

**MINUTES OF THE
SENATE COMMITTEE ON GOVERNMENT AFFAIRS**

**Seventy-fifth Session
May 11, 2009**

The Senate Committee on Government Affairs was called to order by Chair John J. Lee at 1:39 p.m. on Monday, May 11, 2009, in Room 2144 of the Legislative Building, Carson City, 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:

Assemblyman Pete Goicoechea, Assembly District No. 35
Assemblyman Joe Hardy, Assembly District No. 20
Assemblywoman Sheila Leslie, Assembly District No. 27
Assemblywoman Peggy Pierce, Assembly District No. 3

STAFF MEMBERS PRESENT:

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

OTHERS PRESENT:

Lon DeWeese, Chief Financial Officer, Housing Division, Department of Business and Industry
Michael J. McDonald, Alpha Omega Strategies LLC
Douglas E. Walther, Retired Chief Deputy Attorney General, Government and Natural Resources Division, Office of the Attorney General

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Mark D. Taylor, Assistant Controller, Office of the State Controller
Kate Marshall, State Treasurer
Jessica Ferrato, Nevada System of Higher Education
R. Scott Rawlings, P.E., CPM, Deputy Director, Nevada Department of Transportation
Wes Henderson, Government Affairs Coordinator, Nevada Association of Counties
John Wagner, Independent American Party
Janine Hansen, State President, Nevada Eagle Forum
Pat T. Sanderson, Laborers' International Union, Local 872
George Ross, Las Vegas Chamber of Commerce

CHAIR LEE:

We will open this meeting with Assembly Bill (A.B.) 508. This bill revises provisions in regard to low-income housing.

ASSEMBLY BILL 508 (2nd Reprint): Revises provisions governing the development of low-income housing. (BDR 25-1113)

LON DEWEESE (Chief Financial Officer, Housing Division, Department of Business and Industry):

Assembly Bill 508 stands as a compromise. This bill consists of two parts. The first part relates to the changing of the existing rate of compensation allowed for affordable housing developers from the current 25 percent to 40 percent, with 60 percent of that deferred on a Federal Housing Administration insured loan. The second part is in section 2, relating to the continuation of the successful and affordable employer-assisted, first-time homebuyer program. The Housing Division firmly endorses this bill.

MICHAEL J. McDONALD (Alpha Omega Strategies LLC):

There was lack of communication concerning this bill on our side, but we have reached a compromise. This bill will help us build more senior housing. We are approaching almost 50,000 seniors without homes in the Las Vegas Valley. Many find themselves boxed-in, deciding whether to pay for rent, food or prescriptions. These are people who have fought for our county, paving the way for us who sitting here today. It was a great privilege sitting down with Mr. DeWeese, working out this bill's language and reaching compromise.

We have been working on a project for the last two years in the City of Las Vegas; if it were not for the economy downturn, we would have been under construction. We are sitting here today asking for help by supporting this legislation.

CHAIR LEE:

Mr. DeWeese, can you explain section 1, subsection 1 and tell us the remaining balance in the appropriation First Time Homebuyer Program and how that works? How does this new section differ from what is in regulation?

MR. DEWEESE:

The Housing Division has a regulation in place since 1983 that limits developer up-front fees to 25 percent of the total they are entitled to over the life of a project. A common practice was developing around the county which was "build and flip, build and flip," and this regulation was established to prevent that from occurring in Nevada. This practice was pronounced in Florida, Arizona and southern California. Developers would come in, take a full fee and abandon the project to anyone willing to take it. As a consequence, the Housing Division held hearings to regulate and create enough incentive to pay developers back for their out-of-pocket, up-front costs and allow them a decent return. It would also allow developers to take the balance of their developer fees out of the continuing cash flow. As the issuing entity, this regulation helped us to ensure developers were committed to projects long-term because they had to be in order to get their money back.

In regard to section 1, subsection 1, Assemblywoman Marilyn Kirkpatrick from the Assembly Committee on Government Affairs urged us to survey our peers in 23 states. We discovered the peer group had restrictions in regard to the up-front developer fees, but the average up-front costs came to 39 percent. In the spirit of compromise, we were willing to work with industry standards. This is what was proposed in the Assembly Committee on Government Affairs.

In section 2, the employee-employer project was a last-minute bill, A.B. No. 629 of the 74th Session. This was the first bill to create an incentive since Bill Harrah built an affordable housing project for his employees. This bill appropriated money from the General Fund at the end of the 2007 Session, allowing us to match what the employees and the employers were willing to put into a pot of \$1 million. Through the rule-making process, we require all borrowers in this program to have skin in the game. There is no 100-percent

financing for this program, and there is no financing for this program unless there is an endorsement by the employee group and by the employer. Because of the overall delays in getting the program approved through the nonprofit participants, it would be unfair for the people in the queue with loan applications to cut it off at June 30. We ask in section 2 for a continuation of that program so we can run out the remaining dollars and contend with eligible employees who are helping to suck up the inventory of unsold, affordable houses, particularly in Clark County.

CHAIR LEE:

The hearing on A.B. 508 is now closed. We will move into work session. Our first bill is A.B. 54.

ASSEMBLY BILL 54 (1st Reprint): Authorizes certain counties to establish programs to provide financial assistance to certain persons. (BDR 20-473)

MICHAEL STEWART (Committee Policy Analyst):

Assembly Bill 54 relates to Washoe County and their authority to establish a program to provide financial assistance in the form of grants or loans for certain persons to connect to a public water or sewer system and for certain public and private owners in flood-prone areas to make the property resistant to flood damage. The programs may accept gifts, grants and other sources of money to pay the costs of the programs, and the County may, by ordinance, submit delinquent repayment of loans to the County Treasurer for collection.

Before providing financial assistance for connection to a public water or sewer system, the County must establish a groundwater management plan in the affected water basin. The measure limits the financial assistance to owners of property in flood-prone areas to buildings or structures in existence or on which construction had begun on or before July 1 of this year. Assembly Bill 54 also provides a definition of "flood management project" applicable in Washoe County and permits the County to delegate its authority to administer the financial assistance program in flood-prone areas to a flood management authority.

There was an amendment to this bill submitted by Washoe County providing clarifying information. Specifically, it clarifies in section 2, subsection 1, paragraph (b) that gifts, grants and other sources of money received for the program must assist property owners in connecting to a public water or sewer

system. It also makes provisions in section 2, subsection 3, paragraph (a) more specific by providing that the plan for the management and protection of groundwater must specifically provide for the sustainable management of the County's municipal wells in the water basin covered under the assistance program. Testimony indicated that this amendment addresses concerns raised by the State Engineer relating to water management.

Finally, the amendment adds a definition of "private water or sewer system" as it relates only to an on-site domestic well or sewage or septic system that services a private dwelling or residence. A copy of this amendment is attached to the work session document ([Exhibit C](#)).

SENATOR MCGINNESS MOVED TO AMEND AND DO PASS AS AMENDED A.B. 54.

SENATOR BREEDEN SECONDED THE MOTION

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR LEE:

The next bill comes from the Office of the State Controller.

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

Assembly Bill 87 requires State agencies, except in certain circumstances, to assign debts more than 60 days past due to the State Controller for collection. It clarifies procedures for assignment of a debt and requires the Controller to waive assignment if an agency demonstrates it has the resources to collect the debt or for good cause. Additional options for collection of State debts are provided to the Controller, including refusal to do business with a person owing a debt to the State, appointment of a private debt collector and compromise of a debt with the approval of the affected agency. Before turning over money collected from a debtor to an agency to which the debt was owed, the Controller may retain the amount of its costs of collecting that debt.

The measure also creates a presumption that debt owed to the Division of Industrial Relations by an employer who failed to maintain industrial insurance is justified and reasonable, and allows the Controller to bring suit to collect such debt if assigned to her office. Assembly Bill 87 also clarifies that debts collected by the State on behalf of another person may be assigned to the Controller for collection.

Two amendments were offered, and they are attached, [Exhibit C](#). The first amendment was requested by the Controller's Office. It amends section 7.5 of the measure to clarify that a State agency's statutes governing the collection of debts apply to that agency until the debt is turned over to the Office of the State Controller for collection. If Nevada law has provisions governing collection, they apply until the debt collection is turned over. The second part of this amendment changes the amount of debt that triggers a debt collection fee in section 11 from \$200 to \$300 and sets forth a debt collection fee of 2 percent of the amount of debt assigned to the State Controller to offset costs associated with the collection.

The second amendment was proposed by Kim Wallin, State Controller, at the request of the Assembly Committee on Ways and Means as proposed during the budget closing for the Office of the State Controller.

This second amendment would amend section 7 to clarify where the net amount of money owed to a State agency that is collected by the State Controller must be transferred. Specifically, money collected that is owed to a State agency whose budget is supported exclusively or in part from the State General Fund must be transferred to a newly created Debt Recovery Account. Conversely, money collected that is owed to a State agency whose budget is supported exclusively from sources other than the General Fund must be deposited in an account specified by the agency. Finally, if Nevada law provides that the money owed to the agency must be deposited in a specific account or used in a specific manner, that money must be deposited or used accordingly.

The amendment also adds new section 7.3 to create the Debt Recovery Account and sets forth parameters for the use of the money.

Testimony indicated that the fiscal notes on the bill from State agencies, other than the Office of the State Controller, were nullified by the Assembly amendments to the bill.

CHAIR LEE:

For 12 years, the Office of the State Controller has been trying to get their arms around the debt owed to the State. Monies owed to State agencies not using the General Fund immediately receive their money and place it into their accounts. The Office of the State Controller will help these agencies collect the money and get it back into their systems.

SENATOR CARE:

As I read section 21, there would be no statute of limitation except for actions in real property by the State. Is this correct?

DOUGLAS E. WALTHER (Retired Chief Deputy Attorney General, Government and Natural Resources Division, Office of the Attorney General):
Correct.

SENATOR CARE:

Is there research indicating this is practice in other states?

MR. WALTHER:

The idea for this amendment came from the state of Mississippi. When we were researching collection procedures, we came across a case there and looked at their statutes. Mississippi has a similar provision that waives the statute for debt collection actions.

SENATOR CARE MOVED TO AMEND AND DO PASS AS AMENDED
A.B. 87 WITH THE AMENDMENTS PRESENTED BY THE OFFICE OF THE
STATE CONTROLLER BUT WITH THE DELETION OF SECTION 21 TO
GIVE THE STATE A SET TIME LIMIT.

SENATOR MCGINNESS SECONDED THE MOTION.

CHAIR LEE:

I want this motion to be clear, and I would like your thoughts on this motion.

MARK D. TAYLOR (Assistant Controller, Office of the State Controller):

We understand. Historically, we have received old debt, and we understand there is concern. We investigated ways to get at older debt because we are often holding this debt, and we cannot get to it. We thought this method of

suspending regulations as it relates to the statute of limitations would provide us the opportunity.

SENATOR CARE:

There is a reason for a period of limitation. My objection is that if a statute of limitations is applied to citizens, then it should equally apply to the State.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR LEE:

Our next bill in work session also addresses the Housing Division. Assembly Bill 139 allows the Housing Division to create and maintain a statewide low-income housing database.

ASSEMBLY BILL 139: Requires the compilation, analysis and reporting of information concerning low-income housing and housing suitable for use by persons with disabilities. (BDR 25-225)

MR. STEWART:

Assembly Bill 139 requires the Housing Division in the Department of Business and Industry to create and maintain a statewide low-income housing database. The database will be a compilation and analysis of demographics, affordable housing markets and housing needs and availability. The database will also address the housing needs of persons with disabilities, low-income families, the homeless, senior citizens, veterans, the elderly, victims of domestic violence and other vulnerable populations. The Division may use up to \$175,000 per year from the Account for Low-Income Housing to create and maintain the database.

It also requires owners of residential housing who have received government assistance for renting to low-income persons or persons with disabilities to report certain information on the available units to the Office of Disability Services in the Department of Health and Human Services. The Department must adopt regulations to implement the reporting requirement. No amendments were offered. I note this measure was recommended by the Legislative Commission's Subcommittee to Study Mortgage Lending and Housing Issues.

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CHAIR LEE:

Money is collected so this will not place a financial burden on the State.

SENATOR BREEDEN MOVED TO DO PASS A.B. 139.

SENATOR MCGINNESS SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR LEE:

We are moving out of work session and I am opening the hearing on A.B. 135. This bill concerns the Office of the State Treasurer.

ASSEMBLY BILL 135 (1st Reprint): Requires the State Treasurer to review and the State Board of Finance to approve certain state financial obligations before the obligations are issued or incurred. (BDR 30-617)

KATE MARSHALL (State Treasurer):

Assembly Bill 135 seeks to ensure if financial underwriters and opportunists come to State agencies and present them with financial ideas, those ideas have the opportunity to be vetted by an independent financial analysis by the Office of the State Treasurer. That analysis will go to a board which will decide whether the financial idea is good for the State. This bill allows the left hand to know what the right hand is doing, ensuring the State does not incur obligations or have financial responsibilities it would not otherwise have without the State's full awareness and opportunity for deliberation.

CHAIR LEE:

I understand there is an amendment with this bill.

MS. MARSHALL:

The Nevada System of Higher Education is proposing an amendment (Exhibit D) which we support.

JESSICA FERRATO (Nevada System of Higher Education):

The Nevada System of Higher Education has a technical amendment, Exhibit D, in section 1, subsection 4, paragraph (c). It would add to that portion, "A state

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financial obligation of the Nevada System of Higher Education which is required to be repaid from a source other than state appropriations or is a lease, lease-purchase or installment agreement in which the underlying agreement includes a non-appropriation termination clause."

This amendment would allow the Nevada System of Higher Education to continue to operate as they do.

CHAIR LEE:

This is a friendly amendment to the State Treasurer's bill.

MS. MARSHALL:

You will see many exceptions because we are not trying to get at the normal course of business. The bill is aimed at innovative financial projects or methods that the State should review before incurring those obligations. We are not aiming at software leasing-purchasing plans, so there are many exceptions.

SENATOR CARE:

Who finally makes the decision to incur the obligation?

MS. MARSHALL:

The amendment states that the State Board of Finance votes to use or not use the financial tool. A project cannot move forward if it is not approved by the Legislature. The Legislature might say, "This road can be built," but the tool to finance that project is what I am addressing, not the project. The Treasurer's Office would have an independent financial analysis, and the Board of Finance would decide the type of financing if agreed to.

SENATOR CARE:

Somewhere down the road, somebody says, "We were only relying on the Treasurer's Office."

MS. MARSHALL:

No, specifically, it is important to have a separation between who does the financial analysis and who approves the financing. This prevents a conflict of interest or motivations we do not want in government. The Treasurer's Office will do the financial analysis. We will be the final decision maker.

R. SCOTT RAWLINGS, P.E., CPM (Deputy Director, Nevada Department of Transportation):

The Nevada Department of Transportation (NDOT) supports the efforts of the Treasurer's Office in regard to the independent analysis, but we do have an issue with section 1, subsection 3, paragraph (b) where the Treasurer's Office would be responsible for arranging the issuance or incurrence of a State financial obligation. We have public-private partnership language in *Nevada Revised Statutes* (NRS); we can do a limited amount of that, but there is no tolling in this State. We have a structure in place and have established checks and balances. The final negotiation of a public-private partnership goes through the NDOT Board of Directors which includes the Governor, Lieutenant Governor, Controller, Attorney General and three at-large members from across the State. This Board should make the final decision.

MS. MARSHALL:

The NDOT did not raise objection to this bill on the Assembly side. What is reviewed by the Board is important, but I am specifically addressing the financing mechanism. You need financial analysis from those having expertise in the area. The Government Finance Officers Association in February produced a document stating it was critical for financial officers to play, I quote, "a central functional role" in terms of exploring and negotiating privatization projects ([Exhibit E](#)). Otherwise, no one is looking out for your financial bona fides, identifying the critical financial tools, the dollars and cents, how it is organized and structured, and who is paying for what. You will pay much more in incurring obligations because of lack of expertise. I guarantee the private sector will have expertise when coming to the table for their contract. We need the expertise on our side. You do not leave the financial analysis for the Board, but you hire or use the experts in the State to do this work. We do it for the benefit of the NDOT and for the benefit of the NDOT Board of Directors.

MR. RAWLINGS:

We agree. We will hire our own experts to do the financial analysis as we are more educated in the realm of what transportation projects bring and the nuances that those deals take to execute the financial agreement.

CHAIR LEE:

I am a proponent of the NDOT's work, but another set of eyes would be beneficial. This bill says you cannot toll without the Legislature. When that time arises, we can address this issue, but for now, this is a good bill.

SENATOR CARE:

In section 1, subsection 5, paragraphs (a) through (g) begin with "A state financial obligation" until you reach (h), which begins with "A contract to retrofit a state building" Paragraphs (a) through (g) appear to contemplate a State financial obligation but paragraph (h) does not unless it is a contractual financial obligation. Paragraph (h) further says, "... which has been approved pursuant to NRS 338.1906." I am looking at this and everything falls to the State Board of Examiners. Is this the reason?

MS. MARSHALL:

There is already a process in place to deal with those contracts. The Treasurer's Office does review them to ensure the financial incentives are realized. This bill is attempting to limit bureaucracy.

CHAIR LEE:

Mr. Rawlings, perhaps we should wait and see what develops for toll roads and readdress this issue in a few sessions with another bill.

MR. RAWLINGS:

We would be happy to support making the law more workable. We want the State Treasurer involved with financial dealings we undergo, but we need to ensure the process works for all parties. It is a public-private partnership, and we need to protect the State and what is right for the projects.

MR. TAYLOR:

The Controller is a member of the State Board of Finance and the NDOT Board, and she supports the State Treasurer and the amendment.

ASSEMBLYWOMAN SHEILA LESLIE (Assembly District No. 27):

Assembly Bill 135 was a bill from the Assembly Committee on Ways and Means. We held extensive hearings. It was approved in the amended fashion through a bipartisan effort. This bill provides a good system of checks and balances. It is important for the State to have the Office of the State Treasurer and the independent financial advisors review the public-private partnerships that are coming more often before us.

CHAIR LEE:

The toll road issue is one issue, but many other things encompass these partnerships such as State parks, State bridges and the like. This legislation is not directed at the NDOT.

ASSEMBLYWOMAN LESLIE:

This bill was not intended to be about toll roads. I did provide handouts ([Exhibit F](#)) giving examples from other states, such as those partnerships encompassing stadiums. As you mentioned, they could include anything.

CHAIR LEE:

The hearing on A.B. 135 is closed. We will hear A.B. 360.

ASSEMBLY BILL 360 (1st Reprint): Authorizes the temporary creation of certain special districts. (BDR 25-733)

ASSEMBLYMAN PETE GOICOECHEA (Assembly District No. 35):

I brought A.B. 360 forward by the request of the Nevada Association of Counties (NACO). This bill is enabling legislation that would allow a county to establish a special district to place funds that otherwise would come in funds from the federal Secure Rural Schools [and Community Self-Determination Act] or Payment in Lieu of Taxes (PILT). The Secure Rural Schools funding has become an offset to PILT funding. I will use Mineral County as an example of this offset, as they take a huge hit.

Mineral County's PILT payment for 2008 would have been \$450,000, and their Secure Rural Schools payment would be \$531,000. Without the creation of the special district, Mineral County is able to receive the \$531,000 from the Secure Rural Schools fund but must let go of their PILT payment. These federal funds offset one against the other, so if a county gets full funding in PILT and takes a Secure Rural Schools payment, a county must offset that money.

Assembly Bill 360 allows for the creation of a special district. The state of Utah passed similar legislation this year. The idea of a special district is causing angst. Elko County has decided against creating one because it is a board of county commissioners that creates a special district and defines its boundaries, but they must surrender control on that money. This is because a board of county commissioners appoints the governing board of a special district, but they cannot appoint the majority of their commissioners; therefore, they

technically lose control. Elko County does not want to put out funds where their Commissioners are powerless.

I am in agreement with this legislation. In a county such as Mineral County, a half of a million dollars is a lot of money. If they had the ability to create a special district, they would.

Secure Rural Schools funds have to be used for schools or road construction. A county commissioner could define 20 miles of road as a special district and tell the special district's governing board that this is where we want the money spent. There are ways to hold and contain action. A board of county commissioners has the ultimate say to establish or dissolve a special district, so they would have the ability to have de facto control.

SENATOR CARE:

In section 1, subsection 1, paragraph (b), subparagraph (1) says, "Of which not more than half of the members are also members of the governing body or bodies ..." meaning you can have two county commissions, correct?

ASSEMBLYMAN GOICOECHEA:

This is possible, but I do not know why a county would want to enter into an agreement with another county even though that is what the language allows. Why would two counties want to come together, mix their federal dollars and create this special district? Our intent is for this to be for the one county.

SENATOR CARE:

Suppose one of these districts were comprised of two counties. It says "Of which not more than half of the members are also members of the governing body or bodies ..." Does this mean if you had a ten-member governing board of a special district that you could not have six from one county and six from another county, but could you have six from both counties combined? This is more a drafting exercise.

ASSEMBLYMAN GOICOECHEA:

Let us presume there is a three-member county commission and there was a special district with a governing board of five members. The intent is there cannot be three members of the county commission sitting on the special district governing board because that would give the commissioners majority

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control. The language in the text is referring to the elected body or the board of county commissioners.

SENATOR CARE:

Well, it would never happen ...

ASSEMBLYMAN GOICOECHEA:

In regard to "members of the governing body," the only governing body in a county case is a board of county commissioners.

SENATOR CARE:

Do you still want this to read "county or counties"?

ASSEMBLYMAN GOICOECHEA:

I will refer you to the NACO because it is their bill, but I personally delete "counties." I do not see why funds would want to be mixed.

CHAIR LEE:

In section 4, why is there a four-year expiration date?

ASSEMBLYMAN GOICOECHEA:

Funding for Secure Rural Schools will run out at that point and if this legislation goes south, it would be a good time to break it off because the Secure Rural Schools is funded only through 2013.

CHAIR LEE:

Ms. Chlarson, can you work with the language brought to our attention by Senator Care regarding "county or counties"?

HEIDI CHLARSON (Committee Counsel):

Yes.

WES HENDERSON (Government Affairs Coordinator, Nevada Association of Counties):

I have supplied written testimony and handouts ([Exhibit G](#)) explaining the PILT process. The intent of this bill is to allow counties the choice to maximize the amount of federal money coming into the counties. As Assemblyman Goicoechea said, under Secure Rural Schools funding—and there are 11 other federal programs, every dollar from the federal government received by a county

reduces their PILT by a dollar. With the other programs, the money has to be spent for specific purposes, whereas monies the counties receive under PILT can be used for any government activity. We want to maximize the amount of discretionary money the counties have and can spend.

ASSEMBLYMAN GOICOECHEA:

Does the NACO have a problem deleting the words "or counties"?

MR. HENDERSON:

No. I cannot envision a special district formed with more than one county. Two or more counties would have to make decisions over each individual county's PILT money.

CHAIR LEE:

If a road went between two counties and improvements to that road needed to be made, it could be worked out as an interlocal agreement, correct?

ASSEMBLYMAN GOICOECHEA:

We have a number of county roads stretching across a number of counties. A county is responsible for their portion of road. I appreciate this Committee's attention and Senator Care for catching the word "counties" in the bill.

CHAIR LEE:

The hearing on A.B. 360 is closed. The hearing on A.B. 159 is open, and Assemblywoman Peggy Pierce is here to explain this bill.

ASSEMBLY BILL 159 (1st Reprint): Prohibits the Governor or any other state officer or employee, without authorization by the Legislature, from binding the State to the requirements of an international trade agreement or otherwise committing the State to comply with the nontariff terms of an international trade agreement. (BDR 52-386)

ASSEMBLYWOMAN PEGGY PIERCE (Assembly District No. 3):

Last Session I brought a subject to this Legislature that had never been discussed, and that is the subject of international trade agreements. In 1993, Congress passed the North American Free Trade Agreement (NAFTA) and soon afterwards, they passed the enabling legislation creating the World Trade Organization (WTO).

This legislation changed the global trade landscape. There are many things to say about trade agreements, but I am focused on one specific aspect in NAFTA contained in Chapter 11, the Investment chapter. This chapter allowed a foreign business or an investor of a foreign business perceiving any law or regulation passed in the United States as interfering with their ability to make a profit in our country to go before a NAFTA or WTO trade tribunal and demand the law or regulation be changed. Further, they could demand American taxpayer dollars and compensation for perceived future profits. No one noticed this chapter because few people read NAFTA before its passage.

The legislation involving the WTO was also not well-read. The weeks before the vote on the WTO, Ralph Nader challenged any member of Congress to read the agreement and answer ten questions posted by an independent journalist. He offered to give \$10,000 to the member's favorite charity if he answered the questions correctly. Former U.S. Senator Hank Brown, a Republican from Colorado, prepared to vote for the WTO, accepted Nader's challenge and scored 100 percent on the test. He voted against the agreement after reading it. Quoting Mr. Brown, "Anyone who thinks this agreement expands free trade has not read it."

It took time for people to understand what this Investment chapter meant. The short answer is the Investment chapter gave foreign businesses rights in our country American businesses do not have. If an American business does not like what we do in this building, they can lobby against it, call for change and go to court. He does not have the option of going to a trade tribunal. These tribunals have improved, but as of two years ago, they met in secret. The individuals on these tribunals are also not elected by the people, no elected body chooses the people on them and their decisions are not appealable in our courts. As Americans, we are taught the highest court in the land is our United States Supreme Court. This no longer holds true.

As we move through the years, we continue to become involved with trade agreements such as the Central American Free Trade Agreement and those with Panama, Colombia, and South Korea, in addition to the NAFTA and the WTO. It is an ever-expanding universe. The list of areas these trade agreements reach into is invasive. Areas include energy, health care, land use, libraries, public transportation, higher education, toxic bans, tobacco, mining law, state court rulings, economic development, green procurement and policies targeting

companies and those concerning environmental or labor conduct. Foreign companies can challenge these areas using trade tribunals.

What if we woke up tomorrow and gaming became under the purview of global agreements? This did happen. Gaming was roped in under a category of recreation; in Antigua, they went to a WTO tribunal and said that the United State's ban on Internet gaming violated the WTO rules. This time there was a sense of panic in many of the statehouses around our county. I have a letter endorsed by 29 state attorney generals, including Nevada's Attorney General. The letter conveys, "Oh my God, what have we done? How did gaming become a WTO area of regulation?" For the first time, our country's trade representative went to the WTO and we said we want to take this back. Had we not done this, someone could have challenged the state of Utah's ban on gaming, Boulder City's ban on gaming and so forth. This could have meant any state regulation on gaming was up for grabs by people throughout the world. The United States took gaming off the table. However, when something is taken off the table, something else has to be put back. These negotiations are occurring. What may go on the table to replace gaming is liquid natural gas ports. To ship natural gas around the world, special ports are required.

There are a number of examples besides gaming where this intrusion applies. When California discovered the gasoline additive methyl tertiary butyl ether (MTBE) was getting into hundreds of water systems around the state, they banned it. California was taken to a NAFTA trade tribunal by the Canadian company that makes the additive. A Canadian company ...

CHAIR LEE:

You grabbed our attention. Can you talk about the role of our Governor?

ASSEMBLYWOMAN PIERCE:

Yes. Letters were mailed to many states in our country, asking them to become involved in trade agreements. It was a deceptive practice. The letters would periodically arrive, and most states were not paying attention to them; however, in Nevada, someone did pay attention and gave the letters to Greg Smith, Administrator of the Purchasing Division in the Department of Administration. He looked at these letters and, as a member of the National Association of State Procurement Officials, he called his colleagues in other states concerning the letters. Each agreed these letters are deceptive. Mr. Smith has consistently contacted the United State's trade representative saying our State does not

want our procurement regulations and laws to be a part of these trade agreements.

Mr. Smith has provided Nevada fairly good protection but is not an elected official, and the responsibility for replying to these letters belongs to us. We should be responsible for knowing what is taking place, what we are being obligated to, what is coming down the road and what has happened. In regard to nontariff parts of trade agreements, Assembly Bill 159 says before this State can be bound to a trade agreement, this Legislature has to pass legislation authorizing it. We also need to look back at other trade agreements that have come before and see if we are where we want to be.

These trade agreements and trade tribunals are as serious as a heart attack. My bill says we need to get out in front of this and get these decisions made by people in this building. The letter the attorneys general signed states,

We reiterate that it is vital to maintain the principle that the federal government may request but not require states to alter their regulatory regimes in areas over which the states hold constitutional authority. We also stress the importance of having a broader and deeper range of contracts with a variety of state entities and particularly with those bearing regulatory and legislative authority.

It continues and mentions the direction we are moving, saying, "The WTO would like to tell states that they should not prepare or adopt or apply measures that are more burdensome than necessary." The letter continues to say, "That's our decision." We make the decisions for the State of Nevada.

The bill says it is time for us to step up to the plate. This is a complicated issue, and there is a tremendous learning curve, but we need to take on the responsibilities that are rightly ours. I appreciate Mr. Smith's work over the years. I also have a letter from Alice A. Molasky-Arman, former Commissioner, Division of Insurance, stating there was Congressional legislation saying insurance would fall under the purview of the WTO. She does not support this idea. I do appreciate her and other's efforts, but they are not elected. We are. We should be addressing these international trade agreements.

CHAIR LEE:

In section 1, subsection 2 says, "The Governor may not bind the State ... unless the Legislature has enacted legislation that explicitly authorizes the Governor to do so." Are you contemplating coming back with more legislation?

ASSEMBLYWOMAN PIERCE:

Other states have trade commissions. I anticipate we would have an interim committee on trade that would look all this over, make recommendations on where we need to be and submit a bill draft request if we as a body make that decision to be bound to a trade agreement.

CHAIR LEE:

If this bill passes, the Governor would be exempted?

ASSEMBLYWOMAN PIERCE:

Yes.

CHAIR LEE:

If the Legislature was not in Session, would this legislative committee have authority to make these decisions?

ASSEMBLYWOMAN PIERCE:

The bill says there has to be a piece of legislation. Trade agreements move slowly. Negotiations take time. During the interim, there would be time to understand the issue and make recommendations based upon investigation.

CHAIR LEE:

I need clarification. If this bill passes, the Legislative Commission would have oversight if the Legislature was not in session?

ASSEMBLYWOMAN PIERCE:

No. There has to be legislation. Nothing would happen, and the Governor would have to wait. These letters asking us if we want to be bound finding their way to Mr. Smith's desk would no longer happen. The letters would go to the Commission. There would be no action until we enact a piece of legislation saying we want to bind this State to a trade agreement.

CHAIR LEE:

Do you want to offer how to finish this bill? Would there be an amendment? I am confused. It seems an agreement may get caught in limbo. We can handle this problem while we are in this Legislative Session.

ASSEMBLYWOMAN PIERCE:

If you look at the chart, many states do not answer the letters, and they get bound to trade agreements. Nevada is not prey yet. If one of these letters arrives before we set up the apparatus, we would wait until we enact legislation saying whether we want to be bound. Anyone can put forth legislation. If a trade agreement was passed to Colombia, and you felt strongly that you wanted this State bound to the agreement, you could bring forth legislation. This bill would provide for a committee to look into these agreements and advise this body on them.

SENATOR CARE:

Ms. Chlarson, do we have a scheme in place that allows the Governor or anyone else to bind the State to international agreements?

MS. CHLARSON:

There is not a statute authorizing the Governor to bind the State to an international trade agreement. This bill's intent addresses when the federal government asks the Governor whether the State would like to be bound.

SENATOR CARE:

There is no foreign tribunal that can tell Nevada what it may or may not do, correct?

MS. CHLARSON:

Correct.

ASSEMBLYWOMAN PIERCE:

It has worked that if the federal government does not hear back from a state, a state is bound. We are out in front in Nevada, but most states are bound. States are catching on, and there is a growing bipartisan discomfort with our country's trade policies. The process is becoming more proactive in asking states, but states do not respond. Sometimes when states do say they do not want to be bound, they get bound anyway. If letters are not answered, states become bound to these trade agreements.

CHAIR LEE:

How do these letters get to Mr. Smith?

ASSEMBLYWOMAN PIERCE:

At one point, there was a loose idea there would be a State point of contact. There was a feeling those supporting the NAFTA did not want the system to work well. They did not want anyone to know too much about what they were signing everybody onto. To get back to Senator Care's question, Antigua has to be compensated for not having an Internet gaming business in the United States. They are demanding money in the millions. This is in negotiation as are six other countries demanding compensation. There was a small community in Mexico where an American company wanted to put a toxic waste dump on a piece of land located above their water supply. The community said no; the company went to a NAFTA tribunal and demanded and received \$14 million from Mexico. This dollar amount is more than the per-capita income of the entire community.

It is not at the point that the federal government would come and say you have to change a law, although there have already been instances of lobbyists hired by foreign entities coming to state legislatures and saying if you pass this law, there will be a trade tribunal challenge. It has placed a chilling effect on state legislatures around the country. These tribunals are less secretive than they used to be, but most of the information we get about what happens in these tribunal procedures is either leaked or stolen, as there are no Open Meeting Laws.

MS. CHLARSON:

This bill only applies if the federal government asks the State if they want to participate in the terms of an international trade agreement. If the federal government did not ask and bound the State to an agreement, this legislation would not apply. This bill only contemplates a situation where the federal government asks the Governor if Nevada would like to participate.

ASSEMBLYWOMAN PIERCE:

There was no opposition to this bill on the Assembly side.

JOHN WAGNER (Independent American Party):

We support this legislation as we support legislative oversight. When a decision is left to only one person to make, the decision made can be wrong. A body such as the Legislature is to make these kinds of decisions. Many of the

agreements do not help the American worker or the American companies. Most of them work for the benefit of the foreign countries. We have lost many American jobs through these agreements, our labor unions do not support many of them, and having legislative care or oversight is a good thing.

JANINE HANSEN (State President, Nevada Eagle Forum):

We support this bill. Eagle Forum has long opposed international trade agreements such as the General Agreement on Tariffs and Trade (GATT), the NAFTA and the WTO, which destroy sovereignty. These agreements favor international corporations to the detriment of American business and American workers. These agreements have resulted in shipping millions of jobs overseas and the deindustrialization of America. These agreements which are promoted in the name of free trade are not fair trade and have placed American businesses and workers at the distinct disadvantage in the global scheme. We support this bill because we are concerned.

The WTO has ruled against the United States in 40 out of 47 cases and against the U.S. in trade remedies in 30 out of 33 instances. The deal to lock the WTO consisted of three parts. The first was a 14-page WTO agreement, surreptitiously added without debate, to the 22,000-page GATT revision. This was done also without the benefit of calling it a treaty. They circumvented the U.S. Constitution and called it a trade agreement so that the U.S. Senate did not have to agree to it. This undermined our sovereignty. We support this bill and its aims and appreciate the awareness brought forward on these issues.

PAT T. SANDERSON (Laborers' International Union, Local 872):

I am in concurrence with the last two testifiers. One of the scariest things that came out last Session was what happened to California concerning the MTBE additive. They could not do anything about it even though they knew it was in the water supply. They could not take it to court and win. They had to take it to the WTO tribunal.

A highway was going to be built from Mexico to Canada allowing truckers to run without insurance. Anyone could drive on this highway, bringing goods into our country, and they could be freely distributed. The U.S. could not stop this because it was in the NAFTA agreement. Any legislation controlling our own destiny is a good thing.

GEORGE ROSS (Las Vegas Chamber of Commerce):

I am also testifying on behalf of Tray Abney and the Reno-Sparks Chamber of Commerce. I apologize for this bill not having received opposition in the other House, but I was out of town. I am the one devolved to testify upon this particular subject in the business community.

This bill is a piece of a large battle taking place over the last two centuries. In the late 18th century, knowledge, practice, theory and results led to the development of free markets, free trade and the theory of comparative advantage in which counties and regions specialize in those economic activities in which they are most proficient and efficient. When this takes place and they trade with one other, the wealth of all is raised. This development has served the world and the nation extraordinarily well. Those not in support are individuals scared of the future. They see foreign trade agreements as directly leading to the loss of jobs in certain industries in certain parts of the county. Yes, this occurs, but this decline is offset by a great deal of growth elsewhere. People not in support are also afraid of the loss of sovereignty.

Looking at the dais, some of you attend a dinner named for the third President of the United States and some of you participate in a multistate organization dedicated to furthering the principles of that same man. The one thing that man was most dedicated to was the idea that free trade is the absolute basis of American economic growth. It is important to realize this bill appeals to Nevada's inherent sense of state's right, of having its own economic nationalism and to its resentment of being controlled and pushed and pulled by outside economic forces. It is important, however, to lay out the business point of view as to why this bill is pernicious.

It is interesting. I am representing the Chambers and businesses, but they are the ones disadvantaged by these national agreements, and I am here in support of free trade. Free trade is important to the United States and to Nevada. United States' exports directly support 12 million jobs. Those jobs pay between 13 percent to 18 percent more than other jobs. One in three acres of American farmland is planted for export. One in five American manufacturing jobs is tied to overseas sales. United States' service providers brought in export revenues of more than \$400 billion in 2006.

CHAIR LEE:

We are not debating your facts, but can you speak to the bill?

MR. ROSS:

Yes, because the bill is not about whether the Legislature should have the power to abrogate when asked to be involved in an international trade agreement. We solved that problem in 1789 when we changed our governing system from under the Articles of Confederation to the U.S. Constitution. The U.S. Constitution prevented state economic squabbling by placing the power of economic trade and foreign policy into the hands of our central government.

CHAIR LEE:

If I understand, you also do not want the involvement of the Governor, correct?

MR. ROSS:

Given a choice, we would let this be federal policy. According to 2008 data by the U.S. Department of Commerce, excluding gold, Nevada exports totaled \$3.1 billion. The State's economy is highly linked to the world economy. We need to take into account the impact this has on our citizens and the jobs we have in this State. These are the better jobs.

CHAIR LEE:

Is your contention that this bill is not needed, or is it that the Legislature should not be viewing these trade agreements?

MR. ROSS:

Our contention is this type of agreement is a nontrade barrier to trade that ultimately impedes economic growth, hurting the U.S. economy. The U.S. and Nevada benefit from international trade.

Prior to NAFTA, there was a controversy about safety in regard to trucks from Mexico making deliveries into the U.S. This was a pilot program which used over 100 Mexican trucks, and it worked well. In March, the funding was pulled from the program. Mexico retaliated by putting tariffs on 83 products totaling \$2 billion worth of exports. The analysis of this action showed Mexico targeted products made, as much as possible, in districts of Congressmen who voted to disintegrate the pilot program. This was meant to send a message.

If this legislation occurs across the county, it will add up, creating problems and affecting our Country's trade policy.

CHAIR LEE:

We do a lot of trade with Mexico and Canada, but we are not going to be threatened by them.

MR. ROSS:

Remember, the Smoot-Hawley Tariff was another example of someone saying I am not going to be threatened by somebody else. This tariff fed the downward spiral leading to the Great Depression.

CHAIR LEE:

The hearing is closed on A.B. 159 and I move to open the hearing on A.B. 397.

ASSEMBLY BILL 397 (1st Reprint): Authorizes redevelopment agencies to expend money to improve schools located within certain areas under certain circumstances. (BDR 22-130)

ASSEMBLYMAN JOE HARDY (Assembly District No. 20):

Assembly Bill 397 came about when we were looking at redevelopment agencies and the incremental financing involved with them. In the long run, it takes money from the educational pool and uses it to theoretically increase the property tax, giving education a lift with the other boats in that rising tide.

Recognizing some cities have flexibility with redevelopment agency monies, it became apparent in Boulder City that if given an option, a reasonable nexus would be to give redevelopment agency money to education. The genesis of the bill gave the option for a redevelopment agency to give money to schools within the community. In Boulder City, we have an educational foundation to which people can contribute. The foundation can grant money—much like the education grants from S.B. No. 404 of the 73rd Session and S.B. No. 185 of the 74th Session—to certain programs and processes within the community. The ability to augment the educational process exists in schools. This bill gives a redevelopment agency the option to grant money to the schools within the community.

As the bill progressed, the Chair of the Assembly Committee on Government Affairs made friendly additions to the bill, with which I concur, relating to the accountability of redevelopment agencies. The amendment requires a legal description of the boundaries of a redevelopment agency and a report to the Legislative Counsel Bureau which gives legal descriptions and the date of the

redevelopment plan, the scheduled termination of the plan, the total sum of the assessed value of a taxable property in the redevelopment area, the combined overlapping tax rate of the redevelopment area, the property tax revenue received from any tax increment area within the redevelopment area of fiscal year (FY) 2009, copies of any memoranda of understanding that the agency enters into during FY 2009, the amortization schedule for any debt incurred for the redevelopment area and the reasons for incurring the debt. This would give transparency and accountability to a redevelopment agency.

CHAIR LEE:

On page 4, can you explain lines 6 through 10?

ASSEMBLYMAN HARDY:

On page 4, lines 6 and 7 of section 4, subsection 2, paragraph (d) says, "Subject to the provisions of subsection 3, to be used by the agency for the improvement of schools in the community." Section 4, subsection 3, on lines 8 through 10 says, "Money paid to the agency pursuant to paragraph (d) of subsection 2 may only be in the form of grants and may not be used for any regular expenses of a school." This means money paid by the agency could not be used for teacher salaries and would not conflict with the Nevada Plan. We would do productive things for the community.

For instance, in the foundation model of the Clark County School District's Community Education Advisory Board, they look at the grants and say, what can be done for the schools? One of my goals was to get a Prometheus SMARTBoard in each school—these boards enhance learning while keeping student attention, but the money was never available to make that happen. When I talked with people on Boulder City's City Council, I said what if we had a funding source that could help our schools, because a school with 300 or 700 students does not have the same economies of scale as a school with 3,000 students. I want the good things in the larger schools to also be in the smaller cities or schools. The money would not be used to pay salaries or pay for ongoing expenses. It will be used to identify a need and meet that need.

CHAIR LEE:

Would these needs include beautifying the landscape and the like? What are the redevelopment aspects of the money?

ASSEMBLYMAN HARDY:

The redevelopment aspect of the money is what we are recognizing. The development agency takes money in an incremental manner from education. In Boulder City, we are not redeveloping as much as we have money. And in as much as people have issues with redevelopment, the redevelopment agency exists, so what can I do to develop the community in a prospective way for education with the funds? The schools are not in the redevelopment agency the way it is configured in Boulder City. It would be difficult to use this money for landscape, but the nexus is there to use that money for education.

CHAIR LEE:

How did this bill pass in the Assembly?

ASSEMBLYMAN HARDY:

It passed with many votes. I do not recall opposition. In the Assembly committee hearing, two City Council people opposed the bill because they do not like redevelopment agencies. When it went to the City Council for discussion and a vote, the City Council people—who in a different setting are the Board of Directors of the Redevelopment Agency—voted 4 to 1. The same argument surfaced. The Redevelopment Agency was not appreciated by one of those members.

CHAIR LEE:

Boulder City is in the Clark County School District, but because they have their own township, they can take their redevelopment money and put it into their schools. Could this take place equally throughout the State?

ASSEMBLYMAN HARDY:

Correct. The Sparks Redevelopment Agency includes schools and is the poster child for helping education.

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CHAIR LEE:

I am closing the hearing on A.B. 397. This meeting of the Senate Committee on Government Affairs is adjourned at 3:31 p.m.

RESPECTFULLY SUBMITTED:

Cynthia Ross,
Committee Secretary

APPROVED BY:

Senator John J. Lee, Chair

DATE: _____