

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

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

The Committee on Government Affairs was called to order by Chair Marilyn K. Kirkpatrick at 9:03 a.m. on Monday, April 6, 2009, in Room 3143 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4406 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/75th2009/committees/. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

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

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Assemblywoman Barbara Buckley, Clark County Assembly
District No. 8

STAFF MEMBERS PRESENT:

Susan Scholley, Committee Policy Analyst
Cyndie Carter, Committee Manager
Cheryl Williams, Committee Secretary
Olivia Lloyd, Committee Assistant

OTHERS PRESENT:

Dana Bilyeu, Executive Officer, Public Employees' Retirement System
Jack Mallory, Assistant Business Manager/Secretary-Treasurer, Director
of Government Affairs, International Union of Painters and
Allied Trades, District Council 15, Henderson, Nevada
Jeanette K. Belz, representing the Associated General Contractors,
Nevada Chapter, Reno, Nevada
Mandi Lindsay, representing Associated General Contractors Las Vegas
Chapter, Las Vegas, Nevada
Jess J. Franco, Western Regional Manager, Celtic Energy, Boulder City,
Nevada
Jason Geddes, Environmental Services Administrator, Public Works,
City of Reno, Nevada
Michael Hackett, Reno, Nevada, representing NORESCO, Westborough,
Massachusetts
Ted J. Olivas, representing the City of Las Vegas, Nevada

Chair Kirkpatrick:

[Roll taken.] We will open the hearing on Assembly Bill 493.

Assembly Bill 493: Prohibits companies that are involved in specified activities
in the country of Sudan from entering into a contract with certain state
agencies for the provision of goods or services. (BDR 27-1232)

Assemblywoman Barbara Buckley, Clark County Assembly District No. 8:

[Read from prepared testimony ([Exhibit C](#)) and presented a proposed
amendment ([Exhibit D](#)).]

Chair Kirkpatrick:

Does anyone have any questions?

Assemblywoman Pierce:

Thank you for bringing this to us. Certainly if anyone was watching *60 Minutes* last night, after the very depressing report about Nevada, there was another depressing report about the human rights record in Iran. My question is more nuts and bolts. On the amendment it says that the dotted green is transitory language. What does transitory mean? I do not understand.

Assemblywoman Buckley:

The initial language of the bill, the declaration section, would be included as transitory language in the digest. It does not go into the *Nevada Revised Statutes* (NRS) chapter. When you turn to page 3, section 2, of the mock-up, that is the proposed language that would go into the NRS chapter, and the language in section 1, pages 1 and 2 of the mock-up, would go into the transitory digest as a way of explaining what the intent was at the time of the bill's enactment.

Assemblyman Goedhart:

I appreciate your bringing this to our attention today. Do we have any investments currently in the Public Employees' Retirement System (PERS) that would be affected and to what degree?

Assemblywoman Buckley:

We do, and I have a list ([Exhibit E](#)) that I can distribute to the Committee. The total PERS Iran exposure is \$163,215,709, and I have a listing of every company.

Assemblyman Goedhart:

But out of a total of \$20 billion it is still a very small amount.

Assemblywoman Buckley:

Yes, it is a very small amount. We would like it to be zero.

Assemblyman Christensen:

Of the \$160 million, is 95 percent of that investment in oil? I was just curious if there were any other investments. Oil is the obvious one.

Assemblywoman Buckley:

It is all oil.

Chair Kirkpatrick:

Does anyone else have any questions?

Assemblywoman Buckley:

Madam Chairman, in the final drafting process of the amendment, on page 3, lines 6 and 7, I want to clean that language up a little should the Committee choose to pass the bill. I do not want it to leave the impression that PERS' investments themselves are risky by virtue of being in those companies. It is that overall we do not support the policy. So in the final drafting I just want to clarify that language.

Chair Kirkpatrick:

Does anyone else have any questions?

Assemblyman Goedhart:

Has the European Union (EU) taken similar positions on this as well? I am just wondering about what they have done.

Assemblywoman Buckley:

I do not know. I have not checked that, but I will, and I will email you.

Chair Kirkpatrick:

Is there anyone who is in support of A.B. 493 who would like to get on the record? Is there anyone who is in opposition of A.B. 493? [There were none.] Is there anyone who is neutral on A.B. 493?

Dana Bilyeu, Executive Officer, Public Employees' Retirement System:

We have had an opportunity to review the amendment to A.B. 493 and the list with the particular types of companies that are involved in the request. The total is \$163 million of the Public Employees' Retirement Fund (Fund), and these are in very large conglomerate-type companies. Royal Dutch Shell Petroleum is one of them and it is a European oil company. That is our largest holding at \$71 million. Total is another European company. When I speak about them, I speak of them as conglomerates. I will use Royal Dutch Shell as the example for why the Public Employees' Retirement System would invest in the first place. This is the second largest oil company in the world with over 104,000 employees, including 22,000 employees in the United States. When we purchase these kinds of companies, they are purchased through our big index funds. This happens to be traded on the European Index, the EFA as we call it. We participate as part of the EFA in our actively-traded stock funds. The decision to invest in those funds is to capture the total market returns that we have. The board is very concerned about making sure that the assets of the System are working to the best interest of the members and beneficiaries of the

Fund. In fact the list that was provided shows the total cost to the Fund if we had divested from the identified companies. That was a little over \$21 million. It is not a simple question for the Board, and we do take very good care of making sure that these decisions are made in the best interests of the members and beneficiaries of the Fund, which is required by the *Nevada Constitution*.

We are happy to report any of the investments of the program to the Nevada Legislature and to the Governor, and we are happy to comply with the provisions within this particular bill. The issue again for us is simply trying to make sure that the members of the Board are discharging their fiduciary duties to members and beneficiaries and making decisions only in the best interest of the Fund itself.

For your background, the System already complies with the list from the Office of Foreign Asset Control, which is the list that is promulgated by the federal government. That list prohibits investors in the United States from investing in certain identified companies. These corporations ([Exhibit E](#)) are not identified on that list. That is mostly an emerging market list where you will have very specific types of banks, et cetera, that we cannot, as institutional investors in the United States, invest in.

I am happy to participate, and I did speak to Assemblywoman Buckley about certain language in sections 14 and 15 of the declaration, otherwise, we are happy to comply with all of the provisions within the proposal.

Chair Kirkpatrick:

Does anyone have any questions?

Assemblyman Stewart:

So, Royal Dutch Shell Company has investments all over the world and just part of them in Iran, is that correct?

Dana Bilyeu:

That is correct, approximately 1,000 employees in Iran, about 22,000 in the United States, and 104,000 employees worldwide.

Assemblyman Stewart:

How long would it take you to divest your interests in this company?

Dana Bilyeu:

They are publicly-traded corporations, so they trade on exchanges. So it is just the process of going through a sale for them. Again, the decision to purchase

or to sell is made solely for the best interests of the members and beneficiaries of the Fund.

Assemblyman Stewart:

So you would wait until the market was right before you make the sale?

Dana Bilyeu:

We would make that decision based on the best opportunities for the Fund itself.

Assemblyman Stewart:

Thank you.

Chair Kirkpatrick:

Does anyone else have any questions?

Assemblyman Goedhart:

If this legislation was passed, then PERS and the Board would divest yourselves of your investments of \$163 million?

Dana Bilyeu:

That is not correct. The System is a fully discretionarily invested system where we hire money managers who invest for one purpose only, and that purpose is to ensure that the best interests of the members and the beneficiaries of the Fund are served. They evaluate every day whether or not these particular assets are at risk or whether their purchase or sale is in the best interests of the members and beneficiaries. The decision has to be based upon that, and we are happy to report to everyone how we go about that process, but, again, we are prevented by the *Nevada Constitution* from making any investment decisions other than what is in the best interests of the members and beneficiaries of the Fund.

Chair Kirkpatrick:

Mr. Goedhart, I would just like to point out, on page 2, line 17 of the mock-up, in the preamble or transitory language it talks about what the federal government currently requires, then in section 14, on page 4, it talks about how the reporting Legislature and the Governor's Office would work.

Assemblyman Goedhart:

So it is more or less a reporting function that this would affect.

Dana Bilyeu:

Yes, that is correct.

Chair Kirkpatrick:

Does anyone else have any questions? [There were none.] Is there anyone else who would like testify on A.B. 493? [There were none.] Assemblywoman Buckley, do you have any closing remarks?

Assemblywoman Buckley:

No.

Chair Kirkpatrick:

With that, we will close the hearing on A.B. 493.

Assemblywoman Pierce:

Would you take a motion Madam Chair?

Chair Kirkpatrick:

I will take motions this week because it is deadline time this week.

ASSEMBLYWOMAN PIERCE MOVED TO AMEND AND DO PASS
ASSEMBLY BILL 493.

ASSEMBLYMAN CLABORN SECONDED THE MOTION.

Chair Kirkpatrick:

Is there any discussion? That would include the clarifying pieces of the bill.

THE MOTION PASSED UNANIMOUSLY.

We will take a one-minute recess.

[Chair Kirkpatrick and Assemblyman Aizley will be presenting A.B. 192. Vice Chair Bobzien will take over the meeting.]

Vice Chair Bobzien:

We will be opening the hearing on Assembly Bill 192.

Assembly Bill 192: Revises provisions governing certain performance contracts for operating cost-savings measures. (BDR 27-245)

Assemblywoman Marilyn Kirkpatrick, Clark County Assembly District No. 1:

I am here today to present A.B. 192. Also with me today is my colleague Assemblyman Paul Aizley who is helping me with the bill. I did hand you a copy of the Performance Contracting Process ([Exhibit F](#)), and I will be referring to it a little today. Assembly Bill 192 comes from a bill that received a lot of resistance on last session. Those of you who know me, when I get a lot of resistance, I am going to dig into the problem.

Assembly Bill No. 222 of the 74th Session was a bill to make local and state government be the leaders and be energy efficient. We are always telling our constituents to be energy efficient and conserve water, but on the state and local level we are doing a terrible job. That bill died a very painful death; local government was very upset about it. There was a lot of controversy. In fact, my good friend Josh Griffin opposed it so much that I told him I was going to make him come testify with me on this bill today: he won an award at the Nevada Taxpayers dinner for doing exactly what I was trying to get them to do.

I think that the bill has merit. I started looking throughout the *Nevada Revised Statutes* (NRS) to see where some of the problems were on energy efficiency. What was the big rub? Why were people opposed to it? We have facility folks in every part of local government. What do they do? They change light bulbs, they make the doors sound with weather stripping, and those kinds of things. I did look into it, and we did have something in place, which was the NRS on the performance measures for energy contracting. The problem is that nobody reports to anyone on how they are working.

Today my bill discusses a piece of that. When the law was first enacted there was a piece in there that required the qualified service company to provide information to the Office of Energy so that they could see what our energy savings were over time. I did a lot of research on it, and that is why we have the bill the way it is today. I will tell you that there are going to be some amendments; not all of them are friendly amendments. There are some things that I am willing to bend on, but when it comes to accountability, this is a big issue for me this session.

On the first page of the information I gave you ([Exhibit F](#)), this is exactly how performance contracting is supposed to work. As you can see it is very complicated, and it took me awhile to understand how the whole process works. I have been asking for a long time how a company becomes certified to be an energy service company. What do they have to do? This is what I discovered. On pages 2 through 4 of the handout you will see information about the certifying entity, the National Association of Energy Service Companies (NAESCO). On page 5 are the NAESCO ethical guidelines that a

member would have you adhere to. The membership list is on pages 6 through 9. The reason that I put a list of the membership in there is because I think within this bill it is very important that, if you going to do business in Nevada, you have to at least have a Nevada Business License. That is something that is not necessarily required, and if it is not required it does not always happen. If you are going to do the work and get all of the Nevada local and state contracts, then I think you should have a Nevada Business License and use Nevada employees.

On pages 10 through 12 of the handout, there is another piece that talks about "Energy Performance Contracting For You." It is very good especially for our rural communities. It is something that they need to do, and it helps them with the financing mechanism for how they become more energy efficient. However, there is no accountability that goes with it; there is no guarantee that a Nevada business is going to do the work.

Researching Hawaii, I saw that they are a bit more strict on their energy guidelines. Currently, in Nevada we have a third-party consultant come in and tell you the changes that you need to make to be more energy efficient, but it is guaranteed for 15 years. My first question was: how do you guarantee something for 15 years? A lot of things can change in 15 years. Does that mean if I do not use the right people to do the work and they touch something, now it is not guaranteed any more? What are the parameters of the guarantee? That is how I found out that there is a maintenance contract, which is a whole separate issue that goes along with it, and you do not always have a maintenance contract. I think that there is no reason to get rid of performance contracting. Anytime that we can be energy efficient is absolutely great. This currently goes through the Purchasing Division, but I also think there has to be some accountability.

In the last seven years we have had very little accountability, and there are 34 projects that are going on out there. Yes, it is a very big business for a small group of folks. With that, I will let Mr. Aizley explain the portions of the bill and then take any questions.

Assemblyman Paul Aizley, Clark County Assembly District No. 41:

Performance contracts for operating cost-savings by state and local governments were addressed by the Legislature in 2003 and 2005. Assembly Bill 192 further refines the statutes governing performance contracts which apply to local governments. The intent of the bill is to ensure that the contracts achieve their intended purpose and that the local governments have the tools they need to negotiate and enforce such contracts.

I will go over some of the major components of the bill. Sections 2, 3, and 5 require local governments to preapprove contractors who wish to compete for these jobs. This preapproval process is modeled after the procedure used by the State Public Works Board (Public Works) for prequalifying contractors. Because of the new prequalification language, the bill removes existing statutes that address qualifications or define qualified service companies.

Section 4 provides a procedure for appealing a denial of an application for preapproval.

In order to better understand and monitor the benefits of these contracts, section 6 requires that the specific dollar amounts of savings or cost avoidance be included in the contract.

Section 9, pages 6 and 7, cleans up the list of recognized cost-savings measures by removing procurement of low-cost energy supplies and outsourcing of energy needs and by adding ground source heating and cooling systems. Section 9 also makes it clear that performance contracts are only to be used to retrofit existing buildings, since new construction should be energy efficient when built.

Section 12 permits a local government to hire a consultant with the appropriate licensing to assist in the evaluation of the performance contract to ensure that the contract is realistic.

To further ensure that the performance contracts achieve their promised results, section 13 requires that the contract must include a guarantee of cost savings.

Section 14 requires compliance with NRS Chapter 339 relating to bonds and requires a bond for performance contracts greater than \$100,000. The bill continues to allow local governments to reinvest savings in other cost-saving measures, but section 15 clarifies that the reinvestment must comply with the provisions of NRS Chapter 332 and not shortcut the process. In addition to local government using an installment payment contract, section 16 requires the local government to include a provision allowing payment reduction if the actual cost savings are less than the predicted savings.

We urge the support of the bill. It will make performance contracting better for local governments and taxpayers alike. That concludes my part of the presentation.

Assemblywoman Kirkpatrick:

I just want to follow up with one more portion. Let me say, there are not a lot of companies that are going to be able to qualify to do this because the financing piece is such a large part of it. You can see by the way the agreement works in the beginning that there are a lot of up-front costs that go into it, so I just want to make sure that we are getting what we should have gotten when the legislation was originally passed, that we have yet to see.

There will be some issues with Public Works. I do not necessarily want it to go to Public Works, because I think you all know how I feel about slowing things down that way, but I think that there needs to be a process. Currently, NAESCO has a very good process on how you can get prequalified. If you are in their top membership category, one of the things they ask for is that you have to be able to demonstrate that you have the financial capability. However, I still have not been able to figure out how you can guarantee work for 15 years. If it is really only good for seven years, just say it is only good for seven years. With that, I am available for any questions.

Vice Chair Bobzien:

Are there any questions from the Committee? [There were none.] We have a number of people in support of the bill.

Jack Mallory, Assistant Business Manager/Secretary-Treasurer, Director of Government Affairs, International Union of Painters and Allied Trades, District Council 15, Henderson, Nevada:

I would like to thank the Chair and cosponsors of this bill. I think that this goes a long way toward leveling the playing field for Nevada companies that qualify for these types of projects and yet find themselves in difficult positions where they either have to go back and look at their numbers again or cut any potential overhead out of their bids for these types of projects or service contracts. Then, they ultimately end up losing to some fly-by-night that comes from out of state and does not have the type of burdens that local companies have. Numbers of my members, those folks who I represent in southern Nevada, do work on performance contracts of this nature for municipalities, and I ask that you support the bill as it is written.

Vice Chair Bobzien:

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

Jeanette K. Belz, representing the Associated General Contractors, Nevada Chapter, Reno, Nevada:

We really appreciate Assemblywoman Kirkpatrick's interest in this issue. There were several things we had brought to the table in terms of concerns. We also

had a concern about the 15-year guarantee. Actually, when I did some research on this bill last summer, I was told that there were purchasing folks who wanted to extend the 15-year guarantee even longer, and if they had their way, they would extend it even longer than that. So I think that is worth looking at. How can you possibly guarantee savings for that long of a period of time?

I feel very strongly about the requirement for a Nevada Business License. I was in an Interim Finance Committee (IFC) meeting one day and found out that there was a prison telephone company, which provided service to prisons in the State of Nevada, which was not even licensed to do business here. We wanted to make sure that companies are licensed here.

We feel strongly that performance contracting should only be on the retrofitting of existing buildings and that there is no attempt to include any kind of new construction. We wanted to have that put into the legislation.

Also important is that there must be an arms-length relationship between the energy services company and the third-party consultant. Both of these types of folks are looking at these projects to try to determine whether they are feasible, worthwhile, and meet the claims that are made. We want to make sure that those are at arms length.

There are so many things to go over, but as another example when you look at that long list of things included in the definition of energy savings, you will notice that one of the things we removed was energy savings related to educational efforts to try to modify people's behavior regarding energy consumption. We did not think that should be included as an energy savings. Although we did talk about the importance of educating people on how to use, perhaps, a new system if there is some kind computerized control that relates to heating or something like that. If that is something that the people, who are going to be implementing the new system, need to be educated on, then that is important to be included. But not changing behavior; I think they are doing that in elementary schools now.

So in any event, we have a great deal of interest in this bill and look forward to working with Assemblywoman Kirkpatrick to make it an even better bill.

Vice Chair Bobzien:

Any there questions for Ms. Belz?

Assemblyman Stewart:

Do you have specific suggestions on how to make the bill better?

Jeanette Belz:

I was talking to Assemblywoman Kirkpatrick over the weekend, and it looks like some of the other states are a little bit more stringent. We are certainly willing to look at those provisions. I think there are probably some excellent things that other states are doing, and we are very happy to look at those.

Vice Chair Bobzien:

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

Mandi Lindsay, representing Associated General Contractors Las Vegas Chapter, Las Vegas, Nevada:

Fortunately for me, Ms. Belz has pretty much hit all of the hot buttons that are of concern to my members. I would say that we do have a strong investment in this language and we do appreciate the Chairwoman's tenacity in getting to the bottom of some of these issues that we have recognized and that have been problems since, mainly, 2007.

I will just go over four real quick points. Again, as Mr. Aizley pointed out, we do agree with having a preapproval process. That is similar to that used by the State Public Works Board. That also ties in that whole licensing component that we are very concerned about. We also agree that this language should only apply to retrofits of existing buildings, again, for the same reason that new buildings should already be designed to be energy efficient. Finally, I would mention that we do support and of course appreciate the wisdom of requiring guaranteed energy savings. For those of you who may have been staying up to date the last couple of years, there have been quite a few catastrophes, as I might say, so we appreciate the fact that there will be some sort of guaranteed energy savings. With that I will conclude my comments.

Vice Chair Bobzien:

Are there any questions? [There were none.] Is there anyone else who would like to testify in support of the bill? [There were none.] Is there anyone in opposition of the bill?

Jess J. Franco, Western Regional Manager, Celtic Energy, Boulder City, Nevada:

I have a statement that I have provided for the record ([Exhibit G](#)) and some other information ([Exhibit H](#)) and ([Exhibit I](#)). I am a Professional Engineer. I represent Celtic Energy, which is a third-party consultant competitively selected by the State of Nevada to work in the Energy Savings Performance Contracts Program (ESPC).

I happen to be a retired Colonel from the United States Army. I have had the privilege to serve over 28 years in our military as an infantryman and combat

engineer. My primary experience, when not jumping out of airplanes, was in construction and contracting. I spent 15 years in the energy savings performance arena in the State of Nevada and across the country. I was a senior vice president for a Small Business Administration 8(a) Program small business/general contractor in Las Vegas for six years, so I am very familiar with general contracting as well as performance contracting. Currently, I am the Western Regional Manager for Celtic Energy. As I mentioned, we were competitively selected by the State of Nevada Purchasing Division under the requirements of NRS Chapter 332 and Chapter 333A. I am currently living in Boulder City.

First, I would like to report to you from the field that all of the energy-operational-savings projects that Celtic Energy is working on in the State of Nevada are meeting or exceeding their savings guarantees; that needed facility repairs, fixes, and modernizations have been or will be made; that working conditions and teaching environments have been approved; that children no longer have to sit in classrooms with wind blowing through windows and snow piling up inside the doors of their classrooms; that safety and security has been improved by better school, building, and parking lot lighting; and that the program is reducing the cost of operational aspects within the municipalities, school districts, and state agencies and they are saving energy.

The program was legislated by NRS Chapters 332 and 333A, and I will say this: It is some of the best language that I have ever had the privilege to work with throughout the United States of America. There is full accountability at all times. I will digress for a moment and say that with legislation also come policies, requirements, and regulations that are promulgated based upon that legislation. The state began this program by drafting requests for proposal (RFPs) specifically attuned and addressed to energy-savings performance contracts and also contracts that would, therefore, be executed. On the projects we have worked with, Celtic Energy has taken those contracts and we have added in acceptable industry standards and practices that are done all throughout the United States.

As an example, the City of Henderson Justice Facility was a \$2.8 million energy-savings performance contract that is saving in excess of \$240,000 a year. Because of that first pilot project, the City of Henderson has now gone with a city-wide project that has just been signed, and the ground breaking occurred last week. That project is about \$18-million-worth of facility fixes, repairs, modernizations, and improvements. They will save \$1.6 million annually.

Douglas County School District, another one of our clients, has a \$5 million project which is about to complete. They are saving approximately \$460,000 annually.

The City of Reno is in the process of developing an energy-savings performance contract. We estimate it to be somewhere in the \$9- to \$14-million range with an average annual savings of between \$400,000 and \$500,000.

My second point is, I strongly encourage and recommend that the legislative changes that are currently proposed for NRS Chapter 332 and Chapter 333A be tabled at this time until a task force or another body, composed of people with expertise in energy conservation and savings performance, can be formed, such as the Energy Commission that is being recommended under A.B. 522, which I think is awesome. They would be able to review other suggested legislative changes to Chapter 333A and Chapter 332 and make recommendations that will enhance and not potentially impair or negatively impact the execution of these awesome programs to date. Why? *Nevada Revised Statutes* Chapter 332 and Chapter 333A as originally legislated, as I have said, have some of the best legislative language requirements in the United States of America, which are being successfully implemented throughout the state.

Many of the currently proposed legislative changes in A.B. 192 deal more with NRS Chapter 338, general construction, and not energy and operational cost-savings performance contracting. The Energy Savings Performance Contracts Program is unique. It is a 15-year guarantee, and the energy service companies that are involved in providing this, who are qualified, stand behind that guarantee. I have heard the comment made about the 15 years or even longer. Elsewhere in the United States, including the Department of Energy and the Department of Defense, activities are all using 20- to 25-year performance contracts that have been working successfully for over 15 years. I have personally been involved with some of them. They are very specialized and uniquely qualified energy services companies. They do not give a 1-year warranty, they stand behind their 15 years. They have the financial wherewithal to do what is required and the financing companies that provide the revenues to be able to support the project until it is paid off, for example, the mortgage, like your house—know who these companies are and stand behind them.

When we write the requests for proposal (RFPs) or draft the RFPs for the school districts, the state agencies, and the cities that we represent, we put in a twofold qualification requirement: (1) it has to be approved by the state Public Works Board here in Nevada, and (2) it must also be qualified as an energy service company by NAESCO and/or the federal Department of Energy.

Why the last requirement? These two entities go through a very deliberate search of financials and past performance and they talk to the past projects before they qualify or certify any of these companies. These are the ones who have competed. Our RFP also requires that they must be licensed in the State of Nevada. It requires that they must follow the prevailing wage rates. It requires that they do open-book pricing, which has to be available to be looked at initially, throughout the process, and at the end. There is true accountability. There is full transparency within the program as it exists today. I would like to thank you for the opportunity to speak to this Committee, and if you have any questions, I am more than willing to take them at this time.

Vice Chair Bobzien:

Do we have any questions from the Committee for Mr. Franco?

Assemblywoman Spiegel:

In looking at your statement and listening to your testimony, it sounds like you and the clients that you work with already comply with the requirements of A.B. 192. Could you please clarify for me why you are opposed to this bill?

Jess Franco:

Certainly, I will give some examples. If we look at the portion about using percentages to determine energy savings, the industry standard, which is used throughout the United States, is units of energy and operational cost dollars and savings, as opposed to percentages. It is real time: you are saving X amount of British thermal units or you are saving X amount of kilowatts that relate to dollars. This would change that.

A whole section of the statute is deleted in A.B. 192, which has to do with the qualifications of an energy services company. The specialized requirements we put in the RFP mandate that you just cannot have any company. There are many companies that would like to do this type of work but may not have the financial background or the technical expertise. If we allow companies that do not have that expertise to compete and be selected, it has the potential to be a disaster for them and for the entity for which they are doing the project. So we are taking out all of the requirements that an energy service company has to meet in the industry and replacing them with what I call general construction type requirements that you find in Chapter 338. I am not saying that an energy services company is not going to do that, because they do work as a general contractor and have the general contractor's license to perform in the State of Nevada. But they should also have the necessary financial background and technical expertise to successfully implement the performance contract.

There are a couple of other items in here that basically have the potential to take what exists and change it to something which, in my estimation as a third-party consultant and as an expert in energy engineering and performance contracting, would actually make the program not work as successfully as it does today.

Vice Chair Bobzien:

I would like to follow up on that a little more because I appreciate your suggestion for a task force, but we like to think that legislative hearings are effective ways to get at an issue, too. Regarding section 16, could you maybe talk a little about your typical relationships and how maybe this would impact you as well? I guess we are trying to figure this out, and since you are at the table, maybe you can provide us with a window as to how this bill would actually impact you. Is this something that you are concerned about that you would not be able to comply with? It is on the last page of the bill in section 16, subsection 2, about the installment arrangement.

Jess Franco:

I am not an energy services company. I am the third-party consultant who brings the technical expertise and the contractual knowledge to represent, for example, the City of Henderson, the City of Reno, et cetera, and then an energy services company is hired through a competitive process. But in the RFPs and the contracts we draft, it states specifically that if in fact the guaranteed energy savings are not being met, because one of the installed systems or pieces of equipment is not operating or working, the ESCO must repair it, fix it, or replace it at their own cost, at no cost to the city, school district, or whatever. Should they still not be able to make that savings, then the energy services company itself must pay the difference in the energy savings that is not met. So we already have in existence requirements in the contracts and in the RFPs that specifically protect the city, the school district, and the state agency and tell the ESCO what they must do if they do not meet their guarantee. Does that answer your question?

Vice Chair Bobzien:

It sort of answers my question. I am trying to think of how this would preclude that. That seems like a logical way to go forward, to prevent the portions of sections kicking in. . .

Jess Franco:

We are talking about reducing the payment. Typically the way the system works is that an energy services company develops a project and they take it to, say, the City of Reno for their approval. We, as third party consultants, look at it from a technical and financial standpoint to see if it can do what it says it

is going to do. Is it going to meet the financial requirements? Does it meet the mandated net positive annual cash flow: every year the savings are greater than the costs? The way this would be, if I am a financial institution, if I am the Bank of America or one of the other financial institutions that lends money on this project, and that energy services company does not meet their savings guarantee, then the City of Reno does not have to pay that debt service. Well, that is not the way it works. You have to pay your mortgage. Somebody has to pay it. The way it is done within the current NRS Chapter 332 and Chapter 333A is that the ESCO has to pay it. That is not what it says here in section 16, so in essence what we may be doing is putting the city, the school district, or state agency between a rock and a hard place because they may be violating the financial requirement, the contract they have with the financial institution that generated the funds to pay up front for the project, until savings could pay it, amortized over the 10 to 15 years.

Vice Chair Bobzien:

Are there any other questions?

Assemblywoman Spiegel:

You mentioned the City of Reno, and I was wondering if could speak to the City of Reno street light contract and the also the state prison biomass fuel contract that was awarded to an energy company that said that they would self-perform the work, but was not licensed as a contractor.

Vice Chair Bobzien:

Ms. Spiegel I am going to hold you right there because we do have someone here from the City of Reno who is going to be speaking and may be better able to answer your question.

Jess Franco:

That project was before we were brought on by the City of Reno to be their third-party consultant. That was prior to Celtic Energy being involved in doing an actual ESPC contract. As I understand it, that was not under the auspices of Chapter 332 and Chapter 333A. On the biomass project, which was one of the state's demonstration projects, another third-party consultant was involved in that; we were not. The only thing that I do know is that that third-party consultant was not involved throughout that entire period. Which brings up another one of the provisions that I would like to speak to, if I might for a second.

In the bill, there is a provision that kind of hints that an entity should think about whether to bring a third-party consultant on after the energy services company has been selected. We provide what we call "full service."

We strongly recommend, and I personally strongly recommend, that if you are going to bring a technical expert on, you should bring him on as early as possible. You get him to come and take a look. Should you do this under regular Chapter 338 rules or should you consider doing performance contracting? And then if you are going to do performance contracting have the consultant involved in the selection process. We draft the RFP. We do not vote on the actual selection. We provide technical expertise, we have ourselves recused from the selection vote itself, but we make sure that the entity has the right verbiage, requirements, and policies in that RFP so that Chapter 332, Chapter 333A, and acceptable industry practices and standards are used. We would recommend that a third party be involved right from the get-go. I do not believe that was done in the biomass case, but we were not specifically involved so I cannot talk to specifics for that one.

Vice Chair Bobzien:

Ms. Spiegel if you could hold that question again for the Reno representative, it would be helpful.

Assemblyman Goedhart:

Just a follow-up to my colleague's question to you, is there some language that you could work on with the bill sponsor to make it acceptable to you to be able to withdraw your opposition?

Jess Franco:

I believe that I could. Because of the concern about accountability and transparency, we extracted some of the language that is currently in our RFPs and contracts, such as the requirement for licensing, and we referred that language to the Committee through, I believe, the Chairwoman. So yes, I would be more than willing to work with the Committee, the sponsor, and any others.

Vice Chair Bobzien:

Mr. Aizley, did you have a question?

Assemblyman Aizley:

The third-party consultant is mentioned in section 12, subsection 4, on page 9. Are you going to recommend an amendment to that as well?

Jess Franco:

Yes, sir.

Vice Chair Bobzien:

Are there any other questions for Mr. Franco? [There were none.] Do we have anyone else in opposition to A.B. 192? [There were none.] We are now moving to those that are neutral with A.B. 192.

Jason Geddes, Environmental Services Administrator, Public Works, City of Reno, Nevada:

We are neutral on the bill. I just wanted to talk to you about a few of the provisions. I was fortunate enough to be involved in the legislation for Chapter 332 and Chapter 333A in the 2003 Session. For approximately the past year, we have been working on an energy performance contract for the City of Reno and have done a lot of work on that aspect. I would be happy to answer any questions in regard to the City of Reno.

I have a couple of key things to point out. Everything that is in sections 1 through 4 is very good. We do not have the expertise in the City of Reno to go through all of that, so we prefer what is in section 5 of the bill, where the state puts out a list of those contractors they think could do the work, and then we just pick from that list. That is what we did last summer. We took the list that was prepared by the State Public Works Board, issued an RFP to all of those people on the list, and then picked from that list in the competitive process.

In section 8 of the bill, in looking at the building side of it, we agree with the Associated General Contractors of America (AGC), and we do not want to be part of constructing a new building or retrofitting a new building. But if there are rare instances where you need to build a structure specifically for the energy, like a biomass plant or a penthouse for the new heater/chiller that you need to put into a system—a structure that specifically for energy purposes may even be a shed for an off-grid battery for solar, depending on the application—I would try to allow for that, either through a change in the language or legislative intent. So, if it is solely for energy purposes and an out-structure needs to be constructed, that would be allowed under this section.

In section 12 of the bill, regarding third-party contractors, I would make that a requirement. To be quite honest, most of the cities and counties in the state do not have energy experts in-house, including the City of Reno. I pretend to be one, often, but I do not consider myself an energy expert who could go through and do all of the work that is necessary. Having a third-party consultant come in and assist us is very critical and very helpful in dealing with the contracts, how to evaluate systems, the payoff of systems, and how they would actually function.

I have just a few more comments in regard to the bill and how it would fit in the big picture. We did put in the 15-year payback period. Most of the energy efficiency work out there like lighting retrofits will pay off in two to three years. Some bigger projects will take seven to ten years. But what we are trying to do is blend in renewables and the deployment of solar biomass, geothermal heat pumps; those things tend to have a 14-, 15-, or 25- year payback. What we like to do is use the blended savings of the lighting retrofit to help offset the long payback of the solar system and bring that payback down. That is why we put the time frame up to 15 years, and we are working under that premise right now. If you have seen information on some of the solar projects in the City of Reno, we are able to use the lighting portion of it to help us pay for those solar photovoltaic (PV) panels and get that payback period down.

I have seen A.B. 502 that would create an Energy Commission, and I would suggest, if that bill goes forward, that the Public Works Board's recommendations go to that Energy Commission. Part of the problem we have is the list that was created by the State Public Works Board was done once and has not been updated since, so it is a very short and narrow list of companies that we have to choose from, and there needs to be a more timely way of evaluating companies and getting them off or on the list.

My last point is, in Senate Bill 323 there is the requirement that all cities and counties do an energy audit, look at how the renewable-energy systems would play into the energy audit, and make that report to the Office of Energy. As I mentioned, most of us just do not have the expertise to do that, so we would be going to these third parties to help us, and we would have to look at that requirement from that aspect. This concludes my remarks, and I would be happy to answer any questions.

Vice Chair Bobzien:

Something tells me that the bill sponsor is going to be very amenable to your suggestion about transferring from the Public Works Board to a proposed Energy Commission. Do we have any questions for Dr. Geddes?

Assemblywoman Spiegel:

Could you speak to my streetlight question that I asked previously?

Jason Geddes:

Yes, it predates me; but I did speak to our Deputy Director of Public Works about it, and will give you best answer I can. We signed a joinder with Carson City on a contract with Energy Nevada to be the financier of the project. Through that they hired Merritt Electric in Reno, Nevada, who is a licensed electrical contractor, to do the streetlight counts and do the retrofit, and they

provided the financing of the project through a third party. Does that answer your question?

Assemblywoman Spiegel:

I am not sure, because I thought that at first it was awarded to a company that was not licensed, so I was wondering how that was picked up on and what happened.

Jason Geddes:

It was awarded through a joinder that we signed with Carson City that had selected the company Energy Nevada to do energy retrofit work for the City. We signed a joinder to the purchasing agreements, and then they hired Merritt Electric to do all the work, which provided the third-party financing for the work.

I would just add that the joinder process was not very thorough, and when we came in last year we wanted to make sure that we were completely thorough. That is why we went through the full RFP process, did the competitive bids, and did a month-long evaluation on all of the companies, looking at their financials and bringing everything to the table so that we had all the assurances that we needed.

Currently we have 14 contractors and subcontractors working on our project. Eleven of them are in-state licensed contractors, the others are from out of state because the expertise did not exist here for the specific things we were looking at. We are also putting in some renewable energy projects and using two local wood manufacturers as part of that.

Assemblyman Stewart:

How do you feel about the 15-year issue?

Jason Geddes:

As I said, we are very supportive of it, because you can do the lighting retrofits, window screening, and certain other types of retrofits that have a very short payback—two, three, four years—but when we look at the big picture of the things we need to replace, we are looking at replacing heaters and boilers and putting in the PV systems that have very long payback periods. When we do a blended rate we struggle to get it under 15 years when we have to replace a boiler, like the boiler sitting in City Hall that was installed in 1961. We have modified it twice, but we need to replace it. It has a 50-year payback. The current one has been there for 48 years, and we need to use some of the other savings to pay that down or, otherwise, we would not be able to replace that boiler. So we are very supportive of the 15 years.

Vice Chair Bobzien:

Are there any other questions? I have just a real quick question on section 16. The way I read that, it is sort of an option of last resort. Ideally, you would be able to deal with whatever issues or shortcomings that arise through your normal contract. Am I reading that correctly, and is that something you can live with?

Jason Geddes:

I would have to defer, Mr. Vice Chair. I am not a finance expert, and I do not quite understand the intricacies of that language, but I could get an answer for you.

Vice Chair Bobzien:

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

Michael Hackett, Reno, Nevada, representing NORESCO, Westborough, Massachusetts:

I am here today on behalf of NORESCO. NORESCO is a company that has been in business since 1984 and has produced billions of units in energy-saving solutions to various federal, state, and municipal entities. Their corporate headquarters are based in Massachusetts; NORESCO does have an office here in Reno, Nevada. NORESCO is a charter member of NAESCO and is accredited through their accreditation process.

Basically we are neutral, but we do have concerns about this bill. Many of the concerns were highlighted by Dr. Geddes. We agree with his position regarding sections 1 through 4. Using the prequalified list from the State Public Works Board would be just as effective a means of identifying good companies. We also agree with his stated concerns regarding section 8 and believe there should be some sort of a carve-out or exemption for existing buildings to allow for something like a renewable energy plant, if that is something that does benefit the agency. We also agree with his concerns regarding the need to requalify the third-party consultant on a more regular basis than what is being done right now.

Finally, our main concern has to do with section 16.2 and how it is tied to the installation purchase agreement. It is my understanding that when a performance contract is let, there are actually two contracts that fall under that provision. One is the installment purchase agreement, which is for the hardware, the equipment that you need to use to facilitate one of these energy-savings retrofit projects. The other is the energy services agreement, which has been discussed today, and that is the actual guarantee by the ESCO performing these energy services. If the savings that have been projected by

the third-party consultant have not been met, then it is the responsibility of the ESCO to meet any shortcomings.

NORESCO is one of the charter members of the NAESCO, so they do have the financial wherewithal. When they do these contracts even they go to a bank to get the loan for the equipment that is necessary; in some instances these contracts can require several million-dollars-worth of equipment up front. The bill as currently written would severely impact the ability to go to the bank and get that financing, because the bank wants a steady payment stream back on its loan, and if there is any kind of variation which would reduce that payment stream and the ability to pay back their loan, you are going to find that banks are not going to lend money for these projects. So, again, we are neutral on the bill, and we are certainly willing to work with the bill sponsor to try to get some language that is agreeable to all parties. With that, I would be glad to take any questions.

Vice Chair Bobzien:

Are there any questions for Mr. Hackett? I have a concern about section 16. This is the area where I would like to see you work with the bill sponsor as much as possible because this is the meaty section of the bill: the protection to make sure that what happens is what was hoped for. I understand the financing piece of it, but if this is a case of last resort, these provisions would not kick in under most circumstances anyway. I am hoping that there are other things that you can propose to work with the sponsor. Do we have anyone else that would like to testify in the neutral position on the bill?

Ted J. Olivas, representing the City of Las Vegas, Nevada:

I wanted to thank Assemblywoman Kirkpatrick for bringing this bill forward. It is an important bill. I have provided my comments on the bill to her, and we talked a little more about the process. I have also worked with our friends in the construction industry, who have a vested interest in this, making sure that we are all on the same page. I think Mr. Aizley gave a great summary of the history of this bill and how it came about.

One of the concerns that we had back then, through the Nevada Public Purchasing Study Commission, was the accountability. We have to have accountability. How do you write a contract to make sure that at the end of the day we have these savings that they said we were going to get?

I think this bill addresses that, and I think from a local government perspective, certainly for the City of Las Vegas, there are some concerns about the process. You have heard, whether it is good, whether it is bad, you have to think

about the process that is defined in the bill. With that, I have a few things that I would like to mention.

First, there are some really good provisions in the bill from our perspective. Section 6 says you have to put in the contract very clearly what those savings are going to be. Section 12, subsection 4, page 9, talks about retaining a professional service third-party consultant. That is a good option. You heard that the local government needs to hire one of those. I am not so sure that we do. As the bill is written, it says we may hire one. The City of Las Vegas could employ a person who does only this type of work because we know that energy efficiency is a huge issue for the state and local government. We could employ our own guy. I think that should be left to our discretion.

Section 14, subsection 2 talks about the bonding requirement. We need to have those in there. Section 16, subsection 2, says if you do not perform, send us the money back. We are not going to pay you; fair is fair. If you say you are going to do this—you say you are going to have all these savings—but it does not happen, we are not going to pay you. We like those provisions.

There are some general areas that you may want to consider throughout this bill. There are certain sections where we may want to clarify at what level the decision-making process needs to be taken care of. Such as, does the governing body make these decisions or is it its authorized representative? As you know, in the previous sessions we tried to clarify the appropriate level in NRS Chapter 332 and NRS Chapter 338.

Another thing that was talked about earlier, we always had a concern about whether performance contracting should be in NRS Chapter 332—this is construction, essentially. I would submit to this Committee that you could take the whole thing and move it into a section in NRS Chapter 338 where it is appropriately defined. It is public works.

In section 2, subsection 5, the use of the evaluation criteria, I would submit that you should consider allowing for additional criteria as determined by the local government. Currently it says that you can only use these criteria. Well, you do not know what the project is. The criteria could differ depending on the project.

Section 3 defines those criteria. Again, we should have the flexibility to make a determination about these criteria. Section 3, subsection 6 is an example. It says that we have to look at whether the applicant has breached any contracts with a public agency or person over the last five years. There may be a really good contractor who knows how to do this work, and if there is an alleged

breach of contract with an individual, does that mean that I cannot hire them, even though they are the best company for the job? We want to make sure that there is flexibility left in the bill. Also, in subsection 2 of section 3 it says that the qualified service company has to be a contractor or a professional engineer. I am no expert in this area, I do not claim to be, but I am not sure if there are other service providers that can do this work. So are we leaving anyone out? I am not sure.

Finally, there are questions about the denied application process. While this process is very comprehensive and very well defined, it may inhibit our ability to use this type of performance contract. Request For Proposals (RFPs) were mentioned earlier. We have used them for many years. They allow us to request proposals and seek additional information as required, and if they do not meet the requirements, we deny the application. It is a very onerous process.

Section 5 talks about prequalified contractors. It says that they are contractors that are prequalified by the State Public Works Board. I would submit to you that, while the State Public Works Board does a pretty good job, the local governments also prequalify contractors. So why do I have to go to the state to get a pool of contractors when we have our own pool of contractors. Maybe it should be the state and local government's prequalified contractors.

I would be happy to submit these comments to the Committee for further consideration, and I would be glad to work with the bill sponsor and other interested parties on any amendment.

Vice Chair Bobzien:

Do we have any questions for Mr. Olivas? Do we have anyone else that would like to testify on A.B. 192? [There were none.] Madam Chair would you like to wrap it up?

Assemblywoman Kirkpatrick:

I always bring controversial bills to the Committee. First, I would like to thank Ms. Belz because she did do a lot of research during the summer and went to meetings, which I could not attend, to get information.

One thing that I would like to point out is other states require things like the power companies have to show on the power bill what your actual savings are. Let me give you an example. Last session, when my bill that was similar died, \$24,000 was saved by a community college in one year just by changing their light bulbs. Mr. Geddes is absolutely right, that is the big piece of the cost savings, and any other savings is longer term.

Mr. Franco from Celtic Energy gave me a copy of one of their RFPs because, although they may be public information, I could not figure out a good way to find them. Quite frankly, the NRS already requires that the Office of Energy get a copy of this information, so it should be in their database. He showed me one of his RFPs. It is a \$3.7 million contract for Churchill County. They get a savings of \$230,000 over 15 years. Mr. Goedhart, you are so good at math, I bet you can tell me that that is not quite \$3.7 million, if you do that math.

I think that there is a lot of merit to the performance contracting program, but we need to tighten up the language. We need to be able to see the energy savings. I will use myself as an example. Last year my family bought a new air conditioner and new windows; we invested about \$20,000. My power bill has not decreased, but it has not gone up either, although all of the rates have gone up. I guess if you are telling me that is my savings, okay, but I do not see it.

The same thing goes for local government. With local government, there is no reason why the Office of Energy should have not have been given a copy of all of the documents, including the projected cost savings. But who is going back and checking to see if the savings were achieved? I am open to some of the amendments, but I am not open to all of them, and I will take my chances in work session. With that, I will answer any questions you may have.

Vice Chair Bobzien:

Are there any other questions? [There were none.] I will close the hearing on A.B. 192. Do we have any public comments? [There were none.] Do we have any Committee items? [There were none.] With that, we are adjourned.

Meeting adjourned [at 10:20 a.m.].

RESPECTFULLY SUBMITTED:

Cheryl Williams
Committee Secretary

APPROVED BY:

Assemblywoman Marilyn K. Kirkpatrick, Chair

DATE: _____

EXHIBITS

Committee Name: Committee on Government Affairs

Date: April 6, 2009

Time of Meeting: 9:03 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 493	C	Assemblywoman Buckley	Prepared Text
A.B. 493	D	Assemblywoman Buckley	Amendment
A.B. 493	E	Assemblywoman Buckley	NV PERS Account sheet
A.B. 192	F	Assemblywoman Kirkpatrick	Performance Contracting Process Sheet
A.B. 192	G	Jess J. Franco	Prepared Testimony
A.B. 192	H	Jess J. Franco	Celtic Energy Fact Sheet
A.B. 192	I	Jess J. Franco	Suggested Language for the Bill