MINUTES OF THE
SENATE COMMITTEE ON GOVERNMENT AFFAIRS

Seventy-fifth Session
May 6, 2009

The Senate Committee on Government Affairs was called to order by Chair John J. Lee at 1:42 p.m. on Wednesday, May 6, 2009, in Room 2144 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412, 555 East Washington Avenue, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator John J. Lee, Chair
Senator Terry Care, Vice Chair
Senator Steven A. Horsford
Senator Shirley A. Breeden
Senator William J. Raggio
Senator Randolph Townsend
Senator Mike McGinness

GUEST LEGISLATORS PRESENT:

Senator Warren B. Hardy II, Clark County Senatorial District No. 12
Assemblyman Tom Grady, Assembly District No. 38
Assemblywoman Marilyn Kirkpatrick, Assembly District No. 1
Assemblywoman Peggy Pierce, Assembly District No. 3
Assemblywoman Ellen B. Spiegel, Assembly District No. 21

STAFF MEMBERS PRESENT:

Heidi Chlarson, Committee Counsel
Michael Stewart, Committee Policy Analyst
Cynthia Ross, Committee Secretary

OTHERS PRESENT:

Kim R. Wallin, State Controller

Russell M. Rowe, Biodiesel of Las Vegas, Inc.; American Council of Engineering Companies of Nevada
Richard Perkins, City of Henderson
Terri Barber, Intergovernmental Relations Director, City of Henderson
Steve Redlinger, Southern Nevada Building and Construction Trades Council
Veronica Meter, Las Vegas Chamber of Commerce
Fred Hillerby, American Institute of Architects, Nevada
James "Jim" E. Keenan
Jack Jeffery, International Union of Operating Engineers Local 12, Las Vegas; Laborers International Union of North America Local 872, Las Vegas
Wes Henderson, Government Affairs Coordinator, Nevada Association of Counties
Steve K. Walker, Douglas County; Lyon County; Storey County; Carson City
Ted Olivas, Director, Government and Community Affairs, City of Las Vegas
Mandi Lindsay, Government Affairs Specialist, Associated General Contractors, Las Vegas Chapter
John Griffin, APS Energy Services Co., Inc.
John Madole, Executive Director, Associated General Contractors of America, Inc., Nevada Chapter; Nevada Association of Mechanical Contractors
Jeanette K. Belz, Associated General Contractors of America, Inc., Nevada Chapter
Anne Loring, Washoe County School District
Perry M. Di Loreto, Manager, Nevada Tri Partners, LLC
Jay Parmer, Builders Association of Northern Nevada
Maddy Shipman, Southern Nevada Home Builders Association
Don Allen, Silver Springs Mutual Water Company
Bob Foerster, Executive Director, Nevada Rural Water Association
Ed James, Carson Water Subconservancy District
James Sala, Senior Representative, Southwest Regional Council of Carpenters, Nevada
David Kersh, Government Affairs Representative, Carpenters/Contractors Cooperation Committee, Inc.
Dan Musgrove, NAIOP, Commercial Real Estate Development Association, Southern Nevada Chapter
Richard "Skip" Daly, Business Manager, Laborers' International Union of North America, Local Union 196
Yvonne L. Murphy, Tahoe-Reno Industrial Center, LLC
Vincent Griffith, P.E., President, Reno Engineering Corporation
Bonnie Drinkwater, Attorney, Tahoe-Reno Industrial Center, LLC

Clara Andriola, Associated Builders and Contractors, Inc., Sierra Nevada Chapter
Tray Abney, Director, Government Relations, Reno-Sparks Chamber of Commerce
Michael Tanchek, State Labor Commissioner, Department of Business and Industry
Christine E. Drage, Attorney, Weil and Drage
Renny Ashleman, City of Henderson; State Public Works Board

CHAIR LEE:
We will open this meeting in work session (Exhibit C). Michael Stewart will introduce Assembly Bill (A.B.) 289.

ASSEMBLY BILL 289: Provides protection for paleontological sites. (BDR 35-1084)

MICHAEL STEWART (Committee Policy Analyst):
Assembly Bill 289 expands the duties of the Division of State Parks to include administering, protecting and developing paleontological sites and gives public entities authority to enter into cooperative agreements to protect sites of paleontological significance. These sites must be included in the historical properties preservation plan of a master plan, which must be prepared by a planning commission for the physical development of a city, county or region.

CHAIR LEE:
Assemblyman Harry Mortenson could not be here today in support of his bill but has staff present. The bill is straightforward.

SENATOR TOWNSEND MOVED TO DO PASS A.B. 289.

SENATOR CARE SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR LEE:
We will now address A.B. 301.

ASSEMBLY BILL 301: Requires the Governor to proclaim March 31 as "Cesar Chavez Day" in the State of Nevada. (BDR 19-530)

MR. STEWART:
Assembly Bill 301 was brought to us by Assemblyman Ruben Kihuen. It directs the Governor to annually proclaim March 31 as "Cesar Chavez Day" in honor of the anniversary of Cesar Chavez's birth. Assemblyman Kihuen pointed out this is a day of recognition that would call upon the media, educators, businesses, labor leaders and government officials to inform and educate Nevadans about the importance of Cesar Chavez. There was no amendment.

SENATOR CARE:
There is no reason not to do this. There is no fiscal note and this day would not be a State holiday.

SENATOR CARE MOVED TO DO PASS A.B. 301.

SENATOR BREEDEN SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR LEE:
Our next bill in work session is Assembly Bill 305.

ASSEMBLY BILL 305 (1st Reprint): Provides for an ex officio State Paleontologist. (BDR 33-254)

MR. STEWART:
Assembly Bill 305 requires the Administrator of the Division of Museums and History of the Department of Cultural Affairs to designate an employee to serve as the ex-officio State Paleontologist and sets forth duties of the State Paleontologist. To the extent that time and funds are available, the duties of the State Paleontologist include compiling an inventory of paleontological resources and a database of fossils, in addition to coordinating and promoting paleontological research activities in the State. No amendments were offered.

SENATOR BREEDEN MOVED TO DO PASS A.B. 305.

SENATOR CARE SECONDED THE MOTION.

SENATOR RAGGIO:
Dr. Michael E. Fischer, Director, Department of Cultural Affairs is here and is in support of these measures regarding paleontology. Going through this budget process, his Department has taken a large hit. We want to do all we can to ensure relief will come to his Department before closing final budgets.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR LEE:
We will now address A.B. 306 in work session.

ASSEMBLY BILL 306: Designates the month of April of each year as "Paleontological Awareness Month" in Nevada. (BDR 19-1085)

MR. STEWART:
Assembly Bill 306 designates April as "Paleontological Awareness Month" in Nevada, and no amendments were offered.

CHAIR LEE:
This bill sets to recognize our State's paleontological resources and the importance of their preservation.

SENATOR TOWNSEND MOVED TO DO PASS A.B. 306.

SENATOR CARE SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR LEE:
Our last bill in work session is A.B. 352.

ASSEMBLY BILL 352 (1st Reprint): Makes various changes relating to the Spring Mountains National Recreation Area. (BDR 22-488)

MR. STEWART:
Assembly Bill 352 limits new residential units within the Spring Mountains National Recreation Area to the number permitted by the zoning on the effective date of the bill with certain exceptions. Local governments may not establish new nonresidential zoning districts or increase the size of any such existing districts. The creation or expansion of zoning for public facilities is allowed. The measure clarifies that local governments retain all other authority regarding planning, zoning and design review. The bill also prohibits the Nevada Gaming Commission from issuing a nonrestricted license within the area. This bill is similar to S.B. No. 358 of the 72nd Session which granted similar protection for the Red Rock Canyon National Conservation Area. There are no amendments.

CHAIR LEE:
One amendment was offered and pulled. The organization offering that amendment wanted to ensure its removal.

SENATOR CARE MOVED TO DO PASS A.B. 352.

SENATOR RAGGIO SECONDED THE MOTION.

SENATOR MCGINNESS:
Was the pulled amendment sponsored by Senator Barbara K. Cegavske and Senator Maggie Carlton?

CHAIR LEE:
Yes.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR LEE:
Work session is now finished. We will now open the hearing on A.B. 87.

ASSEMBLY BILL 87 (1st Reprint): Revises provisions concerning the collection of debts owed to the State. (BDR 31-494)

KIM R. WALLIN (State Controller):
Assembly Bill 87 amends chapter 353C of the *Nevada Revised Statutes* (NRS) governing the collection of debts owed to State agencies. The fiscal notes were removed once the amendments were put in place and passed by the Assembly. The sole remaining fiscal note is our fiscal note for $53,000 for additional postage and handling costs.

In front of you are handouts (Exhibit D) explaining our needs. In the interest of time, I will address the details if questions arise. Assembly Bill 87 will clean up NRS 353C by mandating agencies to turn their debt over to the Controller's Office when it becomes 60 days past due. Agencies can turn in their debt whenever they want. This causes debt to age. The average age of debt turned over to us is 486 days. If you remove the Department of Motor Vehicles (DMV) debt, which averages 120 days, the average debt age from the agencies becomes 722 days.

This bill will give our Office the opportunity to go after debtors aggressively by filing judgments against them. It also has a provision saying the State will not do business with people who owe us money.

Assembly Bill 87 will allow us to also charge interest on our installment plans. The interest charged would be at the federal IRS rates. It will be standard and easy to track. We would also enter into agreements with debtors to accept partial payment in full satisfaction of debts. This course of action would only be used if it was likely to generate more revenue for the State. There have been cases where agencies have refused to accept partial payment from a business that then goes into bankruptcy and the agencies received no money.

This bill will increase the collection fee percentage charged for debts over $25,000, but this will not exceed 35 percent of the debt or $50,000. This is an increase of 10 percent as it stands at 25 percent. The maximum fee will be raised from $25,000 to $50,000. Eight years ago when this bill went into place, market conditions were different.

The bill also gives the final responsibility for filing judgments and certificates of liability to the Controller's Office instead of to the agencies. Often, agencies do not have the resources.

Under NRS 616C.22 at the request of the Division of Industrial Relations, if a debt is assigned to our Office, this bill will give the Controller authority to bring a civil action in a court of competent jurisdiction to recover from the employer any payments made by the division described in section 5 with accrued interest. They want our help in collecting debts.

You also have in front of you our amendments (Exhibit E). Amendments to section 7.5 and section 11 are from the Controller's Office and the amendments to section 7 and a proposed new section, 7.3, are at the request of the Assembly Committee on Ways and Means. In section 7.5, we are adding language to clarify what statutes govern and when. If an agency has specific statutes relating to the collection of debt, their statutes will govern until the agency turns the debt over to our Office. After the debt is turned over to the Controller's Office, our statutes will govern.

In section 11, we are changing the dollar amount we charge the debtor or collection agency from $200 to $300. With debts under $300, fees are often added that can add to more than the original debt. The fiscal impact to the agencies would be minimal. Looking at the DMV, our largest account, the fiscal impact is estimated under $9,000 per year. We assume we will collect 100 percent of debts they turn over to us between the $200 and $300 range.

We are also adding a 2-percent fee that will be charged to debtors on debts over $300. This money will be used by the Controller's Office to offset costs. Not all money we collect is General Fund money, yet the Office is 100-percent General Fund funded. We collect debt for non-General Funds for the Nevada Division of Transportation, DMV, Great Basin Community College and Western Nevada College—and the University of Nevada, Las Vegas, has recently approached us. This will offset those costs. This idea came out of the Assembly Committee on Ways and Means.

Section 7 was at the request of the Assembly Committee on Ways and Means. Last week at our budget close, several individuals were concerned that when we collect General Fund money and give it to the agencies, it might not be reverted back to the General Fund for debts collected outside of the current budget year. For example, if an agency turns over a debt to us in fiscal year (FY) 2009 for services in FY 2009, we do not collect it until FY 2010. That amount should revert back to the General Fund because we collected it in FY 2010.

Section 7 spells out how the monies we collect are distributed, how the net amount of money is calculated and establishes a debt recovery account for those General Fund monies and the 2-percent fee.

Section 7.3 establishes the appropriation and guidelines for how money in a debt recovery account will be spent. Money in this account may only be used to support the debt collection efforts of the State Controller and must be approved by the Interim Finance Committee before it is spent. At the end of each biennium, any funds left in the account revert back to the General Fund.

CHAIR LEE:
The hearing on A.B. 87 is closed. We will open the hearing on A.B. 147. We have Assemblywoman Ellen Spiegel with us today.

ASSEMBLY BILL 147 (1st Reprint): Requires local governments, under certain circumstances, to grant preference to local bidders bidding on certain contracts for goods or services. (BDR 27-753)

ASSEMBLYWOMAN ELLEN B. SPIEGEL (Assembly District No. 21):
Assembly Bill 147 can help Nevada's economy bound from our economic situation. Assembly Bill 147 makes it easier for local businesses to obtain contracts with our local cities, counties and other governmental entities because it grants them a 5-percent bidding preference.

The legislative intent is to strengthen our local economies statewide, support local businesses, diversify the economy, decrease unemployment and support our State economic development goals. Testimony points are highlighted in the handout (Exhibit F). This bill is vital because our economic conditions are bleak, and we must take actions to address our State's critical needs.

As of March, our unemployment rate was at 10.1 percent, the highest since September 1983. We have the seventh highest in the Nation. This does not consider hidden unemployment such as the self-employed. Property values are continuing to decline and are impacted by foreclosures, abandoned homes and consumer inability to acquire mortgages. People are watching their investment-retirement portfolios dwindle.

There are steps Nevada can take to help. We can begin by maximizing the use of our scarce resources and revenues. Small to medium Nevada businesses are

often overlooked assets. Like many companies nationwide, they are struggling to stay in business, provide goods and services to their customers and offer stable employment to their local employees. Supporting Nevada businesses is vital for our recovery. Long-term economic development is most successful if based on development within our State borders. Nevadans are small business owners. They employ about one-half of private sector employees, and they have created 60 percent to 80 percent of all the new jobs in Nevada over the last decade. It seems obvious. Keeping our local dollars local can help. Labor costs directly inject money into the local economy. People get paid wages, and they spend money. They receive their benefits, and business taxes and fees come right back into us. Profits remain in the community in proportion to local operation.

Nevada businesses often miss out on opportunities. Sometimes this is because we do not have local businesses that meet the needs of our governmental entities. This is one reason taxes and fees in the Las Vegas Valley are remitted to a processing center in Arizona. Other times, our businesses miss out because they lack the required qualifications. We need to address this separately. Our businesses also miss out because they bid a little more than an out-of-state company. As a business owner, I have spoken with many business owners who have their stories. One story is about a trophy store owner who provided an assortment of awards to a local municipality at favorable terms. She was honored by one of the municipalities she did work for at discounted rates and was to be presented with an award. She was not allowed to bid on her own award, and it went to a company in Arizona. I have spoken with printers who have told me to be ...

CHAIR LEE:
We understand.

I need clarification. One can get a 5-percent preference if they have a job over $25,000 and they placed on the local municipality bidders' list? Is this correct?

ASSEMBLYWOMAN SPIEGEL:
It depends. There are two separate components. One is for goods and services handled by the purchasing process. They have a 5-percent preference based on price. There are other services not for bid on a price-competitive basis such as professional services. In these cases, bidding is based on qualification and if

they meet the baseline qualifications, they are given a preference and the price is looked at afterwards.

CHAIR LEE:
Yes, this makes sense. I have three amendments in front of me. One amendment (Exhibit G) says there is an agreement for a sunset in 2013. Do you agree with this amendment?

ASSEMBLYWOMAN SPIEGEL:
I do agree with that amendment and with the amendment (Exhibit H) Russell M. Rowe will present that speaks about biodiesel.

CHAIR LEE:
The third amendment (Exhibit I) was proposed by the City of Las Vegas. I will let them explain this amendment, but are you in agreement with this amendment or any portion of the amendment?

ASSEMBLYWOMAN SPIEGEL:
I am not in agreement with the City of Las Vegas's amendment. For the record, this bill was the first bill to be heard in the Assembly Committee on Government Affairs. It has been amended to address many concerns brought forth by the City of Las Vegas and other localities. Until yesterday afternoon, I had not been approached by the City of Las Vegas or the localities with whom the City worked with since before bill passage out of the Assembly Committee on Government Affairs on March 26, approximately six weeks ago. It was about 4 p.m. yesterday when they came to me with a long, unwritten list. Some things they want would be detrimental to the bill. Something seemingly as innocent as changing the effective date by three months knocks an entire year's worth of benefit from this bill because of the way purchasing works. Other provisions would severely weaken the reporting functions, removing intent for our economic development needs and for tracking this bill's work. Part of why I agreed to put forth the sunset date is because if this legislation is passed and not working, we do not want it to continue. However, if it is working, the sunset allows us the opportunity to come back in two years, review reports and expand the legislation.

CHAIR LEE:
I want the maker of the biodiesel amendment to come forth and explain their amendment.

RUSSELL M. ROWE (Biodiesel of Las Vegas, Inc.; American Council of Engineering Companies of Nevada):
Biodiesel of Las Vegas is a Nevada-based company that produces biodiesel from recycled yellow grease collected from restaurants. They have been in business for a number of years servicing Clark County School District, Nellis Air Force Base, University of Nevada, Las Vegas, and others. They are building a new facility and a new plant that will employ 70 to 100 full-time workers with this new technology.

The drafting of the bill does not include local manufacturers of biodiesel. It boils down to semantics with who is a local bidder and the way in which biodiesel is distributed. The manufacturer makes it and then it goes to the distributor. The distributor is the party on the contract, so even though you can have a local bidder for a biodiesel contract, you may not get the fuel supplied from a Nevada-based company. This amendment, Exhibit H, would require any bidder, in addition to meeting the requirements provided in this legislation, to have the fuel for a biodiesel contract supplied by a manufacturer of biodiesel in Nevada.

SENATOR RAGGIO:
Over the years, this issue has been before us in different forms. As I understand the bill, to qualify as a local bidder, a contractor has to be in business operation in the State for a preceding two-year period. There is an exception making it a one-year period if 51-percent ownership is held by a member of a minority group, a woman or a service-disabled veteran. There are specific considerations a local government must consider when entertaining a bid in addition to the 5-percent preference. Taxes, ownership residence and so forth must also be considered. Over time, we have considered these types of restrictions or limitations. It has always come forward that if we impose these types of preferences, our contractors will be subject to retaliatory measures of this kind when they bid out of state.

RICHARD PERKINS (City of Henderson):
I am here to support A.B. 147 as presented by Assemblywoman Spiegel. This legislation makes community sense. I have heard from countless local businesses as it relates to contracts going out of state for services that could well have been provided in our community during my service in this body, with the City of Henderson and in a law enforcement capacity. It is a good idea even outside of bad economic times. We would be supporting our taxpaying community. Local businesses pay taxes and support Nevada programs and

education. This is a long, overdue benefit to the businesses now paying more for taxes. Local businesses follow Nevada rules and laws whether they are related to workers' compensation, unemployment insurance and local wage levels. They understand our community.

The City of Henderson supports this bill wholeheartedly. In excess of 80 percent of the contracts for goods and services for the City of Henderson go to local businesses. You will hear this bill will increase costs and limit access to goods and services, but that would have been the case 10 to 20 years ago when Nevada's population was much smaller. The markets exist within Nevada to provide the goods and services our local governments will need to procure. There are out clauses in the bill to let them seek services elsewhere if need be.

Senator Raggio mentioned the retaliatory concern. I recall this issue when we considered the 5-percent preference for contractors. We have not seen retaliation from our neighboring states. Opportunities for local businesses to do business in neighboring states exist in great quantity. This idea has been a topic of conversation for various trade organizations, but the retaliating aspect has not been a factor.

TERRI BARBER (Intergovernmental Relations Director, City of Henderson):
I want to elaborate on a comment made by Mr. Perkins. Our data reflects over 85 percent of our 2009 year-to-date vendor payments have been issued to vendors with one in-state location. Our fiscal impact estimate assumes we would transfer 50 percent of the contract services, repairs and maintenance, and supply categories from out-of-state vendors to in-state vendors if a 5-percent vendor preference was implemented.

STEVE REDLINGER (Southern Nevada Building and Construction Trades Council):
We are broadly in favor of the bill and support the concept of the 5-percent bid preference. Speaking to Senator Raggio's concern about retaliation, the 5-percent bid preference has been in effect on public works projects for several years. Our contractors often say they are losing out to out-of-state contractors, but we do not hear them saying they are discriminated against when going after contractors in other states. We do not see retaliation as a problem. On the public works side, the majority of these projects are in Nevada.

VERONICA METER (Las Vegas Chamber of Commerce):
The intent of this bill to keep local businesses working and employees employed in this harsh economic time is good. We support that portion of the bill.

FRED HILLERBY (American Institute of Architects, Nevada):
We support this bill as it expands the preferred bidder concept to professional services; however, there is a distinction. It is not a price bid but is qualification-based. The point system determines the qualifications. The bill's intent would not make an unqualified Nevada professional service qualify; however, when one becomes qualified, they would get a 5-percent point preference in terms of sitting down and negotiating a contract. The contract still must be negotiated, making it acceptable to both the architect and the local government.

Architects support this legislation because unemployment in architectural firms is at 70 percent. The ability to put Nevada architectural firms to work on public works is important and reason for our support of A.B. 147.

JAMES "JIM" E. KEENAN:
I am speaking as a private citizen, but I am a former Douglas County Purchasing Manager and former member of the Nevada Public Purchasing Study Commission. After 47 years in federal, state, local, corporate, private and academic purchasing management, I cannot turn off my profession. It has been good to me, so when I can make a contribution, I do.

As a taxpaying resident of a Nevada county and city, I am concerned about costs. Often, I cannot do much about it other than vote for my representatives, but in this case, I have the expertise to offer.

In February while this bill was discussed on the Assembly side, I was unable to participate due to a health matter. This is my first opportunity. I am also speaking on behalf of John Balentine, the retired Purchasing and Contract Administrator for Washoe County.

I regret to say that while bidder's preferences in any form appear to have value, they do not. They do not add to the purchasing function but distract from it. The concept of social justice is admirable, wanting to help local businesses and labor. The purchasing function is one of the worst ways to accomplish social or political justice goals. This legislative body, local governments and other

agencies have great power to invoke measures to accomplish social and political justice goals better than the purchasing function. This is one of many reasons the federal government refuses to use bidder preferences in any form.

Preferences reduce competition, thus violating the powerful and visible hand concept of economist Adam Smith. They reduce the number of bidders; conversely, I have had bidders tell me they will not bid because there are too many hoops to jump through. It is not worth it. In difficult economic times, they are desperate and so they will bid. In good times, they do not. This brings in a second tier of less than satisfactory or unsavory bidders whom you must award to because they are the only ones bidding, and you do not have enough to disqualify them. Preferences affect your organization and economy.

Bidder preferences also threaten the integrity of the bidding system. This is a tool we have used in our profession for many years. All bidders must be confident in knowing the bidding system will work as described; in other words, one bid, one bite of the apple, and all bids will be treated fairly and honestly. The minute the bidding process is opened to alterations, second chances and modifications, the competitive bidding system begins to disintegrate. It takes a long time for bidders to get back confidence that the system is open, fair and honest.

Bidder preference increases costs up to 5 percent without adding value to the procurement. It adds no value to the items purchased. Back to the issue of social justice, it can add value there, but it adds no value in the procurement process, and you could pay 5 percent more. Whether the economy is good or bad, taxpayers do not like to see money spent with nothing in return. It has been suggested this 5 percent could be called a tax because the citizens will have to pay at a higher price.

Another reason not to support this legislation is because management and administration of an unworkable process would only reduce the efficiency and the effectiveness of the short staff purchasing offices. Purchasing offices in Nevada are hurting as are all other departments and agencies.

A good purchasing manager develops local sources and local suppliers for vested, selfish reasons, not for statutory requirements. The purchaser has a vested interest in developing local suppliers because buying something in 30 minutes, an hour or by the next morning for one's employer makes the

employee look good and makes the job easier. If local suppliers are noncompetitive with outside firms, purchasers need to ask, "Why?" Local companies also present the advantage of location, logistics, low freight, knowledge of the local economy, local customers and the like. If local companies cannot be competitive under those terms, they will not become a supplier.

Specific sections to A.B. 147 are ambiguous and/or vague, demonstrating proof this legislation is unworkable.

Assembly Bill 147 should be voted down. I recommend A.B. 147 be amended to read similar to Nevada Revised Statute 333.336, the inverse preference position. About a year ago, I did hear anecdotal information that Arizona did discriminate against some of our contractors. The eloquence of this provision is, do it to us and we do it to you. Do not do it to us, we do not do it to you. It works, and it preserves the procurement system we have.

CHAIR LEE:
Assemblywoman Spiegel wants to stimulate local contractors and build relationships. I applaud Assemblywoman Spiegel in her efforts to strengthen Nevada's economy.

SENATOR CARE:
I have a question for staff. Section 1, subsection 7, paragraph (b) says "'service-disabled veteran' means a veteran of the Armed Forces of the United States who has a service-connected disability of 0 percent or greater ... ." Does the Veteran's Health Administration recognize the service-connected disability of 0 percent or should that be 10 percent?

JACK JEFFERY (International Union of Operating Engineers Local 12, Las Vegas; Laborers International Union of North America Local 872, Las Vegas):
I am broadly in favor of bidder preference. I put in the first bidder preference bill for the construction industry, and the same arguments were given. The reciprocal problem with other states takes place when they have those provisions in their law. Our first bidder preference law made it a reciprocal situation. We only gave preference to our contractors against contractors who gave it to theirs, and it did not work. This happened with Arizona and Montana, and California has the provision now. Competition in the construction industry has more to do with the economy than with the number of bidders. There are

plenty of bids today. Las Vegas at its peak did not have many bids because contractors were busy. I do not see where the 5-percent bidder preference interfered with competition. The reciprocity did not work. Only a handful of states have that provision, and it would not have any effect.

WES HENDERSON (Government Affairs Coordinator, Nevada Association of Counties):
We are neutral on this bill. We support efforts to promote and keep local businesses alive and in business; however, with this difficult economic environment, the counties are weary of cost increases even by 5 percent.

STEVE K. WALKER (Douglas County; Lyon County, Storey County; Carson City):
On the Assembly side, we were neutral on this bill. There have been amendments proposed by the City of Las Vegas, Exhibit I. We are in support of those amendments to the bill.

TED OLIVAS (Director, Government and Community Affairs, City of Las Vegas):
I am testifying as neutral on this bill because we support the concept of the bill. Mayor Oscar Goodman supports businesses in the State. We have suggestions and an amendment that will make this bill easier to implement and help with the fiscal note.

This has been a difficult process with many people involved. We support the other two amendments, Exhibit G and Exhibit H. I was asked to get support from other jurisdictions for the amendment we bring, Exhibit I. This amendment is supported by the City of Las Vegas, Clark County, Reno, Sparks, Carson City, Douglas County, Lyon County, Storey County, the Las Vegas Metropolitan Police Department, the Southern Nevada Water Authority and the Las Vegas Valley Water District.

After the bill's initial hearing on the Assembly side, I provided a number of suggestions. We held a meeting with approximately 20 affected parties, and we discussed our concerns. The bill was passed out of the Assembly omitting key provisions. The bill sponsor is correct. We did bring this amendment to her late, and there is a reason. It was appropriate to get a consensus from local governments because we are in support of the bill's concept, and this took time. We put together a quick amendment, and we distributed it to as many people as we could.

One of the provisions says the bidder's preference process relates to contracts over $25,000. We recommended $50,000 because that is the point we formally advertise our bids. We want to get large contracts back into the State. Jurisdictions have discretion with smaller contracts under $50,000. Smaller projects go to the businesses in Nevada, and we are talking about big-dollar contracts. This coincides with the public works process in NRS 338.

CHAIR LEE:
Tell me again, who, besides the City of Las Vegas, wants this amendment?

MR. OLIVAS:
Yes. We have support from the City of Reno, City of Sparks, Carson City, the Las Vegas Metropolitan Police Department, Southern Nevada Water Authority, the Las Vegas Valley Water District, as well as Douglas, Lyon, and Storey Counties.

CHAIR LEE:
I thought I had a clean bill, but many people have issues with this bill. Assemblywoman Spiegel, this is the Senate Committee on Government Affairs which works to operate with local municipalities. They have needs, and something has changed in their direction with this bill. We need to further work on this bill.

MR. OLIVAS:
We believe the concept of this bill is good. There is an easier way for implementation and to provide for appropriate reporting. This is why we propose our amendment, Exhibit I.

CHAIR LEE:
Assemblywoman Spiegel has ideas and issues that are not yours, and there is an impasse on both sides.

ASSEMBLYWOMAN SPIEGEL:
Mr. Olivas had brought up concerns initially. In the first version of this bill, there was no minimum, and Mr. Olivas asked for $50,000. A decision was made to make it $25,000 because that is the point where competitive bidding starts in this State. We are looking at helping small businesses in Nevada. There was a compromise going from nothing to putting in $25,000. We have been working with the sponsor of these amendments, Exhibit H and Exhibit I, but we have not

found middle ground. We sought it. Putting in provisions that would gut the reporting and dilute the legislative intent will not work, and changing the effective date cuts a year of the impact this bill provides. There is compromise, but there is also compromise that destroys the integrity of the bill.

Thirty-seven states have similar bills. There is an important provision in our bill. On page 7, section 3, subsection 7 it says,

> The provisions of subsection 6 do not require a local government or its authorized representative to award a contract to a business, contractor, or vendor whose quality of services, supplies, materials, equipment or labor does not conform to the requirements of the local government or if the public interest would be served by rejection of the offer to fulfill the contract.

If local government deems it is not in the public interest to give the preference, they do not have to, but I am trying to maintain the bill's integrity.

CHAIR LEE:
We have a rural county present that is also now in opposition of A.B. 147. We have northern Nevadans not supporting this legislation. We need to work on this bill. Mr. Olivas has nine entities against this bill. This bill needs to work better as I am counting the noes. I am giving more time. If this bill cannot get worked out in work session, the answer remains no. Assemblywoman Marilyn Kirkpatrick, Chair of the Assembly Committee on Government Affairs, is here. I value her and know she has put effort into this bill. I invite her to add input. Ms. Chair, can this return to work session and then for a vote?

ASSEMBLYWOMAN MARILYN KIRKPATRICK (Assembly District No. 1):
Absolutely.

CHAIR LEE:
I want to extend another chance for this bill's passage. There are a lot of noes at this time.

The hearing on A.B. 147 is closed. The hearing on A.B. 192 is open.

ASSEMBLY BILL 192 (1st Reprint): Revises provisions governing certain performance contracts for operating cost-savings measures. (BDR 27-245)

ASSEMBLYWOMAN KIRKPATRICK:
Assembly Bill 192 was sponsored by Senator Townsend as a pilot program in 2005, and in 2007, we went ahead and made it a permanent program. Assembly Bill 192 is an energy-efficiency program that works when entering performance contracts. This bill helps the rules. It is to help with financing abilities in order to create energy efficiency within public buildings.

I worked with Jeanette Belz who represents the Associated General Contractors of America, Inc., Nevada Chapter, for over a year to understand performance contracting, how it works and why it is in the State purchasing process. We have worked tirelessly for the last several months, working with interested parties.

Energy service companies (ESCO) provide certification on energy savings for public buildings and also have financing mechanisms. Smaller entities, such as Churchill County, have used these programs. Churchill County received $3.7 million to help them upgrade a school. The money also helps bond for longer periods of time and maintain energy efficiency.

The mock-up amendment is for section 16 and financing. John O. Swendseid, our bond counsel and our counsel for local government contracts, suggested this section would make it more difficult for local governments to implement energy efficiency and get bonding, so we deleted it. We also added that local governments or a third-party consultant would have to look at the financing ability of projects.

Last Session, I had a bill to change light bulbs for local and State buildings to make them more energy efficient. This change saves a tremendous amount of money. The College of Southern Nevada saved $24,000 in one year by changing light bulbs. This allows them to use that portion of energy efficiency to do other upgrades such as changing their cooling and windows.

One concern is that our local governments follow no reporting mechanism. Statute says our energy office should receive a copy of the contracts so we know what is taking place. They are guaranteeing energy efficiency for 15 years. I want to reiterate that this is in statute; however, we have received 3 copies of contracts and there are about 30 projects. Local governments need to listen. It is a marketing tool for Nevada to be first in promoting energy efficiency, but without documentation, we cannot promote our work.

There were two amendments I denied. One amendment was a clarification amendment. The other amendment addressed whether buildings could be built to help promote energy efficiency.

SENATOR CARE:
Section 2, subsection 4, paragraph (b) says "On more than one project over a period of time to be determined by the local government." I am wondering, how long is a period of time? Is it the local government that determines what that period of time should be?

ASSEMBLYWOMAN KIRKPATRICK:
A small industry was able to do this, and we wanted to open it to other contractors, or allow local government to be their own qualified person for energy savings. Energy savings is promoted from either side as a 15-year energy savings. We wanted local government to have the ability to work off our public works list and to set the time for how long they needed to be energy efficient. For instance, Carson City did not use a third-party consultant. They did it themselves in-house. They determined their energy efficiency would be based on their time limits. Others within our smaller counties have used a third-party consultant to help them. We wanted flexibility to make it broad enough that local governments could determine what type of energy efficiency.

SENATOR CARE:
It is left to the discretion of the local government. In section 3, subsection 1, paragraphs (d) and (f), there is language about not exceeding five projects during five years. How did this language derive as opposed to six projects and six years and so on? And in section 3, subsection 1, paragraph (e), "Whether the principal personnel ... ." For legislative history, who is the principal personnel? Finally, in section 3, subsection 1, paragraph (f), "Whether the applicant has breached any contracts ..." gets my attention because there can always be allegations on a contract breach. I do not know if this means there has been a judgment, somebody has been sued or there is a finding of fact the judgment that this person breached. Could an allegation defeat that?

ASSEMBLYWOMAN KIRKPATRICK:
The reason we added the contract portion into the bill is because we have had bad apples within the industry. We want to make the bidding process clear. In northern Nevada, we have had companies and local governments not on the same page at the end of the day, and somebody lost. We want open discussion,

and we did not want to disqualify the companies as it could have been either side at fault for it not happening.

SENATOR CARE:
It could be read to mean local government could say, we have heard you have beached a contract and we believe you have breached a contract; therefore, you are not qualified. You can see what might happen.

ASSEMBLYWOMAN KIRKPATRICK:
The language can be tightened, but we needed it to be a part of the record.

SENATOR CARE:
You may have a breach, a lawsuit and then a settlement with neither party admitting to liability. So, do you still have a breach?

ASSEMBLYWOMAN KIRKPATRICK:
I do not have the answer. The legislative intent is to make it part of the discussion.

SENATOR CARE:
What about the five years and five projects, and my question in regard to the principal personnel?

ASSEMBLYWOMAN KIRKPATRICK:
It came from the original bill. I can get you the answers. This bill has been changed about 27 times.

CHAIR LEE:
We will have counsel answer these questions.

HEIDI CHLARSON (Committee Counsel):
The language Senator Care is referring to in section 3 was modeled after language contained in NRS 338.1377 which requires local governments to adopt certain criteria to determine whether contractors are qualified to bid on public works. The "... not to exceed five projects, during the 5 years immediately preceding the date of application ..." is existing law for public works.

SENATOR MCGINNESS:
Assemblywoman Kirkpatrick, you indicate this bill has been a work in progress. Did these amendments surface after passage in the Assembly?

ASSEMBLYWOMAN KIRKPATRICK:
Correct.

SENATOR MCGINNESS:
Is this bill nailed down?

ASSEMBLYWOMAN KIRKPATRICK:
Yes.

MANDI LINDSAY (Government Affairs Specialist, Associated General Contractors, Las Vegas Chapter):
The Associated General Contractors (AGC) respectfully asks for your support on A.B. 192. I will expound on a few instances prompting this legislation. On December 13, 2007, the City of Reno issued a press release titled, "Energy-Efficiency at City Hall." The release stated the City Council approved a proposal to furnish and install energy-efficient upgrades to City Hall. It said the agreement with Energy Nevada LLC would replace the existing heating, ventilation and the 45-year-old HVAC system. The Council approved the proposal to enter into the agreement with Energy Nevada for an amount not to exceed $1.9 million. After further investigation by Associated General Contractors, Las Vegas, it was determined Energy Nevada LLC, acting as an energy service company, was not a licensed contractor in Nevada. Since Energy Nevada was not licensed, it was assumed there was no surety for their work.

The City of Reno backtracked and said Energy Nevada LLC would not self-perform the work but would oversee licensed subcontractors. That consideration under our interpretation of law would make Energy Nevada construction manager at risk under NRS 338. This would require Energy Nevada to be a licensed contractor through the State Contractors' Board. The AGC believed this was bad public policy and a gross disregard for State law. The AGC also presumed local taxpayers fronting the cost would assume the contract was an ill-advised venture on behalf of the City. After these discussions, the City of Reno pulled the contract with Energy Nevada.

Another instance promoting this legislation would be the wood-burning biomass plant built to supply electricity to the Northern Nevada Correctional Center and the Stewart Conservation Camp. Both proved problematic in newspaper headlines last year. One headline on March 2, 2008, read, "Prison Biomass Plant Choked by Supply Costs." On March 23, 2008, another headline read "Biomass Plant Has Officials Optimistic," and on April 10, 2008, yet another headline stated, "Power Plant Can't Pay for Itself for 17 Years." From September 2007 when the plant opened through June 2008, they found the department was spending $200,000 a month to buy energy due to a lack of wood, pay off the construction loan and pay for the staff to operate the complicated plant.

The first purpose or instance I stated demonstrates the importance of requiring energy service companies in Nevada to be properly licensed. The second demonstrates the need for having measurable results for an operating cost-savings measure as defined in section 9 of this bill. Both of these changes offered in A.B. 192 provide accountability to the taxpayers.

JOHN GRIFFIN (APS Energy Services Co., Inc):
The APS Energy Services Co., Inc. works on these types of projects across the Nation. We support the bill.

I will address section 2, subsection 4, paragraphs (a) and (b) which say: "The local government may determine an applicant is qualified to bid: On a specific project; or On more than one project ... ." Because of our experience with these types of projects, in Clark County we would have 400 public buildings. It would take years and millions of dollars to get bids, put out the request for proposal (RFP) and analyze all 400 public buildings. Instead, a company will isolate four or five buildings, getting a cross section of the inventory. The company will base the RFP upon those five buildings and decide what can be done for energy efficiency. Next, RFPs will be compared. This gives the local government flexibility to expand the number of buildings the company would cover.

JOHN MADOLE (Executive Director, Associated General Contractors of America, Inc., Nevada Chapter; Nevada Association of Mechanical Contractors):
We support this bill. This legislation will strengthen accountability.

JEANETTE K. BELZ (Associated General Contractors of America, Inc., Nevada Chapter):
In proposed amendment 4756 (Exhibit J), section 11 is the old language we are deleting. These were requirements an ESCO would have to meet. Language was taken from other statute to require valid contractor licensing, bonding, insurance coverage, safety programs and the like.

We wanted to ensure it applied to existing structures. New structures are covered in public work statutes. Also, in the original legislation, there were things that could be considered energy-cost savings. For example, on page 6, lines 42 through 45 discuss education programs to encourage people to turn the lights off. A behavior change could be included as energy savings, but it was not clear why. People came to us and said it might be necessary to retrain people, for example, if there was a new computer system that controls air temperature. We wanted to ensure this would remain. We urge your passage of A.B. 192.

SENATOR MCGINNESS:
To clarify, people support the bill and the amendment?

ASSEMBLYWOMAN KIRKPATRICK:
Yes.

MR. OLIVAS:
We support this bill. We have not seen the amendments. This bill reflects what we have agreed to on the Assembly side.

To address the breach of contract provision, it is for prequalifying contractors. Unless the process has been completed and found in breach, we do not judge. This is how it works in practice. It is an area we look at closely when receiving applications from the contractors. Does this answer the question?

SENATOR CARE:
Yes; in the case of the City of Las Vegas, that requires a judgment.

MR. OLIVAS:
I have looked over the amendment, and we support it.

CHAIR LEE:
The hearing is closed on A.B. 192. We will now hear A.B. 220.

ASSEMBLY BILL 220 (2nd Reprint): Makes various changes regarding the purchase of property for school construction. (BDR 22-551)

ASSEMBLYWOMAN KIRKPATRICK:
Assembly Bill 220 is for Washoe County and addresses the purchase of property for schools. This bill was brought forth by Assemblywoman Debbie Smith. This bill has been a work in process. We have worked with many sponsors, including developers of northern Nevada, to assist the Washoe County School District in holding land. There is no opposition to this bill.

There is an amendment (Exhibit K), and there was a working group last week to make this process work.

ANNE LORING (Washoe County School District):
I am representing Washoe County School District and I am also here at the request of Assemblywoman Smith to give background information regarding why this legislation is needed.

In 2007, the Legislature formed the Washoe County Schools Construction and Revitalization Advisory Committee, commonly referred to as the SB 154 Committee, to assist in looking at means of funding school construction in our county. The Committee was chaired by Senator Randolph Townsend. Other Legislators on the Committee were Senator Bernice Mathews, Assemblywoman Smith and Assemblywoman Heidi S. Gansert. This bill is a direct result of their deliberations.

The Committee looked at creative ways to maximize the use of taxpayer dollars for constructing schools in Washoe County. This bill was designed to stabilize the cost of a school site. Originally, the bill was intended to be statewide, but it now applies to Washoe County School District.

In the second reprint, most of the bill's functions are in section 1, subsections 7 through 9. After a school site has been set aside by the developer at the request of the School District, it can be purchased for the lesser of the fair market value at the time of the tentative map approval plus any out-of-pocket costs to the time of purchase or at the fair market value when the site is

purchased. There is no time limit for the purchase of a school site. This legislation would require the District to purchase the site within five years of approval of the final map or the site reverts back to the developer. The amendment, Exhibit K, deletes section 1, subsections 10 and 11 and changes section 1, subsection 9 to specify that the District will have ten years from the time of final map approval to begin construction of the school.

PERRY M. DI LORETO (Manager, Nevada Tri Partners, LLC):
I have been involved with numerous transactions with the Washoe County School District with respect to locating school sites and seeing them through the process.

During the course of working with the School District over the years and having been involved in the SB154 Committee, I started looking at the process and took notice of unique things in regard to how a school site is acquired. The process starts from designation, which is straightforward. If a school goes in a residential neighborhood, a tentative map is proposed, the District steps up and designates a school site. The next step is a set-aside period for the school site to be acquired. There needs to be a provision for what triggers this move. In the bill, we focused on the time frame for the District to make a move to buy the site—in other words, to close escrow and pay for it. We set five years as a reasonable time from a final map. We use the baseline for a final map because this is when a site is created and necessary improvements such as streets and utilities are put in and properly financially securitized. This is when everyone understands the school will happen.

There is inequity taking place, and this is interesting in the context of the 5-percent preference just discussed. At one hand, government is giving a preference back to business to help local business. Would not the opposite also hold true that in certain circumstances, a preference should be given back to government if government, such as a school district, enhances the business dynamics of what is taking place within these real estate developments? The location of a school within a development is an amenity. It is a plus as it helps create value. After price, the second most asked question of anyone who comes into a residential sales office is, “Where will my kids go to school?”

At the time a District designates a site, it equates to a major anchor in a shopping center. A school site makes the developer’s job and the homebuilder’s job easier, and it enhances property value because there will be a school in

close proximity. The School District designates a site at the inception of the project, but when the project becomes real and the homes begin to get built, the District has to buy the site. It is at this time they get the appraisal, pay market value and are partially responsible for the increase in the market value. This bill wants to hold that line on the price for a period of five years.

We want to also see schools built where the School District designates them. With my experience, they are not going to designate sites where they do not want to build schools. They have a trigger—and that is five years from the time the map is recorded—to buy it or else the land reverts back to the developer. If they buy a site and they do not build, we have agreed to a ten-year time frame in which the District would offer the site back to the developer. After this much time has passed, the land would be sold back at appraised value. It is a matter of fairness and equity. It is reverse of a preference. Give the School District credit for the job they do, and use the market dynamics that come into play and the lift that happens in normal market circumstances where property values will increase because of the school. This would replace having to raise more taxes so the District can spend more money for the site at the time of purchase.

JAY PARMER (Builders Association of Northern Nevada):
The Builders Association of Northern Nevada is the home-building industry in Washoe County. Greg Peek, the immediate past president of the Builders Association, also participated on behalf of the builders on the SB 154 Committee. We support the proposed amendment, Exhibit K, to A.B. 220. We agree to give the School District the opportunity to acquire a school site at a time where the price is favorable to them, recognizing the economics and the financial situation of the school district and also giving the District a defined period of time in which to get school construction under way. This amendment accomplishes both goals.

CHAIR LEE:
Is the first right of refusal to the original developer for purchase of the site if not developed by the School District?

MR. DI LORETO:
It is first offered to the developer or his successor in interest. There is an appraisal process by the School District, and we would have to pay full market value to buy the site back.

CHAIR LEE:
Would it not be beneficial to include more areas? We were told other counties did not want to be involved.

SENATOR MCGINNESS:
What is the reasoning Ms. Loring? Do you have an answer?

MS. LORING:
No. I did not talk to the rural counties, but I understand Maddy Shipman contacted some of them and they indicated this is not the process they use.

SENATOR MCGINNESS:
We are looking at the second reprint, and we have another amendment. Is this bill nailed down?

MS. LORING:
Yes.

CHAIR LEE:
Ms. Shipman, can you offer clarification on this bill?

MADDY SHIPMAN (Southern Nevada Home Builders Association):
When the bill first came forward, it was a statewide bill. It has never been an issue in Clark County, and no one came forward in the Assembly other than the Southern Nevada Home Builders Association, Clark County School District and Washoe County. I spoke with Robert Hadfield, who I thought had knowledge about how it is used in the rural counties, as I was curious no one had come forward. He indicated they generally do not use this process. This could be a result of the rural counties having less development. This law went into effect in the mid-1970s and has been working well in Clark County. One statement made about the law is that it does not say when to buy the property. But the intent and practice in Clark County is purchasing property at the time of a tentative map. It is not a delayed process. The land is designated, purchased and they move forward. The school sites have been utilized as school sites in a timely manner within the ten years under original statute. There has been no reason to change the process.

SENATOR MCGINNESS:
Remarks about development verify we have had a lot of room to build schools in rural Nevada.

CHAIR LEE:
I close the hearing on A.B. 220. We will go ahead and open the hearing on A.B. 236.

ASSEMBLY BILL 236 (1st Reprint): Revises provisions governing grants of money for water conservation and capital improvements to certain water systems. (BDR 30-1049)

ASSEMBLYMAN TOM GRADY (Assembly District No. 38):
I am here with Don Allen, Manager of the Silver Springs Water Company, who requested this bill.

Assembly Bill 236 expands the ability of nonprofit water companies to apply for grant funding from the Board for Financing Water Projects. While discussing this legislation with Mr. Allen, it occurred to me that Lyon County had Mound House Water, Dayton Water, Mason Water, Clear Creek Water and Crystal Clear Water, all small water companies now incorporated into either the city or County systems. Some are incorporated by agreement and others by necessity. Small water companies have a difficult time these days due to unfunded mandates. Once under county or city jurisdiction, the water companies qualify for these grants. Others like Silver Springs Bottled Water Company, a nonprofit water company in a blue-collar community, do not qualify but are required to meet the same rules as municipal water companies. They have no funding to meet the requirements other than from the community. This legislation would correct this disparity by allowing local nonprofit water companies to participate in this funding under the strict guidelines set up by the Board for Financing Water Projects. Only nonprofit water companies made up of local users would qualify. It is our intent that strict rules would be established by the Board and, as with municipal applications, funding would be on a competitive basis considering regulations as established.

DON ALLEN (Silver Springs Mutual Water Company):
This bill is an important addition for our users. Our users are made up of low-income families. We did an income-salary survey in Lyon County; the median household income is $34,000, and the user income in my water district

averages $21,000. There is a large discrepancy between low income and—low income. This legislation gives us an equal opportunity to apply for the grants; we did not have that same consideration before this.

SENATOR MCGINNESS:
Is there an amendment to this bill?

ASSEMBLYMAN GRADY:
No.

BOB FOERSTER (Executive Director, Nevada Rural Water Association):
We support this bill. We have about 170 members around the State, and many of the 14 or so affected by this bill are members of our Association. It does remove unfairness by leveling the playing field to the systems and giving the ratepayers access to the same funding mechanisms.

ED JAMES (Carson Water Subconservancy District):
We do watershed planning for the Carson Watershed. There are 11 major water purveyors in this Watershed. Two fall in the same category as Silver Springs. One is in the Gardnerville area in Douglas County. They are lucky as their water quality is good. They support the bill but do not see a need for going to State funding because their water quality meets standards. Silver Springs is a poor community, and water quality is an issue. They have been drinking this water for years. The water has not changed but the standards have; because the standards have changed, they are required to meet the new standards which are expensive for arsenic. We have many communities or water agencies that have gone to this funding source to help meet the new water quality standards, and this bill will allow Silver Springs the same opportunity.

CHAIR LEE:
We will close the hearing on A.B. 236. We will open the hearing on A.B. 467.

ASSEMBLY BILL 467 (1st Reprint): Makes various changes relating to the prevailing wage requirements. (BDR 28-910)

ASSEMBLYWOMAN PEGGY PIERCE (Assembly District No. 3):
Assembly Bill 476 deals with two issues. One, the bill would ensure the Labor Commissioner can enforce the law on prevailing wage-covered projects where there is no direct contract between the public body and the contractor. Recent

Labor Commissioner decisions on complaints filed highlighted the unintended consequence having a law in place by a lack of clarity in regard to its enforcement.

Two, this bill would clarify the issue of prevailing wage coverage on lease-purchase projects. This was addressed last Session with legislative declaration affirming prevailing coverage on these types of projects; however, there is still a need to clarify this issue as evidenced by a recent situation in Las Vegas dealing with the Las Vegas Metropolitan Police project. I would like to emphasize the importance of the payment for the health of the construction industry and the economy as a whole. In these economic times as we look to public works projects to create jobs and help get the economy moving, we want to ensure jobs created are good-paying jobs with long-term benefits with training opportunities and rewarding career paths for our residents. The payment of prevailing wages serves to ensure public dollars promote quality construction and contractors do not undermine area standards in the bidding process. It promotes stronger communities and helps to sustain a vibrant middle class, which is the backbone of our State and Nation.

JAMES SALA (Senior Representative, Southwest Regional Council of Carpenters, Nevada):
We represent about 14,000 members in the State; of those, 2,000 are apprentices and about 500 are signatory contractors. Many of our members work on public work projects, so this is an important issue.

Assembly Bill 467 is a clarifying bill on certain prevailing wage issues. The legislative intent is public works projects funded or financed in full or in part that meet the minimum threshold are covered by prevailing wages. More importantly, these projects are clearly enforceable by the Labor Commissioner.

The bill does two things. One, the bill will ensure the Labor Commissioner can issue a Public Works Identifying Number (PWP Number) and enforce the provisions of NRS 338 on projects with existing coverage even when there is no direct contract between the public body and the contractor. Secondly, the bill closes a loophole in regard to installment-purchase and lease-purchase agreements. We thought this loophole was fixed last Session by a similar bill sponsored by Senator Warren B. Hardy II.

The intent of prevailing wage and the projects covered in whole or in part is clear in this bill. As we have added different ways to fund and finance projects, creative means such as lease-purchase and installment-purchase agreements to get projects built have been helpful; however, the area in how these projects are covered is confusing for those parties involved.

Senate Bill No. 426 of the 73rd Session established an interim study group, headed by Senator Hardy. It set out to clarify the applicability of provisions concerning prevailing wages to installment-purchase and lease-purchase that involve improvements.

Enacted S.B. No. 515 of the 74th Session includes the legislative declaration that a government agency shall not use lease-purchase to circumvent or undermine prevailing wage. In this same Session, S.B. No. 198 of the 74th Session passed, authorizing the City of Las Vegas to enter into lease-purchase agreements and require payment of prevailing wage.

These bills did not accomplish their desired results, and here are three examples. In 2008, the City of Las Vegas and Clark County went out for a lease-purchase project for an $80 million Las Vegas Metropolitan Police Complex. They had an RFP with a developer not inclusive of prevailing wage, even though less than a year prior, we sat and agreed these types of projects would be covered. We met with the City and County, the developer, Clark County Sheriff Douglas C. Gillespie, attorneys and other folks. At the end of the day, the developer agreed to have the project covered by prevailing wage to avoid additional processes and litigation. The legislation passed in 2007 should have handled this issue.

In northern Nevada, two projects have come to our attention. One is the Cabela's project which was clearly covered by prevailing wage, but issues and a complaint went to the Labor Commissioner. Another example was the minor league baseball stadium in Reno which was clarified by a special piece of legislation in 2005 under NRS 338. This project also became part of a complaint about whether it was covered and how it was covered between the City of Reno, the developer and the contractor.

Assembly Bill 467 attempts to clarify these issues. In the Assembly, we made significant modifications to this bill. Deletions turned the 44-page bill into a 5-page bill. There is a proposed amendment (Exhibit L) to the existing bill passed out of the Assembly. We have been working with the Labor Commissioner's

Office, the AGC and other subcontractor groups, developer groups such as the Commercial Real Estate Development Association (NAIOP), labor unions in the north and south, building trade groups, and local governments to ensure everybody involved in this process is clear and understands that when a project is covered by NRS 338, this bill does not expand coverage. In fact, the first sentence in section 1 in the amended version says:

> Statutes which contain the requirement that the provisions of NRS 338.010 to 338.090, inclusive, 338.013 to 338.090, inclusive, or 338.020 to 338.090, inclusive, apply to a construction project covered under the statutes which contain the requirement ... .

This clarifies those statutes covered by NRS 338 and how they are covered. We are not adding these statutes to places where they do not apply.

The other part of the bill we modified requires the person or entity that executes one or more contracts agreements for the actual construction of the project to include such contract or agreement for the contractual provisions and stipulations that are required to be included in a contract for a public work pursuant to those statutory provisions. This is the legal way of saying that if there is a project like the Las Vegas Metropolitan Complex, their contract for the lease-purchase agreement will state this is clearly covered under NRS 338. This will avoid confusion by the public body, by the contractors and subcontractors and for the developer in regard to the project and costs. As mentioned, in addition to the Police Complex, there was also confusion with Cabela's and the ballpark stadium in Reno, as well as with a number of smaller projects.

The second part of the provision requires a public body, the awarded contractor and subcontractors to comply with these statutory provisions in the same manner as if the public body had undertaken the project.

There is a disconnect between the public body and the contractor with coverage on creative-funded projects, and this bill clarifies coverage.

DAVID KERSH (Government Affairs Representative, Carpenters/Contractors Cooperation Committee, Inc.):

I want to focus on the issue of the Labor Commissioner's inability to enforce the law on prevailing wage-covered projects where there is no direct contract between the public body and the contractor on the project.

I refer you to his analysis on two recent cases. One is the Cabela's case filed by the Building and Construction Trades Council of Northern Nevada, and the other case is the triple-A baseball stadium filed by the Sierra Nevada Chapter of Associated Builders and Contractors (ABC). This is not a union issue but a construction industry issue and a law enforcement issue. It is about having clear and consistent rules so all parties involved in a procurement of a construction process know their responsibilities. In both cases, the Labor Commissioner illustrated his inability to enforce the law due to how NRS 338 is structured. It is meant to deal with public works projects where a public body awards a contract. Both cases refer to a lack of clarity in regard to enforcement, as the public body, the contractor and the Labor Commissioner have to deal with statutory structure that does not fit certain types of covered projects. I refer you to the proposed amendment, (Exhibit M), which in the italic type shows the issue of the public body awarding the contract.

We would agree having a law with no enforcement mechanism makes no sense. This was not the intent of the Legislature when they voted in favor for prevailing wage coverage on these creative projects. A lack of clarity in the law impacts the public body, the contractor and the workers.

As a representative of a labor-management organization who deals on a daily basis with contract-compliance issues, I find it is no mystery that contractors cheat and break the law as they look to gain a competitive advantage in bidding for work. Contractors can cut costs at the expense of workers and their wages, and with our poor economy, this problem will continue to grow.

Many contractors violate the prevailing wage law by using schemes. These schemes include falsifying the number of hours on a worker's check or hours listed on certified payroll records, requiring multiple workers to share one check, having workers give kickbacks to their foreman or denying workers overtime pay and their breaks.

Our organization has a positive working relationship with the Labor Commissioner's Office that has been beneficial in holding contractors accountable for their unlawful and immoral actions.

The prevailing wage law dates back to efforts, following the Depression, to stimulate the economy and prevent out-of-town contractors from taking work away from local workers while driving down local wages. Its aim is to preserve

the best industry standards, encourage job training programs, create good paying jobs and maintain a level playing field where everyone competes fairly.

We want Nevada workers treated with respect while earning a good living, public dollars wisely spent, contractors play by the rules, and most importantly, clarity in enforcing this law.

CHAIR LEE:
Why do we have an amendment and not a clean bill? What has happened since this passed the Assembly?

MR. SALA:
On the record, I give credit to Dan Musgrove and Mike Roberson. The first reprint in section 1 reads"… apply to a construction project of any kind must be construed, if the public body is not a party to the contract … ." The wording "any kind" gave the impression that could potentially be misread or interpreted to mean just that. Their second concern was section 1, subsection 3 which reads:

> Require the contractor who is awarded the contract or entered into the agreement to perform construction on the project, or a subcontractor on the project, to comply with those statutory provisions in the same manner as if he was a contractor or subcontractor, as applicable, engaged on a public work.

There was concern about that language. For the purpose of clarity, we stopped that to comply with those statutory provisions, and we moved subsection 3 into section 2. It simplified it, and the Legislative Counsel Bureau and Assemblywoman Pierce are more comfortable with this language. It will especially help the bodies of local government and developers that will be involved with these projects. The change clarifies intent and eliminates a potential misread expanding coverage beyond the bill's intent.

Sections on pages 4 and 5 in regard to lease-purchase and installment-purchase are consistent with the recommendations coming out of the interim committee and mirror the pieces in Senator Hardy's bill that passed and moved to the Assembly. The piece missing for lease-purchase and these types of projects is the enforcement and compliance mechanism link.

DAN MUSGROVE (NAIOP, Commercial Real Estate Development Association, Southern Nevada Chapter):
There have been questions as to why have an amendment now after passage from the Assembly side. The NAIOP was consistent in taking our concerns on the record during the Assembly side. Immediately after the hearing, we talked with the bill's sponsors about working out the bill and the final language for the Senate side. This has been done. The bill is now a better, simpler bill, and we support it.

Projects that NAIOP and the developers want to do may have government involvement while using private money. There may be a situation where a local government wants to lease space. We have had projects in Clark County where we have used County land, built private shopping centers and seen the County reap the benefit of the lease money, but no private dollars were used. This is one example we brought to the Assembly side to protect because it means new jobs and money into the system. The sponsors of this bill have been proactive to ensure that when a public body or public money is involved, it should be prevailing wage.

RICHARD "SKIP" DALY (Business Manager, Laborers' International Union of North America, Local Union 196):
We support the bill. Since last Session, there have been new developments. When the words were put into NRS 338.010 to NRS 338.090, there was clear legislative intent that those projects were to be covered by prevailing wage. However, through the court system and interpretations, and enforceability, this bill intends to clarify and give meaning to legislative intent. This bill will end confusion and allow the industry to move forward. In regard to the Advisory Group to Conduct the Interim Study on Lease-Purchase and Installment-Purchase Agreements by Public Entities, as Mr. Sala stated, that language is consistent with the conclusions of the Group. This is a good bill that deserves to move forward.

SENATOR CARE:
I need to disclose that Mr. Musgrove is employed by my law firm. I have a question for our Legal Counsel. With a proposed amendment as with A.B. 467, the proposed language says "statutes which contain a requirement" as opposed to statutes "which require," and later, "apply to a construction project" the language says "covered under the statutes" as opposed to "governed by those statutes." The "covered under the statutes" language is problematic.

MS. CHLARSON:
The Legislative Counsel Bureau is able to put this language into a mock-up amendment for the work session. We will work with the proposers of the amendment to clean up the language without changing its intent.

MR. REDLINGER:
We support this bill.

MR. OLIVAS:
We are in support of this bill and its amendment, Exhibit L. There is new language in section 1, subsection 2 clarifying that parties to a development agreement can define the responsibility for compliance.

YVONNE L. MURPHY (Tahoe-Reno Industrial Center, LLC):
We are in opposition of A.B. 467. The developer and owner of the Tahoe-Reno Industrial Center spent $110 million of his private money to develop 104,000 acres complete with water, gas, telephone and fiber optics. He plans to spend an additional $40 million to $50 million to complete this project within the next year. His conservative business estimates have his costs increase by 30 percent if this bill is passed.

It is our goal to create a positive business climate and opportunity for businesses to grow in Nevada. If A.B. 467 passes, it will make it impossible for my client to continue building in northern Nevada. We are supporting 100 families when we employ 100 workers. My client cannot continue to build if we impose prevailing wages.

CHAIR LEE:
With the amendment, the Tahoe-Reno Industrial Center, is still in opposition?

MS. MURPHY:
Yes.

VINCENT GRIFFITH, P.E. (President, Reno Engineering Corporation):
I am the civil engineer and designer for the Tahoe-Reno Industrial Center as well as project manager and administrator of the construction work we do. We are moving forward, employing people and constructing roadways and infrastructure at the Tahoe-Reno Industrial Center during this economic climate. We are graded with the USA Parkway project, the future highway expansion,

and next week we will finish paving the second two lanes of USA Parkway to Portofino Drive, roughly a two-mile stretch of roadway.

Why now? Why would Tahoe-Reno Industrial Center be constructing in this environment? We see our development as a marathon race. Our project is large with a lot to lose or gain for the State. We see ourselves as that jogger pulling away from the pack. We are doing construction when others and our competitors from Arizona, Utah, Idaho and California are not. We do open-bidding construction. We bid everyone in Reno and have worked with Reno companies 70 percent of the time or greater over the last 15 years. In this time, we have not had a construction dispute. We have not been taken in front of the construction board for unfair wages or for our contractors. We have a good track record.

This bill with its language will impact our project and its success. To use the jogger analogy, a 30-percent increase in construction costs would straddle the jogger with a backpack at 30 percent of his weight. We do not see this as a benefit for the State as we are running for Nevada as well as ourselves. We are sponsored by and on the team of the State. We want to get the bill written so it will not impose the 30-percent extra weight while we are working hard to pull apart and make this project the best in the country.

BONNIE DRINKWATER (Attorney, Tahoe-Reno Industrial Center, LLC.):
I have been a licensed attorney since 1994. I represent Tahoe-Reno Industrial Center, LLC, the owner and developer of the largest industrial park in the United States.

My client has been interested in A.B. 467 since its introduction. In the original bill, approximately 18 pages were devoted to eliminating the public body requirement for a construction project to be subject to prevailing wage requirements. The bill became amended to remove those 18 pages; however, when the bill passed out of the Assembly Committee on Government Affairs, it had been amended. This bill passed as an emergency measure under the Nevada Constitution and we did not have an opportunity to give testimony.

The first paragraph is of concern. Before the amendment, I read the paragraph as including every piece of construction whether it includes public works or if the public body is a party to the contract. This construction could be subject to prevailing wage requirements. We object to this. In addition, the requirements

are unclear. With 15 years experience as an attorney, I have no idea how to advise my clients on how to comply with this paragraph. I do not know what would be required of the public body with respect to our private construction contracts. Would the public body participate in the negotiations? How would private construction projects be overseen? The language should be removed. If it is not, substantial revision should be made to explain the types of construction for which this paragraph applies and the obligations of the developer and public body.

I viewed the amendment and see changes made to clarify that this legislation is intended to apply to public works, but the language is unclear as to whether there will be the two requirements. One is the requirement the public body be a contracting party and the other is the subject be a public work. The language saying "the public body will be construed to be part of the contract" seems to be expanding NRS 338. If the public body is not a part of the contract, it should not be prevailing wage.

CHAIR LEE:
Is the Center privately owned?

MS. DRINKWATER:
Yes.

CHAIR LEE:
Where is this relationship?

MS. DRINKWATER:
It is a private developer, but there is a development agreement with Storey County. Over $100 million have been spent in private development.

SENATOR CARE:
The amendment, Exhibit L, has unchanged language in section 1, subsection 1 that says, "Require the person or entity that executes one or more contracts or agreements ... ." It does not say it requires the person or entity that has already executed the contract. Are there contractors with subcontractors who have contracts yet to be executed?

MS. DRINKWATER:
The project is ongoing. There are contracts continually executed.

SENATOR CARE:
Is it your position that if this bill becomes law, it would apply to contracts already executed?

MS. DRINKWATER:
No. It would apply only to contracts after the effective date of an enacted bill. Language above subsection 1 in section 1 talking about construing the public body to be part of the contract is contradictory to NRS 338. If the public body is not part of the contract, it is not a prevailing wage project.

CHAIR LEE:
How far along is the Tahoe-Reno Industrial Center?

MR. GRIFFITH:
The project is 100,000 acres with 30,000 developable acres. We have about 5,000 to 8,000 acres ready for users. There are users at the Center such as PPG Industries, Wal-Mart distribution facility, James Hardie Building Products, Alcoa Aluminum and Kal Kan Foods. We are 10 to 20 years from completion.

CHAIR LEE:
Counsel, do you read the language in the same manner as Tahoe-Reno Industrial Center's attorney?

MS. CHLARSON:
If a contract is already in existence on July 1, that contract would not be impacted; however, this bill would impact contracts entered on a project after this date.

MS. DRINKWATER:
I have heard testimony in regard to the economy and unemployment in Nevada. My client said that if this bill passes, he will take his business to the other states in which he is involved because construction is cheaper. This would be a terrible thing for Nevada.

CHAIR LEE:
Did you have a chance to work with the sponsor of this bill or is this your first time showing up?

MS. DRINKWATER:
This is our first time.

CLARA ANDRIOLA (Associated Builders and Contractors, Inc., Sierra Nevada Chapter):
I am in opposition of A.B. 467. We do not want to place a burden on economic development. The Economic Forum that met on May 1 analyzed data. At the height of the construction industry, there were 200,000 jobs. They project the construction industry will have 93,000. The Associated Builders and Contractors position is reform. We do not want to eliminate prevailing wage. In testimony, we heard the Tahoe-Reno Industrial Center will have inflated costs at 30 percent. Research at the most conservative level inflates costs by 10 percent. In FY 2007 and 2008, this equates to $441 million. If 30 percent is correct, you can take that number and multiply it by 3.

We are here to ensure viable jobs. We have a competitive process, and we encourage economic development, especially in this economic crisis. I want to also clarify a point by Mr. Kersh in regard to ABC filing a complaint. We did file a complaint on the minor league ballpark in Reno because during the process, the City of Reno put the provisions of NRS 338 in its Disposition and Development Agreement. There was confusion, and they did not recognize themselves as a public body. This process allowed for a recordkeeping piece.

We encourage you to keep Nevada viable. The bill's intent is not to expand NRS 338 as we heard from the bill's sponsors, and we do not want that to happen.

CHAIR LEE:
You are in opposition of this bill?

MS. ANDRIOLA:
Yes, we are.

TRAY ABNEY, (Director, Government Relations, Reno-Sparks Chamber of Commerce):
The Reno-Sparks Chamber of Commerce has been consistently opposed to prevailing wage. Our agenda for economic vitality in our public policy manual states our opposition to prevailing wage. We oppose any bill potentially expanding prevailing wage, as it moves in the wrong direction. Fewer schools,

highways and public buildings are built when using inflated wages as paid for by taxpayers.

One of the long-term spending reforms the Chamber has proposed this Session deals with changing the clarification of prevailing wage. We stand opposed to A.B. 467.

SENATOR RAGGIO:
What kind of projects does this bill extend coverage of prevailing wage? Would this apply to projects funded by Sales Tax Anticipated Revenue (STAR) bonds?

MS. ANDRIOLA:
I understand if there is private development such as the Tahoe-Reno Industrial Center, it is interpreted to extend to those private partnerships and investments.

MR. SALA:
This bill does not add or expand NRS 338 coverage. This bill is a cleanup or clarifying bill. There are several issues where projects covered by NRS 338 cannot be enforced or that provision has not been added to the lease-purchase agreement. Senator Hardy has worked on this, and some of the language in this bill mirrors language in his bill.

The baseball stadium, the Cabela's project and the other project we referenced was the Las Vegas Metropolitan Police Complex, a lease-purchase project. In a lease-purchase agreement such as with the Las Vegas Metropolitan Police Complex, the City of Las Vegas and Clark County went to a developer to do a lease-purchase agreement. It was clearly covered by prevailing wage, but there were no provisions for enforcement. A similar occurrence took place at Cabela's and the minor league stadium. This bill does not add coverage to NRS 338. With this legislation, we are clarifying the enforceability and the recordkeeping for certified payrolls.

We have not heard from the Tahoe-Reno Industrial Center until today. If they are not already covered, they would not be covered. If they might already be covered, that decision would be made by the Labor Commissioner. Their attorney mentioned this bill was passed in an emergency measure and did not have a hearing in the Assembly. This is not true. The bill had a hearing and a work session back in March, and we have been working on this bill for

eight weeks. Up until lunch today, we thought we had talked to everyone who had a question about the bill. On the Assembly side, there was no opposition.

SENATOR CARE:
This may come down to drafting. In section 1, line 3 says "Statutes which state that the provisions of NRS 338.010 to 338.090, inclusive, 338.013 to 338.090, inclusive, or 338.020 to 338.090, inclusive, apply... ." Do you mean "apply to a project ... must be construed ... ." Is this what you are saying?

MR. SALA:
The reason we took out project "of any kind" is because this language caused people to have concern. Yet it did not change our intent. We want to say that when we do creative projects such as lease-purchase and installment-purchase, the public body does not award the contract. They do an RFP with a developer who awards the contract. To have the Labor Commissioner enforce the statutes covered in NRS 338, we had to have those statutes in that lease-purchase section construed as if the public body had awarded the project.

SENATOR CARE:
Even if you get creative, in the end, you are talking about a public work.

MR. SALA:
I do not know if Cabela's was a public work, but it was covered by prevailing wage. It was a STAR bonds issue covered by NRS 338. There was no way to deal with the developer and contractor in the Labor Commissioner's ability to issue a PWP Number and enforce it. Our three examples were three variations all covered by NRS 338. Everyone should know when projects are covered up front, and it should be clear.

SENATOR CARE:
I take your testimony to mean that Ms. Drinkwater's client was never intended to be covered. Ms. Drinkwater wants statutory language that makes this clear.

MR. SALA:
I do not know what their project does or whether they are covered. I am unaware if there is an issue with the project.

CHAIR LEE:
The former Chair of the Senate Committee on Government Affairs is here. He has worked on this issue and can give background on this legislation.

SENATOR WARREN B. HARDY II (Clark County Senatorial District No. 12):
This is an issue we have been working on for a number of years going back to the 2005 Session where there was hesitation about extending the concept of lease-purchase to local governments to build projects. There was concern of circumventing prevailing wage laws. We conducted an interim study in 2005, and a number of bills came out of this study, including S.B. No. 509 of the 74th Session, which failed. I brought forth another bill that was identical to clarify lease-purchase agreements because I thought they could be used to get around prevailing wage. My attempt was to clarify that if a building is constructed for a public purpose such as the building of jails, a city hall or a legislative building, prevailing wage should be paid.

Mr. Sala has acted in good faith to achieve that clarification. I do not think he is using this legislation to expand prevailing wage coverage. Regrettably, in my conversations with our Legal Counsel, A.B. 467 would bring in the Carson-Tahoe Hospital and potentially any project that has any government participation such as financing and incentives in a redevelopment area. What ties public work projects together is the contract with the governing body. Language removing that tie opens interpretation according to those conversations with our Legal Counsel. I am seeking language that addresses the end use of the project as a tie. The method tying the projects together for public works projects is the contract with the local government. To remove the language potentially opens judicial interpretation to meaning it was the Legislature's intent to include every project with government involvement under prevailing wage. This is not Mr. Sala's intent. I support this bill in concept which is the end use of the project. If it is a public facility, prevailing wage should be paid. Regrettably, this bill removes the glue that ties projects to the public.

MS. SHIPMAN:
We do not support increasing or extending prevailing wage beyond existing statute, but the amendment does clarify intent that prevailing wage is not to go beyond the statutes requiring prevailing wages be paid. I read the amendment to say that if the project does not fit within the first four lines of the amendment, subsections 1 and 2 do not apply. If the statute contains a requirement that prevailing wage be paid, it has to be construed as a public body even if it is not

a party to the contract for the actual construction of the project. If the project is not part of a statute requiring prevailing wage, those paragraphs do not apply. This is how I read the statute, and now I am hearing there is another interpretation of this statute. Assembly Bill 467 started out as a 29-page bill. The first reprint was considerably reduced. In the original bill, they went through every statute they intended to have prevailing wage apply and to clarify the language. The STAR bonds or tax increment areas under NRS 278C require prevailing wage, but there is no enforcement mechanism because there is no money going forward. On the other hand, other agreements with local governments do not necessarily require prevailing wage. This is where the confusion comes into play.

As I read the amendment in both the original bill and the first reprint, the Southern Nevada Home Builders have a statutory exemption from prevailing wage for sewer and water infrastructure—oversized or not—with or without an agreement with the local government as long as they pay the money up-front. What is in front of you does not extend it for inclusion. I want to ensure we are not extended into this bill. There needs to be a legal determination to clarify this different interpretation of the proposed amendment.

CHAIR LEE:
Our Legal Counsel mentioned she reads it differently than you interpret it.

SENATOR CARE:
This is a matter of drafting. The intent of this bill is clear from testimony. The amendment aside, we are talking about contracts falling under the purview of NRS 338. But prior to subsection 1 in section 1, it is absurd to say a contract outside of NRS 338 is included with the language "project of any kind." I am basing this on the testimony of Ms. Murphy and Ms. Drinkwater.

CHAIR LEE:
We will hear from the Labor Commissioner. After his testimony, we will immediately hold a work session for interested parties.

MICHAEL TANCHEK (State Labor Commissioner, Department of Business and Industry):
The easiest place to start is with the Carson-Tahoe Hospital case around 2003 or 2004 where this issue came up. The case went to the Nevada Supreme Court; they found a requirement under NRS 338 that there be a contract

between a public body and a construction contractor in order to enforce NRS 338 prevailing wages. This works fine with Clark County building a new fire station or the Washoe County School District building a new high school. The problem occurs when we dip into public-private partnerships. What is not present is the public body and the contract with the construction contractor.

In the provisions of NRS 338.010 to NRS 338.090, there is a plain reading problem. The City of Reno brought this to our attention up front with the Cabela's project. They thought prevailing wage applied, but the prevailing wage statutes did not fit because there is no contract with Cabela's. They wanted a PWP Number, as there was a public body and a contract, but they did not meet as an intermediary third party was the developer.

The solution is to create a legal fiction. We are going to pretend the public body has a contract with the contractor, making the statutes apply. There is a provision in the statutes where this works. In the ballpark situation, I stepped out of my judiciary role and functioned as an investigator and issued the determination. I recused myself from any hearing. This had two components: the car-rental tax through Washoe County and the redevelopment provisions through the City of Reno. The car-rental tax had the same problem as the STAR bonds and Carson-Tahoe Hospital. There was no construction contract and public body connect.

In my determination on the ballpark, it was as unenforceable as the STAR bonds and the Hospital. On the other hand, language in one of the redevelopment statutes says this statute applies to the same extent as if the public body had entered into the contract. That is enforceable. There is a Burlington Coat Factory and a Sportsman's Warehouse being built in Carson City. They are prevailing wage projects enforced by the City of Carson. I did put a provision in that determination that there can be confusion. Does this mean the public body should be treated as if they had entered into a contract with the contractor or is it treated as if the developer was a public body that had entered into the contract? In this case, it makes sense to treat it as if the public body had entered into the construction contract. There were two reasons for this decision. In the situation of the Scheels' project in Sparks, Scheels acted as the public body since they had the construction contract and filed payroll records at their home office in Nebraska, making it difficult for people to look at certified payroll in Carson City. It makes sense, operationally, to treat it this way. This proposal is about public-private projects pretending—under statutes where

prevailing wage applies—they are the public body entering into the contract, and the public body will exercise its responsibilities along those lines.

Talking about the PWP Numbers, there is another provision I asked to be added. Historically, we have had a problem with the issuance of a PWP Number. This is only required if the project is publicly bid. For example, energy retrofit projects are done on a request for proposal or request for quotation basis. Technically, they are not required to have a PWP Number. There is a misperception that if there is no PWP Number, prevailing wage does not apply. The number does not trigger the requirements of prevailing wage but the nature of the project.

SENATOR HARDY:
I mixed what we tried to do with the lease-purchase study with what this bill attempts to do. In the lease-purchase study, I was attempting to find the end use. Mr. Sala wants to clarify that anything prevailing wage applies to truly applies. My concern in fixing that is we create a likelihood that the courts will think we meant something much broader. This bill fixes what he wants to fix, but my concern is the fix creates another problem.

CHAIR LEE:
It is an implied problem if the courts get a hold of this ambiguous language. I want the Labor Commissioner's interpretation and stamp of approval on this bill if it comes back.

The hearing on A.B. 467 is closed. The hearing on A.B. 483 is open.

ASSEMBLY BILL 483 (1st Reprint): Revises the provisions governing the terms of certain contracts between public bodies and certain design professionals on public works. (BDR 28-932)

MR. ROWE:
Assembly Bill 483 comes with an amendment (Exhibit N). It was passed out of the Assembly Committee on Government Affairs as introduced. Issues came up before the bill passage deadline while working with Renny Ashleman and his colleagues. We were running out of time, and the Assembly gave us the legislative vehicle to continue to your Committee as we worked out our issues.

The amendment, Exhibit N, is similar to the bill as introduced minus a deletion and language added at the request of Mr. Ashleman. We are dealing with

NRS 338.155, the section governing contracts between design professionals—such as architects, engineers and landscape surveyors—and public bodies that says what can and cannot be in those contracts. Section 1, subsection 5 is an indemnification provision in many statutes throughout the Country in varying forms. It says the public body may require the design professional to defend, indemnify and hold harmless the public body for damages caused by the design professional's negligence.

The indemnification provision is not an issue. The design professional has professional liability insurance that is triggered when damages are caused by the design professional. Attorney fees are included in the indemnification provision.

The problem has been around the language "defend." The first problem is a misconception in the legal community that there is insurance on the market for an obligation to defend the public body, and there is no such insurance. Design professional liability insurance covers the indemnification but not an obligation to defend. If a design professional signs a contract saying they will defend the public body, there is no insurance for that obligation. The problem is every public works contract includes "defend." The choice of the design professional is to sign the contract for the work while running the risk of knowing they have no insurance to cover the obligation. Most design professionals cannot afford to defend the local government out of pocket.

The second problem stems from that misperception. A number of contracts, particularly at the local government level, would require the design professional to defend an allegation of negligence. One would be required to defend at the mere allegation of negligence when a claim has been made. This is beyond the scope of the statute because causation is required as part of the statute.

We are attempting to resolve these problems with our amendment, Exhibit N. On page 2, lines 30 through 32 speak to reasonable attorney fees and costs, "to the extent that such liabilities, damages, losses, claims, actions or proceedings are caused by the negligence, errors, omissions … ." We are clarifying the causation portion and reference the proportionality requirement with respect to the damages brought into statute in 2005. We made the payment of attorney fees mandatory upon adjudication of a claim where the design professional is found negligent. Because attorney fees arise from the negligence of the design professional and there is adjudication, it would wrap under the policy of the professional liability carrier; therefore, it would be

covered. This is one way to get the insurance policy of the design professional to cover the attorney fees of the public body for damages resulting from negligence of the design professional. This introduced proportionality into the statute.

The second provision is in new subsection 6; this provision was in the original bill, but we made modifications. This is a standard provision that voids any contractual provision in conflict with subsections 4 and 5 of this section. This language, found in other areas of *Nevada Revised Statutes,* helps us avoid putting provisions put into a public works contract beyond the scope of the indemnification clause.

The amendment also adds the term "and cost" where it references reasonable attorney fees. Our insurance policies cover attorney fees and costs. This is important to the public bodies because often when claims arise, they need the assistance of the design professional community in evaluating a claim whether there is a design defect or a construction error. This assistance takes an expenditure of resources to cover the design professional's costs. We want these costs covered and insurable.

SENATOR CARE:
The words "defend, indemnify and hold harmless" often are lumped together by attorneys. In your mind, there is a distinction in regard to the word "defend?"

MR. ROWE:
Yes. Many statutes around the Country do not have the word "defend" in them. They say "indemnify and hold harmless," and the indemnification provision includes the reasonable attorney fees. In our Statute, the word "defend" has created ambiguity. The indemnification requirement covers attorney fees. We want clarification on the requirement and its concept.

SENATOR CARE:
> Okay. And in existing law for many "liabilities, damages, losses, claims, actions or proceedings including without limit," all right. Let me focus in for a moment then on claims, because to my mind, that could be the public body receives a letter, and it says, "Because of your conduct, negligent or otherwise, or somebody you have a contract with, we've been damaged in the amount of $1 million, and we'll settle for a half million." And somebody's

> going to have to accrue attorneys fees of maybe $100,000 to end up writing a check for a negotiated amount. No lawsuit was ever filed. So, when we talk about damages and liabilities, and then we have a claim, that to me that's a kind of a claim. So, I guess when you look at these words and you try to break them down, they're not similar. I mean they are similar, not the same, are they?

SENATOR RAGGIO:
After listening to my colleague, I am more confused than before. The initial bill had specific language saying that if the insurer is not covered, then the design professional is relieved of duty to defend the public body. This was taken out by amendment. What does this bill do with respect to the requirement "defend, indemnify and hold harmless?" How does this relieve the duty to defend?

MR. ROWE:
This bill does not relieve the contractual obligation to defend. We are clarifying the obligation to defend is tied to causation required in statute—that damages are caused by the professional negligence of the design professional. Many of the public works contracts require the defend obligation to trigger when there is an allegation. The concern is because this is uninsurable, and our design professionals are mostly small businesses that cannot afford to pay out-of-pocket fees and costs of local or State government at the mere beginning of a claim. We are not attempting to relieve our duty to pay reasonable attorney fees and costs; in fact, we want to include costs for local and State governments. We want to pay them when we are at fault whether the matter is adjudicated or resolved through a settlement. This would be covered by our insurance policies.

SENATOR RAGGIO:
I want to know the difference between existing language in section 1, subsection 5 that says "… defend, indemnify and hold harmless the public body, and the employees, … from any liabilities, damages, losses, claims, actions or proceedings, including, without limitation, reasonable attorneys' fees … ," and the new language that says " … are caused by the negligence, errors, omissions … ." What does the added language do? It says "to the extent … ." What is the difference?

CHRISTINE E. DRAGE (Attorney, Weil and Drage):
I have been representing architects and engineers for the last 16 years on all types of projects from public works projects to private projects in Nevada and California. I negotiate these types of contracts, see the projects designed and constructed, and ultimately, litigated. The intent of this bill is to distinguish between the duty to defend and the duty to indemnify. Our position on behalf of design professionals is that the duty to defend is far broader than the duty to indemnify, and the timing of the duty to defend is different than the duty to indemnify. The duty to defend is triggered at the receipt of a claims letter, arguably. The duty to indemnify is triggered once it is established that damages were caused by the negligence of the design professional. Once established through expert witness presentations during mediation or adjudication through trial or arbitration, the design professional's insurance company will reimburse the public entity for the attorney fees and costs incurred in establishing the negligence causing the damages. We want to link the duty to defend to causation and damages. This is what the additional language does. Without that causal link, the design professionals would have to step up every time they received a letter and begin defending the public body, the third party, without professional liability insurance for that defense.

SENATOR RAGGIO:
Why not suggest only removing the word "defend"?

MR. ROWE:
That was our bill in 2005.

SENATOR RAGGIO:
This is what you are after, correct?

MS. DRAGE:
It is, but we are unable. This is why we are here.

MR. ROWE:
We are trying to work with the State and local governments to come up with workable language.

RENNY ASHLEMAN (City of Henderson; State Public Works Board):
The cure they brought forth in 2005 said we could not pursue design professionals for the duty to defend for various reasons until after the case had

been tried. The trouble is it did not prohibit the contractual requirements being entered.

The meaningful language is that if it conflicts with sections 4 and 5, it becomes void. We continued to believe we could obtain insurance to do that for them. It is not because we wanted to chase them. The voiding language cures that dilemma. The rest of the language makes what the proportionality is composed of clear; this was not done in the original legislation. It also adds what was left out—costs that can be as high as attorney fees, and that is insurable. This bill could be better written, but because of negotiations during the various reprints, the simplest thing to do is to use the language we have in front of us. I have worked with the Nevada Department of Transportation, Risk Management Division, the State Public Works Board, the City of Henderson, the City of Las Vegas and Clark County. They either support the bill or they are neutral. They understand where we are going with this legislation.

We could not find workable language for one other objective we want to place on the record. Part of defend is the idea that you confer and work jointly in putting together a defense. There is no way to do this without causing other insurance contractual problems; we want to spell that out contractually with them. This amendment, Exhibit N, to the first reprint will achieve our objectives to get design professionals down a road we agree is appropriate given the state of the insurance market.

MR. OLIVAS:
We are in support of this bill as amended. This is a complex issue, and this is purposeful legislation.

CHAIR LEE:
The hearing on A.B. 483 is closed, and the meeting of the Senate Committee on Government Affairs is adjourned at 5:14 p.m.

RESPECTFULLY SUBMITTED:

Cynthia Ross,
Committee Secretary

APPROVED BY:

Senator John J. Lee, Chair

DATE: