, this document has been adopted by the Department of Transportation and by the State of Nevada and is applied everywhere in this state. In answer to Assemblyman Bobzien's question about traffic control plans, that manual is where we get that information. When a road closure is necessary, you have to follow that manual in placing traffic control devices. The tapers and the length of the tapers are dictated by the speed on the roadway, or the reduction of the speed that is required. The manual covers narrowing the lanes and various other guidelines.

We are opposed to this bill being assigned only to the county. Multiple jurisdictions—cities, counties, and the state—all require anyone who is putting up a lane closure or control traffic on their roadways to turn in a traffic control plan for review and approval, and there is a cost-based fee, from what I understand. They are not all the same.

Without muddying this subject up too much, another bill, Senate Bill 134, deals with penalties for traffic violations in work zones. We were looking at the whole issue of highway work; right now that bill covers only maintenance construction and not utility work. For example, if the phone company, the power company, or a nongovernmental entity got into the roadway, they are still supposed to get the traffic control permit, but there are double penalty issues. Clark County proposed an amendment to that bill which would exclude all that private work from many of those situations. It is a traffic issue. Anyone who is putting up a traffic control closure on a roadway should be required to get the traffic control permit from the county or city. There is no over-arching state law that requires it. Everyone has a different fee schedule and there is no mechanism for penalty if they do not get it. I see plenty of situations where they do not get the permit. We are working on that bill in the Senate, and perhaps eventually the bill will come over to this side of the house—perhaps not to this Committee—and we will try to work on it.

The other gentleman from Las Vegas talked about issuing a 30-day, 60-day, or 90-day permit to utilities. Las Vegas would have control over their ordinance, municipal, and county codes. They can change their fee and change the time allowances. We are opposed to this bill in this fashion. Regardless of what they say, when it talks about a lane rental fee, they may have revenue coming in from utilities and private entities, but for your contract—and it is your road, and it is a fee outlined ahead of the contract—you receive less revenue than it

costs you. The contractor will put that in his bid and put markup on it. I do not know if that is a solvable issue on road construction projects.

There is a section 2 to this bill, and we are opposed that that ever being implemented.

Chair Kirkpatrick:

Does anyone else have any questions? Ms. Gallo, will you get that information for me?

Debra Gallo:

Yes.

Chair Kirkpatrick:

Is there anyone else who would like to testify in opposition to A.B. 51?

Mr. Musgrove, please come in the neutral category because you created this problem. If the cities can do it, the county will want to do it. Enlighten us, please.

Dan Musgrove, representing NAIOP Commercial Real Estate Development Association, Southern Nevada Chapter, Nevada League of Cities and Municipalities, Las Vegas, Nevada:

Thank you, Madame Chair. I am coming here today in a unique position. I am representing NAIOP, commercial real estate developers, but because of my other client, the Nevada League of Cities, and my history of representing local governments, I come with a unique perspective: I truly believe in the ability of local governments to work with the private sector to resolve these issues and to come up with something that works for both parties. When I started to work with Ms. Smith-Newby, we had very much the same concerns voiced by so many others. In essence, I think all of us want consistency from jurisdiction to jurisdiction. It may be Rainbow Boulevard or Civic Center that becomes Eastern and goes from North Las Vegas to unincorporated Clark County. Everyone wants some consistency. That is why we are neutral with obvious concerns.

We have faith that we can sit down and work this out and come up with something that is in everyone's best interest. Now, wearing my local government hat, I know that we can trust those local governments to do it.

Madelyn Shipman, representing Southern Nevada Home Builders Association, Reno, Nevada:

I probably would have just sat there, questioning whether I wanted to testify or not, had the conversation not included home builders.

Chair Kirkpatrick:

I would like to clarify something for the record. Mr. Musgrove was neutral. What are you?

Madelyn Shipman:

I signed in as being in opposition with a question mark on speaking. The Home Builders Association was opposed to this for many of the same reasons already discussed such as the broad nature of the language. There was some conversation about fixing it to assure there would not be unnecessary mischief with the fee schedule. After listening to the other stakeholders regarding the problems and issues that others wanted to address, I feel this is not subject to a simple amendment. I did want to say for the record that home builders do not extend utilities in the roadways, but they do pay the bill for those extensions. When they do the off-sites, it is usually because of a condition, and it is for the off-sites outside of their particular subdivision. That is because it is a condition on the project and is for the benefit of the broader public interest, not just for that subdivision. The home builders are actually paying the bill for that broader public interest.

I would like to address something. I am in Anne Loring's situation, where for 26 years I have been appearing in these hallways. For most of those years, I represented public entities, and I have played both sides; city and county.

For the new members of the Government Affairs Committee, I want to make sure you understand that the authority the cities act under is not a direct authority to assess fees for blockage of roads. They are doing it under their charters, which have general provisions stating they can literally do anything as long as it is not inconsistent with state law, prohibited by state law, or repugnant to the Constitution. Essentially, unless the local government is addressing the issue, prohibiting the issue, or unless it is repugnant to the Constitution, a city has that very, very limited home rule where they can do whatever they want. Assemblyman Settlemeyer asked what authority the cities were acting under. There is no specific law under which they are acting. They are doing it under their charters and under that limited authority granted to them in their charters.

I wanted to make that point because there is a difference between a nonspecific law and an actual law that is being drafted and approved by a Committee or by

the Legislature. Therefore, you want to make sure the law that is drafted does address the issue that needs to be addressed. I do not understand that to be as broad as this bill allows.

Steve K. Walker, representing Truckee Meadows Water Authority, Minden, Nevada:

My position is neutral, with concerns. I am neutral because I have not talked to the sponsor of the bill about my concerns, and I think that I should do that first. I am also neutral because this is going to be enabling; the real issues will be discussed at the county commission level when they develop the ordinances. The Truckee Meadows Water Authority (TMWA) also collects franchise fees of \$4.2 million per year for Reno and Sparks. We have issues with working on the roadway. For example, over the last 15 years, TMWA replaced 41,000 water meters in the rights-of-way, all over Reno. It was paid for by developer contributions. Basically, we had developer contributions, franchise fees, encroachment permits, and then this fee. We have been placed in the situation where no good deed goes unpunished. We want to try to avoid that.

Derek W. Morse, Interim Executive Director, Regional Transportation Commission of Washoe County, Reno, Nevada:

Our position on A.B. 51 is neutral but we, likewise, have concerns at this point. The Regional Transportation Commission (RTC) is the major road builder in Washoe County. We do not own a single road. We build them for Reno, Sparks, Washoe County, and, in some cases, the Nevada Department of Transportation. We spend an enormous amount of money in our contracts on safe and effective traffic control during construction. You have heard this before, but time is money, not just for the contractors but for us as well. We want them in and out as quickly as possible so that we have more money to effectively spend on other projects to benefit the public.

In putting together our contracts, we pay close attention to traffic and the nature of the roadways we are working on. For projects on the very busy roadways, we sometimes have multiple phases, which are dictated within the contract with individual performance periods and liquidated damages for the contractor to get in and out very quickly. All these provisions are carefully and closely coordinated with the individual jurisdictions. At the very front end they have the ability to help us set reasonable standards for getting the contractors in and out.

We are concerned that a consequence could be a higher cost down the road—an additional cost that would not produce anything productive for the public. As was pointed out earlier, the contractor would have the ability to simply pass

these costs through, and the public ultimately pays them. If this bill does go forward, we would like to work with the sponsors and others to make sure that our concerns are adequately addressed.

Chair Kirkpatrick:

Are there any questions? Mr. Olivas, I am going to ask you what the difference is in the cities. How do the cities get franchise fess, development fees, and the lane rental fee?

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

There were some questions about how this works for the City of Las Vegas. We would be glad to work with the Committee and Ms. Smith-Newby. I will provide the Committee with information about our ordinances. The power of technology allows me to give you information. I just received this from those in Traffic, and I would like to enter this into the record. Our lane usage fees—we call them lane rental fees—are strictly used as penalties. Assemblyman Settlemeyer brought that up earlier in this hearing. We do not charge contractors except when they use the road beyond the period authorized by the permit. An example would be that if we approved a lane closure from 9 a.m. to 3 p.m., and they are working after 3 p.m., we would assess the fee. If we catch a contractor working on the street without an approved barricade plan, he will be assessed for lane rental fees.

Our fees are based on the number of lanes the contractor is working in and the type of road. If it is an arterial road, it would be one rate; if it is a collector road that is another rate; if it is residential road that would be a third amount. I just want to make sure you knew how we assess those fees at the City. I will be glad to provide additional information to this Committee and help in any way I can.

Chair Kirkpatrick:

I think that was most enlightening, because that is a lot different than the way this bill reads. You do not have to get me the answer now, but I would be curious to know if the fee includes the lane that they taper into for safety.

Ted Olivas:

I have no clue, but I would be happy to get that answer to you.

Chair Kirkpatrick:

I am sure your traffic person is listening in. I would like to see the formula for that lane fee.

Ted Olivas:
Absolutely.

Chair Kirkpatrick:

Are there any questions for Mr. Olivas? [There were none.] Thank you. I would like to call on Mr. McKenzie.

Paul McKenzie, representing Building and Construction Trades Council of Northern Nevada, AFL-CIO, Sun Valley, Nevada:

Originally, we were very opposed to this bill, and we talked with the county commissioner from Clark County last night. We were assured that this bill was specific to construction and specific to Clark County. I signed in as a neutral speaker this morning because we somewhat expected to see Clark County present an amendment this morning to clarify that issue. We did not see that happen.

It is interesting that a bill that is specific to Clark County does not mention Clark County except as the sponsor of the bill; and it is specific to construction and does not have the word construction in it one time. After hearing the testimony and not seeing a proposed amendment this morning, we lean much more toward the opposed position than the neutral position that I signed in at this morning.

As many before me have testified, there are many ways this particular goal could be reached. It could be reached by enforcing penalties on violations of traffic control plans. You can write penalties into the contracts with the contractors that are winning the bids so that if they exceed the proposed time frame for the project, they get liquidated damages. For private developers, it can be written into their development plan, including an assessment against them if they violate the time frames. It can be written into the permits that are issued, with penalties spelled out if they violate those time frames. There are many areas to seek a remedy for this without changing state law—especially as broadly as it has been proposed in this bill.

Chair Kirkpatrick:

I would like to clarify something. Ms. Smith-Newby asked if we could hear this bill next week so there would be enough time to prepare an amendment. However, everyone in this room was anxious about this bill, so I decided to have this hearing and listen to all the issues now so that Ms. Smith-Newby could come back with an amendment that addresses all the concerns. In her defense, I did not give her that opportunity. I thought it would be better for all of you to get in the same room, and we had the hearing so that she could do due-diligence on an amendment. I called her out early this morning, and I will

defend her because she did what I asked her to do. She is in the right. She was not trying to skirt responsibility.

Does anyone else have any questions for Mr. McKenzie? We are going to put you in opposition.

We will close the hearing on A.B. 51.

Now we are going to open the hearing on Assembly Bill 97. Good morning, Mr. Musgrove and Mr. Fraser.

Assembly Bill 97: Requires the establishment of procedures for transferring governmental functions between and among local governments and state agencies. (BDR 31-487)

Dan Musgrove, representing the Nevada League of Cities and Municipalities, Las Vegas, Nevada:

I am here representing the Nevada League of Cities. Today we present to you A.B. 97, which we feel is a bill that really works with one of the buzz words of this legislative session, which is transparency. The intent of the bill is to provide mechanisms for the transfer of services and functions between different levels of government—whether that is local-to-local, state-to-local, or local-to-state. This bill is straightforward and allows both the state and local governments through the Committee on Local Government Finance to be involved in these transfers. It allows for notifications to be present. In speaking with some of the folks prior to the hearing, especially Director Willden from the Department of Health and Human Services (HHS), I think we would have no problem with some extension of time periods to allow for a longer period of notification.

There are two sections in the bill. It outlines 90 days' notice, whether from state-to-local or local-to-local, in two places—page 2, line 14, and on page 3, line 11. We have no problem working with anyone concerned about extending those notification periods. I think the better that folks understand and have a chance to set these mechanisms in place, the better it will be for all parties to make sure there is a proper and equitable transfer of services and programs. That is true for any program, policy, or issue that might come along. We talked about annexations or the changing of one service from one entity to another.

In the Committee on Taxation yesterday, Mr. Fontaine and Mr. Fraser were before Chairman McClain and were asked about consolidation and whether local units of government have been looking at consolidation issues. We are. Her

example of a cat going from one side of Sahara Avenue to the other was funny. That would have involved a consolidated animal function. While it may have been the City of Las Vegas or Clark County that picked up that animal, either one would have taken it to one location. Those are areas where we have success stories about consolidation of services in all regions of government throughout the state.

This bill would set up the mechanism to talk about the funding and how the transfers from one local unit of government to another local unit of government would take place. It is a simple, straightforward bill. We think it goes a long way toward transparency and allows units of government to best serve the citizens. I am open to questions.

Chair Kirkpatrick:

Does anyone have any questions? What state agencies do you think could be transferred to local government?

Dan Musgrove:

We have issues right now...

Chair Kirkpatrick:

Was that too broad of a question? You did not just think up this bill and propose it. There must be a reason—a thought—why you are requesting this. This came from the League of Cities, right? Is it based on what type of state agencies could be transferred?

Dan Musgrove:

The League, no. There are a lot of things right now, and David can jump in any time...

Chair Kirkpatrick:

Trust me, I support some consolidation. I am not opposed to it; I am just wondering what sparked this interest.

Dan Musgrove:

Mr. Willden will probably come up later and talk about some of the things that cities have been doing already for the state, things they have attempted to transfer back to the state, and vice versa.

I am not sure this is the best example, but one of the big issues is child welfare from when I was with Clark County. Sabra Smith-Newby is still dealing with that issue. The state is responsible for the function of foster care and adoption, and the county is responsible for child protective services. It was determined

that those services should all reside in one agency. It took a number of legislative sessions and a long time to work through that progression. Granted, I have been away for a while, but I still am not sure that the funding mechanism has been completely determined. Even now, I think it is an ongoing process. That is a very complicated example to use and, perhaps, not the best example.

Chair Kirkpatrick:

The city just turned their day-care licensing provision back to the state. Would that be an example?

Dan Musgrove:

Exactly.

Chair Kirkpatrick:

I am just trying to understand so that we do not have duplication—three agencies doing the same function.

I would like to invite anyone up in support of A.B. 97.

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

I am supporting this bill because I think it is good policy. One of the things the Legislature has seen is a difference of opinion between local city and county and state governments. Frequently there are some maneuvers done by those who think they have more clout than others. These things occur without the recognition of potential problems on the other end. I think this is a way to establish finite procedure, to have those issues looked at in the beginning.

This may address another issue that has long been a concern of the Taxpayers Association. In the 1990s the voters passed a measure stating that the state should not pass unfunded mandates down to the local governments. Yet for those of you who have been on the Committee a number of years, you know how many bills you get that say the provisions of NRS 354.599 do not apply.

In many of those instances, those affected agencies have come forth through channels—the Governor's Office or Administration—with a bill to change something. I would hope that this would allow some prior conversation before those bills get here so that when the bill gets here, there is prior agreement on how things will be done. That is what the voters want—no unfunded mandates unless there is discussion.

In the 2003 Legislative Session, I counted 64 bills that contained language that said the provisions of NRS 354.599 did not apply. I think this bill has far-reaching and good policy ramifications, and I would urge you to pass it.

Assemblyman Bobzien:

I also want to pose this to the sponsors, as well, but I think Carole Vilardo may be in a good position to answer this question. I have some of the same concerns as the Chair. I was trying to picture the scenarios in which we would use this bill and how it would play out. I think the point about the NRS 354.599 exemption is a good point. I also am a little bit worried that when this passes, we will have another section that will find its way into other legislation for exemptions. I appreciate that the bill tries to give some transparency and facilitate early conversation regarding funding mechanisms. I know that transfers between levels of government and consolidations can deal with some very complex issues. A lot of procedures are just made up as they go along. Would we be boxing ourselves in? If it took a number of sessions and was a phased approach, it would not indicate there was lollygagging and political problems. It would indicate that when one thread is pulled, sometimes that affects another. We cannot be sure, at any given time, that we have our arms completely around the problem. The funding mechanism can be illusive because there is no way to account for everything until you have time to get further down the road.

Carole Vilardo:

I would like to respond. I agree with you, but I think this does one thing that may be a problem. By allowing the regulations to be developed, it does not say that you must take the funding mechanism over. It means that there has to be a discussion about the funding. That does not currently occur in the issues in which I have been involved.

I believe one of the points you made is extremely important. It is that many times—and this occurs more often in local-to-local than in state-to-local or local-to-state—funding should be a phased approach, and it is not. As we all know, anytime functions are transferred, it is no different than imposing new taxes. There are unintended consequences. It is good to sit down and ask if everyone has heard and considered all the issues and options such as doing some things now and phasing others in later.

I think that is what this bill tries to do. Will it work? I do not know. For people like myself who are concerned about this issue, it makes you want to say to the people who are asking for the bills, "The law is here for a reason, and yet you are absolutely ignoring it. Can you at least address why you are ignoring it?"

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

We are in support of this bill. As Ms. Vilardo eloquently stated, we also think this is good policy. The bill gives us a methodical approach when this type of event happens. It does happen. Mr. Musgrove brought up the very complex situation that happened at the county. As an example of something that relates more to the Government Affairs Committee, three sessions ago we changed the methodology for submitting certified payrolls. We changed it from the Labor Commissioner to the local governments. When companies had a complaint, they could go to the local government. That made absolute sense. It was great policy and that is how it should work. There was a cost associated with making that change. We clearly did not have the expertise in that area. This bill would have helped us to make the transition work better.

Dan Musgrove:

I would like to respond to Assemblyman Bobzien's question since he did ask the sponsors to address it. Granted, I think Ms. Vilardo hit upon it very well. There may be a fear by the Legislature that this somehow is going to preempt the government's abilities to exempt or to not transfer services down. While we would love for that to happen, the reality is that you can exempt entities, and it gives us the opportunity to work with the state, as Ms. Vilardo stated, to figure out how to actually transfer, how the funding stream will work, and how we can take on the responsibilities appropriately and with the right expertise, as Mr. Olivas stated.

Most importantly, the citizens, clients, or disaffected parties do not have to watch the transition affect them negatively. It gives us the opportunity to make a seamless transition. That is what we are trying to do. This bill forces a dialog, a process, and a procedure that can take place outside this legislative process. During those 18 months outside of session, we need to be able to work through issues. Granted, it may come up again in the next session because, we realize, that unintended consequences may require a law change or a budget shift. You have established a mechanism that does not have to involve an interim committee. Instead it allows for a local process that the state and the local units of government can work through.

Assemblyman Bobzien:

I am not too concerned about our inability to exempt ourselves, because we will find a way if that becomes necessary. I simply want a profile, and I think you addressed that. These are not always simple things that fit in a box. If the intent of the bill is to create more focus and facilitate a better public discussion, then that is fine. I just want to acknowledge that sometimes these are incredibly complex issues.

Chair Kirkpatrick:

Does anyone else have any questions?

Does anyone else want to testify in support of A.B. 97?

Jeff Fontaine, Executive Director, Nevada Association of Counties, Carson City, Nevada:

We simply want to go on record as supporting A.B. 97. We think it is good public policy. We think it brings more definition to a process for situations that have already taken place—and which we fully expect will occur in the future—in terms of consolidation and transfer of duties. I would like to thank Ms. Vilardo for providing her testimony because she really hit the high points in terms of what this bill is attempting to address. Again, we would like to support A.B. 97.

Chair Kirkpatrick:

Does anyone have any questions? Is there anyone else who would like to testify in support of A.B. 97? [There were none.]

I would like to know a bit more about how the regulation process works. Susan Scholley, I am going to give you some homework. Can you find out who would oversee those regulations? Would they go through the Legislative Commission, and would that be a temporary or long-term regulation? Please get us information on that process.

Is there anyone who would like to testify in opposition to A.B. 97?

Is there anyone who is neutral on A.B. 97?

Michael J. Willden, Director, Department of Health and Human Services:

In my 25 years of coming to the Legislature, this is my first time appearing before Government Affairs. We do not usually do business here. We are always in Health and Human Services or in Judiciary or the money committees. I intended only to provide information today. Mr. Musgrove commented on our one concern. It is more of an informational concern. Many times 90 days' notification is not adequate for us to transfer programs. I want to give you some information about five programs in the Health and Human Services world where we interact with the counties or the local governments. Each of these has been problematic over the years—particularly during this last year with the existing economic conditions.

I would like to go over the five programs I am using as examples. The child welfare system is the first. As many of you know, in 2001 we tried to integrate the child welfare system in the two large counties, Clark and Washoe. The counties finance what we refer to as the front end of the system, which are child protective services. The state finances what we refer to as the back end of the system, which is child welfare and foster care/adoption. The county operates the entire system. The way the law is written, the county can get out of that arrangement if it desires. There is a one-year notification period required in the current contract. We would be very concerned if the intent was that the entire child welfare system could be changed in 90 days. By contract, the current window is one year.

Another example is the transfer of child care licensing. This past year, we saw this occur. When there are not local ordinances or local laws for the city or county to be responsible for child care licensing, it defaults to the state. Again, by contract, we have a one-year notification requirement. This past year, the City of Las Vegas gave us notice that it would no longer handle child care licensing. That is fine. Our major concern is that we have an opportunity to address the financing of that child care licensing.

When an entity informs us it no longer will provide a certain service, we do not necessarily have the money in our budget to take over that service. We may be prohibited in the Appropriations Act from even requesting funds from the Interim Finance Committee to seek financing. We want to make sure that there is an opportunity to have a legislative visit to request financing for a social service we are asked to provide.

We have seen substantial upheaval in the Child Support Enforcement Program. Again, that is a partnership between Health and Human Services and local government, particularly the district attorneys and the courts. If they do not want to provide that service locally, they can default that back to the state. We currently require 180 days' notice to default the Child Support Program back to the state. This past year, three counties have defaulted either all or a portion of their child support programs back to the state.

Another program is Elder Protective Services. At the end of the last legislative session, we received notice from Clark County that they would no longer provide these services. They then changed their mind. Again, there was a one-year notification. Again, I want to say 90 days would not be appropriate to transfer an entire system of social services.

The last program I would like to have on the record is the Public Defender. The public defense system, under Health and Human Services, is provided for either

at the local level, if the entities so choose, or at the state level, when public defense defaults to the state. We provide public defender services, in four or five counties, and the other counties provide for public defense in their own way. Current law requires that they notify us of changes in March of odd-numbered years so that the Legislature can address the financing of the system.

In summary, there is a law defining the notification time frame in a few places, and I do not think this bill would change that; however, in other places, the law is unclear about the notification period, and we currently handle that contractually. We put the notification period into the contract. Most contracts require notification from 180 days to one year.

The notification time frame, again, is our major concern.

Chair Kirkpatrick:

Does anyone have any questions? I have a question for you. If passed, this bill will be effective upon passage. Hypothetically, let us say this bill got out of this Committee and passed on to the Senate and was completed by April 1, 2009. If the regulation process moved smoothly by July 1—which would be after our budget was passed—circumstances could really change if we did not take your notification and funding considerations into account; is that correct?

Michael Willden:

That would be assuming the regulations could be done quickly. I have never seen regulations move that quickly.

Chair Kirkpatrick:

I have seen those temporary ones sometimes move that fast.

Michael Willden:

Again, that would be our concern, particularly if entities move toward the 90-day notice instead of the longer notice period. It would be in between legislative sessions, and we would not have the ability to finance a social service. That is the major issue. Our concerns regard the notification time frame and the ability to approach the Legislature or the Interim Finance Committee to address the funding mechanism.

Some of these are multimillion-dollar programs. This is not as simple as transferring a telephone line; these are programs that have hundreds of employees and expenditures of millions of dollars.

Chair Kirkpatrick:

Let me ask you one other question. In section 4, the state agencies are listed in NRS Chapter 233B, and the regulations would be adopted the same way as we do for state agencies. Does that include all state agencies, because there are some agencies that have a different process. Do you know?

Michael Willden:

Yes, there are different processes in my department. Some of them fall under NRS Chapter 233B, known as the Nevada Administrative Procedure Act, and some do not.

Chair Kirkpatrick:

The way this bill is written, would that not exclude some of the smaller departments that could move back and forth?

Michael Willden:

I will have to get back to you on that. There may be a difference for the Medicaid Division and the Public Welfare Division. They are both exempt from the Administrative Procedure Act.

Madam Chair, I do not want to sound as though I am negative on this. I do want to say I think it is good to have a defined process. This last year has been a struggle, and we have worked diligently with local governments to not impact clients and/or services.

Chair Kirkpatrick:

Is there anyone else who would like to testify on A.B. 97?

Dino DiCianno, Executive Director, Department of Taxation:

The Department of Taxation is neutral with respect to A.B. 97. I want to make you aware that the Department of Taxation acts as staff to the Committee on Local Government Finance. We would be assisting them in the regulation process. You asked specifically about the timing with respect to regulations. Given the seriousness of this, if this bill does pass—and take effect upon passage and approval long before July 1—we would ask to have sufficient time to be able to assist the Committee on Local Government and Finance, in addition to the Director of Administration, with respect to programs that would shift back and forth between the state and local governments and between local governments. We would want to have sufficient time to be able to put that process in place.

I have only one question. While we will work toward that—there is no question about that, we will make it work—there is the possibility of the need for some

sort of dispute resolution method. If something happens during that process, I do not know where that dispute would be resolved. That is my only question.

Chair Kirkpatrick:

Thank you. You bring up a good point. I am a bit nervous. I am all about transparency and am the last person to question that. Do you think something may be done not requiring legislative approval that could affect the grand scheme of things? If these regulations are put in place, would there be things they could currently do without the approval of the Legislature? I do not see any provision that states that an entity must come back to the Legislature to do this. I am wondering how it works.

Dino DiCianno:

If regulations are promulgated, they would be subject to review by your council and they would be subject to review by the Legislative Commission. Clearly, if issues were to come up during that process, I am sure that would be the appropriate place to address those issues.

Dan Musgrove:

I think all the issues Mr. Willden and Mr. DiCianno raised are exactly the reason for this bill. In terms of timelines, I think the ideas are absolutely important. A 90-day notification is probably not appropriate, especially when contractual or statutory restraints would overrule that notification period. When there is a contract, the more notice the better. I want to be clear to the Committee that we would be more than willing to work with the Committee on some type of amendment to specify a notification time frame or work through the regulation process. We believe the longer the notification period, the better. It allows the process to work in a more efficient fashion.

We already have abilities under statute to do annexations, and that would be local government to local government. Ms. Vilardo brought up the point that sometimes there is a need for both parties to avail themselves of a procedure to ensure that the process goes well if there are disputes. I think the issue of dispute resolution is something that needs to be addressed more. All of the issues that were brought forth today signify the reasons why this bill is so important. It sets up a process and, again, goes back to the issue of transparency.

Chair Kirkpatrick:

I would say to you that I believe my job is to protect the best interests of the State of Nevada. State department heads know best how the state is protected. We like to work with local government, and that door has got to swing both ways. That is my final comment.

Does anyone else have anything to say on A.B. 97? [There was no one.]

The hearing on A.B. 97 is closed.

Is there any public comment? [There was none.]

On Monday at 9:00 a.m. we will be hearing one bill, A.B. 175. The Chairman of Transportation will be presenting that. On Tuesday, we will not be meeting. If more bills come out today, we can address them at the same time rather than have short meetings.

Does anyone have anything more? [There was nothing.]

[Meeting adjourned at 9:57 a.m.]

RESPECTFULLY SUBMITTED:

J. Renee Ekleberry
Committee Secretary

Patricia Blackburn
Editing Secretary

APPROVED BY:

Assemblywoman Marilyn K. Kirkpatrick, Chair

DATE:_____

EXHIBITS

Committee Name: Committee on Government Affairs

Date: March 6, 2009

Time of Meeting: 8:03 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster