

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

**Seventy-Fifth Session
April 7, 2009**

The Committee on Government Affairs was called to order by Chair Marilyn K. Kirkpatrick at 8:17 a.m. on Tuesday, April 7, 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 Debbie Smith, Washoe County Assembly District
No. 30

STAFF MEMBERS PRESENT:

Scott McKenna, Committee Counsel
Susan Scholley, Committee Policy Analyst
Cyndie Carter, Committee Manager
Denise Sins, Committee Secretary
Olivia Lloyd, Committee Assistant

OTHERS PRESENT:

Mark Winebarger, Chief Deputy Treasurer, Office of the State Treasurer
John Swendseid, Attorney at Law, Swendseid & Stern, Las Vegas,
Nevada
Kim R. Wallin, CPA, State Controller, Office of the State Controller
Danny N. Coyle, American Federation of State, County, and
Municipalities, Local 4041, Retiree Vice President, Carson City,
Nevada
Dennis Mallory, Chief of Staff, American Federation of State, County, and
Municipal Employees Local 4041, Carson City, Nevada
Susan G. Martinovich, P.E., Director, Nevada Department of
Transportation
Kareen Masters, Deputy Director, Administrative Services, Department of
Health and Human Services
Gustavo "Gus" Nuñez, P.E., Manager, State Public Works Board

Chair Kirkpatrick:

[Roll taken.] Ms. Scholley, we are going to start the work session. We have
our work session documents. We will start with Assembly Bill 159.
[Assembly Bill 119 was not heard.]

Assembly Bill 159: Prohibits the Governor or any other state officer or
employee from binding the State to the requirements of an international
trade agreement without authorization by the Legislature. (BDR 19-386)

Susan Scholley, Committee Policy Analyst:

Assembly Bill 159 ([Exhibit C](#)) is sponsored by Assemblywoman Pierce and
others, including joint sponsors in the Senate, and was heard in this Committee
on April 1. The bill prohibits the Governor or any other state official from

binding the State of Nevada to the terms of an international trade agreement unless the Legislature approves such an action. The bill also invalidates any such prior consent.

Amendments proposed by the sponsor are set forth in the attached mock-up ([Exhibit D](#)) which essentially relate to limiting the scope of the bill to non-tariff provisions. Looking at the mock-up, there is one additional change that has been suggested to section 2, lines 4 through 8, which would be to add the parallel language about non-tariff terms, so that the language in section 2 is consistent with the language in section 1.

Chair Kirkpatrick:

May I have a motion?

ASSEMBLYWOMAN PIERCE MOVED TO AMEND AND DO PASS
ASSEMBLY BILL 159.

ASSEMBLYMAN BOBZIEN SECONDED THE MOTION.

Assemblyman Christensen:

Did I see an amendment for this bill by the Nevada Commission on Economic Development?

Assemblywoman Pierce:

Yes. It called for a task force and I felt that would put a fiscal note on this and I want my bill to live.

Assemblyman Settlemeyer:

I appreciate the intent of the bill. I believe that the state's sovereignty is important. I also feel we could have put some language in the bill that indicated if Congress asked for our input on a bill, the State Legislature would be involved in that process. But I still read in the bill that it is the federal government. If the federal government, not Congress, comes to us and wants our input on a bill telling us they have the right to bind us, I do not think that is constitutional. I will vote no on this bill.

Chair Kirkpatrick:

Is there any other discussion? We have a motion by Assemblywoman Pierce to amend and do pass and a second by Assemblyman Bobzien. All those in favor please say "Aye." All those opposed?

THE MOTION PASSED. (ASSEMBLYMAN SETTELMAYER VOTED NO. ASSEMBLYMEN ATKINSON AND CLABORN WERE ABSENT FOR THE VOTE.)

Ms. Pierce, will you do the floor statement? [She nodded yes.]

We will go to Assembly Bill 223. Ms. Scholley?

Assembly Bill 223: Revises provisions concerning preferences for bidders on certain state purchasing and public works contracts. (BDR 27-857)

Susan Scholley, Committee Policy Analyst:

Assembly Bill 223 revises provisions governing preferences for bidders on certain state purchasing and public works contracts ([Exhibit E](#)). The bill as originally drafted provided for a 5 percent preference for businesses owned by service-disabled veterans and for local businesses on state purchasing contracts. It also provided for a 5 percent preference for businesses owned by service-disabled veterans when bidding on state public works contracts less than \$100,000.

The bill also requires annual reporting and repeals an inverse purchasing preference. After much discussion with the Purchasing Division, the Office of Veterans' Services, the State Public Works Board, and the sponsor, the amendments are set forth in the conceptual amendment which follows ([Exhibit F](#)). I did not do this in mock-up form because there were so many cross-outs and additions that it was hard to read, but if you compare the language, you will see that it is similar but shorter. The key change is that the Office of Veterans' Services is no longer involved in pre-certification or reporting with respect to service-disabled veterans' businesses.

Details of the procedures, in many instances, are left to the Purchasing Division and the State Public Works Board to work out or to incorporate using their existing procedures. The adoption of regulations is optional. Instead of the potential for a 10 percent preference by service-disabled veterans, by combining that with the local preference, there is now a straight 7 percent preference for service-disabled veterans. There is also the addition of a provision at the end for the Office of Veterans' Services to annually convene a working group and consider recommendations to the Legislature regarding preferences for local businesses owned by service-disabled veterans.

The definitions in the bill have been modified to be consistent with prior bills, most notably Assembly Bill 147.

Chair Kirkpatrick:

Thank you, Ms. Scholley. Is there a motion?

ASSEMBLYWOMAN SPIEGEL MOVED TO AMEND AND DO PASS
ASSEMBLY BILL 223.

ASSEMBLYWOMAN MASTROLUCA SECONDED THE MOTION.

Assemblyman Stewart:

I have a question on the 7 percent. Is that the 5 percent contributed by the state and 2 percent contributed by local entities? Is that correct?

Chair Kirkpatrick:

Are you talking about the last line in section 6?

Assemblyman Stewart:

Yes. I was under the impression we were going with the 5 percent. So is this 5 percent by the state and 2 percent by the local government? Is that correct?

Susan Scholley:

Mr. Stewart, the original bill had a preference for service-disabled veterans and it also had a separate preference for local bidders. There was some potential ambiguity in the bill as to whether or not the service-disabled veterans could put their 5 percent preference together with the 5 percent local and get 10 percent. Instead of leaving it that way, it now says that if you are a local business owned by a service-disabled veteran you get 7 percent. If you are just a local business, you get 5 percent. The 5 percent was in the original bill and the 7 percent is a modification of the original bill.

Chair Kirkpatrick:

Is there any further discussion?

Assemblyman Christensen:

Can we just keep the preference at 5 percent to keep a handle on the cost? I ask that because some of us had concerns and that was one of them. I believe in the spirit of the bill. I would prefer the preference was at 3 to 4 percent, but I can live with 5 percent.

Assemblyman Settlemeyer:

We also talked about the concept of stating that an individual had an opportunity to match the low bid; that way we would not have to spend more money that we do not have.

Chair Kirkpatrick:

Ms. Spiegel, do you want to amend your amendment so that Mr. Christensen's 5 percent will be the preference amount?

Assemblywoman Spiegel:

I am fine with that.

Chair Kirkpatrick:

We have a motion to amend and do pass by Ms. Spiegel, a second by Mrs. Mastroluca, and a further amendment by Mr. Christensen. Is there any further discussion? All in favor please say "Aye." All those opposed?

THE MOTION PASSED. (ASSEMBLYMAN SETTELMAYER, ASSEMBLYMAN GOEDHART, AND ASSEMBLYWOMAN WOODBURY VOTED NO. ASSEMBLYMAN CLABORN WAS ABSENT FOR THE VOTE.)

We will go to Assembly Bill 304.

Assembly Bill 304: Makes various changes relating to the preservation of existing neighborhoods. (BDR 22-641)

Susan Scholley, Committee Policy Analyst:

Assembly Bill 304 makes various changes relating to the preservation of existing neighborhoods and is sponsored by Assemblyman Segerblom and jointly sponsored by Senator Coffin ([Exhibit G](#)). The bill was heard on March 20. The bill as originally proposed related to inventories and protection of historic and existing neighborhoods, the creation of historic preservation commissions, facilitating funding for undergrounding of utilities, requiring consideration of the effect of new streets and roads, and setting certain standards with respect to the vacation of streets.

Amendments have been proposed as set forth in the attached mock-up ([Exhibit H](#)). The key changes are deletion of the provisions relating to undergrounding, deletion of the provisions relating to the vacation of streets, deletion of the requirement to consider the impact of new streets and roads, and limiting the remaining provisions of the bill to Clark County. In addition, as noted on page 6 of the mock-up, the sponsor has also agreed that the creation of a historic preservation commission would be optional.

Chair Kirkpatrick:

Thank you. Is there a motion?

I have worked with local government. Mr. Segerblom did not really have a say on this bill, but I think he is trying to do the right thing. In northern Nevada, many issues are addressed because there is so much historical value up here. Mr. Segerblom is okay with the amendment. I just think there are some things we should give local government the option to do in the future. The City of Henderson was kind to help me with some language. I think this now addresses everyone's concerns.

ASSEMBLYWOMAN SPIEGEL MOVED TO AMEND AND DO PASS
ASSEMBLY BILL 304.

ASSEMBLYMAN GOEDHART SECONDED THE MOTION.

Chair Kirkpatrick:

Is there any further discussion?

Assemblyman Settlemeyer:

I appreciate the amendments. I was very concerned that this would have the potential of raising everyone's utility costs.

Chair Kirkpatrick:

Is there any further discussion? All those in favor please say "Aye."

THE MOTION PASSED. (ASSEMBLYMAN CLABORN WAS ABSENT
FOR THE VOTE.)

Mr. Christensen, we will go back to your bill, Assembly Bill 284.

Assembly Bill 284: Revises provisions governing homeland security.
(BDR 19-517)

Susan Scholley, Committee Policy Analyst:

Assembly Bill 284 was sponsored by Assemblyman Christensen and others with joint sponsors in the Senate, and heard in this Committee on March 23 ([Exhibit I](#)). It increases the membership of the Homeland Security Commission by two members. It also adds vulnerability assessments and emergency response plans prepared by utility companies to the list of confidential documents in *Nevada Revised Statutes* (NRS) Chapter 239.

At the hearing there were a number of proposed amendments. Several of those are set forth in the attached mock-up ([Exhibit J](#)), most notably on page 1, where there is a clarification that the two new members would represent tribal communities in the southern and northern portions of the state. The

Legal Division will clarify the language as to how that would work. There is also an amendment on page 3 of the mock-up including public entities and private businesses within the confidentiality for vulnerability assessments and emergency response plans.

Assemblyman Christensen:

Looking over the amendment on page 1, I am wondering if we can take the recommendation from Mr. Eaton, the Homeland Security Advisor, who stated that if we specify that two members have to be tribal members, but if one of the at-large members is already a tribal member, then we would be mandating two more. I wonder if it makes more sense to mandate one, just in case we already have another one on the Commission. That came up in the testimony, so I am curious if that is something we would want to express.

Chair Kirkpatrick:

Originally, the bill said geographical area. I remember that we did not want to select just anyone across the state. Rather than saying two tribal members, it was decided to put in the language of north and south to ensure representation from those areas.

Assemblywoman Mastroluca:

Mr. Christensen, could we not say, "Two members who represent tribal communities in the southern and northern portions of the state unless already reflected on the Board."

Assemblyman Christensen:

We could.

Assemblywoman Mastroluca:

I am concerned because you know how contentious it is between the north and the south in this state. I want to make sure it is fair.

Assemblyman Christensen:

I think that would capture the intent of the Homeland Security Advisor.

Chair Kirkpatrick:

The Governor also appoints them so he will see the makeup of the Commission. What is it, Mr. Christensen, that you would like to add to line 16?

Assemblyman Christensen:

Mrs. Mastroluca?

Assemblywoman Mastroluca:

It should say, "Two tribal communities from the southern and northern portions of this state unless currently represented on the Board."

Chair Kirkpatrick:

So what would you do with that other person?

Assemblyman Christensen:

If there is already a tribal member represented on the Board, then the Governor could appoint someone who is not a tribal member in lieu of that representative.

Chair Kirkpatrick:

I thought this was what we did not want to do, to just have anyone on the Commission.

Assemblyman Christensen:

I agree. Would you entertain a motion to amend and do pass?

ASSEMBLYMAN CHRISTENSEN MOVED TO AMEND AND DO
PASS ASSEMBLY BILL 284.

ASSEMBLYWOMAN MASTROLUCA SECONDED THE MOTION.

Chair Kirkpatrick:

Is there any further discussion? To clarify, we are leaving the bill the way it reads. I can work with Mr. Christensen before the bill goes to the Senate and address the discrepancies.

Assemblywoman Spiegel:

During the hearing, there had been a question about including legislative audit capabilities and I did not see anything done with that.

Chair Kirkpatrick:

We just need that for the record so it is very clear that our Legislative Auditor can go in and have a closer look. Henderson withdrew their amendment because it was not needed. Is there any other discussion? All those in favor please say "Aye."

THE MOTION PASSED. (ASSEMBLYMAN CLABORN WAS ABSENT
FOR THE VOTE.)

We will now go to Assembly Bill 401.

Assembly Bill 401: Extends the bonding capacity of the Nevada System of Higher Education. (BDR S-884)

Susan Scholley, Committee Policy Analyst:

Assembly Bill 401 ([Exhibit K](#)) was sponsored by Assemblyman Bobzien and was heard in this Committee on April 3. The bill extends the authorization for the issuance of revenue bonds by the Board of Regents for capital construction projects at the University of Nevada, Reno (UNR) and at the University of Nevada, Las Vegas (UNLV). The extension is for 20 years.

The bill also changes the names of Western Nevada Community College and the Community College of Southern Nevada to Western Nevada College and College of Southern Nevada, respectively. No amendments were proposed and the bill is currently referred to the Assembly Committee on Ways and Means.

ASSEMBLYWOMAN PIERCE MOVED TO DO PASS
ASSEMBLY BILL 401.

ASSEMBLYMAN STEWART SECONDED THE MOTION.

Chair Kirkpatrick:

Is there any discussion? [There was none.] All those in favor please say "Aye."
Any opposed?

THE MOTION PASSED. (ASSEMBLYMAN CLABORN WAS ABSENT
FOR THE VOTE.)

The next bill is Assembly Bill 422.

Assembly Bill 422: Makes various changes regarding the financing of local improvements with revenue pledged from sales and use taxes. (BDR 21-54)

Susan Scholley, Committee Policy Analyst:

Assembly Bill 422 makes various changes regarding the financing of local improvements with revenue pledged from sales and use taxes, also known as STAR bonds. The bill does a number of things as set forth in the cover sheet. There were a number of amendments and issues raised at the hearing. Of special note, the bill has been designated as eligible for exemption by the Fiscal Analysis Division.

Chair Kirkpatrick:

I think that the stakeholders are all trying to continue to work on this. I have spoken with the bill's sponsor and my recommendation would be to send it out without a recommendation and rerefer it to Ways and Means so they can address the variety of issues that we heard.

ASSEMBLYWOMAN SPIEGEL MOVED TO REREFER WITHOUT RECOMMENDATION ASSEMBLY BILL 422 TO ASSEMBLY COMMITTEE ON WAYS AND MEANS.

ASSEMBLYMAN CHRISTENSEN SECONDED THE MOTION.

Is there any further discussion on this bill? All those in favor please say "Aye."
Is anyone opposed?

THE MOTION PASSED. (ASSEMBLYMAN CLABORN WAS ABSENT FOR THE VOTE.)

That concludes the work session for today.

Assemblyman Aizley:

Did you intentionally leave out Assembly Bill 119?

Chair Kirkpatrick:

Yes, I did.

For those of you who have not gotten your final amendments to me please do so. Tonight is your deadline if you want to discuss them. We are going to move to our first Assembly bill, Assembly Bill 60. We are going to reopen the hearing.

We sent this bill out last session. Mr. Goedhart had the floor statement, but it never left the Chief Clerk's desk. Now, the bill is back. We are going to invite a representative from the Treasurer's Office up to speak. They now have a proposed amendment.

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

Mark Winebarger, Chief Deputy Treasurer, Office of the State Treasurer:

[Mr. Winebarger distributed and referred to the amendments drafted by Cecilia Colling, Chief of Staff, State Treasurer's Office ([Exhibit L](#)).]

I am here to submit some amendments for A.B. 60 regarding the Federal Stimulus Package, also known as the American Recovery and Reinvestment Act (ARRA). You should have some notes and the amended language in front of you that I have distributed. Mr. John Swendseid is available in Las Vegas for questions.

The first amendment refers to Build America Bonds. This is a taxable bond the state and local governments can issue. These carry a 35 percent credit on the interest we pay. This amendment is necessary because there is a limit on the amount of interest our bonds can carry. This amendment would allow that maximum to be netted against this 35 percent credit that we will receive directly from the United States Treasury.

Chair Kirkpatrick:

I have a couple of questions for Mr. Swendseid in Las Vegas. Mr. Swendseid, the way the amendment is written, it is not temporary, the way most Stimulus Package funding is written, with a sunset clause. Is there a reason we have to have this in statute forever?

John Swendseid, Attorney at Law, Swendseid & Stern, Las Vegas, Nevada:

You are correct, it is not temporary. This amendment to *Nevada Revised Statutes* (NRS) 99.060 would apply only if we actually get a credit. If the federal government is not giving any credits out, the amendment would have no effect on the existing interest rate limits. If they give us a credit, we take that into account in determining whether or not we have complied with the interest rate limit.

To make this temporary, though, would be fine. I think many of us in the industry feel that many of the bond provisions in the Stimulus Act will be reapproved and reauthorized. That is up to Congress. Our problem, of course, is you will not meet again until 2011. The program expires December 31, 2010. If Congress reauthorizes this before 2011, there might be a period of time when we do not have authority because you will not meet until 2011.

Chair Kirkpatrick:

We have extended some of the other stimulus funding until 2011, at least until we get back into session. Is there a problem with doing that? I do not know what the parameters are of the stimulus funding.

John Swendseid:

This particular provision is scheduled to expire December 31, 2010, so if you put in a provision similar to what you just mentioned, it would not harm us. It would not hurt local or state government.

Chair Kirkpatrick:

What are the potential downsides if we do not take this? I understood the statute to say that we are going to sell these bonds that are not exempt from interest. Would we get the tax credit back afterwards?

John Swendseid:

Under the Build America Bond program, Congress would pay to the issuer of the bonds—the state or school district, whoever it may be—a credit equal to 35 percent of the interest that they pay. Once the mechanism is set up, they are supposed to pay the credit on the same day the issuer pays the interest on the bonds. Congress thinks this may be a more efficient subsidy of local government interests than having a tax exemption. They think that providing this 35 percent credit to state and local governments for interest paid will lower their borrowing costs more than having their interest tax-exempt.

Today, maybe the state would pay 4 percent interest on a bond that it issued. If it issued that bond as taxable, the interest might be 5.5 percent, but the 35 percent credit they get would, in Congress' view, more than make up for the difference between the 4 percent interest rate that you would pay on a tax-exempt bond and the 5.5 percent interest that the state would pay on a taxable bond. This is optional. It may be that it does provide a lower borrowing cost, and the advantage to the state is that it would be able to take advantage of getting a lower borrowing cost by issuing a taxable bond at 5.5 percent but getting back 35 percent of the interest paid in the form of a credit.

Chair Kirkpatrick:

When do we get that credit; is it when the bond is paid off?

John Swendseid:

Each time interest is paid, you would get the credit. So, if you pay interest semiannually, on each of those dates, the federal government would send you a check or money transfer for an amount equal to 35 percent of the interest paid.

Chair Kirkpatrick:

It says on the first page of your amendment, "In some circumstances the financial benefit of this credit will be greater than the benefit of having tax-exempt interest..." When would those certain circumstances be?

John Swendseid:

The studies that I have seen done indicate that generally, for bonds with terms of more than ten years, there is an advantage to having the bonds with 35 percent credit. In other words, the 35 percent credit more than offsets the additional interest cost from doing taxable bonds. On bonds with a term of

one year, studies indicate that is not the case. You are better off with a tax-exempt bond if it just has a term of one year. This is something that will depend on the market. Each time a bond is issued, I would imagine someone at the Treasurer's Office, such as Mark, would, together with their financial consultant, look at the market and see what is going to give the state the lowest net borrowing cost—a taxable bond with a 35 percent credit, or a tax-exempt bond with no credit.

Chair Kirkpatrick:

I have a question on your amendment at subsection 6 on page 4. It says, "Subsections 2 through 5, inclusive, of this section do not; (a) apply..." but a later portion reads, "if the State Treasurer determines there are sufficient safeguards..." What are the safeguards? I thought all of the safeguards were listed in subsections 2 through 5.

John Swendseid:

Subsection 6 deals with a different type of bond, not a Build America Bond. Here, we are dealing with a different kind of stimulus bond that Congress authorized, called a tax-credit bond. These are bonds issued at a zero percent interest rate. The bond holder is promised a tax credit from Congress. The Treasury sets the tax-credit rate so that the bond holder will accept the tax-credit bond at a zero percent interest rate.

We have had some of these types of tax-credit bonds around for about six years, but Congress vastly expanded tax-credit bonds when they assembled the Stimulus Package. It has been thought that it would be useful to have the State Bond Bank be able to do these kinds of bonds because often, smaller school districts in Nevada may get authorization to secure a million dollar bond, but when they pay all the fees associated with a million dollar bond, including my fee, the fee of the financial consultant, the printers, and the rest, it eats up a lot of the savings achieved by the zero percent interest rate.

The Bond Bank currently can do some types of revenue bonds, but there are safeguards that we just mentioned. The safeguards make the use of the Bond Bank unattractive, especially for school districts. In fact, I do not think there have been any school districts that have gone through the Bond Bank, even though they could have done so. The safeguards make it difficult and unattractive and may also cause a legal problem if the result of the safeguard is that a state tax ends up going to pay a Bond Bank bond that is issued under this program. The idea of subsection 6 is to facilitate allowing the Bond Bank to do the zero percent tax-credit bonds that are allowed under the Stimulus Package.

As with the other provision, I do not think there would be any harm to sunset this bill in June of 2011. That would give you the opportunity to see if you thought it worked, if it did or did not protect the state, and if Congress extended the program. The program is also scheduled to expire in December of 2010.

Chair Kirkpatrick:

I thought the Bond Bank was the fund that we established in special session to borrow against in case we ran out of cash? Is that not the Bond Bank? What is the Bond Bank?

John Swendseid:

That is not the Bond Bank. That is the Local Government Investment Pool Fund. The Bond Bank is a part of the Treasurer's Office that issues state bonds to buy local bonds, allowing the state to aggregate bonds together to do a larger bond at the state level. The Local Government Investment Pool Fund is not a borrowing vehicle; it is a vehicle local governments use to invest their money. That is the one we dealt with in the special session.

Chair Kirkpatrick:

In subsection 2, paragraph (j) on page 3, how does the volume cap allocation work under the Internal Revenue Service (IRS) Code and why are we referring to the IRS Code so often? Is there a difference between that and the state?

John Swendseid:

This provision relates to the zero interest rate tax-credit bonds. Congress has enacted a limit on how many of those bonds can be issued. The limit is administered at the federal level and they will allocate amounts of these tax-credit bonds to state and local governments, sometimes based on an application and sometimes just based on factors that the federal government has determined.

For example, one type of tax-credit bonds authorized in the Stimulus Package are called School Construction Bonds. The Treasury has already allocated the volume cap on those school bonds among the 50 states and allocated a portion of it to certain larger school districts. Only Clark County School District in Nevada was eligible for an allocation on its own as a larger district. The State of Nevada did receive a large allocation of this school construction cap bond money.

These bonds are better than the Build America Bonds because these have a zero interest rate. Under federal law, these can be used by the state or by local entities. Without these provisions, it would probably be used by local school

districts since those are the ones that issue bonds for school construction in Nevada. This provision would allow local school districts to go through the State Bond Bank so they can aggregate their borrowing together and achieve some efficiency of scale. The volume cap comes from the federal government, not from the state.

Chair Kirkpatrick:

When you talk about the stimulus and the school bonds, is that similar to just allowing them to go out and build different schools or is it additions to the existing schools? Do you know what the parameters are of the school bonds?

John Swendseid:

I believe the School Construction Bonds are capital construction bonds. A capital improvement to a school building or a new school building would both qualify under this language. There is another type of school bond allowed in the Stimulus Package. Under current law, Qualified Zone Academy Bonds can be constructed only in certain parts of school districts where Congress has deemed they need more assistance than in other parts. We have already done some of those in Nevada. The basic School Capital Construction Bond, which is brand new in the stimulus, is for any capital project for schools. It cannot be used for operating expenses, but it could be a capital repair, capital addition, or a new school.

Assemblyman Aizley:

Does capital expenditure include equipment or permanent equipment in a building? Are there any limitations on that?

John Swenseid:

I am not positive. The guidance on this just came out last week. I can look at that; I have it with me. After the next bill, I can get back to you or send an email to the person from the Legislative Counsel Bureau (LCB) who is with you who has the guidance and will then give you that information.

Chair Kirkpatrick:

Does anybody else have any questions? Thank you, Mr. Swendseid. I appreciate all your help on this. Mr. Winebarger, is there anyone else you want to testify in support of A.B. 60?

Mark Winebarger:

No, ma'am.

Chair Kirkpatrick:

I do not have anyone signed in to testify in support of this bill. Is there anyone in the building who would like to testify in support of A.B. 60? Is there anyone else in Las Vegas? Is there anybody in opposition to A.B. 60? Is there anyone who is neutral to A.B. 60? [There were none.] I will close the public hearing on A.B. 60.

We are going to take a five-minute recess so we can wait for Assemblywoman Smith.

I will call the Committee back to order. We will open the hearing on Assembly Bill 463.

Assembly Bill 463: Restricts a department, division or other agency of this State or a local government from employing a person as a consultant. (BDR 23-1057)

Assemblywoman Debbie Smith, Washoe County Assembly District No. 30:

I distributed a handout with suggested changes to the language of the bill ([Exhibit M](#)). I first want to speak to you about how I came to sponsor this bill.

Over the last year, a couple of things happened that made me think we should start looking at the use of consultants in the state. I have received several emails from constituents who have complained about a person being hired as a consultant, particularly when they are making two or three times more than a person doing a similar job. One of the other experiences I had was going to a public workshop last summer which was conducted by a consultant hired by the state. The workshop was very poorly facilitated and we ended up spending our time cutting pictures out of magazines and making collages with scissors and glue sticks. It was unreal. There were multiple sessions of that workshop that went on around the state. That made me start thinking about how we look at the use of consultants and how we manage their use.

A few months later I talked to a few different people who seemed to know that we were also hiring back retired state employees. These are people who have retired and under the Public Employees Retirement System (PERS) cannot come back to work, but figured out they could form a Limited Liability Corporation (LLC) and come back virtually in the same job as a consultant. I did not understand the logic behind that. I have particular concern about it if those people are making considerably more than they would have made in that job or that they are making more than current employees. I decided to investigate the situation and figure out how much of that practice is occurring. I started by

talking to Kim Wallin, our State Controller, who is in Las Vegas today and will provide some testimony. I found out that this practice is very pervasive.

There are two different issues. One is just the general use of consultants. The second issue is how we hire back former state employees. When I originally talked to the Controller about it and asked if we had a way to run some numbers, I was surprised to find that there was a way to take a quick look at how often this is happening. You will hear testimony that she found over 800 circumstances in this regard. I was shocked, even though I knew that this was pervasive throughout the state. When the Controller testifies, she will give you some details on the information she has found in just doing some spot checking and running a few different lists.

This is important to me in a couple of different ways. One is on the fiscal side of what we are doing. Are we being prudent? Are we making sure that the use of consultants is the best way to use our state dollars? Is it reasonable policy and do we have a good process in place for making these decisions? Who is making the decisions? Who is approving the use of consultants? Where are we seeing this occur and do we have access to this information? As a member of the Ways and Means Committee, I have found that it is not something that we readily see in our budget hearings and that bothers me as well.

That is what prompted me to bring this bill forward. I do believe that in the end it will save the state some money because we have some abuse going on; whether it is purposeful, I do not think it is. We get a little lazy sometimes in the way we do things and the way we monitor them.

I have invited the state agencies that contacted me to please come here today and put their concerns on the record about how they use consultants, especially the use of consultants as a business versus as an individual and how that is important to them. We want to be able to craft amendments to this bill that make sense to them. We have to be efficient. I do not want to put a cog into the works of state government and slow them down. I want to make sure that we are using our money prudently and have some good accountability in place.

When I thought about the workshop where we made collages, I wondered: what was the outcome of that round of meetings and where was the accountability? Who knew that we probably spent thousands, if not hundreds of thousands of dollars, on these meetings to make collages? I am anxious to hear from our state agencies about how we can do a better job in that regard.

The bill is short and simple the way it is written. I know it will need some changes, but I want to talk about a few of the changes I would like to recommend.

Local government was never intended to be written into this bill. I would like to eliminate local government from the requirements. I think this discussion urges local government to look at their practice of hiring former retirees and making sure they are not engaging in that in an abusive way. I have spoken to some people who are looking at their agencies to see how they are currently handling the situation.

As outlined in the handout ([Exhibit M](#)), I would recommend changing the verbiage in section 1.1 to "A department, division or other agency of this State shall not employ, by contract or otherwise, a person to provide services as a consultant for the agency unless any of the following circumstances exist, as determined by (1) The person provides services that are not provided by any other employee of the agency..." That is in the original bill. It just changes that first paragraph from who they should employ to who they should not employ. And "(2) A short-term need or unusual economic circumstance exists for the agency or local government to employ the person as a consultant." This gives the agencies a lot of flexibility when they need to hire a consultant for a special kind of work.

I will give you an example that we heard in our Ways and Means Committee the other day. This particular person is retiring and we are employing him back immediately. We discussed this in our hearing and it made sense because he is working in a particular situation where we have been in a legal battle for many years and he has some very specialized, institutional knowledge. We are about to culminate that battle and so it made sense that he stay on long enough to finish that piece. There is an end in sight and a very special reason for it.

The next section is new and says, "(3) The use of consultants shall be reported at least once every six months to the Interim Finance Committee" (IFC), in a report setting forth (a) the number of consultants employed, (b) the purpose for which the consultant is employed, (c) the amount of money received by each consultant, and (d) the identity of each person who is a former employee of the same department. That was a recommendation from one of the agencies.

In section 1.2, I would like to change the cooling off period from one year to two years, meaning a state employee could not be hired back in any capacity for two years. What I am trying to prevent is the concept of leaving one week and coming back the next week. I think that is ridiculous. People either want

to work or want to retire, and if they come back it should be under very special circumstances.

The other problem we have when we allow this to happen is how do we ever promote people? How do we improve the brainpower of our current workforce if we keep bringing back the few individuals who have the institutional knowledge, rather than train the rest of the department in that knowledge to become valued employees? We do not do anything to keep our people in the workforce. If you could leave and come back, why would you not do so?

The rest of the bill refers to the school districts and the requirement that the school districts provide the same type of reporting that the divisions would be required to do. This requires no action by the districts as far as what they can and cannot do, but requires the reporting. If we require this reporting and this transparency, and if there are abuses, they will stop because it will become very public.

Assemblyman Settlemeyer:

I appreciate the amendments. When I first saw the bill, the local government aspect scared me because my county employs maybe 50 to 60 consulting jobs a year. So, this is just reporting to the Interim Finance Committee (IFC) once in a while?

What about a situation where an employee becomes ill and cannot do the job for health reasons, and the former Director returns and covers for him for a couple months; is that allowed?

Assemblywoman Smith:

I think that is covered under the short-term need or unusual economic circumstances. This is exactly the type of thing we are talking about.

Assemblyman Aizley:

You mentioned that there were more than 800 incidents of hiring back state employees as consultants, and then you talked about state employees in general. I would like to know if the 800 examples were really consultants as opposed to hiring someone back for a non-consulting purpose. I am concerned that you are also making it impossible for a former instructor or professor to be hired back to teach a course. That person could be the expert in the field, and, even though he is retired, might be available to continue teaching the course. I do not want to rule that out by saying no former state employee can be hired back for two years.

Assemblywoman Smith:

That is the kind of feedback we need. We need to figure out ways this bill will work for everyone. I am not talking about a state employee going to another government agency. I am talking about former state employees coming back to work for the state as consultants. That is our purview. The field of education is one of the areas that we need to look at.

One of the avenues commonly used for temporary employees is staffing agencies. I do not consider staffing agencies as consultants. Many state agencies have to use staffing agencies. They are not supposed to be included in this bill.

Mr. Aizley, the Controller will clearly indentify the numbers that she is referring to, but the 800 are people coming back as consultants. That number reflects only individuals, not the companies that hire on as consultants. It is pretty shocking.

Assemblyman Stewart:

I appreciate your work on this, particularly number 3 on the amendment which requires the reporting aspect. I really think we need that. On eliminating the local government, that does not include school districts, does it?

Assemblywoman Smith:

School districts are only to be considered in the reporting realm, which is in section 1, subsection 3 in the current bill. That they have to report has been the only intention for school districts.

Assemblyman Stewart:

We have forced people to retire by some of our actions. Knowledgeable and efficient employees might be forced to retire before a certain deadline to receive certain benefits, and then they would not be allowed to come back for two years, even though they may be needed. I bring that to your attention for some potential modification.

Assemblywoman Spiegel:

We could use some clarification when speaking of a person. I own a consulting firm and I had some questions about a person versus a corporation, even if it is not an LLC. What happens if someone is employed by one company and goes to work for a corporation that does consulting; would that preclude them? How would you tell and how would you know?

Assemblywoman Smith:

That is a very good question. We clearly cannot go that deep. We only have so much control and that is hiring a person directly back. We do need to clarify language that defines a person, the single LLC person, versus the general use of consulting firms. We need to get a handle on both. My belief is we just need to make sure we are not employing them for long periods of time. We have had consultants on the payroll for years.

As times change, so does our use of consultants. You will hear that from the Nevada Department of Transportation (NDOT). They have some very good information about how, as the economy changed, their work has changed, as has their use of consultants.

Assemblywoman Spiegel:

You mentioned staffing agencies. I remember when I was a student I used to get summer jobs through staffing agencies. It almost seems that if someone wanted to do this, they could subvert the process by hiring someone from a staffing agency.

Assemblywoman Smith:

I think the reporting requirement will prevent that from happening. If the information is reported and we are looking at it on a regular basis, I think the abuse will be less likely to happen. One thing about the staffing agencies is that the workers do not get overcompensated. We do not want to see a staffing agency doing the job for years on end for a person. We need to see how long we are keeping consultants on the payroll.

Assemblyman Bobzien:

I think your points about the long-term workforce development applications are good because a lot of times we end up in situations where we have employees with institutional memory, but we do not plan for the long-term succession that passes that knowledge along.

Mr. Aizley made a comment about the use of letters of appointment in the higher education setting and I think it is a good point. You often have faculty members who return to work because they are the experts in their field and can fill gaps in the faculty lineup. Many times those letters of appointment are used for special projects and are more along the lines of the consulting relationships you are contemplating. As you go forward with your investigation, that is something that is present in the educational realm and must be considered.

Assemblywoman Smith:

If we are able to get this bill processed, we will learn a lot over the interim about where we need to look and what we have to do. Undoubtedly, we will make some mistakes, but we can work on them to find better ways of doing things. We learn with most of our bills that when we implement them, we find out what works and what does not. In the course of the interim and with the reporting, I think we will learn a lot.

Assemblywoman Mastroluca:

Listening to the conversation and the discussions about accountability, I would almost like to see a line in the bill where you talk about the purpose for which the consultant is hired and the ensuing results. If we brought in a consultant to train 20 people on how to make a widget, tell me how many people can now successfully make a widget.

Assemblywoman Smith:

I appreciate that and I was hoping that we would hear that from the agencies as they comment today or as they work with me as the bill moves forward.

Assemblyman Goedhart:

We talked about the flexibility in the amendment dealing with either unusual economic circumstances or a short-term labor need. If that need exists, are they still bound by the two-year cooling off period or would that void the two-year cooling off period?

Assemblywoman Smith:

The way it is written, the two-year cooling off period would apply. I am open to discussion about the flexibility of that period. People always find a way to get around the rules. That is the only thing I am concerned about.

Assemblyman Goedhart:

I just wanted a point of clarification.

Assemblywoman Smith:

That is the way it would be.

Chair Kirkpatrick:

Does anyone else have any questions? [There were none.] We are going to go to Ms. Wallin in Las Vegas. Good morning.

Kim R. Wallin, CPA, Nevada State Controller, Office of the State Controller:

As Assemblywoman Smith mentioned, we began having a conversation when she was drafting this bill. She had come to my office and asked if we could

see if we had current or former employees who are working for the state as consultants. In our first attempt, we found 876. After we went through the list, refined the information, and looked at more detail, we narrowed it down to 780 individuals who have received pay or are currently receiving pay as consultants in the state. Of the 780 individuals, 315 are current employees. Regarding those who are current employees, I have not been able to access all of the contracts because we do not have a centralized contract database. I am still looking for those people. I cannot tell if any of the 315 are currently active as consultants. But, we were able to access 45 contracts and of those consultants, 21 percent are current state employees. They are getting a paycheck and they are also getting consulting fees. The largest dollar amount of the 45 contracts is \$600,000 over a four-year period. This was for professional services. One of our former employees had a contract for \$4 million over a nine-month period. I do not want to single out any agencies because I have not been able to go to these agencies and ask what the consultants were used for. That is why we need that information.

My staff also compiled a list of those who are information technology (IT) consultants. In Fiscal Year 2008, the consultants we could identify were paid a total of \$8.5 million.

In my office we save more than \$400,000 in our IT area because we do the programming in-house. To give you an example, if I take one of my programmers who makes \$85,000 a year, including benefits, and compare that to what I would have to pay for an outside contractor, the fee would range from a low of \$125,000 to a high of \$250,000 a year. As Assemblywoman Smith said, there are cost savings in examining our consulting agreements.

Another issue the state is facing with the budget cuts and hiring freeze is that many agencies are forced to hire consultants because the work still has to be done. These consultants are not necessarily any cheaper than what we have to pay an employee, including benefits. That is something you, as legislators, need to review.

I completely support this bill. During the next few years, I want to look at how we staff agencies, and how we develop the necessary talent within those organizations to avoid having to subsequently hire consultants.

The two-year cooling off period will place the onus on the agencies to begin developing their in-house talent. Within my own office, we are having each person train someone underneath them so that when they leave, that employee with the same skills will take their place.

I plan to work with Assemblywoman Smith to define the contract parameters of what is necessary to be in the contract language—maybe contracts of less than six months, or less than a certain dollar amount. Some offices, such as the Treasurer's Office, have consultants, but they are not necessarily previous employees. They also have to hire bond counsel and financial consulting counsel for their bond issues. That is a specific example of where we do need consultants who have specific knowledge.

Assemblyman Aizley:

Ms. Wallin, do you consider every IT person hired back a consultant as opposed to just someone doing a job?

Kim Wallin:

The IT people whom I spoke of were not all employee rehires. These are individuals who have been working for the state as IT consultants for five or more years. We have not bothered to develop the in-house knowledge, so we still have to utilize consultants. A lot of these people were hired off the street and never worked for the state, but when you work as a consultant for five years, you may as well become an employee. Even the Internal Revenue Service (IRS) indicates that those who are in these positions for more than one year must become employees.

Chair Kirkpatrick:

Does anyone else have any questions? I think we are all shocked at your numbers. Are you going to send us a copy of those numbers for the Committee? Would you?

Assemblywoman Smith:

I can send you a summary because I have a lot of spreadsheets.

Chair Kirkpatrick:

Are there any other questions? Ms. Smith, do you want to say anything else?

Assemblywoman Smith:

I think that there is a need for outside consultants. No business in any state could survive without them, but this is something that has to be more tightly controlled. It is happening across the country. I have noticed what is happening in other states. When the President first began talking about budget issues back in January, he spoke of examining the federal use of consultants in the same way. It is time to make sure we are spending every dollar soundly.

Chair Kirkpatrick:

We will start with those in favor of A.B. 463, Mr. Coyle and Mr. Mallory. Good morning.

Danny N. Coyle, American Federation of State, County, and Municipal Employees Local 4041, Retiree Vice President, Carson City, Nevada:

With me today is Dennis Mallory, Chief of Staff of the American Federation of State, County, and Municipal Employees (AFSCME), who will have some additional comments. We would like to speak specifically to subsection 2 of the bill and generally about subsection 1. [Mr. Coyle read from prepared text ([Exhibit N](#)).]

Dennis Mallory, Chief of Staff, American Federation of State, County, and Municipal Employees Local 4041, Carson City, Nevada:

We think that as this bill materializes with the amendments that you have spoken of, this will provide the checks and balances that are obviously needed, especially after hearing Ms. Wallin's numbers. It will ensure integrity and accountability in the business of hiring consultants. The numbers are staggering. We knew there was an issue, but, wow, it is bigger than we could ever imagine. As my colleagues and I fight every day to preserve pay, health benefits, and retirement for state employees, it is astonishing to hear those numbers that show we are wasting money every day by hiring consultants instead of using in-house personnel and promoting that upward mobility that Mr. Coyle was talking about.

We will work with Ms. Smith and Ms. Wallin and the Committee to make sure all concerns are addressed. This bill needs to be enacted to save the state a ton of money.

Assemblywoman Pierce:

I am not really surprised. I have thought for a long time that a lot of things we have done over the years and the decades that were sold as fiscally responsible were, in fact, a huge waste of money. This is a good example. We have the smallest government in the country and it is a huge waste of money.

Dennis Mallory:

You are right. There was probably a need for this at one time, and through the years it morphed into abuse of the system. I think that is what happened. Thank you for your comments.

Chair Kirkpatrick:

Does anyone have any questions or comments? In opposition, I have Ms. Masters and Ms. Martinovich.

Susan G. Martinovich, P.E., Director, Nevada Department of Transportation:

I appreciate Assemblywoman Smith's bill and definitely want to work with all of you. I just want to provide some information that the NDOT has on this bill. The concern the NDOT has on this bill is that it adds an extra layer and some time to our process, one that we feel does have appropriate checks and balances.

The NDOT primarily uses firms selected on quality-based selections and they are used in times when we have a need, when we do not have the expertise. We have short time frames and we do not have the staff or the manpower to meet those time frames. We have developed a process that is very explicit on what we need to do and when we need to have a consultant onboard. The process has also been approved by the Federal Highway Administration because we have stringent requirements when hiring consultants utilizing federal funds. We have a need for a wide variety of consultants that range from design, hydraulics, bridges, and right-of-way acquisition, to bridge and construction inspection for our jobs and analysis of disparity studies. In almost every gamut of our industry, we have utilized consulting firms to help us.

When we need to hire someone, we have very stringent forms that the designer or person who needs it has to work through with their division head and then it goes to the Director's office. I do not sign every single one of them but my deputies or my assistant directors will review the requests to see if we really do need to hire and utilize consultants.

There is an extensive process to select the appropriate consultant. It is based on the project, their experience, their past performance, and more. I will admit, with respect to the example that Assemblywoman Smith gave regarding the consultant cutting collages, that workshop was held through NDOT. We had heard that complaint. I explored the situation and found that the firm is still working for NDOT but the individuals who put that particular workshop together are no longer allowed to work on NDOT projects. We do try to incorporate the checks and balances in like situations.

In our budget there are things that are standard: salaries, travel, and operations. The only part that has any flexibility, depending on how much revenue we are receiving, is our capital program. In the capital program, our use of consultants ranges from 12 to 13 percent. This year it is only at 6 percent. Use of consultants takes directly away from putting pavement on projects. I would rather do that. But there are times we need the extra help and expertise. In lean times, we will cut way back. During busy times we have to get projects ready. We have to have projects ready in order to spend the money, and if we

do not spend the money we do not get the money. That is the way the federal allocation works.

For example, in 2003 our consultant use was 12, almost 13 percent. In 2006 we used almost 13 percent and in 2009 we are projected to use only 6 percent because we have had to cut back in order to maintain some semblance of pavement preservation projects. I would rather give our in-house staff the expertise and the knowledge of doing a large interchange project than put those jobs out to consultants. We always work with our division heads and our rotary design divisions and ask, "Can you do this work? Can you get it done in this time frame?" Most of the time they indicate "yes," but if we cannot, we utilize consultants.

In summary, going through the process that has been approved, our transportation board also reviews and sees every consultant and agreement contract that we have at their open meetings. Adding the additional process of getting approval from the IFC would really slow us down.

Assemblyman Stewart:

Would the report every six months be a problem for you?

Susan Martinovich:

The department would be very happy to report every six months. It is the prior IFC approval that I have concern with, but the reporting would be no problem.

Assemblywoman Spiegel:

If the need for prior approval by the IFC were eliminated but just the reporting was required, is that something you would be okay with?

Susan Martinovich:

Yes, we would be okay with that.

Chair Kirkpatrick:

Have you seen the amendment that Ms. Smith brought forward?

Susan Martinovich:

I have not had the opportunity.

Chair Kirkpatrick:

I get just as frustrated as you do when I have to go before the legislative IFC. Where are the checks and balances on the money as to who determines how much you can pay for a consultant? What is the board make-up and why are they different than the Legislature overseeing it?

Susan Martinovich:

As far as how much can be spent, we have set some budgets within our agency on consultant use based on historical payment amounts. We do not select consultants based on a low bid. They are selected based on quality and past performance. Once they are selected then there are negotiations to go through. Before entering into negotiations, they must provide a negotiation summary, estimating what the cost of the project will be. Ultimately, the division director will approve those negotiations and the contract.

I am the one who reviews the overall consultant budgets and then I work with the division and tell them they are either spending too much or too little. The board is our State Transportation Board, which is comprised of the Governor, the Lieutenant Governor, the Controller, the Attorney General, and three members appointed at-large. At every meeting, they see the list of all contracts and agreements that we have entered into, as well as the amount of money that those agreements are encumbered for.

Chair Kirkpatrick:

I understood that you had to come before public works anyway on some of those things, but maybe I was misinformed.

Susan Martinovich:

No, we do not.

Chair Kirkpatrick:

It is consistent that 13 percent of your budget has been for consultants in the past few years and now it will be 6 percent.

Susan Martinovich:

It is not of our entire budget but of our capital 406 budget.

Chair Kirkpatrick:

For those of us who are not on the money committee, how many consultants are there and for what time frame?

Susan Martinovich:

There are many consultants. We hire hundreds of them and some of them are multiyear because we have project development phases that are multiyear. To start with a project on I-15, for example, our Project Neon, we have the environmental assessments, and you have to lay out many alternatives to the project. There are some long-term multiyear contracts, but the end result of those is that we have a project ready to go out the door to advertise.

Other projects are very short-term, such as a disparity study that is forthcoming, and those would have a consultant hired for a few months.

Chair Kirkpatrick:

Out of those consultants, how many are in state and how many are out of state?

Susan Martinovich:

The majority are in-state firms because that is one of the selection criteria. The firm's location must be nearby for the consultant to be responsive and meet with our staff and follow up often. That is one of the criteria where they get higher valuation.

Kareen Masters, Deputy Director, Department of Health and Human Services:

Our department primarily uses temporary employment agencies that the state contracts with to hire staff for temporary assignments for positions that are either temporary or very difficult to recruit classes of employees. The Health Division, for example, staffs many of the positions in our Early Intervention Services Program with a contract through Accustaff. These positions include Child Development Specialist, Speech Pathologist, Physical Therapist, and Occupational Therapist. Other divisions use employment agencies to hire staff for special assignments, such as serving as part of the child welfare multidisciplinary team which participated in the review of child welfare systems and staffing the Governor's Methamphetamine Task Force. While many of these employees hired through the temporary employment agencies have never worked for the state, it is beneficial to the department to have the option to employ former state employees without requiring them to sit out for a two-year period of time.

Former employees often have the experience and the knowledge of state programs and systems to accomplish assignments independently with a minimum of training. As more employees retire from state service it is also useful to have former employees participate in training their successors to ensure a continuity of operations.

The Nevada Department of Health and Human Services would like to maintain the flexibility to determine how staffing needs may best be met, including the hiring of former employees. We would also suggest including a definition of consultant in the bill.

Assemblywoman Pierce:

If someone is getting ready to retire, should they not train their replacement before they retire?

Kareen Masters:

That does happen occasionally in state agencies. Sometimes you are not able to recruit for a position until you know there is going to be a vacancy. If we do a recruitment, we may be indentifying a person from another division who is going to move into that position. It is not easy to get what is called an overlap position which would allow the new person to work side-by-side with the person who is exiting state service. The person who is going to be filling that position is busy working in their own job and does not have time to leave that position and train with the person who is going to be leaving.

Chair Kirkpatrick:

That sounds ridiculous. Do we not cross-train employees to do more than one thing? It seems detrimental to the entire process. I do not understand when you say they do not have the time to train. The freshmen legislators here on this Committee get a crash course on how to be a legislator, and within 65 days they have done pretty well. I do not understand how a state employee is any different.

Kareen Masters:

I am sorry if I made it sound as if none of that goes on. We try to do succession planning and people do cross-train. We have a public manager program that people go through to assist them in acquiring management skills. There is a lot of fine detail one would need to know about in an upper level management position, and unless you are working very closely with the person who is departing, sometimes you are not able to acquire all the detailed knowledge that you would need to be successful in that position.

Chair Kirkpatrick:

Sometimes we are our own problem when we do not want to see change come. We learn some of the greatest principles of life when individuals work their way up the ladder and never forget what it was like to progress up the ladder to success. Where is the study that shows your ideas stating the way the agency works is the way it will remain for the next 25 years? I hear you say that no one could fill the shoes of that employee without proper training. Just because you do not have the exact same skills does not mean you could not do the job. What you said was, you cross-train and you try to bring people up, but there comes a time when there is no one in that division that can take the place of the Director when he or she retires. I disagree with that because there has to be a time when you want a little bit of change and you want someone to come in with a new viewpoint on the work environment. It is very sad that we have to wait for someone to come from out of state to fill a position. Just because it worked somewhere else does not mean it will work here.

If you are retired and you come back as an employee, are you allowed to get your PERS benefits?

Kareen Masters:

My understanding is that if you are hired through a temporary agency it does not impact your ability to receive PERS benefits. I am sorry if I gave the impression that there is no room for change in government; I do not feel that way at all. I also do not feel that only the person who held the position was qualified to train an up-and-coming employee. I used to work for the private sector and it was typical of the company I worked for to have management training programs that provided systematic training. They were not doing two jobs at once and they followed a specific training method which was very successful. I certainly would embrace programs like that as well.

Assemblyman Atkinson:

When you talk about government, cross-training, and positioning, it is difficult in government to cross-train. It is tough because you have to straddle the line and not make people work out of their class and make sure they are doing the work that is within their job description and classification. We can train our staff and make them eager to do their job, but it does become difficult.

I work for government and we have the same challenges: where do you work them, where do you put them, how do you cross-train, and so forth. It is not easy to bring someone in and have them work beside you while you are training. Contracts usually will not let you do that. They do not allow you to bring someone else in while the incumbent is still there. There is not enough money in anyone's budget to do that and the rules do not allow you to do that. Unless we go back and change all the contracts, that is the way it will be.

I understand what Ms. Smith is trying to do and I fully support the bill. These are two different issues. One is the use of consultants in general. The other is bringing former state employees back as consultants and cross-training them. It is not that easy to do in government employment. It may be easier in the private sector.

Assemblywoman Pierce:

Over the last 20 or 30 years, this Legislature has put tremendous pressure on agencies to never come and ask for more employees. I think we are part of the problem. I am very appreciative of Assemblywoman Smith bringing this forward.

Chair Kirkpatrick:

Ms. Masters, did you get Ms. Smith the information on the staffing agencies?

Kareen Masters:

Yes, we did provide some information to Ms. Smith.

Chair Kirkpatrick:

Are there any other questions? Does anyone else want to testify in opposition to A.B. 463? Is there anyone who is neutral on A.B. 463 who would like to testify? Mr. Nuñez.

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

I just learned of this bill this morning and I apologize; I have not yet had a chance to talk to Assemblywoman Smith.

I have no concerns with section 1, subsections 2 and 3 with respect to the cooling off period or the reporting to the IFC. We can do that as it would not impact our agency. However, with respect to section 1, subsection 1, there should be a definition of a person.

We used to do some of our design in-house, but the volume of work we are doing right now does not allow us to do that. Most of our design projects are outsourced to consultants.

The capitol improvement project (CIP) that is approved by Senate Finance and Assembly Ways and Means has a total project cost. There is a line item on that cost estimate for the exact amount of money that is going to be paid for consulting services on that particular project. So it starts right here with the Legislature approving the exact amount.

After the CIP is approved we go through consultant selection for those projects that are going to utilize consultants. Our board has adopted regulations from the *Nevada Administrative Code* (NAC) that we have to follow for the selection of consultants. At the end of the selection process, we have to take the final candidate to our board at a public meeting for their approval. After that, we enter into negotiations and draw up a contract, which then goes to the Board of Examiners (BOE) for approval.

There is quite a bit of transparency already in the process, from the amount of money that is approved, to the consultant selection, going through our board and then going through BOE. That process currently takes four months to complete. If the intent of this bill would be to also take that approval to the IFC, then it would add another three months to the process to finally get the consultant working on the project.

Perhaps that is not the intent of the bill, but that is the way I read it. There may be a difference in hiring a firm as opposed to hiring an individual. For all our large projects, we will be utilizing firms that have many employees. If that does not fit the definition of a person, with most of our work we would be okay. We try to match the size of the job to the size of the consultant. We find that if you give a large consulting firm a very small job, you do not receive very good service. It also allows us to spread the work to as many consultants as possible. We feel we are not doing our job if we do not engage as many firms as possible.

Our main concern is the timing. If we had to take every consultant contract or selection to the IFC, it would really slow things down.

Chair Kirkpatrick:

Mr. Nuñez, there was an amendment submitted that changes section 1, subsection 1 that addresses your concerns.

Gus Nuñez:

Is that available?

Chair Kirkpatrick:

Yes, it is. Does anyone have any questions for Mr. Nuñez?

Assemblyman Bobzien:

Can you give us a comparison of the degree to which you relied on consultants three or four years ago as compared to today?

Gus Nuñez:

When I came to Public Works about 7 1/2 years ago, our volume of work doubled. We could not grow that fast and maintain the quality that we needed, so we utilized consultants. Prior to that we were already hiring consultants, but we were also doing some work in-house.

With the volume of work we have, we rarely find the time to complete the work in-house. There will be a slowdown in 2009 and in order to maintain our staffing, we may look at doing some of that work in-house instead of outsourcing it as before.

Did I answer your question or did I misunderstand?

Assemblyman Bobzien:

I was thinking that of one of the benefits of using consultants is that you can trim the staff back when your workload decreases.

Chair Kirkpatrick:

Does anyone else have any questions? Thank you. Is there anyone else who would like to testify as neutral on A.B. 463? [There was none.] Ms. Smith, do you have any final comments?

Assemblywoman Smith:

I appreciate the good discussion. I wanted to touch on some of the conversations about how difficult this is for the agencies because we do have a hiring freeze. The other side of that is as long as we continue operating this way we will never get to the true picture. I have always talked about school funding, as an example. As long as the Parent Teacher Association (PTA) keeps raising hundreds of thousands of dollars, buying copy machines, and hiring teachers, we will get to where we need to be; it is a bit of a supplemental issue.

We do not have a true picture. When we have our budget meetings in Ways and Means, we do not hear this information. We do not realize that we are in need of extra staffing because we are covering it by hiring consultants. As long as we are not talking about it, we never know what the real need is. We must have a true picture.

Assemblyman Goedhart:

Looking at the amendment under item 3, you have the review process and the reporting requirements. Is that only applicable to the school district?

Assemblywoman Smith:

Everyone would report. The school districts only have to report, but the state agencies would follow the rules as well as report their use of consultants. I understand after hearing testimony today and speaking with the agencies, that we are going to have to figure out better criteria or parameters, because we certainly are not going to delay work because we have someone who has to wait to go through a prolonged approval process. We will come to some agreement on that issue.

Assemblyman Goedhart:

The way it is currently written, it only applies to the school districts?

Assemblywoman Smith:

Only the reporting applies to the school districts. The reporting and the restrictions apply to the state agencies.

Assemblyman Settlemeyer:

I was wondering if you thought about adding one other item to the bill—the length of time the person is employed. This might be a helpful statistic.

What is the definition of a consultant?

Assemblywoman Smith:

Thank you for the great suggestion on the length of employment. Our perspective on a consultant is someone who is not a direct employee. That is why we have to get to the staffing agency issues. I need to meet with our Legal staff to ensure proper protocol and a common understanding of the definition of a consultant.

Assemblyman Settlemeyer:

Say Mr. Goedhart is voted out of the Assembly and Nye County wants to hire him back as a consultant, but he created a suborganization, so now he is not a direct consultant; it is a firm. Are we going to be able to reach those types of individuals?

Assemblywoman Smith:

That is what we are attempting to do because that is what is happening. People are forming Limited Liability Corporations (LLCs) and are being hired back. Through the Controller's Office, we have found we have a way to match those. We also have a process within State Purchasing where there are certain things they have to check and we may need to refine those a little bit. The only thing we cannot get to are people who are hiring on with a company and they do not show up as an employee. We know that is common practice, especially in the engineering world where people retire and then go to work for a big firm that does inspection and engineering. I am not worried about that. I am worried about the overuse of the big companies and making sure that as our economy changes, so does that use. I am also concerned about the abuse with the use of individual consultants.

Assemblyman Settlemeyer:

I am a little concerned about the cooling off period in emergency situations.

Assemblywoman Smith:

We will work on that.

Assemblywoman Mastroluca:

One thing you may want to keep in mind is sometimes consultants are kept on retainer and so they may be employed for a year or two, but you only call them and pay them when there is a need. For example, I know that the City of Las Vegas has a group of people on retainer who are hired to deal with a very specific piece of equipment that they own. It is not practical to train an employee, because it is updated so often and it changes. Sometimes they will have someone on retainer that they can call and hire for that specific task.

Assemblywoman Smith:

We will look at that issue. I think one of the important things in a situation like that would be to make sure we know we are paying a reasonable amount of money, that we are not keeping people on the job longer than we need to, and that we have an evaluation process in place that says we need to figure out another plan if needed.

Assemblyman Aizley:

I do not think this is an easy topic. There are a lot of sub-plots going on all over the place. The University System will spend \$75,000 to \$120,000 to hire a new Chancellor or President, when they could be spending maybe \$10,000. That consultant search fee sometimes exceeds the faculty member or employee's salary. If the impetus is to save money there are ways to save money where you would use employees. In my opinion, that would not be bad. I do not know if you think of headhunters as consultants or not.

Assemblywoman Smith:

I think the end result is that we will save money. As the Controller pointed out, when they started eliminating some of the consultant use they saved \$400,000 in their office alone. That is a lot of money. The most important thing is that we are absolutely transparent, which this reporting will ensure. When there is more transparency, people will begin to take a look and say, if the public is seeing this information, is it the best possible way for us to do business? It will cause us to reflect on how we conduct business, both personally and with policy.

Chair Kirkpatrick:

Is there anything else for Ms. Smith? We are not meeting on Friday. Our deadline is tomorrow. We are going to close the hearing on A.B. 463. Is there anything from the public? [There was none.]

[The meeting was adjourned at 10:29 a.m.]

RESPECTFULLY SUBMITTED:

Denise Sins
Committee Secretary

APPROVED BY:

Assemblywoman Marilyn K. Kirkpatrick, Chair

DATE: _____

EXHIBITS

Committee Name: Committee on Government Affairs

Date: April 7, 2009

Time of Meeting: 8:17 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 159	C	Susan Scholley, Committee Policy Analyst	<u>A.B. 159</u>
A.B. 159	D	Susan Scholley	Mock-up Amendment to <u>A.B. 159</u>
A.B. 223	E	Susan Scholley	<u>A.B. 223</u>
A.B. 223	F	Susan Scholley	Mock-up Amendment to <u>A.B. 223</u>
A.B. 304	G	Susan Scholley	<u>A.B. 304</u>
A.B. 304	H	Susan Scholley	Mock-up Amendment to A.B. 304
A.B. 284	I	Susan Scholley	<u>A.B. 284</u>
A.B. 284	J	Susan Scholley	Mock-up Amendment to <u>A.B. 284</u>
A.B. 401	K	Susan Scholley	<u>A.B. 401</u>
A.B. 60	L	Mark Winebarger, Cecilia Colling, Office of the State Treasurer	Amendment to <u>A.B. 60</u>
A.B. 463	M	Assemblywoman Smith	Amendment to <u>A.B. 463</u>
A.B. 463	N	Danny Coyle	Testimony on <u>A.B. 463</u>