

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

**Seventy-Fifth Session
March 25, 2009**

The Committee on Government Affairs was called to order by Chair Marilyn K. Kirkpatrick at 8:03 a.m. on Wednesday, March 25, 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 Chad Christensen
Assemblyman Jerry D. Claborn
Assemblyman Ed A. Goedhart
Assemblywoman April Mastroluca
Assemblyman Harvey J. Munford
Assemblywoman Peggy Pierce
Assemblyman James A. Settlemeyer
Assemblywoman Ellen B. Spiegel
Assemblyman Lynn D. Stewart
Assemblywoman Melissa Woodbury

COMMITTEE MEMBERS ABSENT:

Assemblyman Atkinson (excused)

GUEST LEGISLATORS PRESENT:

Assemblyman Pete Goicoechea, Assembly District No. 35
Assemblyman Harry Mortenson, Clark County Assembly District No. 42
Assemblyman Joseph M. Hogan, Clark County Assembly District No. 10

STAFF MEMBERS PRESENT:

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

OTHERS PRESENT:

Wes Henderson, Government Affairs Coordinator, Nevada Association of Counties, Carson City, Nevada
Jerrie Tipton, Chairman, Mineral County Board of Commissioners, Hawthorne, Nevada
Patrick T. Sanderson, representing Laborers' International Union Local 872, Carson City, Nevada
John Hiatt, Private Citizen, Las Vegas, Nevada
Elizabeth Warren, Private Citizen, Goodsprings, Nevada
John Bacher, President, Sandy Valley Public Water Preservation Association, Clark County, Nevada
Helen Mortenson, representing Archeo-Nevada Society, Las Vegas, Nevada
Sabra Smith-Newby, Director, Department of Administrative Services, Clark County, Las Vegas, Nevada
Laurie L. Carson, Chair, Board of Commissioners, White Pine County, Ely, Nevada
Bjorn Selinder, Public Policy Innovations, Fallon, Nevada, representing Churchill, Eureka, and Elko Counties, Nevada
Mike Page, Member, Board of Commissioners, Eureka County, Nevada
Dino DiCianno, Executive Director, Department of Taxation
Donna Bath, Private Citizen, Ely, Nevada
Lee Rowland, Northern Coordinator, American Civil Liberties Union of Nevada, Reno, Nevada
Camille Garrett, Legislative Coordinator, Amnesty International, Las Vegas, Nevada
David F. Kallas, Detective, representing Las Vegas Police Protective Association, Las Vegas, Nevada

Danny L. Thompson, Executive Secretary-Treasurer, Nevada State
AFL-CIO, Henderson, Nevada
Chuck Callaway, Sergeant, Intergovernmental Services, Las Vegas
Metropolitan Police Department, Las Vegas, Nevada
Charlotte Bible, Assistant General Counsel, Las Vegas Metropolitan Police
Department, Las Vegas, Nevada
Marcus Martin, Officer, Lead Taser Instructor, Las Vegas Metropolitan
Police Department, Las Vegas, Nevada
Marc A. Bello, Detective, Washoe County Sheriff's Office, Reno, Nevada
James G. Miller, Sheriff, Storey County, Virginia City, Nevada
Steven B. Silva, Senior Law Enforcement Specialist, Division of State
Parks, Department of Conservation and Natural Resources
Richard Perkins, representing the City of Henderson, Nevada
Richard Boulware, Assistant Federal Public Defender, Las Vegas, Nevada

Chair Kirkpatrick:

[Roll was taken and a quorum was present.]

Assemblyman Christensen and Assemblyman Atkinson are in other meetings this morning so they will be here shortly. As a reminder for the Committee, today there is no floor session so we are going to get as much done as possible.

Good morning, Assemblyman Goicoechea. Please come forward. It is good to have you here—if I cannot have you on the Committee I will just make you come here all the time.

**Assembly Bill 360: Authorizes the creation of certain special districts.
(BDR 25-733)**

Assemblyman Pete Goicoechea, Assembly District No. 35:

Thank you, Madam Chair. I represent District No. 35, which includes all or part of eight counties across central Nevada, so I refer to my district as central Nevada. I am here this morning to present Assembly Bill 360. It was brought forward by request of the Nevada Association of Counties (NACO). The bill enables legislation that allows a local government to create a special district to put federal dollars into so they do not become an offset to the payment-in-lieu-of-taxes (PILT) payment ([Exhibit C](#)). The way the law is presently structured, even though Senator Harry Reid got full funding of PILT, if there are additional payments—and there are eight other programs that can generate federal dollars—when those federal dollars come into a county program, then the county has to deduct that amount from PILT.

I have with me today Wes Henderson from NACO and Jerrie Tipton from Mineral County is in the audience. You will hear what an impact this can be for many of these counties. Regarding the money received for the Secure Rural Schools (SRS), half must go to the school district and the other half must be used for roads. It is truly earmarked money; it has a designated place to go. In some cases such as in Nye County, that money was over \$2 million out of Secure Rural Schools in Fiscal Year 2008 ([Exhibit D](#)). You have this in your package of information. That \$2 million would come back and offset Nye County's PILT payment. They would have to deduct a like amount from their PILT. Secure Rural Schools was only going to be funded for five years and has only four more years to go. Clearly you can have your PILT payments beat down to nothing by the time they are done; Secure Rural Schools drops all the time.

The tragedy of this is that PILT funding can be spent by the local jurisdiction in any way they see fit. The only places Secure Rural School money can be spent are the school district and/or roads. For Nye County, that \$2 million means it is a \$2 million hit to the county budget as far as General Fund money goes.

With that, I will turn it over to Wes Henderson. He has provided a lot of data to the Committee. We all get enough paper this time of year, but the information he has provided contains good facts. If you look through his testimony you can see that this is just an enabling bill that allows the creation of a special district, if that is the choice. There are some jurisdictions that do not want to do that. The thing you must understand with creating a special district is that the board of county commissioners has to be completely separated from that special district. There can be no ties whatsoever. Actually, by creating the special district, the county loses all control over that money. They have to make sure that whoever they put on the special district board is going to do what they want to do. It is very limited because that money can only be used for rebuilding roads.

Elko County is going to generate a lot of money out of this; they do not like it. I told them they needed to create the special district so it goes up one side of the road for 20 miles and comes back down the other side of the road and then back across, and that is the special district. Where else are you going to spend the money?

There is a way around it, but a lot of county commissioners are very nervous about creating special districts. It will not work for everyone. It may not be a big enough financial advantage. In those counties where it is truly a hit, they need the ability to create the special district and take a chance for a few million

dollars. If it is a county like Mineral County or one of the smaller counties, it is a lot of money in their budget.

Chair Kirkpatrick:

Does anyone have any questions? Assemblyman Goicoechea, we talked about this and you informed me that Utah currently does this a similar way. The language "special district" makes me nervous. How do we narrow it so that that they cannot create a whole bunch of special districts? How does that work?

Assemblyman Goicoechea:

You are right. The state of Utah is passing similar legislation on this process. It has passed legislation that allows the creation of special districts. I believe we are still waiting on the results. I will let Mr. Henderson address that for a solicitor's opinion whether this is truly legal to separate it. We have a solicitor's opinion from 1981 that says it can be done. It has been done. I think the federal government is taking another look at it. It is a lot of money. So there is a possibility that we would get a solicitor's opinion that says that it cannot be done. That would make this bill moot. In the absence of that and because we do not know how long it will take to get the solicitor's opinion—we only have this session to get it in—we will just try to put this tool in place. It is just a tool in the toolbox. If it does not work, then, fine, it does not work.

As far as the special district language in A.B. 360, it is pretty well specified as far as the creation and what that can do.

Chair Kirkpatrick:

The part that I am worried about is "designated for the territory covered by the special district." What does that mean?

Assemblyman Goicoechea:

Technically, I do not think there would be anything wrong, if you had two or three places and enough money in the county that you wanted to create a special district and you wanted a road rebuilt in it. I would think that the board of county commissioners would be very apprehensive about creating more than one district. It would be tough enough to track that one governing board. There is nothing to prevent creating two or three districts if they are brave enough to do it. Again, when you hand that money off to that special district, the local government no longer has control of it.

Chair Kirkpatrick:

I would not want one small area to become one big district because as soon as that happens once, and it works well, then I am sure that everyone is going to

try it. We have seen that with sales tax anticipated revenue (STAR) bonds; we have seen that with redevelopment.

So will every special district have its own board? Will the same board represent all the special districts?

Assemblyman Goicoechea:

The way the bill is drafted it says "the" special district. We may want to put some clarifying language in there to tighten that up and specify that there will be no more than one special district created by a county. I would be amenable to that. I think that makes sense. The last thing we want to have is two or three different boards out there. Then how would the money be divided? Clearly, it makes sense to me if a county decided that only one special district would be created. Again, this is only enabling legislation; it allows local government to create one district. I think that is the most we want.

Chair Kirkpatrick:

Do you think we could add language requiring a report to come back to the Legislature on how creating a special district worked, or requiring a sunset date? We need something to ensure that we revisit it to make sure that nothing has been missed.

Assemblyman Goicoechea:

I think it is local government funds; it really would not impact the state budget. We could add some language. If we get a solicitor's opinion saying that it cannot be done, then it would be a moot point.

Chair Kirkpatrick:

Does Legal believe that we can do this?

Assemblyman Goicoechea:

Yes, clearly they do. They believe that it is constitutional.

Chair Kirkpatrick:

We are the state that gets the least amount of money back for what we contribute. We can give the counties the tool. I just want to make sure that we can revisit it to make sure that it works the way we intended it to work.

Assemblyman Goicoechea:

I am sure we can get a commitment from NACO, and you definitely have one from me providing I am here next session. I would be more than willing to come back and report to this body and the Legislature that it worked or it did not. If you would like language in the bill that requires a report back from

NACO regarding how the special districts worked, I am sure we can put that right in the bill.

Chair Kirkpatrick:

Are there any other questions? [There were none.]

Wes Henderson, Government Affairs Coordinator, Nevada Association of Counties, Carson City, Nevada:

[Spoke from prepared statement ([Exhibit E](#)) and attachments related to Fiscal Year 2008 Entitlement Land Payment Formulas ([Exhibit F](#)).]

I would be happy to answer any questions.

Chair Kirkpatrick:

Thank you. Does anyone have any questions? I have a few questions. On page 1 of the bill it says "a special district may be formed subject to the provisions of this chapter to manage any money that is paid to the State of Nevada." What money is that? What are you giving them the ability to do?

Wes Henderson:

Under SRS, the money is paid to the State Treasurer and then under another statute, that money is distributed—half goes to the school district and half goes to the county. It is just money that flows into the state as a pass-through to the counties.

Chair Kirkpatrick:

Could we tighten up that language? In reviewing the Utah legislation, their services in the special district may be created to provide water, sewer, drainage, flood control, garbage collection and disposal, health care, transportation, recreation, fire protection, and for operating and maintaining correctional and rehabilitation. I think this is another taxing industry. You are using Utah's legislation as a model, but in our legislation you are saying our money goes to transportation and I do not see that. I just want to make sure that the language is very tight. In Committee yesterday, I said, "You give someone an inch, they will take two and a half miles." I just want to make sure the language in this bill is very clear. I do not know how it works, but the language from Utah seems like a county budget, if you ask me. They are allowed to do many things. Where in Senate Bill 360 does it specify just those two things? Can we somehow spell it out?

Assemblyman Goicoechea:

I can respond to that and Wes Henderson can follow up. Truly, there are about eight different federal funds that come through the state to local government.

Some of them allow for spending money over a broad base. The PILT funds can be spent in any direction. The Secure Rural Schools is what we are focused on. It is the big money in the State of Nevada. That money is earmarked and can only be spent for the school district and/or roads. The Mineral Leasing Program, which is a big issue in Utah, can go to any governmental service. Wes Henderson may know where the Mineral Leasing Program money is spent and if it is a true offset to PILT and goes through a special district. The only one we were aware of was the Secure Rural Schools that is a big advantage for the State of Nevada.

Chair Kirkpatrick:

I want to give you the tools you need. I just want it very clear on the record what it was meant for, what the legislative intent was.

Assemblyman Goicoechea:

I will defer to Mr. Henderson. He may have better clarification for that.

Chair Kirkpatrick:

It does not say that in here and I want it to be very clear what the intent is. I do not want to come back in two years and find that we are in trouble.

Wes Henderson:

I can address that. Section 2, subsection 2 of the bill states what happens to that money received under the provisions of *United States Code*, Title 16, Section 500, which is the Secure Rules Schools Program. That federal statute dictates that the monies have to be spent on roads and schools.

Chair Kirkpatrick:

Does anyone else have any questions? [There were none.] Good morning.

**Jerrie Tipton, Chairman, Mineral County Board of Commissioners,
Hawthorne, Nevada**

From the standpoint of Mineral County, the ability to do this would bring about an additional \$1 million into the county in the next four years. I think they assumed that you already knew this, but I do not know if either one of these gentlemen stated that when that money comes to the county, it goes into the General Fund. Currently, PILT money goes into the General Fund. If this legislation is enacted, a special district will allow it to go to the special district and not the county's General Fund.

From my standpoint, if this happens and we determine we are going to do this, I am going to keep close track of the parameters of that district. It is up to the

county commissioners. If they decide to do this, it is their responsibility to make that special district what it needs to be—no more, and no less.

Yes, for Mineral County \$1 million would be a huge boon over the next four years. For other counties, it may not.

Chair Kirkpatrick:

Does anyone have any questions? As a County Commissioner, do you think it would be the county's position to create an ordinance that would spell that out?

Jerrie Tipton:

That is how I would see that happening. An ordinance would say something like, "This is a special service district; this is what it can do; this is what it cannot do; this is the area of the population." In speaking with the people in Utah, I understand that if there was a seven-person board, three members could be county commissioners or county supervisors; they just cannot have a controlling interest on that board. If it is a road issue, then someone from the regional transportation commission board would be a part of the oversight committee for the special service district.

Chair Kirkpatrick:

Are there any other questions?

Assemblyman Goicoechea:

The special district has to be created under *Nevada Revised Statutes* (NRS) Chapter 308 which is currently spelled out in the existing statutes. There are going to be guidelines on the creation of a Chapter 308 special district. In the information provided by Mr. Henderson, you can see the dollars. All I can ask the Committee to do is to look at the dollars for Secure Rural Schools and the PILT payment. It makes a tremendous impact. We need to enable them to access that money. Again, the special district would have to be created under current NRS Chapter 308.

Chair Kirkpatrick:

I just wanted to make sure. I think it will benefit the whole state, but I just want our intent clear and on the record about what we were trying to accomplish. Does anyone else have any questions? Do you have others who want to testify, Assemblyman Goicoechea?

Assemblyman Goicoechea:

I am sure there are others here who could come forward and give a "me, too," but I do not think there are any who have signed up to testify on this bill.

Chair Kirkpatrick:

Is there anyone who would like to testify in support of A.B. 360? [There were none.] Is there anyone who is in opposition of A.B. 360? [There were none.] Is there anyone who is neutral on A.B. 360? Good morning, Mr. Sanderson.

Patrick T. Sanderson, representing Laborers' International Union Local 872, Carson City, Nevada:

I have a few questions. If the money goes to this special district and it is designated for roads, does the county have the same responsibilities to bid these jobs out the same way that they have to now? If the money goes to school building, does it have to go through NRS Chapter 338 and be bid out? It should not be that a board winds up with control on all of this and then simply gives projects to their friends.

I know our rural counties need this money and I am all for them getting it. I just want to understand the process a little better to make sure that when these special districts are created and receive this money, they spend it properly and within existing state laws. Can someone explain how it would work?

Assemblyman Goicoechea:

The school district money goes right into the school fund. It does not go through the special district. It would be formed under NRS Chapter 308. Clearly, any expenditure would have to go through the public bid process, and I am willing to state that on the record for legislative intent. It would have to meet all the requirements of local government, even though it is a special district.

Patrick Sanderson:

If the money was great enough for these roads, would it still be awarded at prevailing wage? Is that the intent?

Chair Kirkpatrick:

It is on the record, Mr. Sanderson. Mr. Tanchek, the Labor Commissioner will be running across the street to make sure. Is there anyone else who is neutral on A.B. 360? [There were none.] Mr. Goicoechea, do you have any final statement?

Assemblyman Goicoechea:

In closing, I would appreciate your support. I think this bill is drafted tight enough. Whether we can do this or not depends on what is decided on the federal level. I know this will help the smaller jurisdictions—those smaller, rural counties, and some of them are not so small when you look at the numbers.

This would provide some dollars in Clark County; however, a few hundred thousand dollars in Clark County are not as significant as \$2 million in Nye or \$1 million in Mineral County. It is a big piece of their budget. I would really appreciate your support.

Chair Kirkpatrick:

Assemblyman Goicoechea, if this is enacted July 1, do you know when the smaller counties would see the first payment?

Assemblyman Goicoechea:

The first payment has already been appropriated. I think this would have to be in place by next October. I should defer to Mr. Henderson to verify this information.

Chair Kirkpatrick:

This is a time when we need jobs, we need roads, and we need all those things. It would be interesting to know when it would happen.

Assemblyman Goicoechea:

My understanding is that it would have to move ahead quickly, because with the federal appropriations coming in October, this would have to be in place. Clearly they will lose the first year's offset; that will be gone because of the timing of this. I will defer to Mr. Henderson.

Wes Henderson:

Thank you for the question. As Assemblyman Goicoechea stated, federal appropriations are made in October. This year, the Secure Rural Schools payment was received in January. The counties that may choose to create these districts would have to have them in place before January; otherwise the money would go to the county and they would create an offset.

Chair Kirkpatrick:

Are there any other questions?

Assemblyman Stewart:

How long has Utah been doing this, and are they the only state that is doing this?

Wes Henderson:

Utah has been doing this since at least 1989. As far as I know, they are the only state that is currently doing this. I believe there are other states that are considering it.

I would like to address one more thing that I neglected to mention about the solicitor's opinion. We were recently in Washington, D.C., for a convention. We had a meeting with the Department of the Interior and a representative from Utah. The Department of the Interior personnel took a copy of the Utah statute. The feeling I got from that meeting, though it is never wise to guess what is going on in a lawyer's mind, is that they are expecting a favorable opinion from the solicitor. This legislation is certainly in line with what Utah has been doing since 1988.

Chair Kirkpatrick:

Does anyone else have any questions? We are going to close the hearing on A.B. 360. Assemblyman Goicoechea, I know that we said we were going to take all three of your bills so that you could go back to Ways and Means Committee; however, Assemblyman Mortenson's witness needs to leave soon so we are going to rearrange the order of bills on the agenda again.

Assemblyman Mortenson, good morning.

Assemblyman Harry Mortenson, Clark County Assembly District No. 42:

Thank you very much, Madam Chair. I apologize for the rush. Mr. Hiatt needs to be in court in Reno. So if he could begin his testimony, I would appreciate it.

Chair Kirkpatrick:

Good morning. We will now open the hearing on Assembly Bill 394.

Assembly Bill 394: Creates an advisory bistate commission to study and make recommendations concerning various environmental and land-use issues. (BDR 22-489)

John Hiatt, Private Citizen, Las Vegas, Nevada:

[Spoke from prepared statement ([Exhibit G](#)).]

I think that we have an opportunity to do this. We tried this during the last session but because of a fiscal note, nothing happened. I think that this bill can be amended so there is no fiscal note and then it can move forward. We can have a forum for discussion of issues so that governments in both Nevada and California are aware of how their actions affect the other state. So far, Nevada has probably been the loser on this in terms of what has happened in the past. I think that now is the time for action and to get the ball rolling.

Chair Kirkpatrick:

Thank you. Assemblyman Settlemeyer.

Assemblyman Settlemeyer:

I am pretty familiar with the Tahoe Regional Planning Agency (TRPA), since they operate in my region. I am familiar with how this could work. My question is, who in California is bringing forth their legislation and how is that legislation going?

John Hiatt:

So far, no legislation has come forward in California. We have seen interest on the part of both Inyo County and San Bernardino County. We did have an informal meeting last fall with Supervisor Mitchell Fell and his staff from San Bernardino County. Supervisor Cervantes from Inyo County said he would attend but later stated that it was election time and he did not have time to come. At a meeting last November in Clark County, there were three of the four counties represented with interest in moving forward. There has been no legislation put forward in California so far. If we can get something started, then we can go to them and inform them we are interested. We need both states to move forward. I think Inyo County and San Bernardino County can carry the ball in California.

Assemblyman Mortenson:

Madam Chair, I have had at least three letters from legislators in California—and even one letter from Utah—asking me what we can do to perpetuate this in California. Each time, I had to write back and say we could not do it here because we had a fiscal note and our bill died. I think they are anxious to pursue this in California. Utah wants to make it a tri-state commission but that is too large of a step right now. Perhaps we can do that in the future.

Assemblyman Settlemeyer:

My overall opinion—and some people here may agree or disagree with this—is that I think California is the problem. Until they come to the table and are willing to participate with us, I think we are somewhat "preaching to the choir" in that respect. Do we include something in the bill that counties should just go ahead and start meeting like this but that the bill will not have any effect until California decides to play? In other words, we can enable it contingent on California also passing a bill.

John Hiatt:

At this time what we are proposing is an advisory board only. It does not have legal standing. If California will pass legislation so that it really does have some standing, that would be great. However, I think that we need to start somewhere. This is the start.

Chair Kirkpatrick:

Does anyone else have any questions? Assemblyman Goedhart, I would like to hear your opinion last. I am looking to you for direction because you live in Nye County. I would like Assemblyman Aizley and Assemblyman Stewart to go first.

Assemblyman Aizley:

Are there any other issues besides water and fireworks?

John Hiatt:

Certainly, there are other issues. For instance, along Interstate 15 in the Ivanpah Valley between Simpson and Mountain Pass, the closest emergency services are in Goodsprings. Clark County emergency vehicle ambulances get called frequently to respond to accidents on the California side. There is no formal agreement on how that happens; there are no discussions going on. This is a long distance from San Bernardino, California, so Clark County, Nevada, gets stuck with responding there. There is no way for California to reciprocate or a way to deal with that.

Assemblyman Stewart:

Is it the intent that San Bernardino County and Inyo County in California, and Clark County in Nevada, would share the cost of this commission?

John Hiatt:

Yes, and we think that the cost would be minimal other than travel expenses. We met informally last time at the Jean Airport facility, which seems to be a fairly central location.

Chair Kirkpatrick:

We did not move this bill last session because there was a fiscal note, but we also had other concerns. If we passed this today and Clark County were to say okay and cover their expenses, is it correct to say we could not do anything with this until California put legislation in place? There is no way that Clark County, and I will defend them, has the money to be out there trying to ask everyone to come together and talk about the issues. I have been to those meetings, and for the same \$80 meeting pay, I could get on the phone and do the same thing in a conference call.

What is the possibility of it being on California's legislation? It still would take a couple of years because they move much slower than Nevada does.

John Hiatt:

I cannot answer the question about how long it would take California to pass legislation. We have seen expressions of interest there. As you just mentioned, legislation tends to move slowly in California. I think that if we start here in Nevada, then something will happen in California. If we do not ever move, we will never get to first base. Somehow, we have to start the ball rolling or nothing will happen.

Chair Kirkpatrick:

Do you think that with the development of Ivanpah getting closer they may want to actually come to the table and talk about what is going on out there?

John Hiatt:

I think there certainly is interest in what is going to happen in the Ivanpah area. I think the first things that are going to happen are possibly some major solar-energy projects. Some of these are proposed in California and some in Nevada. This will have a significant impact on various resources there.

Chair Kirkpatrick:

That is a whole other issue with me. We are not doing it for free in this state anymore.

John Hiatt:

You asked if there were issues that might be of concern, and I think the solar-energy project is an issue that is coming faster than the Ivanpah Airport issue.

Chair Kirkpatrick:

I agree. I should think California would have a vested interest in talking to us. I think we hold the cards here. They need us more than we need them on many issues. I am trying to understand why we have to wait for them.

John Hiatt:

Another big issue is water. Compared to Nevada, California has very lax regulations regarding groundwater. The Primm Valley Golf Course is owned by people in Nevada. Why do they pump the water on the California side? Because they can go there and pump whatever water they want without having to apply to anyone for anything. If they own the land, they can pump water to their heart's content. Yet, that is a shared aquifer. Ultimately, that pumping will have an effect on wells in Nevada. I think that we need to make people aware of what is going on and have a forum for discussion. They need to understand that actions in California, which may seem innocuous when seen from a distance, will have long-term, adverse consequences to both sides.

Chair Kirkpatrick:

Assemblyman Goedhart, I saved you for last because we got to water, which is your issue.

Assemblyman Goedhart:

I agree with the concept, but I look at the creation of an advisory board only, with a fiscal note of a million dollars per biennium. Do you know how that figure was calculated?

John Hiatt:

I do not know how it was calculated.

Assemblyman Goedhart:

I am talking with my fellow legislator here and saying we can pick up the phone and talk with folks from Inyo County and San Bernardino County in California. Being that this board would have no power or jurisdiction more than an advisory board, I do not understand why we cannot just talk right now.

John Hiatt:

It does not seem as though talking is taking place. When people are in a room, then conversation and talk takes place, whereas there may not be the impetus to pick up the phone and call someone and talk—especially if you do not know them or have never met them.

Assemblyman Goedhart:

Thank you.

Chair Kirkpatrick:

Assemblyman Aizley.

Assemblyman Aizley:

This population of 170,000 in Charleston View . . .

John Hiatt:

That is potential population.

Assemblyman Aizley:

Yes, potential population, because it is nowhere near that population now. If it were to happen, you are talking about the aquifer for Pahrump and possibly for the Amargosa Valley if they are connected.

John Hiatt:

You are right. It would be devastating to Pahrump. That is essentially Pahrump water. They were going to proceed with the project and drilled a 24-inch production well down to over 1,600 feet. It turned out to be a dry well, so that dampened their ardor, so to speak. They probably drilled in the wrong place. It is hard to conceive that there is no water on the California side when we know how much water there is on the Nevada side.

Assemblyman Aizley:

I think that it is linked to the Amargosa water table and you are working against the pupfish problem. There could be a federal prohibition against having 170,000 people in Charleston View.

John Hiatt:

We are now getting details of exactly what water basin that is and how water flows there. Where that water is coming from is not clearly known. It is thought that a significant source of the water in that valley comes off of Mt. Charleston and the Spring Mountains. However, no one knows how much of that water flows into the Amargosa Valley and whether it flows towards Ash Meadows or flows down toward the Dumont Dunes area of Willow Creek.

Assemblyman Aizley:

I think it is a big problem for Nevada, for Clark County.

Chair Kirkpatrick:

Does anyone else have any questions?

Assemblywoman Pierce:

Out of curiosity, given California's current water problems, is anyone thinking about looking at the big picture in California?

John Hiatt:

There is always a lot of talk when it comes to water. Action is a different story. California is experiencing some severe water problems, though not at the California-Nevada border on the Mojave Desert. That area is small potatoes for their urban population. There is surely no connection at this point in time.

Chair Kirkpatrick:

Because you are working on the water issues, Assemblyman Goedhart and Assemblywoman Mastroluca, can you do me a favor and find out how many protests the State of Nevada had processed based on the water being drilled on the California side of that area? I am just curious. I think that would be helpful

information. I would like to see that in writing so you do not have to tell me today.

Does anyone else have any questions? In Las Vegas, I have three people.

Elizabeth Warren, Private Citizen, Goodsprings, Nevada:

I live in Goodsprings, which is practically on the California border, and I am here in support of A.B. 394. Thank you for the opportunity to testify in favor of this bill. This is a populist bill. It is a bill that arose from the experiences of those of us who live along the border. We have been asking for years why all of our legislators are not doing something about all of this. When something happens, we are not entitled, encouraged, or invited to participate. We want to be heard. These are our homes; these are our businesses; this is our little corner of the world, and we want to take part in decisions that affect its well-being.

I am not going to read all of this testimony I have here because I think you have already heard a lot of similar thoughts about what a beautiful place the Mojave Desert is and how difficult it is to make people understand that the desert is very fragile. Tracks that were made there 150 years ago by mule trains can still be found in the desert today.

What I do want to stress is that these hard economic times we are in at the moment will eventually pass—though we do not know exactly when. What we do know is that these hard times offer a valuable respite from the constant pressure to develop. This is the breathing space all of us need to use to take the time to think ahead to what we want our state to look like in the next ten or twenty years and to plan how to get there. This proposed bistate commission offers an opportunity for residents on both sides of this border to address common concerns, share ideas and information, and to resolve conflicts. It gives us the opportunity to develop viable resolutions that will benefit the people and the communities on both sides of our common border. The end result of involving the people who live in the region in these decisions will enrich our state and county coffers while enhancing the quality of life of all of our citizens.

We support the notion that there should be no fiscal impact for this commission. The cost will be negligible if the counties rotate the meeting places among them and provide the needed administrative support, which would include such things as meeting space, publication of agendas, and the taking of minutes. Each county seat could keep a set of the minutes and supporting documents generated by the commission. Such records would be available to the public. Members of the commission could travel to the meeting place at their own expense. There should be no state administrative staff, thereby relieving the

State of Nevada of any financial burden relating to the business of the commission. Residents of each county would be encouraged to attend meetings held close to home. They could offer input to the commission's deliberations. State involvement would be limited to processing commission recommendations to their respective legislatures or to other levels of government as appropriate. State administrative staff would not travel, thus minimizing the fiscal impact of this proposal.

The last time we attempted to pass such a bill, it died because of the fiscal impact. Take the fiscal impact away and let us shoulder this burden ourselves as citizens and as members of our County Commission and let us move forward with talking with one another. Currently, no one talks to anyone. I urge the Government Affairs Committee to act fairly on this proposal, and I thank you very much for the opportunity to testify in support of A.B. 394.

Chair Kirkpatrick:

Does anyone have any questions? [There were none.] Thank you, Ms. Warren.

John Bacher, President, Sandy Valley Public Water Preservation Association, Clark County, Nevada:

The Sandy Valley Public Water Preservation Association is a nonprofit Nevada corporation. The Sandy Valley community encompasses San Bernardino County and Inyo County in California and Clark County in Nevada, and is adjacent to Nye County, Nevada. Our Assemblyman, Chad Christensen, knows the community well and is familiar with some of the challenges we face, including the water issues Sandy Valley residents have fought for the last ten years. All residents, no matter what county or state they live in, have the same challenges with regards to water, electricity, and emergency services. Our limited emergency services are provided by the Sandy Valley Volunteer Fire Department. The nearest county fire department is more than 25 miles away. We are a community that has to fend for itself.

We are in favor of A.B. 394. We want it to be passed because it provides a mechanism for a review of enterprises that may strongly affect the community. The proposed membership provides local representation. Those living in the proximity of the affected areas would be represented as members of the commission. It provides much-needed experts such as hydrologists. Therefore, we are in favor of A.B. 394.

I would like to address some of the questions that were asked previously. Sandy Valley is a unique community. In the year 2000 a "privatizer" of water came into our valley to withdraw 2,000 acre-feet of water, transport it out of our valley, and move it to Primm. The residents on both the California side and

the Nevada side came together and we hired lawyers, a hydrologist, and a geologist. They came up with studies and confronted this water "privatizer." There was a three-day hearing which the community paid for in conjunction with the expenses of the privatizer. What was proven by the hearing is that Sandy Valley has 2,200 acre-feet of recharge. The valley has already been restricted on the Nevada side, precluding any agricultural activity. In 2001, one of the hay farms on the other side stated that they removed 8,000 acre-feet of water out of our basin.

Remember, the statistics show 2,200 acre-feet is the rate of recharge. We did not totally agree with the State Engineer's decision to grant 415 acre-feet of water to this privatizer of water to take over to Primm. The valley community came together again to fight this. We did not want the 415 acre-feet of water to go. We went to district court, and district court ruled that, by law, the State Engineer is the expert on water. They bowed to his decision. The residents of both California and Nevada came together again and agreed to take it to the Nevada Supreme Court. As a result, last year the Nevada Supreme Court decided in favor of the Sandy Valley residents.

Water is an issue. We are in the same basin; it is a closed basin; we have no other water resources. If an enterprise comes in on the California side and desires to extract more water from the basin, California law states that their laws govern rivers, streams and lakes—no underground sources. That could impact us greatly.

In terms of emergency services, in the last few months the Sandy Valley Volunteer Fire Department has been called to go over to California, because the fire services on that side were busy. The volunteer fire department has about 23 members. At any one time in the valley there are four people on call. If they are called to respond on the California side, then that ambulance is occupied. They will not leave the person they are with over there to come back to the valley.

Chair Kirkpatrick:

Mr. Bacher, we understand that is a problem, but I do not know if volunteer firefighters are required to go to the other state. I have my own concerns with this bill. I do not know that if we create this bistate commission, California will put water laws in place that will help us. I do not know how all that works. I am familiar with Sandy Valley, and Assemblyman Christensen is on this Committee, and Assemblyman Goedhart lives in Nye County, so there are two Assembly folks who have your interests at heart. We have a time constraint because we have four more bills to address this morning; could you please summarize for us.

John Bacher:

I already completed my formal presentation and so when specific questions came up, I thought I would try to provide more information.

Chair Kirkpatrick:

We appreciate that.

John Bacher:

We are just saying that residents of Sandy Valley would like to see an advisory board. It would give us an avenue to have transparent—not hidden—communication. Thank you. I am asking that this bill move forward.

Chair Kirkpatrick:

Thank you, Mr. Bacher. Is there a town board in Sandy Valley?

John Bacher:

We have a Citizen's Advisory Council of five members appointed by the County Commission. We do have a say in the Mesquite Development Association, which is our civic association. We have been involved with the water wars, and we are quite active in the community.

Chair Kirkpatrick:

Does anyone else have any questions for Mr. Bacher? [There were none.] Thank you. Mrs. Mortenson, did you want to testify?

Helen Mortenson, representing Archeo-Nevada Society, Las Vegas, Nevada:

I just want to support all that has been said. I think that it is tremendously important to start the dialog, we appreciate the Government Affairs Committee hearing all the testimony, and I hope they support A.B. 394. Thank you.

Chair Kirkpatrick:

Thank you, Mrs. Mortenson. Does anyone else have any questions? Thank you to those in Las Vegas. Is there anyone who is neutral on A.B. 394? [There were none.] Is there anyone in opposition? Ms. Sabra Smith-Newby. If anyone else is in opposition please come to the witness table.

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

I signed in opposition to this bill because I did not have an amendment prepared and I could not choose neutral. I want to make it clear that, while we are opposed to the bill as written, we are not opposed to the idea of discussing the issues going on out there. We applaud Assemblyman Mortenson for bringing

forth the idea of a forum to discuss these issues because they are important to the residents of that area.

As Director of Administrative Services for Clark County, I participated in the meeting held in Jean, Nevada, with the other Commissioners, including our Commissioner, Susan Brager. I have assigned one staff member to the project of coordinating Clark County's concerns and participating in ongoing discussions. We are interested and open to these meetings and discussions; however, we do think that the establishment of an actual commission—particularly because it is not binding on California—is problematic.

There are some other problematic issues, such as establishing an office and determining who pays for it. If public documents are public, they need to be open for viewing from 8 a.m. to 5 p.m. Where would that be? Is the open records law compatible between Nevada and California? I would be happy to work with the proponents should this bill move forward. We are committed to doing our part and bringing our people to the table, providing that the other counties also do their part and come to the table. I can make that commitment to you today.

Chair Kirkpatrick:

Does anyone else have any questions? Is there anyone else who would like to testify in opposition to A.B. 394? [There were none.] Assemblyman Mortenson, do you have any final words?

Assemblyman Mortenson:

No. Thank you very much to the Committee and to Madam Chairman for allowing me to bring this bill forward. I think this is a good bill. Last session it passed both Houses. I think the vote was unanimous. It was killed by a financial note. This time I am hoping we can eliminate that. I am not sure.

Chair Kirkpatrick:

Thank you, Assemblyman Mortenson. If there is nothing else on A.B. 394, we will close the hearing on A.B. 394 and open the hearing on Assembly Bill 415.

Assembly Bill 415: Makes various changes concerning the organization of county offices in certain smaller counties. (BDR 20-507)

Assemblyman Pete Goicoechea, Assembly District No. 35:

Thank you, Madam Chair, and members of the Government Affairs Committee. Today I am bringing forth A.B. 415. The long and short of the bill is that almost every election cycle, I am approached by different counties that want to either combine or separate county offices. It could be the Recorder and Auditor or the

Clerk and Treasurer who they want to put together. In some jurisdictions, they may want to separate a county office. Perhaps they were combined by legislative action and now they would like to separate them. That is what we are trying to accomplish with A.B. 415.

We are also presenting a companion bill, Assembly Bill 419, which addresses action that puts the Clerk and Treasurer together. Humboldt County has a bill on the Senate side that makes their District Attorney the Public Administrator. It is a never-ending process. We are here as legislators from the smaller rural counties trying to either combine or separate offices. What this bill does is separate the Legislature from the process. It would require that the Board of County Commissioners, by ordinance, could separate or combine a county office. After passage of the ordinance, that local jurisdiction would have to go to an advisory ballot question. If the majority of the voters approved that ballot measure proposal, then the Board of County Commissioners could proceed with that combination or separation.

This could only happen during the time when the person holding the office had resigned or their term had expired. Counties could not go to a vote and combine or separate offices in the mid-term for either one of the elected officials. As the ordinance was being drafted, the Board of County Commissioners also would have to establish that combining or separating would benefit the public. They could not create an ethical, legal, or practical conflict of interest by the combining or separating of offices. That could be an issue. Clearly, we would not want to have the Auditor and Clerk offices or the Auditor and Treasurer Offices be combined. I do not think that would make good sense. Clearly, the offices would have to maintain a separation of powers.

I think it is pretty well spelled out in the bill. It only applies to counties with a population of 40,000 or less—which is presently only 12 counties. I know with the new census we will see Lyon County decrease in population. There may be other counties that decrease as well. This bill predominantly pertains to those smaller rural counties.

As we experience a slowdown in the economy and the workload decreases, some Boards of County Commissioners may decide it makes sense for them to combine offices. With the salary increases and benefit packages that have been approved in the last few sessions, there is a significant cost for each elected official in place. Maybe the county would be better off financially to have one elected official. We all know that staff does a lot of the work anyway. Bottom line is there would be only one supervisor instead of two.

In some cases in the small jurisdictions where the money is tight, I think it makes sense to give the Board of County Commissioners—who have the ultimate responsibility for the budget—the ability to combine offices as long as the people in the community support that. It takes a majority ballot question.

I have with me Laurie Carson, Chairman of the Board of Commissioners from White Pine County, as well as a number of other representatives of other small governments across the state. Part of this bill allows the combination of the Public Administrator, which is an elected official, and another position. There are a number of counties that have their District Attorney functioning as the Public Administrator. In some of the smaller counties, there is apprehension about having the District Attorney also be the Public Administrator. How can that person administer an estate when, in fact, they would be the person who would prosecute? There are a number of district attorneys who do not like that scenario even though there are currently five counties in the rural areas that have it that way. They would like the ability to designate another county-elected office as the Public Administrator.

Again, this just gives smaller local governments the ability, with voter approval, to have the flexibility to combine or separate a county office. I will answer any questions.

Assemblyman Settelmeyer:

Would it require a vote of the County Commissioners and a vote of the people?

Assemblyman Goicoechea:

Yes. The County Commissioner vote would be the vote that created the ordinance. Then the ordinance requires a public hearing before the ordinance could be passed. So it is a structured political process.

Assemblywoman Mastroluca:

Would the vote go before the people for each office that was being combined, or would they vote one time and then the County Commission would have the ability to combine offices at will?

Assemblyman Goicoechea:

No. The legislative intent, or at least my intent, is that it would take a vote for each combination. The ordinance would be proposed and then it would go to a vote of the people, which would take at least two years or the next election cycle. There will be a delay in this process. It may take four years before the combination or separation of offices could take place. So it would not be something that happened quickly.

The other thing is that the person has to be out of office or termed out. It has to be a vacant office, either through election or resignation.

Assemblyman Stewart:

I realize that perhaps other counties do not have the same problem Clark County has. We have had a number of county officials who have been removed from office. You may want to add language to the bill to cover that.

Assemblyman Goicoechea:

Once a person is removed from office, it becomes a completely different process. I do not think that there would be any choice except to reappoint. The consideration to go ahead and pass the ordinance and hold an election could be given to the Board of County Commissioners. The case of a resignation or impeachment from office would be hard to accomplish through this mechanism. It would be cumbersome to require a new election, an advisory question, and then, ultimately, the combination.

Assemblywoman Pierce:

I would like to double-check that this advisory question could only be posed during the general election. We do not want to set something up where there could be a special election with one advisory question in May or something. Is that right?

Assemblyman Goicoechea:

I would have to defer to your counsel. It is NRS 293.482. I believe that it could be on a special election if there was one slated. I am not certain exactly what NRS 293.482 states. I think it is anticipated that this would go through the normal election process. We may need to tighten up the language to reflect that, and that would be fine. We would not want to see an election held today and the appointment tomorrow.

Assemblywoman Pierce:

I would like to see that. It is really expensive to hold an election, and I could see that someone may want to expedite an election in a month. The bill should include language that it has to be voted on during the general election in November in order to save money.

Assemblyman Goicoechea:

I agree with that. People also will recognize that it does save money and it has to go to a public hearing to establish the ordinance. The public would probably kill you if you said you were going to save \$40,000 by combining the offices and then spent \$100,000 to hold a special election.

Chair Kirkpatrick:

Does anyone else have any questions? Assemblyman Goicoechea, is there a mechanism or thought on how the state would be notified and have proper access to the right people in charge?

Assemblyman Goicoechea:

Do you mean if there was a combination or how the statutes would be amended to show that office had been separated or combined?

Chair Kirkpatrick:

I am wondering how the state would know who the contact person is if the Treasurer and the City Manager offices were combined. Is there a mechanism within the ordinance to notify the state? Would we have to go back the following session and change the statutes?

Assemblyman Goicoechea:

With this statute in place, I would think it would allow for that amendment of the statutes. Clearly, elected county officials would have to take the oath of both offices when the offices are combined. That office would be noted in the Secretary of State's Office.

Chair Kirkpatrick:

I applaud you for bringing this bill forward. We have talked a lot about consolidation this session.

Assemblyman Goicoechea:

I am thinking that the Secretary of State currently maintains the list of elected officials in the counties. For every election cycle, the Secretary of State's Office would know who the officeholder was and whether the offices had been combined or separated

Chair Kirkpatrick:

Does anyone else have any questions? [There were none.]

Laurie L. Carson, Chair, Board of Commissioners, White Pine County, Ely, Nevada:

I had my testimony written to address both A.B. 415 and A.B. 419.

Chair Kirkpatrick:

You may go ahead with your prepared statement, and we will incorporate both into the record.

Laurie Carson:

That would be great. I am speaking about A.B. 419 and section 4 of A.B. 415, both of which will allow White Pine County to join the eight other Nevada counties utilizing the option of combining the Clerk and Treasurer Offices.

[Spoke from prepared statement ([Exhibit H](#)) and Memorandum ([Exhibit I](#)).]

I brought with me Donna Bath, who retired, after 15 years, as County Clerk of White Pine County. I had a good and informative conversation with Barbara Griffin, who has retired after 22 years as the Douglas County Clerk-Treasurer. When I spoke with Ms. Griffin, she informed me that she felt that combining offices was cost-effective and it would be prudent for us to move forward with this. She felt this was the best way to get the most out of taxpayer monies. Thank you.

Chair Kirkpatrick:

Does anyone else have any questions?

Assemblywoman Spiegel:

I received an email from Ms. Beverly Cornutt ([Exhibit J](#)). She raised a number of issues and a number of concerns. Did she copy you on that email?

Laurie Carson:

No, I did not receive that email. I spoke to her late last night and she said that she did not realize that she needed to write this quickly. I did not tell her that I would be here today. I did not know when this bill was going to be put on the agenda. I believe it was put on the agenda Monday. So, no, I have not seen that yet.

Assemblywoman Spiegel:

She explained that and somewhat apologized for sending it to us directly. She raised concerns about the ability to have enough staff and the resources for cross-training. She also spoke about automation. In general, she expressed a number of concerns about being about to implement a combined office in a way that would be able to yield the results that are required. I can read parts of the email if you would like.

Chair Kirkpatrick:

We can print it out. I do not want to get in the middle of a political issue of White Pine County. We are here to talk about policy. I do not know if this person is elected. [Audience says yes.] Yes, she is elected. Mr. Goicoechea, we can print this email for you.

Assemblyman Goicoechea:

For the record, even if both bills do have provisions in them to allow for the combination of the office of Clerk-Treasurer, it is A.B. 419 that is really the bill we need to focus on. With your permission, Madam Chair, we can go ahead and continue with A.B. 415 and the benefits of that bill. If it is decided that A.B. 419, the combination bill, should not proceed, then we can amend the language of A.B. 415.

Chair Kirkpatrick:

The Committee Manager, Cyndie Carter, can print out that email.

Assemblyman Goicoechea:

I do have some other people on A.B. 415.

Chair Kirkpatrick:

I am sure Ms. Cornutt is listening on the Internet, and I want to make sure she knows that we will get her email testimony into the record. If there is anyone else who wants to testify in support of A.B. 415, please come forward now.

Bjorn Selinder, Public Policy Innovations, Fallon, Nevada, representing Churchill, Eureka, and Elko Counties, Nevada:

Good morning, Madam Chair and members of the Committee. For this morning, Elko County, being over 40,000 in population, is not part of this discussion. I would like to introduce the person here with me this morning who is a newly-minted Eureka County Commissioner and expressed an interest in making a short statement. I will fill in some gaps if there are any. I would like to introduce Mike Page, Eureka County Commissioner.

Mike Page, Member, Board of Commissioners, Eureka County, Nevada:

The Eureka County Commissioners are in support of A.B. 415. They feel that it would give some latitude to small counties to do what needs to be done in a timely fashion. We are in support.

Chair Kirkpatrick:

Mr. Henderson.

Wes Henderson:

I want to go on record that the Nevada Association of Counties (NACO) is in support of this bill.

Chair Kirkpatrick:

Does anyone have any questions for the three speakers that are at the table?

Bjorn Selinder:

I would like to make one more statement, if I may. Obviously, this is enabling legislation only. It is subject to a vote of the people before any changes could possibly be made. Certainly given the economic conditions of today, it requires fiscal responsibility on the part of the counties that would be affected by this bill. Certainly this would provide an alternative to local governments. Thank you very much.

Chair Kirkpatrick:

Does anyone else have any questions? Are there approximately eight counties that are already doing this type of scenario?

Bjorn Selinder:

I believe that is correct. As an example, Churchill County has had a Clerk-Treasurer ever since I can remember, which is well over 35 years. It has been very effective and quite successful. I believe that many other counties enjoy the same benefits.

Chair Kirkpatrick:

Does anyone else have any questions? Is there anyone who would like to testify in support of A.B. 415? [There were none.] Is there anyone who is in opposition to A.B. 415? [There were none.] Is there anyone who is neutral on A.B. 415? Good morning, Mr. DiCianno. We have gotten to see you a lot this session—we appreciate that.

Dino DiCianno, Executive Director, Department of Taxation:

Good morning, Madam Chair and members of the Committee. It is always a pleasure to be here. We are neutral with respect to A.B. 415. We do understand that consolidation is a good thing. We do agree that this type of legislation or policy mechanism is a good concept. However, I do have some concerns. As you are well aware, the Department of Taxation has the financial responsibilities with respect to White Pine County. We are currently working on an exit strategy. I know there was a comment made earlier about the removal from "severe financial emergency" by 2010. I want to have that completed by July 1 of 2009.

I think it is time for the Department of Taxation to remove itself from the oversight of White Pine County. It is time for White Pine County, its Commissioners, and its citizens to take care of their own business as far as their financial responsibilities are concerned.

We have reviewed the internal control audit and other audits associated with White Pine County. I believe it would be premature at this point to have

White Pine County combine the Clerk and Treasurer offices until certain issues are resolved.

I do agree that this should be subject to the vote of the people. If the people of that community wish to combine those offices, so be it. If you have any questions I will be happy to respond.

Chair Kirkpatrick:

Does anyone else have any questions?

If the state has fulfilled our obligation to White Pine County and we requested that the process be completed by July 1 of 2009, how long do you think it will be before that would be accomplished? First we took control and now we want to give it back to them; could we change the mechanism from the get-go rather than having them wait another four years? How does that work?

Dino DiCianno:

Madam Chair, I think you have hit the nail on the head. That is the issue here. With the concurrence of the Committee on Local Government Finance and the Nevada Tax Commission, if the Department of Taxation would relinquish the financial responsibilities of White Pine County, then they would go to what is referred as "technical financial assistance" that we would provide to them. I would like to see some of the issues that have been raised in the audit resolved and the ability to establish internal controls put in place before this combining of offices occurs. I do not say that disrespectfully to White Pine County and the County Commissioners. I want to make sure that we are not back here two years from now; that is my concern.

Chair Kirkpatrick:

Does anyone else have any questions?

Assemblywoman Mastroluca, Assemblyman Aizley, Assemblywoman Spiegel, and Assemblywoman Woodbury may not know that in 2005 the State of Nevada took over administrative responsibilities for White Pine County. Now White Pine County is moving forward and getting ahead.

Dino DiCianno:

That is correct, Madam Chair.

Chair Kirkpatrick:

Now they are back on their feet and doing well. Does anyone else have any questions? Thank you, Mr. DiCianno. Would you like to come back, Assemblyman Goicoechea?

Is there anything else? We will make sure that the email sent by Beverly Cornutt gets into the record for today's meeting. With that, I am going to close the hearing for A.B. 415. We are opening the hearing for Assembly Bill 419.

**Assembly Bill 419: Revises provisions relating to county treasurers.
(BDR 20-231)**

Assemblyman Pete Goicoechea, Assembly District No. 35:

Thank you, Madam Chair. I also get confused because these two bills are so intertwined. In fact, both of them do the same thing. It will be up to this Committee and White Pine County. Assembly Bill 419 was a request bill from White Pine County. That is why I did not really get into A.B. 419 as much as A.B. 415. As the Chair stated, White Pine County has been under severe economic hardship and has been administered by the Department of Taxation since 2005. They are recovering. I think the request of A.B. 419 was only a movement by the White Pine County Board of County Commissioners to put cost-saving measures in place. You also have to understand that politics being what they are in White Pine County, I went to the Board of County Commissioners and requested a formal action from them and a vote of their Commissioners to request even the drafting of A.B. 419. I wanted to make sure I had as much coverage as possible, knowing what the small county political process is like.

Another thing that added to the requesting of this bill is the fact that the White Pine County Clerk resigned mid-term. They currently have an appointed County Clerk. Mr. DiCianno from the Department of Taxation said he would not want to see this change happen now. Those office terms will have to run until the 2010 election. The soonest that any combination could be implemented would be in 2011. Again, we have to consider if that is enough time or not.

The political process being what it is in White Pine County, it will be up to this Committee to make that policy determination of whether we should require that it go to a vote of the people. That will extend the time out until 2014 because, by the time that it is on the 2010 ballot, and then that person is reelected and they serve another four years, that would make it six years before the Board of County Commissioners could make the decision to combine offices. That was why they wanted to fast-track by asking for this change to occur through the legislative process. Again, we currently have nine combined Clerk-Treasurers in the state. Eureka County and Lander County have combined offices. If it so difficult to do, how are the eight other counties doing the job? Again, I do not want to get into the full-blown politics of it as I depend upon the people of White Pine County to return me here, so thank you.

Chair Kirkpatrick:

Thank you. Are there any questions? [There were none.] Is there anyone who would like to testify in support of A.B. 419?

Laurie L. Carson, Chair, Board of Commissioners, White Pine County, Ely, Nevada:

Madam Chair, I guess that would be me. When I was elected County Commissioner in the election of 2006, I had a conversation with Ms. Terry Rubalb of the Department of Taxation. At that time, combining offices into one was discussed as a cost-saving measure. So this is not something that is new to the County. I was even given documentation stating that in 2000 there was discussion about this. Thank you.

Chair Kirkpatrick:

Does anyone else have any questions? Good morning.

Donna Bath, Private Citizen, Ely, Nevada:

Good morning Madam Chair. I held the office of County Clerk of White Pine County for 15 years. Ms. Carson asked me if I would come and offer any background information. Just for the record, I do not have a dog in this fight.

I retired due to the insurance issues that are now being questioned. I have a deep love and concern for my community. With all due respect, I have to offer a disagreement with Mr. DiCianno from the Department of Taxation. I lived that job for 15 years. We have been in an economic crisis the entire 15 years. What the State of Nevada is going through right now, White Pine County has been going through for the last 15 years.

We truly understand the need for consolidation, working hard, and doing more with less. I can tell you exactly what happened and why I feel that we need to combine offices and why I support this idea. I was a duly elected officer in 2000 when this issue was first brought up by the former County Commission—we had not yet been taken over by the Department of Taxation, but our financials were less than dire. The Commissioners approached me and asked what I thought about combining the offices. My concern was that I would have to run against the incumbent. Then I took a step back and told myself that what I was here for was the best interest of our constituents.

Even though I would have had to run—potentially against the incumbent—there was no guarantee that I would have a job. You all know that. You have a 50/50 chance of getting elected every time you take part in an election. You

truly need to look at what is in the best interests of your county and your citizens.

I have to applaud the County Commission. They have a wonderful economic development person who is a do-all, do-everything for every person, and she is trying her very best to combine services and get the best bang for the taxpayer's buck. I give credit to all the elected department heads. Everyone there is trying.

For the 15 years I was County Clerk—and District Court Judge Papez can testify to this—we tried to find a good financial package that would be compatible with the court system, but because we were Clerks and not Clerk-Treasurers, we did not have access to the financial package that the Treasurers had, which tied into the county ledger. The stumbling block is trying to bring something in that is compatible with the court system, the case management system, and also the financial package. The Treasurers have a wonderful financial package that is already in place. It is a very easy and simple process to put in a few more slots to add in the court fees and a fine section.

If we had had access to the financial package, we could have avoided some financial issues. We did have financial issues in 2005. We had a forensic audit done and that is still undetermined. When I started in 1994, we only had one district court. There were six and one-half full-time employees in my office, including myself. When the Department of Taxation came in, our office was gradually reduced—including myself—to four full-time employees and one employee who worked one day a week. We did not have enough employees to do cross-checks and balances. We just did not.

Right now the Treasurer's Office has one additional person, besides herself, and a half-time person, I believe. There are issues that have been raised in White Pine County for audit exceptions year after year because there is no cross-check and balance. There is not enough staff to cover those needs. I barely could cover two court systems, County Commission meetings, staff management meetings, and all the elections. For ten years I personally took on the duties of County Commission staff.

When I decided to retire in September, I talked with the County Commission and also with—in my opinion, the savior of White Pine County—Karen Rahala, and I said if the county was going to go forward with its reorganization, I thought it was incumbent upon them to give the new Clerk the benefit of not having those additional staff duties. As Ms. Carson said, it took a good two weeks out of my personal time, and I would come in, sometimes as early as 3 a.m., to get all the Commission work done and then do my duties. We were

all doing the best that we could. The vision the Commission and I had when I left was to remove the County Commission staff position, which was equivalent to a half-time position. This was in anticipation of going through with the combination of the Clerk-Treasurer.

I think that the \$100,000-plus would be better spent in technology and offering a staff salary that would attract someone who would stay even if the department head changes.

For those reasons, I would be in support of A.B. 419. I would be happy to answer any questions.

Chair Kirkpatrick:

Does anyone have any questions? [There were none.] Thank you. We appreciate you coming forward with the history. I think that Mr. DiCianno is looking out for the state's best interests.

Donna Bath:

He certainly is and we appreciate that. From the standpoint of a department head, I want the Committee to understand that if we had those additional bodies in there, the exceptions to the audit could be taken care of expeditiously.

Chair Kirkpatrick:

Thank you. Is there anyone else who would like to testify in support of A.B. 419? [There were none.] Is there anyone who is in opposition to A.B. 419? [There were none.] Is there anyone who is neutral on A.B. 419? [There were none.]

Okay, Assemblyman Goicoechea.

Assemblyman Goicoechea:

Thank you, Madam Chair and Committee. I will be very brief. If A.B. 419 is adopted and becomes effective July 1, this change would not occur until January of 2011. Given that 18-month time frame, they could, if they chose, put their staff together and get their act together. I would hope they would then be able to address the issues from the Department of Taxation and Mr. DiCianno. It is not as if it is going to happen quickly.

Chair Kirkpatrick:

I know that we did this with some water regulations last session. Do you think there is a possibility that we can say that if it goes to a vote of the people, then it has to come back to the Legislature for final approval? That would give them a full two years. It could be a moot point if the voters do not want to do it.

Assemblyman Goicoechea:

Yes. Assembly Bill 415 does that. If we just delete the language in there that actually created the combined Clerk-Treasurer in White Pine County, then what it will be is the election process moving forward like you are saying. They can have the advisory ballot question in 2010, but it would be 2014 before they could have the election to elect the combined office.

Again, White Pine County was trying to combine them before having to go through an election cycle. I do not know how they could both appear on the ballot—to elect a combined Clerk-Treasurer along with the advisory question. If the voters did reject it, then the County would be short one elected official. That is kind of where we are.

The policy call has to be the question of what is in the best interest of the people. The Board of the County Commissioners feels that it is. I will be honest with you, given the personalities that are in White Pine County today, I think the present Treasurer is the person who would be elected to the Clerk-Treasurer position. She has been there a long time. I can also understand her apprehension; she has been there long enough to be looking at retirement.

Again, it is a policy that we need to make when we look at the Board of County Commissioners and say they are probably are doing what is best. Mr. DiCianno has valid concerns. The Department of Taxation has managed White Pine County for the last four years. They have a concern about this being too quick even though there will be an 18-month time frame. It is tough and that is why it is a requested bill.

Chair Kirkpatrick:

Thank you, Assemblyman Goicoechea. Does anyone else have any questions on A.B. 419? With that, we will go ahead and close the hearing on A.B. 419. I am looking to my staff that brought us some treats. Since I am not letting anyone leave, we will take a short recess. Committee members do not leave this room.

[Meeting was recessed at 9:52 a.m.]

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

We are going to open the hearing on Assembly Bill 273. Welcome back, Mr. Hogan.

Assembly Bill 273: Makes various changes governing the use of tasers by peace officers. (BDR 23-1009)

Assemblyman Joseph M. Hogan, Clark County Assembly District No. 10:

Thank you very much, Madam Chair. I am pleased to be back with another very short and simple bill. It is like yesterday morning. I cannot help but remark that it is interesting to come running in from the Ways and Means Committee, where I had the opportunity to rather strongly and vocally support the police budgets against the recommended cuts, and then come here where we have a gentleman's difference on some of the points of A.B. 273.

Madam Chair, with your permission, I would like to call up to the table and introduce Lee Rowland to describe the specifics of the bill and the amendment.

Chairman Kirkpatrick:

I need to disclose that my son-in-law works for the Las Vegas Metropolitan Police Department. I have never had this discussion with my son-in-law, and I am not even sure that I have to disclose, but I would rather be safe than sorry.

Are there any questions for Assemblyman Hogan? I just have one. I have a question about section 4. I thought we already had a database. We talked about this in 2005. I thought that when any type of incident happened there had to be something recorded and dated and made available to the public within 24 or 48 hours. How would the database outlined in section 4 be different than what is currently required? Does that only apply to the use of a gun and we just need to add the word taser?

Assemblyman Hogan:

Section 4 includes the word taser, and this would be added to any other incident reports that are currently required by the individual police organizations. This is taser-specific. A number of the organizations may not currently be equipped with tasers, so it would not cause any change in their practices. For the organizations that do have tasers, it would require that the same type of incident report that they would normally use in cases of the use of a firearm or other reportable actions would be required in this case. It really is just clarification and extends reporting of incidents involving the use of a taser.

Assemblyman Munford:

When an officer discharges a taser, is there a recommendation to aim at a certain part of the body, or can officers aim wherever they want?

Assemblyman Hogan:

There are two ways to approach that question. The first is to note that requirements are determined by each department. The large police organizations tend to have more detailed and fully developed instructions. Other departments decide to do it their way. Part of this bill is to get some

uniformity. The instructions on the use of the taser that I am familiar with generally advise that the officer attempt to avoid areas where there will be more damage than necessary. Certainly one would avoid the face and the neck. I was surprised to see that the best and safest place to aim is at the back. People may criticize that. The back is a large expanse of flesh, not quite as critical and crucial as the face, of course, and a target that one is more likely to hit. That is my understanding of the guidance. We may get further elaboration on that later.

Assemblyman Munford:

I have one follow-up question. When you pull the trigger twice, is there a second discharge of the electronic jolt?

Assemblyman Hogan:

We will hear from people who are more expert than I. There are basically two ways to use the taser. One is with a wire attached to a barb that travels 20 feet or so. The barb catches either on clothing or on skin and transmits the 15,000 volts of electricity. The other way is to use the taser almost like a baton and it will discharge about the same degree of electric force as shooting the barbs. Using the taser as a baton has often caused more problems; the shock can be repeatedly administered. I think that many of the deaths were the result of multiple hits on the same person within a short period of time. I think I have exhausted my technical knowledge.

Chair Kirkpatrick:

Is the taser used once in every 1,000 calls, or every 50 calls? Do we have that kind of information?

Assemblyman Hogan:

I have not seen that kind of information. I believe that the taser was discharged in excess of 400 times in either 2007 or 2008.

Chair Kirkpatrick:

Is that across the state or just by one entity?

Assemblyman Hogan:

That was just by the Las Vegas Metropolitan Police Department (Metro). It is used with some frequency but compared to the total number of calls, the use is not very high. There is a fair number of instances where there is perceived need to prevent someone from committing serious harm. That is why we wanted to work out and negotiate an overall standard to help with training policemen and to provide guidance to all those involved in the process.

Chair Kirkpatrick:

This information is for the Committee: Mr. Ron Dreher, who is representing the police officers group, submitted a letter that will be put into record as he was unable to attend today ([Exhibit K](#)). Good morning.

Lee Rowland, Northern Coordinator, American Civil Liberties Union of Nevada, Reno, Nevada:

Thank you, Chair Kirkpatrick and members of the Committee. I run the northern office of the American Civil Liberties Union (ACLU) of Nevada in Reno. I would like to start with a simple statement to undergird the entire discussion today: A taser is a lethal weapon.

I think that really needs to sink in. There are now many deaths on record—over 100—that have occurred after an individual has been tased by a law enforcement officer. Seven of those have occurred in the Las Vegas Metropolitan Police Department's jurisdiction. According to Amnesty International, Metro unfortunately is the law enforcement agency with the largest number of deaths occurring after the use of a taser.

You can see that I am being careful and mincing my words. Not only am I an attorney, but I use the word "after" rather than "because of" in part because the state of the science in this area is in flux. There are almost no peer-reviewed or accepted studies that show a taser directly causes a certain type of reaction or death.

One of the things that contribute to the state of that science is the fact that Taser International, by its own admission, has been incredibly aggressive against its critics. They have sued coroners, medical examiners, and peer-reviewed researchers who claimed that a taser contributed to a cause of death. We are operating in a world where there is not as much scientific information as we would like.

There is obviously a significant environment of intimidation faced by people who deal with causes of death and are trying to figure out to what degree the taser plays a part. What I can say is to reiterate Amnesty International's report that there have been at least 100 individuals in the last ten years in the United States who have died after having been tased by a law enforcement officer. Usually the cause of death, if listed, is something like "excited delirium," which is not a recognized medical term. I just want to be clear that we are operating in a somewhat mushy world, which is unfortunate. We think this absolutely requires the Legislature to err on the side of caution. Frankly, bodies are piling up. I think this is an area where we absolutely need to have a respectful and appropriate policy that recognizes the potential for a loss of life.

Taser International first marketed these weapons as nonlethal. After a series of lawsuits and other actions, they now term it a low-lethality weapon. That is also reflected in the Las Vegas Metropolitan Police Department's description of the weapon. They changed it from nonlethal to a low-lethality weapon. I wanted to start with that because I have received some of the emails that have been sent to this Committee from law enforcement. I have seen a few of them refer to the Taser as a nonlethal weapon. That is absolutely not true, neither scientifically nor under the law enforcement use-of-force matrix.

We are dealing with a lethal weapon and, as we all know, it is a weapon that is less lethal than a gun. The question is how to responsibly put that into a law enforcement use-of-force protocol.

From our point of view we have a constitutional responsibility to ensure that the police do not use the tools given to them in a way that is improper or disproportionate—a disproportionate use of force. So the ACLU believes, as do many other groups, that because the taser carries the risk of death, and is a potentially lethal weapon, it needs to be put in place in a use-of-force matrix in such a way that it is responsive to an actual threat or actual danger to the person, the officer, or any other third person. Any other situation where those facts are not present does lead to the taser being used as a compliance tool, which is what Assemblyman Hogan just described. A compliance tool would be akin to "Get up," "No," "Get up," "No," and then the taser is used. Because of the risk of death and the extreme pain associated with the taser, we do believe that that would be an inappropriate use of the weapon. To the degree that law enforcement thinks that use is appropriate, we have a respectful but profound disagreement.

That is the policy decision that we are asking you to take up very seriously today. I am happy to go through the bill. I know that Assemblyman Hogan has given his blessing to the proposed amendment ([Exhibit L](#)) that we have developed in response to law enforcement concerns. Would you like me to go over the original bill or go through it as we are proposing it to be amended?

Chair Kirkpatrick:

First, I want to see if anyone has any questions because I have some questions of my own. When you say 100 people have died after the fact, has that been broken down as far as how many had alcohol or drugs in their system? Has it been broken down to how much time elapsed from the tasing to death? I think that if we are going to talk numbers, I would like to know all the details on how that is determined. I think it is important for the Committee to know how the formula was developed. You say, in your opinion, that tasers are now a lethal weapon. Are they still not sold within sporting goods stores? Are they not

sold across the nation? Do any other states have this language in their statutes? Before we even get into the bill, I just want to have all the cards out on the table because I do not know the answers.

Lee Rowland:

Absolutely. First, with respect to the study, I am not a statistical expert, nor have I done any research myself. Primarily, I am relying on the Amnesty International studies which have looked at people engaged with law enforcement and who have then subsequently died after the use of a taser. There is a certain hourly requirement, which I do not know offhand. Unfortunately, there was a representative from Amnesty International sitting in Las Vegas, hoping to testify to you precisely about those details, but I believe she had to leave because of time constraints.

I think the best that I can do right now is ensure that if she is not able to testify to you later and answer those questions, I can submit those to you ([Exhibit M](#)). I am just hesitant to give you any more specific data because I do not think it would be as accurate as you need. This is an area of science where there is a lot of controversy and disagreement. From our point of view, the fact that someone had drugs in their system does not make the taser a nonlethal weapon, because that person would have been unlikely to have dropped dead on the street absent the tasing. There needs to be research about how those deaths are calculated, but I would add that the fact someone was drunk, or the fact someone was on drugs, from an ACLU point of view, and I believe also from an Amnesty International point of view, does not undercut the fact that the taser may have contributed to that death. I think that is what the Amnesty International report would say.

Chair Kirkpatrick:

I agree with you, but I just think it is important for the Committee to understand the formula. I just want to know what facts are involved in the process.

Assemblyman Settlemeyer:

I, too, would like to see that study; if you could just email it to me. I understand the concept that some people, as you indicated, may have died due to the use of the taser. I can consider the taser to be something less than deadly force, something less than a deadly weapon, and I do not think that you will find any other state that says it any differently. It is not like a gun.

One of the things that was left out of the bill is the situation where you have an escapee from prison who may not have been a felon, and an officer is allowed to treat that individual as "if" deadly force can be applied. I do not see that exception here, for escaped convicts. By making this change, do you feel you

are almost telling the officer if he thinks he needs to use a taser, just go ahead and shoot the suspect?

Lee Rowland:

You are looking at the original version of the bill. Our amendment, which was made after consulting with law enforcement, does include any situation where there is probable cause to believe that the suspect has committed a violent crime. It does not include a situation where he is fleeing an actual prison camp. That was not suggested by the officers. We are open to that language, although my sense is that if you have an individual escaping from an institution, deadly force may be appropriate, depending upon the level of violence of that person. I am happy to explain the details when I go through the proposed amendment. I think they will be responsive to your concern.

I would like to stress, again, that we are open to any changes and received no specific suggestion from law enforcement as to the language.

Assemblyman Settelmeyer:

The question was, are you not encouraging officers to just shoot people rather than tase them? If you fear for your life, and if you are going to have to make a choice, I think that an officer would be more likely to use a gun to save their life than the taser. Are you not just encouraging the use of a gun?

Lee Rowland:

Again, the amendment deals with this and takes out the alternative to deadly-force language. It is completely different. I am not really here to defend the original language of the bill, though I am happy to explain it because the amendment, as we proposed, would not cover the situation you suggest. I am happy to answer any questions you have, but if you like, I can immediately go through the "use-of-force" option so at least you will know what we are proposing in case it covers some of your concerns. I think both the questions you asked have been altered by our proposed amendment language.

Chair Kirkpatrick:

Did you tell me about the other states that currently have addressed this or not?

Lee Rowland:

The Amnesty International report cites 330 deaths in the United States and 25 deaths in Canada after individuals had been struck with a taser. In at least 50 cases in the United States, coroners reported to have listed the taser as a cause of death. We are talking about 50 cases where we know that coroners directly listed the taser as a contributory cause of death. Certainly 50 deaths is a significant number since the taser is a relatively new weapon.

Chair Kirkpatrick:

You are going to get us that study, correct? I would be curious to see if it covers a certain part of the county. I think we have to look at the big picture on it. Are there other states that currently have this type of legislation pending? Are we going to be the leader with this?

Lee Rowland:

I can tell you that we have been working with some national experts at the ACLU office, and I know they have statistics taken after a survey of major police departments. Based on their survey, they estimate that 41 percent of police departments have a policy that is similar to the one that we are proposing. This is model policy that requires tasers only to be used when there is some risk of danger.

The reason we are proposing it as state law is because Nevada already has a deadly-force statute on the books. Nevada is somewhat unique in that regard. I think we believe, primarily as a libertarian state and for other reasons, that it is appropriate to have statewide policies on the restriction of the use of deadly force against citizens. Because the taser is less than lethal, but still lethal, we believe it is appropriate to include it within the existing *Nevada Revised Statutes* (NRS) 171.1455.

Chair Kirkpatrick:

Then I guess the lawyer answer is, yes, we will be the first state to have it in statute. I am just looking for a yes or no answer.

Lee Rowland:

That is a fair criticism. I think the answer is, I do not know. I am happy to try to find out. We looked mostly at other agencies that had these policies because we find that the agencies in Nevada are lacking these policies, and that is why a statewide law is called for. I have not looked into other states, but I am happy to do that at the pleasure of the Chair. I just do not know the answer right now.

Chair Kirkpatrick:

If other states are putting this language in their policy, and we are the ones to put it in statute, it is important for us to know why Nevada would be different.

Assemblyman Munford:

In the use of the taser, does it have any different effect regarding the distance an officer is from his target? Does it become more lethal when the target is

closer? When an officer is pursuing a suspect and that person is down, does the officer try to control him a little bit more with the taser?

Lee Rowland:

I think the answer is, generally, yes. The proximity does usually affect the degree of burns and harm that a subject receives; however, things like distance from an individual and the place on the body where the taser hits are absolutely decisions we think are best left up to individual law enforcement agencies.

What this bill is trying to do is simply set a minimum level of harm or threat beyond which a law enforcement agency may develop its own policy. This bill makes clear that we want them to develop their own policies that have all those details.

A model taser policy such as the one put out by the International Association of Chiefs of Police (IACP), which is a police officers group, has every detail like that. This bill in no way gets to those details. This is supposed to be a broad bill that simply defines in a broad way the types of situations where we think it is okay for officers to be using a weapon that can kill people, and that is the bottom line, because of the risk of death, which may increase based on the type of specifics you are citing.

We just want make sure that the risk of death is recognized by law enforcement when they are developing these policies. We think that is so critical because when these weapons were marketed to the agencies, they were sold as nonlethal weapons. Regardless of the number of deaths, law enforcement agrees this is a lethal weapon. They call it a low-lethality weapon, but that means there is a lethal possibility. We are trying to focus on the broader factors with respect to those questions. I am happy to try to forge you a model taser policy, so I have to look at those details.

This bill would not affect those things. That would still be within the purview of law enforcement developing their own policies, as they do with the use of a gun, even though there is a state statute setting, again, a constitutional minimum threshold of when you can draw that gun and use it.

Chair Kirkpatrick:

Does anyone else have any questions?

Assemblyman Christensen:

First of all, I appreciate you being here. You obviously have a solid grasp on this topic. I do not know if I have more of a statement or a couple of questions, but does your organization, the ACLU, advocate more for the idea that no one uses tasers?

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Lee Rowland:

No, we actually do believe that lower-risk weapons are a critical tool because they can frequently save lives. In that regard, we differ from groups like Amnesty International that oppose tasers, because they believe that they are overused and lead to a police state where it is an inappropriate use of force. The American Civil Liberties Union does not hold that position. We believe that tasers are an important tool, precisely because they can be used in situations where there is some risk but there is not a lethal risk, so a taser is appropriate to effect an arrest or to protect an officer without killing the subject. We do support the use of the taser; we just want to make sure that it is recognized as having a potential lethality. Therefore we want law enforcement agencies to put it higher up on the use of force than something like pepper spray or a baton.

Assemblyman Christensen:

Got it. I am glad you qualified that because as I was reading the bill material I was led to believe that the ACLU was saying tasers are lethal devices.

I would like to share with you, Madam Chair, that I grew up in a law enforcement family. My oldest brother is a career policeman and my father was in law enforcement in the military. I have gone out on ride-alongs with my brother; some of these rides also included Las Vegas law enforcement and Homeland Security officials. I know that working in law enforcement can be a thankless job. Oftentimes a police force will be brutalized by the media or other activist groups that are saying there would have been a better way to handle a specific situation, but those people have never walked in the policeman's shoes. They have never held that device and had some crack addict with a .357 come straight at them. These officers often have only a nanosecond to exercise their professional judgment, judgment which has been granted to them by this legislative body, and knowing that the consequence of their decision will be with them the rest of their lives. I realize that from time to time there may be a rotten apple who takes the wrong action, but that is maybe one in 50,000 incidents and is extremely rare. Every single law enforcement officer I have ever worked with has always been stellar and reflected the will of the citizens they have been charged to protect.

I am always very sensitive whenever this body talks about making policy with regard to how these officers should do their jobs. I just had to share that perspective, just for the respect that I have for those who wear that badge and have to act and make critical judgments, oftentimes within a split second.

Lee Rowland:

Absolutely. Both myself and our Executive Director, Gary Peck, began this process with exactly that assumption, which is, we do not get up in the

morning and put a gun on. There are other people who understand the details of that life better than we do—those people who work in law enforcement.

What we did to develop this amendment was sit with folks from both the Metro and statewide law enforcement groups and asked them for their input about how this would affect their daily lives. What I can tell you absolutely, truthfully, on the record, is that we received not one suggestion that this language would prevent any appropriate use of the taser—it could be approved in any way.

To the extent that law enforcement objects to this proposal, I would ask that you consider and hopefully ask what situations are not covered by the language we proposed, because that is exactly what we tried to do. We simply tried to set a broad floor above which law enforcement can use this weapon and not tie their hands by getting into specifics. We are basing it on the structure of the language that you as the Legislature and in your wisdom have already determined what is appropriate for deadly force.

I would say that while there is no question that these are incredibly difficult decisions that sometimes happen in a heartbeat, it is precisely what police officers are trained to do. There is no question, that is incredibly difficult. All we are asking for is that you give the same consideration to another weapon, which is a fairly new use of force in the grand scheme of things. We now know that use of a taser carries a risk of death, and by law enforcement's own admission it is a low-lethality weapon.

We are not looking to have an officer be in a critical situation and question whether the use of his taser fits under the state law or not. I realistically do not think that is happening now with guns and, of course, there is a state law that requires that.

We are certainly mindful of all those issues. Our goal is to set constitutionally minimum standards where beyond this you cannot use your weapon. Here, we do not have to wonder if this is a situation where the ACLU and the police officers would not interpret a set of facts the same way and whether or not it would fall under this provision.

The police have stated openly, both to the press and to members of this Committee, that they would like to be able to use this weapon as a compliance tool, meaning when there is no risk. That is an area where we have a profound policy disagreement regarding a weapon that carries a risk of death. If there is no risk to someone, we believe it cruel and unusual to use that weapon.

I think this is not about making people make detailed decisions in a heartbeat. It is about fundamental policy differences in regard to whether or not that weapon should be used in that situation, and this is broad enough that all an officer has to do is decide there is some risk of harm to some individual. That is something we ask officers to do every single time they interact with a suspect, because the entire use-of-force matrix—what tool they are allowed to pull out of their tool belt—is determined based on their, admittedly incredibly difficult and incredibly skilled, but highly trained, ability to look at a situation and determine the facts.

Assemblyman Christensen:

Certainly highly trained, and I would agree with you on that. I am glad to hear you have included law enforcement in the development of the amendment. Assemblyman Hogan, I will certainly do the same with all the blue uniforms that I know. I guarantee that.

Chair Kirkpatrick:

I just want to clarify for the record that I do not know that this Committee has heard either side that way. I mean no disrespect to Mr. Smith, but we do not have everything that is in the newspaper. We are not up here reading the newspaper. Those reading it are reading it online; not me. I believe that the Committee came today with open minds for open policy. We struggle in the Legislature when we micromanage what local government is suppose to do, and that is why I asked you if other states are already doing this within their statutes, in their policies? Believe me, I am the first to beat up on local government if they are not playing by the rules and we put it in statute, but at the same time, the Legislature gives them very broad authority to make things happen. I think that it would be unfair to think that this Committee does not have an open mind this morning. Although we are the safest room in the entire building right now, we still want to hear the policy side of it. I would hope that is how this process will go.

Lee Rowland:

I did not mean to imply that the Committee had any antipathy to a position. I think there are legitimate policy differences and some law enforcement representatives have stated publicly that they want to be able to use the taser outside of these areas. I am hoping that the Committee asks law enforcement whether their objection to this language is because it is micromanaging or whether it prevents them from using the taser as they are.

I am trying to say that, with respect to the second question, we have not received any feedback that this language prevents an appropriate use of the taser that already exists. Maybe there is, but we are not aware of any.

Chair Kirkpatrick:

Let me ask this question of Mr. Hogan, and then we are going to move on because eventually we have to get through the bill. Mr. Hogan, did you meet with the law enforcement agency before or after this bill draft request (BDR) was submitted? I am just curious.

Assemblyman Hogan:

My first meeting was after the BDR was submitted, before the product came out and made a change or two while the bill was in BDR process. The changes appearing here are entirely a result of the comments and concerns we heard from the law enforcement personnel who participated.

There was a very serious effort to pick up on what their expressed concerns were and to translate them into language that would best avoid a limitation that law enforcement thought was excessive, or some other imposition on their judgment. The product we are looking for is simply a broad standard that will provide guidance to the individual officer through training. I want to emphasize the point that the Peace Officers' Standards and Training (P.O.S.T.) academy, which is a highly regarded training entity for law enforcement, does not include training in use of tasers with their cadets, at least the last time I checked. At some point that really needs to be a very integral part of training. I would think that it needs to be provided and presented in a uniform way rather than the way it is currently, where each individual larger police entity provides whatever training they are going to provide.

The idea is a standard that we can all agree on, that protects citizens on the one hand and provides adequate protection and flexibility for the police to conduct themselves and others.

Chair Kirkpatrick:

We are going to Mr. Settelmeyer, Mr. Bobzien, and then we will go right into your amendment.

Assemblyman Settelmeyer:

Why the utilization of the word "substantial" in this definition when, if you left the word out, to me it still accomplishes the goal? To me you are almost telling the officer to not use the taser; use the gun. Why utilize the word "substantial" when a better word may exist?

Lee Rowland:

The only reason "substantial" is in there is because we wanted it to be clear that there needs to be a risk, not simply physical contact. Physical harm in the law can be something as simple as a slight slap or someone brushing up against

you. We did not want the language to indicate that an officer could use a taser just because a suspect was near enough to him to kill him. We just wanted to indicate a higher level of threat.

Assemblyman Settlemeyer:

I appreciate that. I think if you read the bill without the word "substantial" the bill still accomplishes everything you are worried about.

Assemblyman Hogan:

If I could just add to that, Madam Chair. When you get the ACLU report, which was published in December 2008 and is the latest analysis, you will find that there are a surprising number of situations—and I want to say out loud, "not in Nevada"—in other states of this country where tasers have been employed by school police against teenagers, boys and girls alike, when they did not obey some command. The point is, the teenage high school sophomore female or male who is not a physical threat probably should not be tased. Children also may be a little bit more susceptible. I think "substantial" is trying to capture the idea that this person is a "substantial" threat, not an irritation and not just somebody who is being difficult or who is acting out their condition on drugs or other influences.

Assemblyman Bobzien:

I do want to start off by congratulating Assemblyman Hogan for bringing this issue forward. This is a very difficult bill, and a very difficult issue, and I think that those of us who are willing to wade into those issues ought to be congratulated because this is awfully tough, and I also appreciate Ms. Rowland. You said at the table what you are trying to do.

Just some commentary quickly and then the actual question. I look at this and kind of tag along with Mr. Christensen's points about the decisions that those in law enforcement have to make. I do look at those from a personal life experience, having taken a defensive handgun class and having to grapple personally with those issues of when is the force appropriate. I keep hearing the words, "We are trying to set a broad standard for how this is used," and I do appreciate you trying to do that.

I guess what I am going to have to hear from law enforcement is that this is actually workable. In a split second it can be followed, and is not going to encourage more officers to reach for their firearm rather than the taser.

The question that I have is, as it is presented and as we have been discussing, it seems the intent regards law enforcement, but of course NRS Chapter 289 is pretty broad. Chapter 289 of NRS brings in not just the Department of Public

Safety and the Highway Patrol, but also the State Fire Marshal and folks in Mental Health. There are a lot of individuals who are covered in this Chapter. Is it your intention to have this apply to all of those folks who are in this Chapter, or are we just having it apply to law enforcement?

Assemblyman Hogan:

As I suggested a bit ago, in other states there have been situations where entities which are not the mainline law enforcement organizations have in fact been equipped with tasers and have used them, arguably, quite inappropriately. I think the intention here is to set a standard for safely using this device, and I would say that part of the standard is that the officer is empowered to, and authorized to, and trained to use the taser by his or her law enforcement agency. I think any organization that has control over people's behavior and which might equip itself with tasers should be guided by whatever broad principles can be developed. I do not see it as a bad thing to extend the regulation to any organization that has the use of tasers as part of its operation. I think where there is a taser there needs to be an understanding of the reasonable limits to its use.

Assemblyman Bobzien:

That helps. Ms. Rowland, could you weigh in on that?

Lee Rowland:

I would defer to Assemblyman Hogan's answer. I think it is the right one, and I think what we are trying to do is say if you are using a taser in the context of being a P.O.S.T.-certified peace officer and you have been trained for it, these apply to you. That is the beginning of the bill, where it says if you are a peace officer you can use a taser only if you have been trained on how to use it, and under certain circumstances. So, yes, it is appropriate in any situation where someone would fall under that.

Chair Kirkpatrick:

Let us start with the amendment.

Lee Rowland:

I think the easiest way for the Committee to understand is if I go through the bill. I know the amendment language well enough that I can just go through the bill and explain to you what the amendment is changing from the current bill, and hopefully explain both succinctly.

Section 1 is simply a description of what NRS statutes would be changed by this bill that would remain unaltered by our proposed amendment.

Section 2 is the meat of the bill. It sets the use-of-force protocol just as the state law does for guns. The original language that came out of the Legislative Counsel Bureau (LCB) stated in section 2, subsection 1, line 5, that the taser would be used only as an alternative to deadly force. We do not feel that language is appropriate because we think that the taser is an additional weapon, not simply a substitution for a gun. Our proposed amendment removes the entirety of subsection 1, so there is no language left about an alternative to deadly force.

Our proposed new subsection 1 would simply start with the original subsection 2, which begins, "a peace officer shall not use a taser on a person unless" Lines 7 through 33 on page 2 of the bill all describe those situations. We are proposing the removal of all of this use-of-force language, after our discussions with law enforcement, and the substitution of our amended language, and I will go through that point by point.

Chair Kirkpatrick:

Does subsection 1 apply to NRS Chapter 289, which is what Mr. Bobzien talked about? Would all of the folks who use tasers be subject to this?

Lee Rowland:

Yes, any peace officer. That is how the bill begins, so it would be anyone within that chapter who is defined as a peace officer.

Chair Kirkpatrick:

Subsection 1, lines 3 through 5, are deleted; lines 6 through 12 stay, correct?

Lee Rowland:

That is correct.

Chair Kirkpatrick:

I know that this is like kindergarten, but this way we are very clear what it says. Lines 13 through 17 are deleted.

Lee Rowland:

Yes, lines 13 through 17 will be replaced with the language I am about to explain.

Chair Kirkpatrick:

Okay, please go ahead.

Lee Rowland:

Law enforcement was primarily concerned with situations where there was no immediate risk or threat of harm, but they might be without backup and they were in a position to arrest someone. This means they would have to approach the suspect, get close, and have some objective indicators that the suspect may be a risk, for instance, if the suspect is 250 pounds and 6 feet 5 inches tall. In that situation, we changed the language to permit an officer to use an electronic control device (ECD). We have been calling it a taser but that is a brand name. I suggested that we replace it in the statutes, but I know it is easier for all of us to use the word taser. In our amendment subparagraph (1), the use of a taser is appropriate if a reasonable officer, looking at the totality of the circumstances, believes that "the a person has the present ability to harm himself or another, and the use of an ECD is necessary to prevent that person from causing immediate substantial physical harm to himself, the officer, or another." The reason we put that into the language of "prevent" rather than "existing" threat is for exactly the situations that law enforcement set forward. For instance, the suspect might not be currently threatening, but the officer has to walk up to him if he gets close. This is an attempt to be responsive to that kind of situation. It does require that a reasonable officer would believe he needs to use the taser to prevent risk of harm. That is what subparagraph (1) is intended to cover.

These subparagraphs are all "ors," so these are all acceptable situations. Subparagraph (2) would mean that the "use of the device is necessary to prevent a person from fleeing arrest where the officer has probable cause to believe that the person has committed a violent crime and poses a substantial threat to public safety." We lowered this language. Before it said "a felony" we changed this to "a violent crime" so that it was not necessarily felony behavior but simply that someone is fleeing and poses a threat. In that situation, we believe that the taser can be okay, as long as there are specific facts that the person poses a threat to safety. That is a lower standard, but somewhat modeled on the ability of an officer to pursue and/or shoot a fleeing suspect with a gun. This is a lower standard because it is simply a violent crime and all they have to do is have probable cause to believe that they are a threat to the public.

Subparagraph (3) is that "the person is engaging in physical resistance against a peace officer with the intent to cause substantial physical harm to that officer or another." This gets rid of the present ability language. There is a reason for that. This is not a situation where a police officer is trying to effect an arrest and is grappling with a suspect and has no idea if the suspect knows jujitsu or has a knife. We do not want the officer to be concerned whether or not the person has the present ability. It is enough that the person is physically

resisting the officer and clearly intends to harm the officer. So the difference in this situation would be if the officer says, "Hold out your hands I am going to cuff you," and the response is, "No." That would not be enough to tase someone. If, however, the officer says, "Hold out your hands," and starts to cuff the suspect and he starts tussling with the officer in an aggressive way, then the use of the taser would be appropriate because there is a risk of harm to that officer. It is delineating the difference between resistance that is passive and poses no threat to an officer and when that resistance is physical against the officer with evidence of intent to harm the officer. If someone is sitting on the ground saying, "No, I am not coming," we do not believe that use of the taser to shock that person via pain compliance is appropriate. If, however, that person is engaging with the officer in any way that poses a threat to the officer, we believe the taser is an appropriate use of force because there is a risk or threat.

Those are the three situations that we have covered in the use of force. One situation that is not covered, Assemblyman Settelmeyer, is the escape issue. I lack knowledge of law enforcement as to whether or not that would be appropriate. I do not know whether that would fit into deadly force depending on the risk. If there is specific language or a specific situation where this is overly restrictive for law enforcement, we are absolutely open to amending the language. I think we need specific input from folks who have more knowledge.

Assemblywoman Pierce:

Are we keeping lines 18 to 33 in your amendment, the rest of section 2, or is that being deleted?

Lee Rowland:

The rest of section 2 is intended to remain. Our section would just replace lines 13 through 17.

Assemblyman Munford:

When an officer gets within an arm's distance of a suspect and takes him to the ground, is that when the choice between using the baton or the taser is made? Remember the Rodney King incident? Mr. King is on the ground and showing a little resistance. I have seen officers use really aggressive force. Do all officers have the option of using their baton, their gun, or their taser? Do they wear all three of these? When they get within an arm's length of the suspect it seems as if they use the baton more than the taser. Is there any distinction when they determine the use of their baton versus their taser?

Lee Rowland:

From our point of view, the baton does not carry the same risk of death so it should be lower on that use-of-force protocol. There may be situations where several tools are available to an officer based on the situation. I think that is the point where we absolutely have to defer to law enforcement and their impressions of the facts and the totality of the circumstances. When they get into the situation where more than one weapon is appropriate, it is up to the police officer to decide which weapon is best. I think what we are trying to do is make sure that the taser does not go below a certain degree and is used only when there is risk. The baton may be lower in the use-of-force containment.

Assemblywoman Mastroluca:

Ms. Rowland, can you explain to me the definition of a reasonable officer versus a peace officer?

Lee Rowland:

Those are typical legal terms. The "reasonable officer" term implies that the officer is being objective and is used throughout criminal law. When you are asking a police officer to make a decision that affects public policy, you use a "reasonable officer" standard so that it prevents any kind of subjective interpretation. For instance, an officer's rationalization that "He was a really big African American guy and I was scared so I used the taser" would not be that of an objective, reasonable officer, as it is obviously racist. We are hoping that our officers do not think that way.

The objective standard is to ensure that a police officer is using his training to interpret the facts and the circumstances in an objective way. What we want to do throughout a use-of-force policy, both within law enforcement and within legislation, is make sure that we are looking to a "reasonable officer" standard, meaning someone who has been trained is looking at the facts and interpreting them in a reasonable way.

Chair Kirkpatrick:

That is section 2, right? No one has any questions? Section 3 you are deleting altogether?

Lee Rowland:

Yes, and we can be quick on that. Section 3 would have required mandatory cameras on tasers. The removal of that is for pragmatic reasons. Number one, it is fiscal. The cameras are incredibly expensive and we do not want this bill to be killed by a fiscal note. Number two, there has been some indication recently that Taser may stop producing cameras for the taser because of decreased demand.

Chair Kirkpatrick:

I do not understand why we are changing all the references to "taser" in Amendment 3 to "electronic control device," yet section 5 still has the definition of "taser". That is not consistent. My other point is in NRS Chapter 289. It is mostly administrative stuff, and there is only one piece that talks about the choke hold and it says, "adopt regulations." Do not let us micromanage you. Adopt regulations that are based on the safety issues. I am going to have a hard time getting through this if we are only one of ten states doing this when our own statutes, all the way back to 1991, talked about the choke hold, which I am assuming in 1991 was probably the newest type of deadly force based on whoever was in charge. For years and years we have done choke holds by regulation. We have done other things by regulation. I do not want to make Clark County Park Police, who might see 50 people in a month, live to the same standards as Las Vegas Metro officers, who might see 50,000 in one day. I am trying to justify why this chapter. If it is talking about deadly force, why are we talking about the administration chapter that sets the rules on what everybody else should do?

Assemblyman Hogan:

If I could comment on the question you just raised? It seems to me that what we are trying to do is somewhat consistent with the way we treated the concern about the choke hold some years ago. It was made clear that there was a concern that this was a technique that potentially caused a great deal of harm, sometimes death. It was addressed, but the details were left to departmental regulations.

That is exactly the same as our intention here; we are trying to set a standard that says where you can use a taser and where you cannot. If you imagine a training curriculum on how to use a taser and when to use it, I think we would anticipate quite a bit of detail, a lot of examples, and a lot of guidance given to newly trained police members on how to carry out these overall principles. It should be clear in the statute that there is a great concern about it. There should be guidance in a general way, and then there can be more details in the regulations.

Chair Kirkpatrick:

Mr. Hogan, I am going to follow up with this, because this is what NRS 289.810 says for the choke hold: adopt regulations that address "the manner in which records of training, certification, and recertification will be maintained to ensure compliance with any applicable statutory or other, related requirements." That is the shortest and most constraining provision. If that is the direction you are trying to go, it is way too detailed.

This says each agency in the state that employs a peace officer shall adopt regulations which govern whether or not officers use the choke hold. That tells me the officers and concerned citizens got together and said, do what works best for your department. I travel from Laughlin to Las Vegas, it is 93 miles one way, and to be an officer out there all alone, that criteria is going to be much different than if you are an officer in the center of town. If you are trying to set a standard to which regulations can be established, we need to stop and start over and allow everybody to be part of the process. We need to figure out which direction we are trying to go and why this is in this chapter of NRS. If we are trying to be in this chapter, to be consistent, and this bill belongs somewhere else, I could save everyone the trouble and take a motion and refer this bill to Judiciary. I am trying to understand the reason this bill is in this Committee, because we are talking about a policy to establish some type of regulation. I just need to know what direction you are going. I am confused.

Lee Rowland:

From my point of view, the closest law to this is NRS 171.1455, which sets minimum standards for the use of guns. This is precisely the same type of regulation. It recognizes that a weapon has a lethal effect.

Chair Kirkpatrick:

Can you please repeat that statute again, because this bill is NRS Chapter 289.

Lee Rowland:

Why that came out of Chapter 289, I cannot answer. We did not put this in the statutes.

Chair Kirkpatrick:

So what is it?

Lee Rowland:

It is NRS 171.1455.

Chair Kirkpatrick:

We move fast, but not that fast. Keep going.

Lee Rowland:

I would say the reason that is appropriate is because these are potentially lethal weapons. You are not micromanaging strategy; you are just putting a minimal use on it.

Section 4 remains the same. It makes it clear that the use of the taser by a peace officer is a public record pursuant to NRS Chapter 239. It does not say

that, but it is implied. We have our proposed Amendment 4, which is to make it absolutely clear—although I think that was the intent in the original bill—that any video footage taken by a taser camera would be included as one of the records in that database. I would note that this is a situation where we are open if there was a particular situation where that record would pose some specific threat to law enforcement if it were released, or there was an issue of specific exemptions. From our point of view, the default is that it has to be a public record because it falls squarely under the definition of public record under the law.

Section 5 is unchanged with the exception of the noted definition. To be clear, my suggestion and proposed amendment would change all references to "taser" to "electronic control device." It would define an electronic control device rather than a taser. Taser is a brand name, like Frisbee. It has become ubiquitous, but the appropriate term is an ECD, an electronic control device. That is just to be consistent and not to bring brand names into the *Nevada Revised Statutes*.

Chair Kirkpatrick:

We are good. I am still trying to figure out why the bill is here in this Committee. Does anyone have any questions? Is there anyone who would like to testify in Carson City in support of A.B. 273?

Lee Rowland:

I know the representative from the National Association for the Advancement of Colored People (NAACP) was sitting here waiting to speak. I hope it can be acknowledged that he is on the record. I believe that he had to go to another committee room for another meeting.

Chair Kirkpatrick:

He can also submit testimony. We can put it in for the record. We are always open to that.

Assemblyman Aizley:

I think I have to make some disclosures before we get into any more of this. Some might be good news, and some might be bad news depending on who is listening. My son, David Phillips, is in the criminalistic lab in Metro. I did participate in the citizen's police academy and I am very interested in these topics. I went through the training where there was a simulated case and I was killed because I was not quick enough with my response. So I appreciate that kind of incident. Several years ago I was president of the ACLU of Nevada for four years. I would advise all of you that the combination of the police and the ACLU working together will probably produce some of the best policy. It will be

good for the police. It will protect them on the job as well as protect the citizens. I think this is a very important conversation.

Chair Kirkpatrick:

Does anyone have any questions?

Assemblyman Hogan:

I was going to mention that we have received a communication confirming that other states do have a law somewhat similar. We will have to research the exact language and get back to you with that information. I am afraid that we would not be the first but maybe we would have the best language, with your help.

Chair Kirkpatrick:

I want to read what the other states say and if it is similar to the choke hold statute. Is there anyone in Las Vegas who is in support of A.B. 273 and would like to testify? [There were none.] Is there anybody in Carson City? [There were none.] Is there anybody in Las Vegas who is neutral and would like to testify on A.B. 273?

Camille Garrett, Legislative Coordinator, Amnesty International, Las Vegas, Nevada:

I want to bring the report that you have been discussing. I want to make sure it is submitted into the record and everyone receives a copy.

I also want to give a very brief statement and read a couple of excerpts from the report. I want to let you know that Amnesty International has never supported banning the use of the taser by the police. The police are on the front lines protecting us every day. They deserve our respect, our admiration, and the best information we can provide to them about the weapons they carry.

Police claim that tasers have saved lives, and we believe and support that. However, there is a lack of consistent guidelines on the use of tasers that make them susceptible to being used inappropriately. I did want to state to Ms. Rowland that, yes, there have been 334 deaths; they are documented in our Amnesty International report. I am going to grab my other report and I would like to read you some of the recommendations from Amnesty International.

Chair Kirkpatrick:

Are they short, because I think as legislators we would want to go through them. I think it is important for us to read the whole report, not just hear the highlights.

Camille Garrett:

Yes, they are short. They are just some recommendations that I had not heard mentioned, but I will be more than happy to provide the report.

Chair Kirkpatrick:

Does anyone have any questions? [There were none.] Mr. Peck did send a fax indicating that at least two states have enacted laws that create minimum standards when police officers can reasonably use ECDs. One state has banned the use of ECDs altogether by police officers. We will provide the Committee with a list of such legislation as quickly as possible ([Exhibit N](#)). I told staff not to make copies, that we would put it in the record. Is there anybody in Carson City who would like to testify as neutral on A.B. 273? [There were none.]

This is how we are going to do opposition. I will call the first three people up and the next three please be ready. I also ask that you not repeat each other.

David F. Kallas, Detective, representing Las Vegas Police Protective Association, Las Vegas, Nevada:

I had the opportunity to speak to the bill sponsor, Assemblyman Hogan, prior to the final drafting of the bill and I raised some concerns that our organization had on behalf of our officers who patrol the streets of Las Vegas and who use the taser device.

Madam Chair, you spoke about the section in Chapter 289 that refers to the choke hold that was implemented in 1991. That was implemented in reaction to a situation that occurred in Las Vegas in which an individual in the custody of three vice officers died in a hotel room while struggling with the officers.

I believe the Legislature subsequently took up that issue and decided that the agencies throughout the state should have a uniform policy of how to deal with situations using what is considered a choke hold. I could not agree more. I believe, looking at the current bill and the amendments, that we could all be better suited, especially considering what Assemblyman Aizley said, to have a uniform policy throughout the state. I do not think it should be the purview of a legislative body to take that discretion away from the individual law enforcement agencies as to how to implement those policies.

What we believe would be more appropriate is to direct any agency that implements use of the taser to adopt certain policies and procedures for training. Leave it to the officers to make the policies to determine the how, where, when, and by whom.

I look at the remainder of the bill and the amendments, talking about which times officers could use the taser, and the greatest authority any officer has is

the power of discretion—whether they are dealing with a combative subject and believe it is most appropriate to use our baton, or they are dealing with a subject and believe it is most appropriate to use CAP-STUN, or they need to push away from a subject and decide to pull their taser out and use it as a distraction to create distance from the subject so that they do not get hurt or the subject does not get hurt. I do not think that it should be the purview of the legislative body to get into the minds of officers and to take that discretionary authority away from them.

I believe the agencies are well suited to determine policies and procedures in the use of any type of tool that they give to the officers that they train to use on the street. It is then the officers' option and their discretion as to how they should use them. They must be able to document and articulate why they used them, when they used them, and how they used them, to ensure that the usage was appropriate.

Let us say that the use of a taser is necessary to prevent a person from fleeing arrest where the officer has probable cause to believe that the person has committed a violent crime. If I were to put back on my uniform, my badge, and my holster, I believe, from my training, that under those circumstances I would have the authority to shoot that person.

The taser was implemented as an option for law enforcement agencies because of the criticisms they received from their use of deadly force. I understand that the tasers have now been put in the category of low lethality, but so have shotguns. We do not have groups at the Legislature asking to legislate how we use our low-lethality shotguns, because we believe those decisions are best left in control of the administrators and policy makers of those particular agencies. I believe that under these circumstances it would be appropriate that you implement something that says any agency that authorizes the use of a taser must adopt policies and procedures based on the agency's decision, and allow them to maintain that discretion as to how they want to operate their organization.

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

Many, if not most, law enforcement agencies in Nevada are affiliated with our organization. I want to speak specifically about the latest group that we are affiliated with. As a result of a bill that the Legislature passed last session, Clark County bailiffs are now the Clark County Court Marshals. I want to speak specifically about them. Only for the last three years have they been authorized to use tasers. Since that time, they have had six incidents where tasers have been deployed, and there have been no deaths.

One day I was at the Clark County court and an attorney came through the metal detector with a loaded .45 in his briefcase. The marshals take away 300 weapons a month from people coming to court, and many of those people who come to court are ex-felons. Their weapons are removed. They are also very willing to fight. Since the court marshals have been allowed to use tasers, there has been a steep decline in the number of people who want to fight. Assemblyman Settelmeyer, I would say that you are exactly right. If I shoot you with a taser, you may have some lasting effect, but if I shoot you with my sidearm, I can guarantee you there are going to be lasting effects; that would be the option.

The concerns of the court marshals are if you make these restrictions so onerous, the county that controls their budget will take the taser from the marshals. I can tell you, with certainty, if you do anything to impact their budget, every one of these agencies, whether it be a county or a city agency, is going to have to look at ways to reduce their budget, including removing those weapons and leaving officers with the only other option, a sidearm.

For this reason, we are against this bill. In addition, I would agree with Mr. Kallas that these policies are better left adopted by the local agency that is dealing with these decisions every day. I look at this amendment, in subparagraph (3), where it says "the person is engaging in physical resistance against a peace officer with the intent to cause substantial physical harm." I represent prison guards, and they do not know what someone's intent is. I can guarantee you, if you are that officer who defends himself or takes action, chances are you are going to end up as an individual in court. There is a very high probability that would happen, as this language is very subjective. I think you are almost ensuring that. For those reasons we would support that, if you are going to do anything with this bill, it be left to the local agencies to adopt regulations for the use of tasers.

[Chair Kirkpatrick turned the meeting over to Vice Chair Bobzien.]

Chuck Callaway, Sergeant, Intergovernmental Services, Las Vegas Metropolitan Police Department, Las Vegas, Nevada:

We appreciate the concerns of Assemblyman Hogan and the ACLU. We did meet with them and discuss their bill at length, and we offered them feedback. However, the bottom line is, we agreed to disagree. We believe that it is not necessary to have legislation that governs the use of tasers. We believe that we have a very strict policy that governs when officers can use tasers in the field ([Exhibit O](#)).

Without going further and repeating a lot of what has already been said, we have two folks in Las Vegas, with our department, who would like to testify. One is our head taser instructor, Marcus Martin, and the other is our legal counsel, Charlotte Bible, who might be able to answer some of the technical questions that were brought up earlier. I do not know if you would like to have them speak now or wait until later.

Vice Chair Bobzien:

We will wait and see if our Committee members have any questions for the current speakers. Are there any questions? I have two questions. The first question is for Mr. Kallas. Without having the report in front of you from Amnesty International, would you comment on the statistics that have been presented earlier today? I am also thinking in terms of the question that was raised about other contributing factors—the presence of drugs and alcohol in those situations.

David Kallas:

The statistics are what they are. I recall Ms. Rowland speaking earlier about the number of deaths that were caused or not caused where a taser was used, and making statements that public officials had been intimidated to not allude to the fact that a taser may have contributed to somebody's death. I have a concern about broad-based statements like that.

Anything used inappropriately could cause unintended consequences. If I take my baton out to strike somebody for a purpose, and they duck and I hit them in the head, it is going to have a pretty significant unintended consequence. But, that is why we train our officers and we provide them with policies and procedures. The policy manual of the police department has to be at least 500 pages and is about two inches thick. That is just the policy and procedures of how you are suppose to act as an employee of that department, let alone knowing the laws of the state, the cities, the counties, and the municipalities in which you live.

I would rather defer to the training and experience of those officers to determine themselves what they believe is appropriate, and be able to later articulate that to someone.

Vice Chairman Bobzien:

Sergeant Callaway, could you provide the Committee with a copy of the taser policy from Metro? I would be interested in seeing that. We are not going to ask that from every law enforcement agency.

Chuck Callaway:

I would be happy to supply that to you.

Vice Chairman Bobzien:

However, if other agencies have a taser-use policy, and I am thinking particularly about Washoe County, I would be interested in having that for our reference.

Assemblyman Munford:

Out of curiosity, I would like to ask Mr. Kallas if the choke hold case you were referring to is the Bush case, and did this case establish the choke hold policy?

David Kallas:

Yes, I believe that was what caused that choke hold legislation to be put into the NRS Chapter 289.

[Chair Kirkpatrick returned.]

Assemblyman Stewart:

Could you just briefly tell us how long the taser training program is?

Chuck Callaway:

I believe the initial training is four hours, and then the officers are required to go through a more advanced training to brush up and enhance their skills every quarter. Our head instructor is in Las Vegas and he could probably give you a more detailed breakdown of that training.

Chair Kirkpatrick:

Does anyone else have any questions?

Assemblyman Aizley:

If a police officer is accused of some incident, is it better to have his actions protected by a state law or by a local policy?

David Kallas:

I am not quite sure about the question. I think his actions would be governed by state law and governed by policy and procedure. As long as he did not work outside the lines of that policy and procedure or state statute, then there would be no concern for protection. Anybody, at any time, can step outside the lines and they would be held accountable. We are held accountable even when we are inside the lines because we are constantly scrutinized about our actions. When the use of any force is reported in our department and is documented, the officer has to articulate why it was used. I think the concern about

accountability is already there. I think the public has faith and trust in us in what we do because they know we are trained and experienced to handle what we are suppose to handle.

Assemblyman Aizley:

I think the protection of the officer is greater if he is following an approved legislative law. He might not be as well protected by simply a local policy.

Chair Kirkpatrick:

That is just a comment.

Assemblyman Aizley:

Comment, yes.

Chair Kirkpatrick:

I am going to go to Las Vegas. If there is more than one person who would like to testify in opposition, please go to the table. In Carson City, I would like to have Mr. Bello, Mr. Silva, and Mr. Miller at the table.

Charlotte Bible, Assistant General Counsel, Las Vegas Metropolitan Police Department, Las Vegas, Nevada:

As you know, we oppose the bill and we have a legal concern regarding section 4 of the bill. That is what I am here to talk about. Officer Martin is here to talk about the operational issues.

Our concern is that section 4 mandates that a database be created, that it include the video obtained from a taser camera, and it would be a public record subject to public inspection. Our concern is that requiring a public database jeopardizes a defendant's constitutional right to a fair trial by allowing public access to public disclosure of evidence in a criminal case while the criminal case is open and pending.

This bill treats all video the same and does not allow for individual assessment of the video. When a video is captured as a result of the firing of an ECD or taser, it is downloaded as evidence of the incident it is associated with or it is part of a use-of-force report, but neither download is considered public record available for public inspection. Evidence is not a public record and has never been held to be a public record. Evidence is proof of the existence of a fact; it is investigative information to prove or disprove a matter of fact. It must be maintained in a meticulous manner to retain its authenticity and reliability to use in a criminal case.

This ECD or taser video is just like any other evidence. It is similar to a surveillance video from a convenience store that is retained as evidence, or like

a blood sample. The only time the department might make use of a surveillance video is if a suspect is a fugitive and there may be a portion of the video that is used for purposes of seeking the public's help in identifying the suspect or in apprehending the criminal. Requiring an ECD video to be classified as a public record and for public inspection in a criminal case potentially violates the defendant's constitutional rights to a fair trial. Premature, pretrial publicity can prejudice a defendant and impede his right to a fair trial. For example, if a video captured a confession of a defendant and that is broadcast over the news stations, it should be a court that decides what evidence is considered. In that case, if the video is broadcast, the defendant may have difficulty suppressing it. Also, making such videos public record may result in the disclosure of an arrest that may not result in a formal charge or conviction, and that would violate NRS 179A.100 regarding the confidentiality of criminal history information. Also, maintaining the confidentiality of the video evidence may be needed to protect an ongoing criminal investigation from premature disclosures. Our point is, violating a defendant's right to a fair trial must outweigh the public's right to know.

Even an allegation of prejudice to a defendant can result in a mistrial or require a change of venue which can be costly consequences for a county or state. We would like you to understand that the evidence that is obtained from use of the taser camera is evidence that should not be opened to public inspection while a criminal case is open and pending. The risk of prejudice to a suspect or a defendant or the criminal justice system, while a criminal case or an investigation is open, far outweighs the benefits of requiring that ECD video be opened to public inspection. For those reasons, we oppose A.B. 273.

Chair Kirkpatrick:

Does anyone have any questions? [There were none.]

Marcus Martin, Officer, Lead Taser Instructor, Las Vegas Metropolitan Police Department, Las Vegas, Nevada:

I would first like to say that Metropolitan Police Department policies, as you are about to see, are sufficient. They are all encompassing; they match the confines of *Graham v. Conner*. Many of the things that the ACLU has proposed already exist in our policies. For example, number 8 in our policy states that, when a subject displays solely passive resistance, in other words, they refuse to stand upon command, our officers are not to tase that person. A simple disobedience is not cause to be tased by the Metropolitan Police Department.

I find it unique that in my position, and in my squad's position, we constantly receive calls from supervisors, sergeants, lieutenants, and deputy chiefs questioning every use of force that goes across their table. They question

whether they should have tased this person running from them. How did it match *Graham v. Conner*? It is a very common occurrence. Sometimes it is frightening because they almost go too far the other way, questioning whether they should have tased an escaping felon. I believe that everything that has been proposed already exists with the department.

I do need to move to the training question that was submitted earlier. Training for the Metropolitan Police Department for the end user stipulates a minimum of four hours of training. Because these are recruits, it typically bleeds over into five and six hours, but the minimum is four hours. They must fire two cartridges per post. Instructors have an eight-hour day with me personally, and include medical and electrical capabilities. Every officer must complete a two-hour annual recertification.

Mr. Munford, you asked a great question about aiming. The electrical control device I hold here is not loaded and is the ECD, with the camera attached, that you are all familiar with. I will point it at me. Can you see the red dot on my chest?

Chair Kirkpatrick:

It is on your tie?

Marcus Martin:

Yes. To answer Mr. Munford's question, our officers are trained to follow laser strike at center mass to avoid soft tissue areas of the face, the neck, female breast, and groin. He was very correct in saying the back is the proper place to target a subject, because there is more muscle mass, more lockup, no sensitive areas, and surprise may be a factor against a combative person.

Our handcuff policy already exists as well. It is fairly severe. If a suspect is in handcuffs, an officer will not win the argument that he was justified in the use of his taser even though he faced a risk of being injured. County property has been damaged, such as windshields and vehicle windows, but that is not a reason for a subject to be tased, because they are handcuffed.

So many things, as I said earlier, already exist. I am glad that the ACLU was willing to work on this bill because my fear was for the officers who commonly face subjects who have a problem with their gender, or their stature. Our female officers frequently face the problem of a suspect having the attitude that they do not have to obey the officer because she is female. If this had been relegated to only deadly force, we would have taken an incredible tool away from those ladies that has kept them safe, or at least safer.

If I may say on a personal note, Madam Chair, if a taser did in fact kill, I would be very dead. I can think of no one in this department who has been tased more than I have due to the various schools that I have attended. I have received some incidental and accidental tasings. Some people would consider me a high risk category because I will be 50 years old this fall, I am barrel chested, I am borderline hypertensive, and I have an arrhythmic heart. I am a walking poster child for in-custody death, yet I am here today. So, I submit to you respectfully, the taser does not kill.

Chair Kirkpatrick:

I am thinking we should have brought you to Carson City.

Marcus Martin:

Please do not get me started, because I can put on a show. I can tell you of countless incidents where you would agree with me when I showed you somebody who was tased and why they were tased. I think that officers apply the taser judiciously and appropriately. What you may not be aware of is there is pretty much hell to pay in written format and in internal affairs, at least in our department, when an officer misuses the taser. The checks and balances are in place in the Las Vegas Metropolitan Police Department.

Chair Kirkpatrick:

Does anyone have any questions? Mr. Munford, did you get all your questions answered? Thank you; because of you we did get a demonstration.

Assemblyman Munford:

Yes. Mr. Martin, you are doing an excellent job in Las Vegas. It is a pleasure to hear you express yourself. You are doing a very good job.

Marcus Martin:

Thank you, sir. If I had more time I could give you some more technical information. I would be happy to visit you in Carson City.

Chair Kirkpatrick:

If there is anything else you need to put on the record, please do so at this time. If not, we will go back to Carson City and have the last three folks speak. Are you finished Mr. Martin?

Marcus Martin:

Yes, I am. Thank you, Madam Chair.

Marc A. Bello, Detective, Washoe County Sheriff's Office, Reno, Nevada:

I am a taser master instructor. On behalf of the Washoe County Sheriff's Office, we rise in opposition of Assembly Bill 273 in all of its aspects.

We believe that the bill should not be legislation and that it should be handled by each agency through policy, procedure, and training. The Washoe County Sheriff's Office also has very strict policies and procedures and training guidelines for the use of a taser, or electronic control devices, as some have referred to them. We also concur with the testimony given previously in opposition to the bill. Again, we rise in opposition to this bill.

Chair Kirkpatrick:

Does anyone have any questions? [There were none.]

James G. Miller, Sheriff, Storey County, Virginia City, Nevada:

I am the president of the Nevada Sheriffs' and Chiefs' Association. I am here to let you know that every sheriff, and there are 17 in the state, 13 police chiefs, and others in this organization of ours are opposed to this bill.

Assemblyman Aizley asked the question about state law versus policy and procedure. The policies and procedures that guide individuals in our agencies are built around state law. Therefore, it does protect that person out there on the street. I have been out here for many, many years and had to work my way up using mace, nightsticks, and hands on. Without this new device, an officer's danger would be greatly increased. They would get injured much more frequently.

Chair Kirkpatrick:

Does anyone have any questions? [There were none.]

Steven B. Silva, Senior Law Enforcement Specialist, Division of State Parks, Department of Conservation and Natural Resources:

In the interest of efficiency and brevity I have provided written testimony ([Exhibit P](#)). If that is sufficient, I would be happy to answer any questions that the Chair or the Committee may have regarding our experience with the electronic control devices at the Division of State Parks.

Chair Kirkpatrick:

Thank you, Mr. Silva. We do appreciate your written testimony. I read the part that the database in section 4 is a big concern. Unless anyone has any questions, your written statement has all your contact information so we can contact you if we need to.

Steven Silva:

I would be happy to answer any questions at any time.

Chair Kirkpatrick:

Does anyone have any questions? [There were none.]

James Miller:

I would find it very hard to believe that there is one agency in this state that does not have a policy regarding this issue. I would think that the 17 sheriffs and the 13 chiefs and other agencies would be glad to send you every one of them for you to see.

Chair Kirkpatrick:

Does any have any questions? [There were none.] Is there anybody else that would like to testify in Carson City in opposition to A.B. 273? Mr. Hogan, your ACLU guest came back.

Richard Perkins, representing the City of Henderson, Nevada:

I am also the retired Chief of Police from Henderson. Let me apologize to Assemblyman Hogan, because he and I have not spoken about my opposition to this bill. Frankly, I did not know that I would be testifying today. In the many years that I served in this body, I worked with the ACLU on a number of issues. I think that it is very important to have the connection between the ACLU's approach to civil liberties and law enforcement working together when we create various policies in our state.

I retired from the police department after 25 years in Henderson. That might sound pretty impressive, but most of the folks, if not all of them sitting in this audience today, the sheriffs, the chiefs, and others, far exceed the time in law enforcement that I spent. There were probably over 500 years of law enforcement experience in the room when you began this hearing. Frankly, I do not have a stake in this anymore as I am no longer the chief. I do not have to deal with those policies, but I am still here to tell you that I think the bill would be harmful to law enforcement's ability to conduct its business.

I also think that even with the amendments as written, it becomes sort of a full employment act for some lawyers. As the chief, on average I got sued about once a month. Every time a police officer gets sued, everyone in the chain of command gets sued. I was responsible for the policies of that department and the actions of each one of those employees. It came with the job and I understood that, but I can tell you, I think there would be additional lawsuits under this bill.

What was not said earlier is the Las Vegas Metropolitan Police Department, the Henderson Police Department, and others within the state are internationally accredited. There are over 100,000 police agencies in the world, and I think there are only about 600 accredited agencies out of that 100,000. Many of them are right here in the state and that is something you can all be proud of. It is a very onerous and rigorous thing to become accredited. The reason I bring

this up is that the Commission on Accreditation for Law Enforcement Agencies also has standards that need to be met and that address the use of tasers.

When I was a police manager, a captain, and a deputy chief, I will tell you that I was actually against the use of the taser in the early portion of the force continuum. It was out of my lack of education of that particular tool. As I have come to understand the taser better, I was part of the decision making process that moved it up in the force continuum. Because of where it is listed now in my department and in others, fewer officers, suspects, and members of the general public have gotten hurt or killed. I know that in my heart. I have seen the reports and I have been able to analyze the use of those tasers. In fact, I was one of those people who scrutinized the use of the taser and the uses of force that came across my desk. I would have those officers come in and explain why they decided to use the taser at that point in time.

There was a big debate on whether or not a taser is "deadly force," and its new term is low-lethality instead of nonlethal. I can tell you just about anything an officer does is low-lethality. If an officer has to put hands on someone, deadly force can result. If an officer uses his baton or some other impact weapon, as Mr. Kallas mentioned earlier, that can become deadly force. It is all in the use of the weapon and the situation that the officer finds himself in.

Courts have also reviewed use of tasers on many occasions and have not defined the taser as deadly force. If they had, we would be having a different discussion today. To speak to Mr. Aizley's earlier question about whether or not it would be better to have it in state law, I suppose that there are some benefits to that; but as you know, Madam Chair, we had a discussion last week on annual sessions. One of the challenges is that you meet only every other year. If we find some evolution in the use or the need to amend a policy, we can amend our policies at the local law enforcement level. To change the state law, we would have to wait for the Legislature every other year. We also mold our practices in conjunction with court decisions and lawsuits that we face and in conjunction with the citizens we serve. We take their input when we make these policies and that is the policy you have today. The policies of each one of these law enforcement agencies were based upon that input.

I do not want to take too much more of your time. I, too, am shocked that this bill is in your Committee and not in the Assembly Judiciary Committee, but let me just finish by telling you that the bottom line is, if this bill passes with the stated amendments, more people will be harmed, and more people could potentially die. Most of you know me, and I am not a melodramatic person. I love to see things and make decisions based upon the facts, but that to me is truly the belief that I hold. With that I am happy to answer any questions.

Chair Kirkpatrick:

Are there any other questions? [There were none.] Thank you very much, we really appreciate it. We have one more for the record in support of A.B. 273.

Richard Boulware, Assistant Federal Public Defender, Las Vegas, Nevada:

I am also the attorney who is head of the Legal Redress Committee for the (NAACP) in Las Vegas, Nevada. I am president of the National Bar Association Foundation, which is an association of African American lawyers in Nevada. At this point we support the idea of accountability to the extent that tasers are used.

Prior to becoming an attorney, I was a consultant for police departments. For years I dealt with community and police issues and issues related to how to internally manage police departments. I am not unfamiliar with the workings of police departments and I am not unsympathetic to their concerns. My primary concern here is the issue of accountability with respect to the use of what is possibly a lethal weapon and a weapon that is painful and has the potential to be misused. I do not believe that the bill does anything other than ask for accountability.

I think that Officer Martin very eloquently established a reason for the bill if the departments are already engaging in policies that in effect parallel the bill. It seems to me that the only reason not to have the bill would be that there were other officers or other departments that are not following those policies. We create statutes and laws in part to protect people who cannot speak for themselves. I am here to protect those people who come to the NAACP or who come to the National Bar Association and say I was tased inappropriately.

I will give you an example of a case that I had just last week. It was in federal court with park rangers, but I think it illustrates the point. My client was pulled over; he was a 55-year-old veteran, honorably discharged. He had a broken leg in three places. He was ordered out of the car because there was an old warrant that was later expunged. He was ordered to walk backwards to the back of his truck. Again, he had a leg broken in three places with a pin in it and he walked back with a limp. The rangers acknowledged that he had a limp. He put his hands on the tailgate of his truck as instructed and then they asked him to spread his legs. He said, and you can hear it on the audio recording, "My leg is broken. I cannot spread my legs." The rangers then grabbed his arms and pulled them back. Because his leg was broken he could not hold himself up so he held on to the officers' hands. The officers pushed him forward and he was tased. Not just once, but twice.

I understand it was the park rangers' concern about what they perceived as my client's issues, but that client suffered further injuries as a result, and those injuries may have been diverted by a different policy. There were four rangers who were present in this incident. I recognize that there may not be that many people who are tased, but I am here for those who are because we cannot forget them.

I do not want officers harmed and I want them to be able to protect themselves, but we also have to have standards and accountability. The shape of this country, in terms of economic situations, is based upon the fact that we do not have accountability. We all know that laws are not created because we believe that everyone violates them. We create laws to make sure that in those incidences where there might be a violation, people are protected. The people who come to me and to my organization are not protected at this point. Not because law enforcement is not trying to do their job; I think that for the most part they are, and they will continue to. But I think that it is important for people to understand there is clarity and accountability, and I think that works in law enforcement.

When I interviewed law enforcement officers as a consultant, one of the things that was most confusing to them was policies that were vague—policies that allowed for a great deal of discretion.

We do not advocate the extent to which the taser is being used, but we do advocate that there be a clear policy about their use. We know that police departments are very good at implementing policies that come from law or statutes. They are very good at interpreting Fourth Amendment requirements with respect to searches and questions about searches, even though that law is very complicated. They are very good about Mirandizing individuals and talking with them in terms of what they need to do. They understand that it is part of their job; they have to interpret statutes as best they can.

As the bill is worded, there is still broad discretion with respect to what the officers can do. It is not as if the line of accountability is being drawn or is so specific that there is not the possibility of interpreting in favor of the officers and their conduct. What I am saying is that there are people who could potentially be tased for no reason other than what could be a bad judgment call. I recognize there is a concern for officer safety, but I do not believe that we should sacrifice accountability on the backs of the individuals who may be tased in violation of a policy.

I do want to reiterate that this comes not just from the fact that people come to me, but because I have worked with police officers and police departments.

I recognize the importance of having a very specific standard and the fact that they can train based around the standard that is created. For those reasons, I would support at least creating some accountability in terms of the bill as it currently exists.

I am in disagreement with the amendment. Through my experience, the incidences of misuse come to light almost entirely through outside surveillance mechanisms or someone who has observed conduct. It is rarely the case that internal observation or internal investigations can lead to these types of uses being brought forward. I am not saying never, but in my experience it is necessary to have some outside surveillance. As I stated earlier relating the incident involving my client who was improperly tased, there was video and audio of the incident. The ranger reports did not explicitly state what my client said. If I had not had the video and audio at my trial, I would not have been able to bring that to the attention of the judge. I think it is very important that we have an external mechanism in terms of checks and balances because that is also fundamentally a part of our country and the way we operate in terms of laws. We need to have outside agencies double-check what other agencies are doing.

Chair Kirkpatrick:

Does anyone have any questions?

Assemblyman Munford:

Are there any figures or any statistics, on the basis of race or ethnicity, on who has been tased more?

Chair Kirkpatrick:

You can get Mr. Munford and anyone else on the Committee that information in writing. I believe, Mr. Munford, it is probably in the Amnesty International report that will be given to us.

Richard Boulware:

As far as I am aware, there is actually only one recent study, in Houston, Texas, which talks about the fact that minorities are disproportionately more likely to be tased. Unfortunately, minority communities are more likely to be involved with law enforcement. I would encourage this Committee that is considering the amendments to include the collection of information with respect to how the taser is being used. As we know from prior bills, for example Assembly Bill No. 500 of the 71st Session which was implemented in 2001, there continues to be unfortunate disparity with respect to minorities and law enforcement. That needs to be addressed. I am very concerned about the use of tasers, particularly in the minority community.

Chair Kirkpatrick:

Thank you. Assemblyman Hogan, would you please sum this up for us?

Assemblyman Hogan:

I need to make one point in particular and then a quick summary. An effort was made throughout this process to solicit from the spokespersons for law enforcement what their concerns were so that we could try to address them and incorporate them in the language. The testimony of Charlotte Bible in Las Vegas was what we wished we could have had in response to our earlier request, so we would know what objections and/or concerns they had about the release-ability and public-information aspects of it. We will try to address that, but it is disappointing that we could not get an answer earlier that could have helped us include something in the amendment that would modify that. As a general matter, we have simply tried to show that with literally hundreds of deaths around this country, and a disproportionate number of deaths in Clark County, this is a matter that certainly deserves the attention of either the Judiciary or Government Affairs Committees or whomever.

Chair Kirkpatrick:

We are keeping it now; we have spent this much time on it. It is ours. We own it.

Assemblyman Hogan:

I sense that we are getting very good and quality attention to the bill from this Committee, so I am perfectly happy to be here. I think we have established that there is something worthy of considering and that harm is being done in rather large numbers considering the fact that it is a new weapon. Many, many police forces do not use it. I would just ask people to remember that we are not trying to regulate in great detail or dictate the training curricula. I was very impressed with the training curricula, and certainly the trainer.

I think we are all better off to have a carefully worked-out standard that applies statewide to any use of tasers against the public and that is compatible with the individual departments working out the implementation of policy in accordance with the local conditions. We still feel very strongly regarding that issue, notwithstanding the fact that, generally, the police community would rather not have an imposition of a policy. I think it is appropriate and necessary in this case, and we will continue to work to eliminate as many differences as we can. If the law enforcement friends of ours are willing to come back to the table, we will be there.

Chair Kirkpatrick:

Does anyone have any questions? [There were none.] Is there anyone else who would like to testify on A.B. 273? [There were none.] With that, we will close the hearing on A.B. 273. Is there anything from the public? [There was none.]

Meeting adjourned [at 12:09 p.m.].

RESPECTFULLY SUBMITTED:

J. Renee Ekleberry
Recording Secretary

Cheryl Williams
Transcribing Secretary

APPROVED BY:

Assemblywoman Marilyn K. Kirkpatrick, Chair

DATE: _____

EXHIBITS

Committee Name: Committee on Government Affairs

Date: March 25, 2009

Time of Meeting: 8:03 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 360	C	Wes Henderson	Payments-In-Lieu-Of-Taxes
A.B.360	D	Wes Henderson	Secure Rural School Sheet
A.B. 360	E	Wes Henderson	Prepared Testimony
A.B. 360	F	Wes Henderson	Entitlement Land Payment Formulas
A.B. 394	G	John Hiatt	Prepared Testimony
A.B. 415 and A.B. 419	H	Laurie Carson	Prepared Testimony
A.B. 419	I	Laurie Carson	Memorandum
A.B. 415 and A.B. 419	J	Assemblywoman Ellen Spiegel	Email from Beverly Cornutt
A.B. 273	K	Ron Dreher	Letter in Opposition
A.B. 273	L	Lee Rowland	Amendment
A.B. 273	M	Lee Rowland	Follow-up Testimony
A.B. 273	N	Gary Peck	Testimony
A.B. 273	O	Chuck Callaway	Taser Policy
A.B. 273	P	Steven Silva	Testimony