

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

**Seventy-Fifth Session
March 11, 2009**

The Committee on Government Affairs was called to order by Chair Marilyn K. Kirkpatrick at 8:02 a.m. on Wednesday, March 11, 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

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Assemblyman Pete Goicoechea, Assembly District No. 35
Assemblyman Tom Grady, Assembly District No. 38

STAFF MEMBERS PRESENT:

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

OTHERS PRESENT:

Ernest C. Schank, President of Board of Directors, Truckee-Carson
Irrigation District, Fallon, Nevada
Bennie B. Hodges, Secretary/Manager, Pershing County Water
Conservation District of Nevada, Lovelock, Nevada
Kenneth C. Spooner, General Manager, Walker River Irrigation District,
Yerington, Nevada
Doug Busselman, Executive Vice President, Nevada Farm Bureau,
Sparks, Nevada
Steve K. Walker, representing the Board for Financing Water Projects,
Minden, Nevada
Don Allen, Superintendent, Silver Springs Mutual Water Company,
Silver Springs, Nevada
John Slaughter, Director of Management Services, Washoe County,
Reno, Nevada
Richard "Skip" Daly, Business Manager, Laborers, Hod Carriers, Cement
Workers, and Miners, Local Union 169, Reno, Nevada
Danny L. Thompson, Executive Secretary-Treasurer, Nevada State
AFL-CIO, Henderson, Nevada
Edwin D. James, General Manager, Carson Water Subconservancy
District, Carson City, Nevada
David Emme, Chief, Administrative Services, State Department of
Conservation and Natural Resources, Division of Environmental
Protection Nevada
Michael Tanchek, Labor Commissioner, Office of Labor Commissioner,
Department of Business and Industry

Chair Kirkpatrick:

[Roll taken] We are going to open the hearing on Assembly Bill 226. Good morning, Assemblyman Goicoechea and Assemblyman Grady.

Assembly Bill 226: Makes various changes concerning the financial organization of irrigation districts. (BDR 48-991)

Assemblyman Pete Goicoechea, Assembly District No. 35:

We are bringing A.B. 226 to you this morning. It was brought forward by request from the Truckee-Carson Irrigation District (TCID), the Walker River Irrigation District, and the Pershing County Water Conservation District. I also should note there is another district in the north, the Washoe County Water Conservation District. I do not believe they are presently providing any irrigation services. I will defer to my colleague from Reno, who may know.

Do not be deceived by the length of this bill. This bill applies to *Nevada Revised Statutes* (NRS) Chapter 539, which contains old, archaic language. We need to take a session and go through NRS Chapter 539, clean it up to have it really say what it needs to say. We have a couple of band-aids in this bill to try to address some of the major issues impacting the irrigation districts today.

I am sure that even those from the south are aware that the Truckee-Carson Irrigation District had a break in the Fernley Canal about year ago. That situation brought forward serious issues with NRS Chapter 539. The old language in that chapter says the water districts impose only X amount of assessments and spend only X amount of money on emergencies. This language is hampering the ability of the irrigation districts not only to do business but also to provide for public safety.

Subsection 1 of A.B. 226 changes the aggregate debt that may be incurred by the water district from \$350,000 to \$500,000. We are talking about multimillion-dollar structures being allowed to incur only \$500,000 worth of debt. That probably needs to be changed to a larger number. The directors from Walker River, Truckee-Carson, and Pershing County are here to testify this morning. They definitely have more expertise. Again, we are simply trying to ratchet this statute up, little by little.

Subsection 2 contains new language we have amended into the bill ([Exhibit C](#)). It says the board of directors may levy an assessment of up to \$5 per acre on all lands in the district for the establishment of a capital improvement fund to be used for construction and reconstruction of irrigation system infrastructure.

Under the existing law, districts are allowed to assess up to \$1.50 per acre. That money has been typically used for capital improvement or for salaries and administrative costs. What we have done is put this \$5 per acre assessment in place. I will let the managers from the districts speak about how many acres each have. Truckee-Carson is the largest and would include about 100,000 acres. With the \$5 assessment, they could possibly generate \$500,000 to create a pool of money to facilitate the financing of much-needed repairs of the infrastructure.

I do not think the acreage of the Pershing County district exceeds 40,000, so at \$1.50 per acre they might end up with \$50,000 or \$60,000, which will not allow them to do anything.

Subsection 3 says in the absence of a capital improvement fund or the \$5 assessment, they would be able use the \$1.50 assessment as allowed by current statute to cover administrative costs, salaries, or projects. Those are the major changes proposed for the bill. The other change in the bill is what we have addressed in the section in NRS 539.255. That appears at the top of the amendment sheet ([Exhibit C](#)).

This clearly spells out what the districts are allowed to do by law in dealing with an emergency or necessity. When the Rogers Diversion Dam failed in Pershing County, the water district was legally allowed to expend only \$2,000 without going to bid. When the Fernley Canal failed, TCID could legally expend only \$5,000 without going to bid.

We are asking for that language to be deleted, so in case of an emergency the districts can go out and get bids. I do not have to tell you, with the Rogers Diversion and with the Fernley Canal break, they spent millions of dollars in the first week. The water had to be shut off. They hired contractors and got the trucks and equipment in place to plug the leak. If the statute was taken at its literal meaning, they could not have done that. We want to delete that "5 cents for each acre" restriction. Remove that restriction in the case of an emergency or a necessity.

I will now turn it over to my colleague and then the three managers from the irrigation districts. After that we would like to have Mr. Doug Busselman from the Nevada Farm Bureau come up to speak.

Chair Kirkpatrick:

Good Morning, Assemblyman Grady.

Assemblyman Tom Grady, Assembly District No. 38:

Members of the Committee, I think Assemblyman Goicoechea went over the bill and the amendment clearly. As he mentioned, just in the last few years we have had the Rogers Diversion Dam failure in Pershing County, which is in Assemblyman Goicoechea's district. That was a necessity, and we allocated a few dollars to help with that project last session. The Fernley flood which was in my district, was devastating not only to TCID but to the entire community. Right after that, another small structure went out in Fallon. With the help of many local farmers and the crews from TCID, it was fixed in order to get water back during a very crucial time—when farmers needed to irrigate. These are the types of emergencies the districts are facing. As Assemblyman Goicoechea mentioned, the \$1.50 or the 5 cents an acre just will not handle these situations any longer. During these modern times, the districts need to come up with more dollars. With that, Madame Chair, we appreciate the time you are giving us today.

Chair Kirkpatrick:

Thank you. Does anyone else have any questions?

Assemblywoman Spiegel:

On the new paragraph 2 of the amendment it says the board may levy an assessment of up to \$5 per acre. Is that a one-time assessment or an annual assessment? Or is there a period of time associated with that language?

Assemblyman Goicoechea:

I was not very clear on that, and I will clarify. You must understand this language is only enabling legislation. It allows the board of directors to put \$5 as a cap. That is an annual assessment. It is clearly up to the board of directors what they will impose. They could charge the \$1.50 and put that in their irrigation system infrastructure. They could drop it to 50 cents or, with this language, they could go up to \$5. Again, we are only proposing enabling legislation.

Assemblywoman Spiegel:

Perhaps we could put "annual" in there so it would specify annually and not allow assessments to happen monthly or quarterly.

Assemblyman Goicoechea:

The statute does say "annual." Again, we want to make sure the amount is not above that. That is why the cap is in place.

Assemblywoman Pierce:

So the inserted paragraph 2 replaces what is on page 2?

Assemblyman Goicoechea:

Could you repeat that?

Assemblywoman Pierce:

This is an additional paragraph that goes before the paragraph in paragraph 2.

Assemblyman Goicoechea:

Technically, we do not care where it is located as long as it is in the bill.

Assemblywoman Pierce:

So you are keeping what is there now and adding that other paragraph. I am a little uncomfortable with the language of "necessity." I am okay with the "emergency" language. I assume there is a definition of emergency. I am concerned about getting bids in cases of necessity. Can you clarify that for me?

Assemblyman Goicoechea:

Again, we were dealing only with existing language, and that is how it is presently stated in statute. We just kept it the same where it says "award of contract in case of emergency or necessity." We did not go back and change a lot of the verbiage of the statute. If you feel more comfortable with deleting the "necessity" language and simply having it say emergency, we would not have a problem with that.

The real issue we have with NRS Chapter 539 is that it is a maze. Every other page seems to be in conflict with the previous page. There are probably many chapters in statute that need to be revised. We are offering a small band-aid to a chapter that probably needs a major rewrite as well as the dollar amounts needing to be revisited.

Chair Kirkpatrick:

Does anyone else have any questions?

Assemblywoman Mastroluca:

Is \$500,000 enough?

Assemblyman Goicoechea:

No. Clearly, it is not. I will let the managers from the irrigation districts talk about that. I am sure if they had their way they would love to see a \$5 million cap on that. The \$500,000 is not enough money; \$500,000 will not pay for the cement for one of these projects. We were afraid that if we tried to make changes that were too radical, then the world would cave in. I understand we are having some heat on this even as it is trying to address these numbers. The

bottom line is that if the infrastructure in place fails, it will impact the irrigators and their ability to perform; it is also a public safety issue.

Assemblyman Aizley:

I have a bit of a mathematical question regarding the \$1.50. Was it usually assessed at the \$1.50 maximum, and now you are asking for \$5 per acre? That is about a 333 percent increase. Is that large of an increase necessary?

Assemblyman Goicoechea:

I will refer that to the managers, Assemblyman. The bottom line is that I think some districts did not impose an assessment at all, and others have imposed it at the maximum depending on their needs and how it was to be used. I believe Pershing County is currently assessing, and it goes into a capital improvement fund. It depends on the district and the current board of directors. That is exactly why we changed the language. We did not want to give them that 333 percent increase and have them just put that money into administration or have the ability to spend it anywhere they wanted. That is why the amendment is in the bill and requires that those assessments go directly to the capital improvement fund or the stabilization fund or whatever that fund is called. The only way they can get the assessment to be used for administration or to pay salaries and wages will not change; that number will remain at \$1.50. That is in existing statute. What we have done is give the districts the ability to go to \$5 per acre to create this other fund that would help them leverage the money to take care of some of the real issues in front of them.

Assemblyman Aizley:

So the process is being watched.

Assemblyman Goicoechea:

We are trying.

Assemblywoman Mastroluca:

I am a little concerned with the amendment including construction and reconstruction. If this is for emergency purposes, I would feel more comfortable if it only said reconstruction.

Assemblyman Goicoechea:

Again, the language in this bill needs to be reviewed. In some cases there may be bypasses or other safety measures that would make sense. Again, we do not want to confuse this ability to impose a \$5 assessment, that it could be expended only in an emergency scenario. This \$5 assessment could be used for ongoing construction for their facilities.

Assemblywoman Mastroluca:

Do they not have other ways of accessing that money, such as voter initiatives?

Assemblyman Goicoechea:

They have a fee on their water, and I should be careful, before I get underwater with this, and let the managers do the talking. Everything the districts do goes either on the cost of each acre-foot of water delivered or on the assessments. They are struggling. If they had the ability to put \$500,000 in this aggregate sum, then they would be able to go to the State Board for Financing Water Projects to see if some of that money could be 85 percent leveraged. That is also known as the "A.B. 198 Board," after Assembly Bill No. 198 of the 66th Session. Some of these upgrades would be new construction, and some would be putting band-aids and patches on the holes. I would hate to limit the districts to going back and fixing things with this money. I think there are cases when they are better served if they had the ability to build a new project.

Assemblyman Settlemeyer:

This is regarding the construction/reconstruction issue. There was a situation on my property where the Washoe Tribe had a diversion. The flood of 1997 completely wiped it out. The river had changed so much that there was no logical way to put the same diversion back in the same location. At the time, the Army Corps of Engineers determined the best thing to do was to move it upstream 250 feet and reestablish the diversion. That type of limitation would be very problematic in an emergency situation. The tribe wanted their diversion back immediately of course, but it took eight months. Those are the types of things we are dealing with in agriculture.

The saddest part is the way construction costs, as many of us know, have changed. Water diversion for the Ottoman Canal in Carson was built for a whopping \$400,000. The last time we looked into the cost to take it out, it was estimated at \$5 million. Assemblyman Goicoechea, when was the last time these dollar figures were changed? When was the \$1.50 put in?

Assemblyman Goicoechea:

I did not go back and do a lot of research on this. Mr. Schank from TCID knows a lot more of this history than I do. As I have looked at this, the \$1.50 was last changed about 12 years ago. At one point it was down in the pennies—35 cents or so—and it may have been more recent than that, but I have not looked into it. I was only addressing what our current needs are.

Chair Kirkpatrick:

Mr. Settelmeyer, we can get that information for you; it will not be too difficult to research.

Does anyone else have any questions?

Assemblyman Goicoechea, who is here today that can answer these questions? How many irrigation districts are there in Nevada? Are there any irrigation districts in southern Nevada? What is the percentage of money used for administrative costs?

Assemblyman Goicoechea:

Any of the three managers from the irrigation districts could answer those questions. There seems to be some confusion. It is my understanding there are only four irrigation districts, yet there are other water districts. I do not know how those are separated.

Chair Kirkpatrick:

Can we work with Legal to make sure the language is tight so it works on the construction part? I do not want to hamper you there because sometimes you cannot decide where the river will run or how to temporarily repair a broken levee. So can we work with Legal?

Assemblyman Goicoechea:

You do not need to ask me, though I appreciate that you did. I am sure Legal will make sure it is watertight.

Chair Kirkpatrick:

Perfect.

I will bring the managers up first to speak.

Ernest C. Schank, President of Board of Directors, Truckee-Carson Irrigation District, Fallon, Nevada:

I am pleased to be here today before the Committee to participate in this hearing. I will try to answer your questions the best I can. I am sure I am speaking for myself, Mr. Spooner, and Mr. Hodges when I say agriculture is especially important in northern Nevada. In our particular case, it is the lifeblood of the Fallon and Fernley communities.

The main reason I am here today is because of the breach that took place in the Truckee Canal in January 2008. Everyone knows the problems that the breach caused because the event was smeared all over the news. The TCID wears

about three hats. We have our responsibilities through the irrigation statutes, NRS Chapter 539, and a few others. These all affect the way we operate. We operate under state law; we have a fiduciary responsibility. Because of that we have a responsibility to our constituents, and a contractor with the federal government to deliver water for the United States to our constituents. Sometimes we get put in the middle, and we become the punching bag, so to speak.

The Truckee-Carson Irrigation District was formed 91 years ago. The project commenced 106 years ago. Our 106th birthday will be on March 14. A good share of the infrastructure was built starting in 1903 and began to be used in 1905.

To say the least, most of the canals—and particularly the Truckee Canal, which links the Truckee River to the Carson River—was not designed for the kind of urbanization that has sprung up in the past few years. Those of you who have driven through Fernley know what I mean. What were once agricultural fields with very sparse housing is now a community of at least 20,000 people. Homes are sitting in what used to be fields—alfalfa fields, meadows, and pastures.

As a result of the breach in the canal, the Truckee-Carson Irrigation District is required to bring the canal, which was built to 1903 standards, up to modern standards. That is understandable for the safety of all the people who are now living underneath its banks. I say "underneath" because they literally are living underneath the canal's banks.

We experienced a shutdown last year because of the breach, which was immediately fixed; in fact, it was fixed within about 45 days. It took another 45 to 60 days to get it turned back on. As a result of that situation, and of being under a court order and a Bureau of Reclamation order, we are allowed to run it at a maximum of only 30 percent capacity. Consequently, last year there was a shortage of 15 percent in the amount of irrigation water for farmers. This year we might suffer a 20 percent shortage depending somewhat on how much moisture we get, because we cannot run the Truckee Canal at its full capacity.

The Bureau of Reclamation has estimated the repair cost of 11.7 miles of the Truckee Canal through the Fernley area will be somewhere between \$20 million and \$80 million. We did some preliminary estimates and believe that work can be done for less, but we do not know the details at this point because of the engineering that is required.

As was mentioned earlier, last summer we had a small breach on the Lewis Spill, which is on the main canal that brings water into the Fallon area. The breach was caused by a pipe that was installed in 1935 by the Civilian Conservation Corps (CCC) as a result of the stimulus package in those years. They put a pipe deep in the ground that had automated flow, and no one would have found it except that it started to leak at an elbow and, over time, saturated the bank and gave way. The farmers joined in and we were able to make a temporary fix. A project that would have normally taken several months was accomplished in nine days and we were able to save the crops that would have been destroyed. The permanent fix of that facility is estimated to cost in excess of \$1 million.

The long and the short of it is, we do not have the ability to do the things that we will be forced to address by the Bureau of Reclamation. One of the resources available is money from the "A.B. 198" funds, but we have to have a bit of money up front in order to benefit from those matching funds.

Chair Kirkpatrick:

Mr. Schank, you are in support of A.B. 226, right?

Ernest Schank:

I am.

Chair Kirkpatrick:

I thought for a minute we were having a presentation so I need to clarify where we were.

Ernest Schank:

I guess I should have said that. I do not come before you very often. Last time it was only to provide information and not to testify for or against a specific bill.

The language in which I am interested is in the number-two insert. Let me simply say that we have not used the \$1.50 levy since 1990, but this past year we brought it back so that we could begin to put together a capitalization fund for improvements. We would like to go after some matching funds. We can spread an assessment over only about 100,000 acres, and it will return less than \$150,000. I could be wrong, but I believe I was told that the last change in that \$1.50 amount was in 1961.

We would support the \$5 amount because, again, that would allow us to tap into some other sources, like the "A.B. 198" funds, to complete these needed repairs. The communities of Fallon and Fernley need this desperately.

I would like to point out one other thing. The ability to make these assessments will spread the collection of funds over a larger group than simply the water users. Some might say that is not fair. Let me point out that particularly in the Fallon and Fernley areas, there is drainage that benefits everyone. There is group water recharge that also benefits everyone—particularly the City of Fernley. They are dependant upon the groundwater recharge. Many of the wells in that area started to pump sand after the canal was shut down for only 45 days.

A nice environment is another benefit when water is brought into the community. There is recreation and, of course, the economies of both Fallon and Fernley are largely built on the agricultural resources.

With that, I will turn the time over to my colleagues, and then I will be happy to answer any questions that I can.

Bennie B. Hodges, Secretary/Manager, Pershing County Water Conservation District of Nevada, Lovelock, Nevada:

The Pershing County Water Conservation District is the Lovelock area's irrigation district and is 40,738 acres in total area. We have Rye Patch Reservoir. The source of our water is the Humboldt River. I am here this morning to ask this Committee to support changes to amendments to A.B. 226, specifically regarding NRS 539.255 and NRS 539.480.

I would like to briefly discuss these two statutes. As NRS 539.255 is currently written, it is outdated, unrealistic, and just does not work. For example, if you take our irrigation district of 40,738 acres, in an emergency situation we are allowed to only spend 5 cents an acre, which means that we would be allowed to spend \$2,037. Three joints of a 48-inch culvert that might be installed under a road in a drainage or irrigation ditch would cost \$2,668. That purchase would exceed what we were allowed, by law, to spend in an emergency.

In 2006, the Rogers Dam on the Humboldt River at Lovelock failed. That dam was responsible for irrigating 21,000 acres of prime farm ground. During the next two weeks district employees, farmers, members of the community, and a private contractor jumped in and built a temporary concrete-faced-rockfill (CFR) dam. That dam cost us \$706,000 to build. The 21,000 acres of hay that were saved produced revenue of a little over \$11 million. Using this scenario, you can see how this 5 cents an acre that the irrigation district is allowed to spend in an emergency situation will not work and is outdated.

I do support changes to NRS 539.480 increasing the debt amount from \$350,000 to \$500,000. Also, I support the assessment increase from \$1.50

up to \$5 an acre. However, I do not think that this is enough money to get anything done in the economy today.

I would like to touch on something Mr. Schank talked about a moment ago. He stated that TCID had not assessed the \$1.50 an acre since 1990. We have handled it differently in our district. The Pershing County Water Conservation District at Lovelock has always assessed that \$1.50 per acre. We kept those funds for emergencies and capital improvement projects. Even at \$1.50 per acre, we could be saving it and building it up for years and years, and in one season it could be wiped out.

I would like to review what happened after we built that CFR dam. When that CFR dam failed, we spent \$206,000 to repair it. That was a temporary fix to get through that season. The next season we had to build a temporary bypass spillway to irrigate for the following season. That cost \$709,000—almost the same cost as it was to build the CFR dam. The reason that we had to build an emergency bypass spillway that next season is because one year was not enough time to complete the engineering, design, testing, soils testing, and all the requirements for the construction of a new dam. Finally, last year the new dam at Lovelock was constructed. The cost of the construction of that dam and the cost of the bypass spillway came to a little over \$5 million. Granted, this was an unusual event, but this example shows what can happen when Mother Nature decides to turn a lot of water loose down the river.

That is all I have. I will turn it over to Mr. Spooner.

Kenneth C. Spooner, General Manager, Walker River Irrigation District, Yerington, Nevada:

I had not anticipated giving testimony this morning until Assemblyman Goicoechea volunteered me, so this will be very brief.

I personally support A.B. 226 as Assemblyman Goicoechea has advanced it. I agree that this is a band-aid and is nowhere near enough. I do not know if this is the right forum to state this but, more importantly, I would encourage this Committee to totally review NRS Chapter 539. Now is the time. We could probably get something for next session, but I would not hesitate to review this. It needs to be gone through from page 1 all the way to the end to make it current.

Chair Kirkpatrick:

Does anyone else have any questions?

Assemblywoman Spiegel:

This is following up on Assemblywoman Mastroluca's question. Is this enough? Is this a meaningful amount? In Mr. Schank's example, you gave a \$50 million to \$80 million price range, which would come out to \$500 to \$800 per acre. Why are we looking at \$5 per acre when the need is so much greater? In Mr. Hodges' example with the CFR dam, it came out to \$33.60 per acre. Again, is \$5 enough?

Ernest Schank:

Realistically, the answer is "no," but it is better than what we currently have. We also have a constituency out there that if we raised it more than \$5—even \$5 will get complaints—we would have an uprising. We have to weigh all these factors. To answer your question, no, it is not enough; it is a band-aid, but it is better than what we have now.

Assemblywoman Mastroluca:

Mr. Hodges, you said that the total figure for repairs was \$5 million. How much had been put away from the \$1.50 assessment into the fund?

Bennie Hodges:

We had, at least, \$300,000 and some thousand dollars. I cannot recall that number right now off the top of my head.

Assemblywoman Mastroluca:

This question is for all three of you. If you were able to take on a debt of \$500,000, how long would it take you to pay that money back?

Bennie Hodges:

If we do not have the money on hand, we cannot spend it. It must be available to be spent. When a public entity, like an irrigation district, tries to get a large loan, as we tried to get, they must jump through hoops, and it takes forever. We did not have time to do that. This farm ground was drying up—burning up. We had already secured grants to do district-wide repairs, and we went to the board and asked if we could use that grant money for part of that emergency. A big portion of the cost of that was made up by in-kind labor by us. We were working around the clock. We were being credited toward our grant supplements for the amount of work-time we were contributing.

Chair Kirkpatrick:

Does anyone else have any questions?

Kenneth Spooner:

I have one quick comment in response to Assemblywoman Mastroluca's comment. Part of the problem is the antiquity of NRS Chapter 539. If normal operating funds have been set aside, we are constrained to a set-aside fund of 3 percent of annual budget for reservoirs. That is nothing for improvements in these situations. This \$1.50 on the books now is not enough; \$5 is not enough. That is why I referred to the bigger issue here of a total review of NRS Chapter 539. It will give us the flexibility in other areas and not just NRS 539.480.

Assemblywoman Spiegel:

Mr. Spooner, there is no separate reserve fund for capital improvements?

Kenneth Spooner:

There is, but there are other parts of NRS Chapter 539 that constrain us. When I became manager 10 years ago, I wanted to set funds aside. To comply with the law, there was a restriction on the amount that could be set aside. I have set funds aside, but the amount is still not sufficient.

Chair Kirkpatrick:

Does anyone else have any questions?

I have a few questions. In 1961, the assessment amount was 50 cents per acre. In 1973, it was increased to \$1.50 per acre. If you took \$1.50 and accounted for inflation, the amount today would be \$7.13. If you take the \$5, plus the \$1.50 for administration, you are coming closer to that figure. Susan Scholley is very good at helping me reach that information point. If we retain the \$1.50 for administration, and then the increase to \$5 goes entirely for capital improvements, how does that compare with what you are currently spending for administrative costs? Do any of you know now, or can you get me that information?

Also, do either one of you know if there are other irrigation districts that we may not be aware of in the south or in other parts of the state?

Bennie Hodges:

There are no large irrigation districts like ours. I think we represent the three largest irrigation districts in the State of Nevada. Washoe Valley has a small irrigation district, and I am not familiar with any others.

Chair Kirkpatrick:

Okay. We are from southern Nevada and do not necessarily know if more exist.

Ernest Schank:

In fact, Madame Chairman, I might add, historically the water law in NRS Chapter 539 was written so that the Newlands Project could be built.

Chair Kirkpatrick:

Assemblyman Goicoechea and I did speak early this morning about revisiting all of NRS Chapter 539 next session. It seems that every time you read a subsection, it is different from the previous subsection. We agreed we really need to look at that chapter next session to make it consistent.

Does anyone else have any questions? Thank you for coming.

Would anyone else like to testify in support of A.B. 226?

Doug Busselman, Executive Vice President, Nevada Farm Bureau, Sparks, Nevada:

[Read from prepared statement ([Exhibit D](#)).]

I will be happy to answer any questions the Committee might have.

Chair Kirkpatrick:

Mr. Busselman, I have a question. The last part of your statement confused me. I thought we were trying to get them up to \$6.50. I thought I heard you say you would like the \$1.50 for administrative costs to go away.

Doug Busselman:

Chair Kirkpatrick, as we read what the language would say, you would have that in the new paragraph 2, which addresses the \$5 per acre issue...

Chair Kirkpatrick:

Mr. Busselman, can you do me a favor? As Assemblyman Goicoechea stated, it does not matter where the language is inserted, and we do not necessarily have it written that way. Could you refer to the language you are addressing so we are clear?

Doug Busselman:

Certainly I will, Chair Kirkpatrick. In the current law, which is on page 2, subsection 2, line 1, it says, "Thereafter the Board may levy an annual assessment in the absence of assessments." Our interpretation, and the reason we wanted the new paragraph 2 as shown ([Exhibit C](#)), was to have that language take precedence, if you will. If the district was not assessing for capital improvements, then the district would be able to use that particular

authority to assess for general administration. That was our intent in the work that we did.

Chair Kirkpatrick:

Assemblyman Bobzien, did you have a question?

Assemblyman Bobzien:

I am just trying to understand. I think I am pretty confused on this one too. I am questioning why we have to include a second passage for assessment. Why would we not simply keep what is in the original bill and strike the \$1.50 and just move the assessment that is in place now up to \$5. The scenario you are putting forward is if the district is to avail themselves of the other \$5 assessment, you are suggesting that the \$1.50 assessment that is currently in place would go away? Is that correct?

Doug Busselman:

Assemblyman Bobzien, that was our understanding of how the language would be constructed in the legislation. Our biggest concern about the original bill was that we understood that the need was capital improvements. However, as we interpreted this, the district could raise that administrative fee and have it go for everything but capital improvements, even though that was the intent. That is why we were involved in working on the new language.

Assemblyman Bobzien:

To follow that to its conclusion, according to the new subsection 2 in the amendment, the district can make use of the annual assessment of up to \$5 per acre for the establishment of a capital improvement fund for construction or reconstruction. That would then get the district off the hook for the normal administrative expenses of salaries and office costs. Is that what you are intending—to just lay people off, and just do construction for the district for the next period of time?

Doug Busselman:

Our understanding is that there are other sources of revenue to pay for administrative costs. What this particular section of statute does is allow for an assessment. As you heard, there are a number of irrigation districts which, in the past, have not levied assessments under this particular authority. This is in addition to the districts' normal methods of raising revenue to pay for administrative expenses. This is above and beyond the administrative fees that irrigation users pay the district for the delivery of water.

Assemblyman Bobzien:

I understand what you are saying, that you want to make sure there are safeguards for your members and your users and that the costs do not get out of control. I am thinking in terms of the Humboldt scenario, where they do make use of that levy and they do rely on that revenue. If they are going to levy the \$5 for capital projects, because they are not going to have that \$1.50 any longer, they are going to have to go out and get grant funding. I am just wondering if that might be a little bit over the top. I do not know if it would be a workable situation for them.

Doug Busselman:

Understood.

Chair Kirkpatrick:

Does anyone else have any questions? That defeats my purpose of stating how close we were to inflation costs, right? Thank you, Mr. Busselman. We will have to get with Assemblyman Goicoechea and see how much closer we are getting. Does anyone else want to testify?

Assemblyman Aizley:

I have a general question about a point of information. We have the Muddy and the Virgin Rivers down south, and I believe there is irrigation around Overton and Mesquite. Are these things done without an irrigation district? Are they just too small? What is going on there?

Chair Kirkpatrick:

Maybe Assemblyman Settelmeyer can help us out.

Assemblyman Settelmeyer:

Different communities have different solutions. Larger communities require irrigation districts. In Carson Valley we have what is called the Allerman and Virginia Ditch Canal Corporation. Land owners got together and formed the corporation, so we are all jointly liable under a limited liability clause for anything that may go wrong. As projects get larger and there is more urbanization in an area, an individual's insurance company would not provide coverage. I believe that Ed James of the Carson Water Subconservancy District is in the audience. Perhaps he can explain some of the differences in agricultural organizations in different communities. In my opinion, when you get larger, you tend to get irrigation districts.

Chair Kirkpatrick:

We can try to get that information. Is there anyone else who is in support of A.B. 226? [There were none.]

Is there anyone who is in opposition of A.B. 226? [There were none.] Is there anyone who is neutral on A.B. 226? Good morning.

Steve K. Walker, representing State Board for Financing Water Projects, Minden, Nevada:

The clients I represent are neutral on A.B. 226. Assemblyman Goicoechea suggested that I had some information on irrigation districts. Chapter 539 of NRS does not have a clear definition of irrigation districts. Classically, in the west, an irrigation district is formed to pay for the Bureau of Reclamation Dam that was built in the watershed, and then the district would pay that money back. Lovelock, the TCID, and the Washoe County Water Conservation District with Boca Reservoir in the north are this way. Walker River has its own private upstream storage. Muddy Valley Irrigation Company in the Overton/Logandale area does not have upstream storage—Virgin Valley may be the same—and the company has a board formed mostly on irrigation district procedures that came from the Church of Jesus Christ of Latter-Day Saints. The users have specific shares. So what you really need to do is to go back to the statutes and define irrigation districts and capture what they actually are.

Chair Kirkpatrick:

Thank you, Mr. Walker. Does anyone else have any questions? Is there anyone who would like to testify neutral on A.B. 226? We are going to close the hearing on A.B. 226 and open the hearing on A.B. 236. Good morning, Assemblyman Grady.

Assembly Bill 236: Revises provisions governing grants of money for water conservation and capital improvements to certain water systems. (BDR 30-1049)

Assemblyman Tom Grady, Assembly District No. 38:

[Read from prepared statement ([Exhibit E](#)).]

I would point out that the Silver Springs Mutual Water Company has a board of directors consisting of five members who are community water users. The company's total workforce is five people, including two employees in the office, Mr. Allen, and two people on the outside. So this is a small water company. For those of you who are not familiar with the Silver Springs area, it is located 35 miles east of Carson City. As you are driving back to Las Vegas and come to the first four-way stop out in the desert, that is Silver Springs.

Don Allen, Superintendent, Silver Springs Mutual Water Company, Silver Springs, Nevada:

Silver Springs established its water company back in the 1940s. It was under private ownership at the time. In the 1950s the water company turned into a 501(c)(12) nonprofit public utility. The population of Silver Springs mainly consists of retired and fixed-income residents. We did a study of the median household income for our residents according to U.S. Department of Agriculture guidelines, and it is \$21,900—not a whole lot of money. With the new mandates coming up, we have tried every useful tool to keep water affordable for our residents. Under the *Nevada Administrative Code* (NAC), we are accountable to the Public Utilities Commission to turn in an annual report regarding the status of the water company. We do that. We are trying to follow all the required guidelines, pretty much without funding—well, with limited funding. We appreciate the help of everyone.

I understand there have been concerns about mutual water companies that have not done the right thing. I almost feel restricted because we have done the right things—we have tried. We have been a mutual water company and have worked at doing the right thing for 50 years.

It is odd to be cut off from funding in an area where a general improvement district (GID) right down the road can receive funding for the same things we need. It is the same type of community. One is eligible for funding and one is not.

On behalf of Silver Springs I would appreciate consideration of this bill. We are trying to do the best for our residents, who truly cannot afford increases. We appreciate all your support. I will be happy to answer any questions.

Chair Kirkpatrick:

Does anyone else have any questions? Mr. Grady, I have a few questions. I think this is similar to the setup Utah has along the Santa Clara River where the nonprofits can apply for available grants.

Assemblyman Grady:

I believe you are correct.

Chair Kirkpatrick:

They have strict guidelines on how their nonprofits are formed in Utah. Do you know how the nonprofits are formed here in Nevada?

Assemblyman Grady:

I believe Mr. Allen mentioned that nonprofits are formed under Internal Revenue Service (IRS) guidelines under Section 501 (c) Chapter 12. They submit their annual reports to the Public Utilities Commission, so there is oversight.

Chair Kirkpatrick:

I believe we discussed last week when Washoe County had a bill whether there are other avenues to help some of these folks get the resources that they need. What is the worst-case scenario if, hypothetically, you did not comply with the Safe Drinking Act? Could they come in and make everyone hook up to a different system?

Assemblyman Grady:

I think the County would be forced to come in, take over, and make the improvements. This is happening now or was recently completed in two other small water companies in Lyon County.

Chair Kirkpatrick:

I am not advocating either way. I am just trying to understand what would happen.

Assemblyman Grady:

It would be the county's responsibility to go in and give the people safe drinking water. That is what Mr. Allen and his folks are trying to do with the limited funding they have.

Chair Kirkpatrick:

How many nonprofit water companies are there in the whole state?

Don Allen:

I am not sure of the exact number, but I believe there are around 14 of them built similar to Silver Springs Mutual Water Company.

Chair Kirkpatrick:

I want to help you do what you need to do without changing major legislation. The nonprofit program is very successful in Utah. We already have a whole bunch of quasi-water agencies. I have tried but I cannot get them all together. There is always a new one popping up. What I do not want to see is—even though you follow the guidelines of the IRS—another water agency being formed from the original. That sometimes happens in the state. I cannot even tell you where these water companies fit within the organizational chart. Is there a way to be sure we would not be creating yet another public quasi-agency that would be involved in this funding question?

Assemblyman Grady:

I believe the State Board for Financing Water Projects, which is also known as the "A.B. 198" board after Assembly Bill No. 198 of the 66th Session, has the experience and has been very successful. I believe it was Speaker Emeritus Joe Dini who first introduced this legislation. Some years later, Assemblyman Lynn Hettrick asked for further bonding capacities. Several sessions ago I had the pleasure of requesting more bonding, which we were successful in, not only by receiving more bonding money but getting the laws changed so that, when the bonds were paid off, that money would stay with the districts.

The water projects board is very selective about who receives loan money. It has been one of the best boards around. Will this bill spread the pie further? Yes, it will. That is the reason the legislation was passed—to take care of these small companies. If it has to be through the NAC or through its own rules and regulations, we would encourage the board to make it very tight so these groups have to show all the necessary documentation in order to get this funding.

Chair Kirkpatrick:

Does anyone else have any questions? Thank you for coming. Is there anyone else who wants to testify in support of A.B. 236?

John Slaughter, Director of Management Services, Washoe County, Reno, Nevada:

I apologize I did not sign in on this bill, but I was talking with our staff back in Reno. You may recall that we had a little issue we discussed last week. We see this as, again, one of those tools in the tool kit that would assist us—not in all situations—in chipping away at our current problems.

Chair Kirkpatrick:

Does anyone else have any questions? Is there anyone else who would like to testify on A.B. 236? For those of us who are on the Commerce and Labor Committee, Assemblyman Grady, there was \$31 million coming to the "A.B. 198" fund through stimulus money. So we have already heard a little about this.

Is there anyone who is in opposition to A.B. 236?

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

We are in opposition to this bill as it is written. I did submit an amendment ([Exhibit F](#)). Our concern is regarding adding requirements for when entities can receive public funds. There are certain requirements that come with receiving federal funds. It is no different than the federal stimulus money that came to Nevada, which included Davis-Bacon prevailing wage attachments in order to receive that money.

We see this as a very similar issue and an issue we fight every day to uphold. If that concern is adequately addressed, we have no problem with the rest of the bill. Hopefully, we can get that addressed and move forward.

Chair Kirkpatrick:

Everyone has a copy of the amendment Mr. Daly submitted yesterday. Does anyone else have any questions?

Danny L. Thompson, Executive Secretary-Treasurer, Nevada State AFL-CIO, Henderson, Nevada:

We are not necessarily in opposition to the bill. It is certainly what the folks need out there, and in Assemblyman Grady's district this is a real challenge. There are constantly battles over how public monies are used. Sometimes we end up in court. We would much rather clarify this in the beginning rather than go through the lengthy process of going to court with the state.

Chair Kirkpatrick:

Does anyone else have any questions? [There were none.] Is there anyone else that would like to testify in opposition to A.B. 236?

Steve K. Walker, representing the Board for Financing Water Projects, Minden, Nevada:

I am representing the State Board for Financing Water Projects, which has been referred to this morning as the "A.B. 198 Board". First, I would like to clarify a confusing issue. As I understand it from the Nevada Division of Environmental Protection (NDEP), the stimulus money of \$19.9 million is going through the Nevada Clean Water State Revolving Loan Fund and not the "A.B. 198" program.

The members of the Board for Financing Water Projects met last Wednesday and unanimously opposed this bill. They oppose it for several reasons. Spending public money to improve private utilities is one issue. If, in fact, state money from the bond program was given to a private utility and then that

private utility was later sold, where would that money go? What happens to the public money? How is it accessed?

Expansion and dilution of project funds is an issue. The bill would reduce or eliminate incentives for public ownership of our water supply and our water infrastructure. We have heard of several cases in Lyon County where the Lyon County government was forced to take over private water companies. It happened so often in Washoe County that, in the 1990s, they passed an ordinance that prohibited forming a private water company.

Private water companies are typically underfunded, and in some cases, actually have created problems that are not water-related. In the existing infrastructure of a county they can create a leap-frog development in front of the existing facility. All of a sudden there is a water company with higher density that is away from schools, away from police, and away from fire. That is an issue.

I recently reviewed the history of some problems. Panther Valley is a mutual water company in Washoe County. It is currently being taken over by the Truckee Meadows Water Authority (TMWA). Including the whole takeover issue, the cost to the Truckee Meadows Water Authority ratepayers exceeds \$500,000. There was blatant mismanagement of that company.

Silver Springs Mutual Water Company exists within a general improvement district (GID) for sewer under the oversight of the Lyon County Commission. I do not know this for sure, but the geographical areas must match because the water that comes from the Silver Springs Mutual Water Company eventually becomes the effluent flow to the wastewater treatment system currently being run by the GID. I think a function of water supply could simply be added to the GID, and Silver Springs would then—as all GIDs do now—have access to the "A.B.198" program. That is a pretty simple solution to this specific issue. No other mutual water companies have come forward to request this exemption. Again, maybe we can solve it this way instead of expanding a program that would handle a lot of additional issues.

That is the end of my testimony and I would be willing to take questions.

Chair Kirkpatrick:

I would like to say something. Assemblyman Goedhart, Assemblyman Settelmeyer, and I sit on the Commerce and Labor Committee, so we will ask the state to clarify the testimony heard in that Committee. Mr. Dursoff did send me something late last night, and I will forward that to the Government Affairs Committee. It is so important to tell the same story in all committee meetings so we know what is true. We are at your mercy. I do not want it to be said

that I gave false information, but I am saying we had a long discussion in Commerce and Labor about this issue because we heard a bill that raised the topic of the "A.B. 198" funds. I asked how the priorities were set regarding the sewer and the clean drinking-water portions. We will have to clarify that information. I can only go by the testimony of the state agency in the other committee. I get frustrated because we try to do all the right things, but the stories change and we get different information.

Assemblyman Bobzien:

Mr. Walker, you bring up some important philosophical points, and I am trying to apply that reasoning to the particular situation that Assemblyman Grady is dealing with. Are you suggesting that the nonprofit currently managing the infrastructure convert to a GID and then, somehow, make a change in the NRS so that the GIDs are then eligible for this funding? Is that your prescription for their particular situation?

Steve Walker:

I probably did not make myself clear. General improvement districts are already eligible. They represent a large portion of funding. The water company does not even have to form a GID. I am suggesting that the existing GID take on the additional function of water. What they do typically defines the GID. They can take on additional functions. I do not know *Nevada Revised Statutes* (NRS) Chapter 318, the GID law, well enough to say that can just happen, but that may be an option they could look into, or they could form a GID to become eligible.

Assemblyman Bobzien:

So, you are suggesting dissolving the nonprofit and ceding the management to the GID. I am sure we are not picking on the particular nonprofit in question. Are you saying that often these nonprofits fall on rough times, mismanagement or something happens, and then the public has to bail them out? Is that your overriding concern?

Steve Walker:

That is the overriding concern. Another concern is that there is accountability by elected officials on these systems, with GIDs and, particularly, this one through the Lyon County Commission. Typically, even private for-profit water companies eventually do not make a profit, and then they have problems.

I would like to clarify the statement I made regarding the stimulus money. Probably, I should have not made any statement. That information should come directly from the Nevada Division of Environmental Protection (NDEP), and

I apologize for misspeaking. My explanation was the way I understood it while I was sitting in those hearings of the Commerce and Labor Committee.

Assemblyman Bobzien:

I would like to continue on this a little more. Are you saying there is no Public Utilities Commission (PUC) oversight of the nonprofits? There are some safeguards currently in place for these nonprofits. I understand your point about the oversight of elected officials, but it is not as if nonprofits are operating in a vacuum. There are some measures of accountability, right?

Steve Walker:

The Public Utilities Commission (PUC) has oversight of all private water companies. It varies by the number of customers. Typically, there is little oversight in communities of less than 25 connections. There is oversight by two entities. The NDEP has to submit water quality reports to show they are meeting the maximum contaminant levels for any water company. Depending on the number of connections, the PUC regulates all the private water companies.

Once the company is under a government system, then government is responsible for regulation, and the company no longer is subject to PUC regulations. The company moves away from PUC to the local government that oversees regulations or the GID boards.

Chair Kirkpatrick:

Does anyone else have any questions? I have one follow-up question. When TMWA does take over the agency, though TMWA incurs the debt, there must be benefits as well; what are the benefits? It cannot be all bad, or you would not do it.

Steve Walker:

In the case of Panther Valley, the conversion is happening right now. The benefit is to the water users of Panther Valley. Truckee Meadows Water Authority sold water at the wholesale price to them, and then Panther Valley resold that water at a retail price. Now, it will simply be sold, as to any other TMWA customer, at a retail level. What are the rates? I cannot address that. Now, they will be just like any other TMWA customer. I do not know there would be benefits other than better regulation of the system because there is better oversight.

Chair Kirkpatrick:

I am sure it helps the overall water supply as well as helping the ratepayers to have a more consistent situation.

Steve Walker:

Since Panther Valley was already a wholesale TMWA customer, the water supply will be the same. They are not bringing in a new water supply. They would be neutral on the water supply level. The conversion would bring additional customers who were somewhat captured already by the wholesale rate they have been paying. It would be a wash. The customers who have converted to TMWA are the people who have really benefitted from the conversion.

Chair Kirkpatrick:

Does anyone else have any questions? Would anyone else like to testify in opposition?

Mr. Grady, would you like to come up and make one final statement?

Assemblyman Grady:

I would like to correct a few statements made earlier. Mr. Walker referred to Silver Springs as a private water company; they are actually a nonprofit water company. If the company were to receive funding, it would be controlled by the board that is giving out the funding, the "A.B. 198" board. The water sewer and the GID sewer are not in the same area. There is some overlap, but they are located in other areas outside of the boundaries of each other. The board of directors for the water company is an elected board.

Regarding the amendment, I have not talked with Mr. Daly about it. He dropped the amendment off yesterday afternoon, and I did not get a chance to review it. I do not think it is necessary at all, because if the water company gets the funding, they fall under the requirements of "A.B. 198" funding, so I do not understand why another amendment would be required to state that they are doing what the board would require them to do.

Finally, I have the utmost respect for the State Board for Financing Water Projects, but I think it is our job here as legislators to make the rules and it is their job to carry them out. Thank you.

Chair Kirkpatrick:

Thank you, Assemblyman Grady.

Does anyone else have comments on A.B. 236?

**Edwin D. James, General Manager, Carson Water Subconservancy District,
Carson City, Nevada:**

We are neutral on this bill. Don Allen came to our board and asked for our support. The Silver Springs company is one of the water agencies in our watershed, and he was concerned about the community. We have done a lot of work there.

As a little background, there are 11 major water purveyors in the Carson Watershed. Two of them are mutual water companies. The one in Douglas County is fairly well off financially, has enough opportunities, and has no need for state funding to meet its needs. Its water quality also meets all the standards. The problem with the Silver Springs system is that they are dealing with a new standard for arsenic in the water. It is going to cost their community quite a bit of money, and Silver Springs is a very poor community.

I talked with Mr. Walker about the concerns being raised. The problem with Silver Springs is they are being saddled with some bad players out there. What we are trying to figure out is how to help the community of Silver Springs. When they have to implement arsenic treatment, it is going to cost that community quite a bit of money. How can that best be accomplished? There is a mutual water company that has been operating for 40 years; they have their own water rights. The question is how they can best move forward when facing these issues.

For a little background, the GID was formed in Silver Springs to deal with the sewer system. I have some experience with that because several years ago their manager quit, and I was asked to help them in the interim. The wastewater side of that GID in Silver Springs was financially upside down. They were not meeting depreciation. They were having a lot of problems.

I was able to get the water company and the GID together and, for a year, Don Allen ran both operations. It was the first time the GID was in the black financially and was able to meet the needs of the community. Due to local politics, that deal ended, and the GID tried to reestablish itself. It failed. Lyon County had to step in and take over the GID and it is currently being run by Lyon County Utilities. It is actually doing a very good job. Again, we had a situation where it was not the mutual water company that had problems; it was the GID in Lyon County.

If we are going to say that in order to get funded you have to be part of the GID, it is a decision the group has to make if Lyon County will end up taking it over and operating it. If that is the case, we really need to be talking with the Lyon County people; we need to be working with the local communities. It

takes time to get into this. We would like to be part of that discussion and look forward to meeting the needs of the public.

Arsenic is just one issue. There are bigger issues in Silver Springs that need to be addressed. We felt that if we are going to dissolve the mutual water company and have them be part of the GID, that is a discussion that should include all the parties involved.

At this point, we are neutral on this bill. We want to support a solution because the people out there are suffering. If they have to meet the new arsenic standards, and if they are not eligible for grants and low-interest loans, they are the ones who will end up having to pay the most. We hope we can work jointly with the water board and others to try to come up with a solution.

Chair Kirkpatrick:

Does anyone else have any questions? Is there anyone else who would like to testify on A.B. 236?

Richard Daly:

For the Committee's sake, I would like to make a comment regarding the position of Assemblyman Grady on the amendment. The reason we say an entity receiving a grant is to be deemed to be a public body is, because under Nevada's prevailing wage law, even if the grant money states how you must use it and recipients are subject to specified provisions, if they did not publicly bid, or if they hired a contractor and the contractor did not pay prevailing wage, it would come down to a matter of enforcement. What if they did not turn in the certified payroll as they are supposed to? The Labor Commissioner has come back in several instances and said he could not enforce the prevailing wage laws because the definition of a public body was not met. So, if they are not deemed to be a public body, it does not matter what you tell them to do. If they do not do what they are asked, by law there can be no enforcement. That is the reason we chose that language. They must be deemed to be a public body by definition for the purposes of NRS Chapter 338. Then we would have recourse for compliance.

David Emme, Chief, Administrative Services, State Department of Conservation and Natural Resources, Division of Environmental Protection Nevada:

I just wanted to provide some clarity in terms of the various financing programs available. Basically, we have two financing programs. There is the "A.B. 198" program. That is a state program that relies on state funds deriving from bonds. You must be a public body to be eligible for that program, and that is the issue here. The other program we have is the State Revolving Loan Fund (SRF) program. That relies on federal funding. We receive a capitalization grant from

the United States Environmental Protection Agency (USEPA) on an annual basis. That grant money, plus the loan repayment monies, go into an enterprise fund, and we use that money to provide loans. Again, regarding the difference between the two programs, "A.B. 198" is state funding, where we provide grants targeting small communities. With the SRF program we are providing loans, and both public and private systems are eligible for those loans.

The stimulus money will be coming into the State Revolving Loan Fund program. As we testified in the Commerce and Labor Committee meeting, 50 percent of that funding has to go to provide some form of loan subsidy. We are targeting disadvantaged communities to receive that portion of the funding so that they can be eligible for, essentially, a grant. We refer to this as "principal forgiveness," which means we are giving you the money, and you do not have to pay the loan back. It is either that or negative interest.

The Silver Springs Mutual Water Company did apply for that funding under SRF, asking in the range of \$1.8 million. We are in the process of developing the priority list. They did submit an application and could be considered for funding under that program.

Chair Kirkpatrick:

So as a nonprofit, is it correct that the company could apply for two different types of funding?

David Emme:

That would be true. If the law was changed and you decided to make them eligible under the "A.B. 198" program, they could apply for either a loan or a grant. As it currently stands, they are eligible only for a loan through the SRF program because they are not a public entity.

Chair Kirkpatrick:

My frustration with this whole thing is that a lot of us on this Committee are from southern Nevada, and we want to see the smaller communities do what they need to do to comply with federal and state regulations, but there always seems to be some heads knocking over the level of funding ability. How do we find the balance?

I believe they do this very thing with the nonprofits in Utah. I believe I suggested looking at this when we talked about Assembly Bill 54. Can you tell me a way we can help everyone win without having to tie into one big system? You can tell me off the record, because I do not want to put you on the hook. I am curious. I think that northern Nevada is very unique, and we need to allow people to have the flexibility to do whatever they need to do.

Assemblyman Settlemeyer:

So currently under state law the "A.B. 198" is a state program, and you have to be a public body. Does a 501(c) (3) qualify as a public body or not?

David Emme:

No, it does not. There is a definition in the statute regarding the eligibility.

Assemblyman Settlemeyer:

That was all I needed to know, thanks.

Chair Kirkpatrick:

Does anyone have anything else?

**Michael Tanchek, Labor Commissioner, Office of Labor Commissioner,
Department of Business and Industry:**

I am neutral on the bill. As to the public policy matter, I am looking at the prevailing wage issue through Mr. Daly's amendment. Whether that is a sound public policy or not is up to you to figure out. I am looking more at the enforceability issues. Mr. Daly did bring that matter up for discussion. We have had some enforceability problems in the past.

I looked at the language in the amendment. I have not analyzed it thoroughly, but should it go forward, I will work with the parties to make sure we do not run into the same types of problems that we have had in the past.

By virtue of that amendment, there is now an impact on my agency; it would expand the pool of entities on which I would have oversight in terms of prevailing wage. I do not know the magnitude of the impact. There are 14 agencies, as Mr. Allen mentioned. That could be de minimus. If it turns out that we have 300 or 400 of these things scattered around the state, then that could be relatively problematic. I used to be a staff attorney for the Public Service Commission in the old days, and I did work with a small water company program in that capacity. I know some folks over there, so I could check with them and find out that information.

Chair Kirkpatrick:

It would be helpful to know exactly how many small water companies there are across the state. If you could let us know what the actual impact would be and how the enforcement issues could be made clear, that would be helpful.

Does anyone else have any questions? Is there anyone else who would like to speak on A.B. 236? We are closing the public hearing on A.B. 236. Is there any public comment? [There was none.] Is there anything from the Committee? [There was none.]

Meeting adjourned [at 9:38 a.m.].

RESPECTFULLY SUBMITTED:

J. Renee Ekleberry
Recording Secretary

Cheryl Williams
Editing Secretary

APPROVED BY:

Assemblywoman Marilyn K. Kirkpatrick, Chair

DATE: _____

EXHIBITS

Committee Name: Committee on Government Affairs

Date: March 11, 2009

Time of Meeting: 8:02 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 226	C	Assemblyman Pete Goicoechea	Amendment to A.B. 226
A.B. 226	D	Doug Busselman	Prepared Statement
A.B. 236	E	Assemblyman Tom Grady	Prepared Statement
A.B. 236	F	Richard "Skip" Daly	Proposed Amendment