

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

**Seventy-Sixth Session  
February 28, 2011**

The Committee on Government Affairs was called to order by Chair Marilyn K. Kirkpatrick at 9:02 a.m. on Monday, February 28, 2011, in Room 3143 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4406 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at [www.leg.state.nv.us/76th2011/committees/](http://www.leg.state.nv.us/76th2011/committees/). In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: [publications@lcb.state.nv.us](mailto:publications@lcb.state.nv.us); telephone: 775-684-6835).

**COMMITTEE MEMBERS PRESENT:**

Assemblywoman Marilyn K. Kirkpatrick, Chair  
Assemblywoman Irene Bustamante Adams, Vice Chair  
Assemblyman Elliot T. Anderson  
Assemblywoman Teresa Benitez-Thompson  
Assemblyman John Ellison  
Assemblywoman Lucy Flores  
Assemblyman Ed A. Goedhart  
Assemblyman Pete Livermore  
Assemblyman Harvey J. Munford  
Assemblywoman Dina Neal  
Assemblywoman Peggy Pierce  
Assemblyman Lynn D. Stewart

**COMMITTEE MEMBERS ABSENT:**

Assemblywoman Melissa Woodbury (excused)

**GUEST LEGISLATORS PRESENT:**

None

**STAFF MEMBERS PRESENT:**

Susan Scholley, Committee Policy Analyst  
Jenny McMenemy, Committee Secretary  
Olivia Lloyd, Committee Assistant  
Cynthia Carter, Committee Manager

**OTHERS PRESENT:**

Greg Smith, Administrator, Division of Purchasing, Department of Administration  
Dan Marran, Purchasing Manager, City of Sparks  
Kimberlee Tarter, Deputy Administrator, Division of Purchasing, Department of Administration  
Mike L. Baughman, Executive Director, Humboldt River Basin Water Authority  
Bruce Kittess, Private Citizen, Carson City, Nevada  
Paul Eastwood, Private Citizen, Carson City, Nevada  
Bob Grosulak, Private Citizen, Carson City, Nevada  
Gary Carsten, Private Citizen, Gardnerville, Nevada  
Jason Geddes, Environmental Services Administrator, City of Reno  
Jack Mallory, Director of Government Affairs, International Union of Painters and Allied Trades District Council 15  
Kyle Davis, Policy Director, Nevada Conservation League and Education Fund  
Randell S. Hynes, representing Nevada Solar Authority, Ltd.  
Leslie Medeiros, Business Owner, The Solar Store  
Rose McKinney-James, representing The Solar Alliance  
Joe Johnson, representing the Sierra Club, Toiyabe Chapter  
Mary Pierczynski, representing Ann Hall  
Ann O. Hall, Private Citizen, Reno, Nevada  
Lawrence A. Werner, City Manager, Carson City  
Lee Plemel, Planning Director, Carson City  
Luke Andrew Busby, representing Clean Energy Center, LLC  
Tom Clark, representing the Interwest Energy Alliance and Cleanpath Renewable Development  
James Martines, Assistant City Attorney, City of Henderson  
David Fraser, Executive Director, Nevada League of Cities and Municipalities  
Dan Musgrove, representing the City of North Las Vegas  
Skip Grey, Assistant Director for Administrative Services, City of North Las Vegas

Ron Corbett, Manager, Fleet Operations and Purchasing, City of  
North Las Vegas  
P. Michael Murphy, representing Clark County  
Charles H. Schardin, Medical Administrator, Department  
of Corrections

**Chair Kirkpatrick:**

[Roll was called.] We are going to start with our presentations and then we are going to hear the bills. We will start with the Division of Purchasing.

**Greg Smith, Administrator, Division of Purchasing, Department of Administration:**

One of the things that we thought you would like is to hear things from a statewide perspective with regards to the Nevada Purchasing Study Commission. We will then go into what we do at the state level, which is slightly different than what they do at the local level, to give you an overall perspective of what it is that we do.

**Dan Marran, Purchasing Manager, City of Sparks:**

I am the cochair of the Nevada Public Purchasing Study Commission (NPPSC). It is important to point out that the people testifying currently are local purchasing agents that have been doing this job for some time. We represent many other people within the study commission and on a statewide basis. We are also very active on regional and national organizations. Greg Smith is the current president of the National Association of State Purchasing Officials (NASPO). He speaks with a voice that represents many other individuals with the experiences that have gotten him to that position. I am on the board of examiners for the Universal Public Purchasing Certification Council (UPPCC). We have expertise beyond this. Kathy Rainey, the purchasing manager for the City of Las Vegas, has regional and national experience with the Institute for Supply Management (ISM), which is an organization of public and private purchasers. When you ask us questions, please know that our expertise goes beyond our day-to-day jobs and our agencies. We represent a great deal of expertise in the field.

The NPPSC is established per *Nevada Revised Statutes* (NRS) 332.215. It sets forth that the commission shall study practices in governmental purchasing and laws relating thereto and shall make recommendations with respect to those laws until the next regular session of the Legislature. Our commission meets on a monthly basis. We meet much in the same way as the Legislature, with feeds to Las Vegas. North and south get together once a month to talk about issues that are coming up within our industry. There are issues to talk about and ideas to be shared and leveraged for the greater good of both local agencies.

Public procurement has always been a collaborative effort through the sharing of contracts, sharing of specifications, or leveraging demand wherever possible. That is joining our respective needs and bidding as one entity. This will possibly help us to get greater economies of scale. It has always been a collaborative industry. The role of public procurement has evolved from the simple purchase of widgets to the concept of greater best value for our agency. Low bid tends to make people nervous. It comes from a history of poorly written specifications and an overly aggressive vendor community. We strive to get a better specification that talks about life cycle value and that awards on the best interest of the taxpayer at that time. Specification so the selection process can be fair and equitable is also what we aim for. In our role, public procurement staff seeks to keep a level playing field. Our bid process is wide open. Our purchasing policies and practices are documented, transparent, and nonpolitical. We make a recommendation to our elected boards. This is after we have gone through a legal advertising process. Bids have identified what the selection process will be. The public procurement function is about a level playing field and openness to anyone looking to do business with the local government. Public procurement professionals exist to ensure that our taxpayers, supporting our activities, are getting the best possible value for their dollar. We are always looking for the best possible value, while working within the rules that are established at your level through the NRS and local and municipal codes.

**Chair Kirkpatrick:**

We need to keep the dialogue between your organization and future legislatures going. I know that the Legislature tries to change the rules of purchasing that have been in place for many years. When you talk about statewide purchasing, do we have a purchasing consortium within our own state where we draw off of each other? I have seen that happening on a national level, but can we do that on a state level?

**Dan Marran:**

There are a few different things that can work. Within the NPPSC there is an email listserv that exists with all members. Any public entity is welcome to join in the activities of the commission. Through that listserv, we are able to ask who is interested in participating or has a contract that is available to use and leverage. The commission's mission is dedicated toward legislative issues. Within regions, there exists, at least in the northern half of the state, the Northern Nevada Consortium for Cooperative Purchasing (NNCCP). It is a chartered organization that has been around for about 20 years. That group gets together on a monthly basis. It is much more casual. They talk about contracts where there may be opportunities to leverage needs and discuss what the problem issues are. They also attempt to learn from each other's experiences. I know there have been efforts in the southern part of the state to

do something similar to this group. The success is unclear, because I have not been involved in those organizations. I will say that the consortium, as it exists today, is looking to expand outreach within the group. We were talking about adding members from the south. There is a discussion about this. I think you are talking about leveraging collective needs and looking for collaboration. Collaboration can only be offered; it cannot be forced. That is what we have within the northern section of the consortium. We consult each other about our bids and leverage our collective needs. We may be able to work together; however, some of us may have special delivery issues that are unique to that agency. We can only offer that collaboration. We cannot make anyone collaborate with us.

**Greg Smith:**

On a scale of ten, with my knowledge of what goes on in other states compared to the cooperativeness inside Nevada, I would say we are at a five or a six, with ten being the best cooperation. There are some really positive things that have come out of this economic downturn. Most local agencies, school districts, et cetera have become more interested in cooperation in purchasing, as they see their staffs reducing and the need to drive prices down lower. There is a heightened interest in cooperating. A month ago, I had a visit from Bart Patterson, who is the Vice Chancellor of Administrative and Legal Affairs for the Nevada System of Higher Education (NSHE). He oversees procurement at the University of Nevada, Reno (UNR), the University of Nevada, Las Vegas (UNLV), and the College of Southern Nevada (CSN). He asked for my assistance in making sure those systems are cooperating. That is the first time this has happened, and it is counter to the nationwide trend where university systems are trying to stake their autonomy. There is a revitalized spirit of cooperation. We have, on a few occasions, done things on the state level, such as a bid for school buses for all of the county school districts. We do not buy school buses at the state but, being able to do something under the state's umbrella, each entity is considered a third party intended beneficiary to the contract. We drove prices down, even though that is not something we would normally do. We are happy to do those things. It is easier for us, at the state level.

**Chair Kirkpatrick:**

I am going to elaborate a bit. I will use the example of olives. Everyone knows that a black olive is a staple item. It can be served anywhere. With the crops the way they are, olives are projected to triple in cost by July 1. My question is, why can the north and south not work together so that we can lock in our olive usage and get a better price? We would save money. Are there tools that we can give you in the Legislature? We are always telling you what to do in the Legislature, and I would like to ask: are there tools so that we can work

collaboratively to benefit the taxpayers? With olives for instance, one manufacturer may have five different brands. That gives people flexibility.

**Greg Smith:**

In my opinion, and based on my knowledge of other states and their laws, Nevada has as flexible a procurement law as any state in the country. I have many of the tools I need. We are under NRS Chapter 333 at the state level and under Chapter 332 at the local level. They are similar, but there are some significant differences. To continue your example, I would suggest that the problem of what type of olive to buy does not manifest itself at the procurement organization. We will buy what our agencies tell us they want to buy. What often happens is there is one agency in the north that demands a particular kind of olive and an agency in the south that demands another type of olive. It is breaking down the barriers at the customer level. It is easier to do now because no one has any money. It is much easier. It still has a long way to go.

**Dan Marran:**

One of the challenges that we have, given the geography of the state is the different supply chains meeting the differences of the state. One of the things that a professional procurement officer has to look at are the needs of the individual client and what the supply chains are for that particular commodity. We have looked at fuel, for instance, on a regional basis. We know that we cannot do it on a statewide basis because fuel in northern Nevada is being obtained from the Bay Area or Salt Lake City, whereas in Las Vegas we are getting fuel primarily from southern California. Professional staff looks at these things. We may ask others if they have a need and go into procurement issues together. We then leverage what we need to do. However, on a statewide basis it is difficult because of the geography. I would like to add a tip. The state goes out on behalf of agencies a great deal of the time. The state acts as the lead agency for Western States Contracting Alliance (WSCA) contracts that local agencies use. For instance, with the City of Sparks I do not need to bid for copiers at this time. The State of Nevada went out last year, awarded to multiple vendors, and the state was a lead agency for a copier contract for the western United States. It is not just the City of Sparks that used this contract. We have local agencies from throughout the western region. Any local agency in the country could use that contract, should they have the enabling law to do so. We look to those leverages as much as we can. As staffs have been shrinking we have no other choice but to look for these things. I work for the City of Sparks. Two years ago my purchasing division was myself, two buyers, and a purchasing technician. As of last April, it is just me. I am the entire purchasing division for all services, supplies, and public works construction. I am not alone. Local water agencies in the north are that way. The

City of Reno is currently without a purchasing manager. We are looking for these resources all the time.

**Greg Smith:**

For years public procurement was a back office function that had no voice. It was simply a function which processed requisitions. There has been a transformation in the process. It is getting better. We now have a seat at the table. When someone is asking for procurement items and we believe we have the correct item to meet the needs at a much lower cost, we are able to influence that decision now. People are starting to realize that the money that is saved in one place is equal to the revenue that could be created in another place. The importance in public procurement has been really heightened.

**Assemblyman Ellison:**

One of my big concerns is to try to do as much inside Nevada as possible. Do you take Nevada vendors on priority? Do you attempt to procure as much as possible in Nevada before you seek vendors that are out of state?

**Greg Smith:**

Currently, the only tool I have at my disposal to give any kind of preference or deference to a Nevada-based vendor is in the event of a tie. There is a provision that allows me to use the Nevada-based vendor when the bids are tied. There was language applied last session for a local disabled veteran-owned business that would allow for some preference. To date, that has not made a difference in any procurement that we have used. There have been ways used by the agency in which the Office of the Attorney General has supported us requiring a Nevada-based vendor. For example, tourism used to let a \$5 million advertising and public relations campaign. In the actual solicitation document, they required that the successful vendor or any vendor who proposed must be a Nevada-based firm. They felt that who better to sell Nevada than Nevadans. The Attorney General's Office actually supported that. Recently, the Department of Public Safety let an approximately \$2 million contract for public relations and safety-related issues. They did not put the Nevada preference clause inside their request for proposal (RFP). I personally feel that if they had, the Attorney General's Office would not have supported it, because there were firms that were very successful in advertising public safety in other states that had much more experience. There are ways of attempting to accomplish vendor preference under the current law but, for the most part, Nevada law encourages open competition no matter where the company resides at the current time.

**Kimberlee Tarter, Deputy Administrator, Division of Purchasing, Department of Administration:**

State agencies have a certain degree of autonomy in their ability to purchase directly below a \$5,000 threshold. We have encouraged agencies to use Nevada vendors through a database. Our database has approximately 10,000 vendors that have registered with our division. We query it, extract the Nevada vendors, and upload those vendors onto our website. We maintain a database that is searchable by commodity on our website. We have modified our training that we provide to state agencies. We have made them aware that the data exists, and they should be going out querying the database every time they need to make a procurement. Law states that three quotes have to be obtained. In order for us to influence business for local Nevada vendors, we uploaded all of our registered vendors from Nevada on our website, and we set up our training to require that agencies quote that website.

**Greg Smith:**

We did a similar thing in the \$5,000 and under that the state agencies can go to directly. From \$5,000 to \$25,000, which is the formal bidding threshold at the state level now, our office has to maintain a minimum of three quotes. In areas where I believe there is significant Nevada competition, we have directed staff to quote every Nevada vendor on the database to give them an opportunity at the business. We started that about three years ago.

**Assemblywoman Bustamante Adams:**

Are there certain criteria that you use to determine what constitutes a local business?

**Greg Smith:**

It has been a moving target at this point. We have not had to drill down that far because it is an informal process. If the Legislature decides to pass some type of preference, we will seek guidance in determining that. It is a little bit frustrating. Does the physical office need to be in Nevada? Is a post office box sufficient? Does a company who has registered and incorporated with the Office of the Secretary of State get that kind of preference?

We buy approximately \$8 million to \$10 million worth of food each year for the prison system. Sysco and U.S. Foodservice, the two primary vendors, have very large facilities at either end of the state. They pay a lot of taxes here. They are not a corporation in Nevada. They employ hundreds of people. They spend their money here, but they are not technically a Nevada business. Sierra Meat Company in Reno would be considered a Nevada business. We really struggle with how to designate who is a Nevada business and who is not. In the informal manner we have done, we try to make the process the most inclusive that we can. If it is going to be a law of preference, we would need guidance as to how we designate the selection process.

One of the challenges is the reciprocal preference law applied by 38 states. If we apply a preference here, that is fine for the vendors who do business only in Nevada. However, if a businessman living in Incline Village does a lot of business on the other side of Lake Tahoe, a penalty would be applied in an amount equal to the preference that is received in Nevada. That is a concern for some people.

**Chair Kirkpatrick:**

When I spoke to the purchasing consortium, I understood that preference has to be something that is easy to implement. Laws have to be implemented. One of the discussions that was brought up was the certification process. We do not want to be detrimental to businesses that do hire Nevadans but do not have their headquarters here. We cannot have it all. As long as they are employing Nevadans, that is what is important. I am very passionate on this subject. Was there any more discussion on that?

**Dan Marran:**

It is just a casual observation of what other states and localities are doing. I know that, at some time last year, we were looking to see if there was a business license within a community in Nevada. That is a relatively easy thing to check. There has to be discussion on the impact a preference program has on the local agency. I am an office of one at this point. If I have to suddenly verify the geographic location of a vendor to confirm they are qualified in a bid evaluation process, that puts more workload on the agency. It may even delay purchases.

Public procurement generally opposes preferences. As an employee of a local agency in the state, I will operate under any law that is put before me. When you start talking about preferences, it is worth noting that the federal government does not allow preferences of any kind in a bid evaluation. There are national purchasing organizations that have been on the record for years against these purchasing preferences. Most of these organizations argue that they drastically affect competition and allow prices to go up. The agency will be paying slightly more to affect the political need of the preference.

**Chair Kirkpatrick:**

We did mention to the Secretary of State that his office would be a good place to have people register. He stated that he was open to discussion on this subject.

**Greg Smith:**

As the President of NASPO and the long-time chairman of the WSCA, I would be less than honorable to the profession if I did not echo Mr. Marran's

sentiment. However, I have committed to work together and make any law that the Legislature passes happen. The state is the logical place to create some kind of a database that the local businesses could access to ensure compliance. It is a challenge. It is not rocket science. We could implement it if you so choose.

**Assemblywoman Bustamante Adams:**

Can a vendor upload their own information, or does it have to pass through certain processes in order to be included?

**Greg Smith:**

Currently, we allow the vendors to upload their own information. The vendors can change their contact information if they need to. About three years ago we started placing selection boxes where the vendors could identify themselves as a minority, female owned, et cetera. It is an all voluntary deal right now. There are no checks that happen. We could apply that next level should you decide upon legislation.

**Assemblywoman Bustamante Adams:**

Is the database maintained in-house? How does it work?

**Greg Smith:**

The database has been developed by our office. It is maintained in-house in association with the Nevada Department of Information Technology to host the database at the state level. At the current time, approximately 10,000 vendors are signed up for the database. That is after we purge. Every so often we will go in and check the activity of a vendor in order to keep the database up to date. I am comfortable in telling you that there are 10,000 active vendors in our system.

**Chair Kirkpatrick:**

Will you speak about the procurement class? I have heard both negative and positive things about this class. I have been to a few of those meetings and I thought the networking and the resources alone were worth it.

**Greg Smith:**

You are speaking of the procurement outreach program, correct?

**Chair Kirkpatrick:**

Yes.

**Greg Smith:**

I have heard positive and negative things as well. I have gone on behalf of the state to some of the meetings. At least at the federal level, they try to give

people as much information as they can. The problem is that that the program speaks to federal regulations. It can be boring. It is a nice idea. The more information we can get out to the public, the better. The people that run it have invited people from the state and the local entities to make an attempt to have people present at the meetings. They are more knowledgeable on some of the finer details.

**Chair Kirkpatrick:**

Should we separate the two programs?

**Greg Smith:**

I thought you were speaking about the program that we have sponsored at the state. We have a three-day contract compliance class for state employees. Kimberlee Tarter was the person who implemented this program. We have certified over six hundred individuals in the state. We have made those individuals mini procurement experts. This has helped compliance immensely.

**Kimberlee Tarter:**

In 2006, we rolled out the contract manager certification program which not only certifies state employees but has brought forth considerable participation from the local municipalities. It is a 21-hour, three-day class. It instructs state employees on the procurement process as well as the full life cycle of the process. That means from making the purchase to ensuring that it has been received and meets standards, and into the management side of the process. The class goes down to a fairly granular level. It gives participants information about commodity purchasing, the widgets of the world, when purchasing does and does not get involved, and when three quotes are required. The class also discusses services, authority, and when purchasing cooperation is required. The RFP process for the State of Nevada is very detailed and is established in statute and regulation. There is quite a burden that goes along with the RFP process. We have a lot of information. We have to communicate with the participants on how to comply. It is three days and includes training on the contract entry and tracking system for the state, which is a workflow system. The budget office used this for the service contracting side. We do a test so that we can measure and benchmark the information we are training them on to ensure that the students are receiving and understanding the material and process. Once they pass that test, they are certified. We recertify them every two years. We update the training after each legislative session to keep the program on track and focused on the accurate information on the statutes.

**Greg Smith:**

Having these 600 ambassadors, if you will, out there in the agency has enhanced compliance and enforcement on using contracts and proper protocol.

We are always refining the process based on past history. When we have changes in the process we have an email that goes out to each of them. In this way, our ambassadors can get that new information implemented in their agencies. We have never lost a protest at the State of Nevada since I have been an administrator. I think that attests to the purity and the soundness of the process. It is also a testament to a wonderful staff. I have the lowest turnover of any state agency around. I have a wonderful staff.

**Dan Marran:**

I wanted to circle back to where we started, which is outreach to vendors looking to do business with us. I participated in numerous reverse vendor shows or chamber of commerce events where the event has been marketed as learning how to do business with the government. I have examples at these events, where we have marketing strategies being given to the people in attendance that are unrelated to their profession. There is a disconnect from the business side on how complicated it is to interact with the government. We do not try to make the process complicated. I have many circumstances where I cannot change the process. There are many different requirements. We have bid requirements, insurance requirements, bonding requirements, et cetera. There is a good deal of education that needs to occur with the vendor base that is very valuable. It is more valuable to have those discussions and teach vendors how to get business opportunities and work the process. Those interactions need to take place in order to ensure an equal opportunity for competitors and have tremendous value to the businessman.

**Chair Kirkpatrick:**

I do not do any business with the state or local governments, so I have nothing to gain from this except for my constituency. They are very frustrated by the process. It comes back to the fact that smaller businesses do not know how to get in the game. That is the right lingo to use because it is a process that has to be learned. Companies like U.S. Foodservice and Sysco, although they do employ many Nevadans, hinder smaller local businesses. We heard a fleet bill in this Committee. They said they did not want any help from us and to delete them from statute. I disagreed. My constituent that might be able to do that work wants to know how to get into the process. I also understand that now more than ever people are looking to government as a guarantee for contracts when private business is not doing well. Is there any way, without costing any tax dollars, that we could do a better job of providing outreach to smaller vendors? The smaller vendors will never have the purchasing power of a bigger company. If they start with the smallest bid, then they can grow and become a Nevada-headquartered business because they are invested in it. I know that this is a bidder's preference. There has to be a way that we can help our Nevada businesses grow to get some of these purchasing contracts. I will use

cookies at the school district as an example. A large business in San Francisco can produce cookies for less because they are producing on a large-scale basis. However, we have several great companies in Nevada that are attempting to get their production volume up in order to become a larger company. Is there a way to reach out to these smaller businesses through procurement?

**Greg Smith:**

The beauty of being in Nevada is that we are still a small state. I have 22 people on my staff. I get a lot of emails and phone calls every day from interested vendors. I always make sure I return the local phone calls first. I know who many of these people are in many cases, even though I do not personally know them. I know what they are struggling with. A friend of mine at White Pine Glass is an example of this. He wanted to do business replacing the windshields in highway patrol cars out in the Ely area. He wanted to respond to one of our solicitations. We sent him a solicitation. It was 80 pages long. This small business does not have an RFP response team or a legal team. I had to spend the time going through the process with him. Many of the complications stem from the Attorney General's Office terms and conditions. I am able to focus in on what is really important. When you break it down and help educate them, it helps tremendously. We do a lot of that in our office. I am trying to help people along. We have to be a little bit careful once we get the RFP out there. We do not want to appear to be helping write the response or giving them coaching or too much enthusiasm.

Making some of those awards is another thing entirely. I do not always have to give it to the lowest price. I can give multiple awards sometimes. I can give it to someone who is going to cost us a little more out in Ely, so that our troopers do not have to drive all the way to Elko for \$5 less. We can make it more convenient, and I can justify the awarding of those as a way to get some of these people into the procurement process.

**Kimberlee Tarter:**

We recognize that, and our staff has been working diligently to look on our forms and simplify our forms. We recognize when we are negotiating with a multi-million dollar company their staffing is completely different than when we are negotiating with a Carson City business owner. We are looking at simplifying the contract form and the solicitation forms based on dollar thresholds. We are also developing a form on our website that gives vendors insight into responding to solicitations. I would say that, while I think the procurement outreach is a good program, I do not know that they give out specific information on how to respond to a state solicitation. Our office does a considerable amount of training. It would not be outside of our realm to hold some informational workshops semi-annually to explain what vendors are seeing

in the bid and RFP documents in order to assist them in being better prepared to do business with the state.

**Chair Kirkpatrick:**

Maybe it is the local governments that we need to work more closely with as far as outreach to local vendors is concerned. I know in southern Nevada, they have done some local outreach. It tends to be very expensive for people to go to these workshops and spend the day. Rather than giving a bidder's preference, are there any other states that allow for the use of a local distributor based on requirements? For instance, if there is a company that wins a bid for both local and state, the RFP process requires that a local distributor be used. That may actually help some of the smaller businesses.

**Greg Smith:**

As the chairman of WSCA, fifteen western states that have gotten together to do approximately 20 contracts, computers and copiers are some of the large ones. That is what we have decided to start doing in recent years. One thing we were worried about with these conglomerate contracts is that we were going to be using these huge manufacturers. In essence, we would be cutting out a lot of the local people that were just as important. We have begun to do more business with manufacturers and have them select the local suppliers. The local suppliers are different depending on the state. This makes sure the business goes through the local retailers. It is something we are very sensitive to. We do it as much as we feel is feasibly possible. I will use Sierra Meat Company as an example. They are a long-time and good business. We went to the U.S. Foodservice prime vendor concept. Prior to going to that concept we were doing business with 60 separate vendors. We were buying different items from different vendors. When we went to the prime contract, we get all of those items from one vendor. A lot of those individualized companies did not like that process. Sometimes business moves in a direction that some of the local businesses cannot keep up with. We do our best to be sensitive to the issue. There is no one in public procurement that wants to see these small businesses go away completely.

**Chair Kirkpatrick:**

The cost of doing business is that there is a price for every invoice that is generated.

**Greg Smith:**

Getting the trucks in and out of a prison is not exactly an easy process. Having one truck show up with everything on there in one delivery is easier than having all the items brought in separately. There are many reasons why we have

chosen one vendor. It did leave a lot of local Nevada vendors who specialized in certain things upset that we had decided to do it that way.

**Chair Kirkpatrick:**

At least on the state level, you also put in another opportunity. They are called opportunity vies.

**Greg Smith:**

That is correct.

**Chair Kirkpatrick:**

I have learned over my time here. I understand that you are all trying to work with Nevada vendors. On the local level we will just work harder.

**Dan Marran:**

We are listening to the client and balancing the needs of the client and the state both financially and logistically. That is one of the challenges that we are faced with. At the local level we recognize that preferences may cost us money. We are trying to balance the very real needs of Nevada versus the needs of our agencies. My job need is to save my agency money. How do we balance that against the real need to help Nevadans get back to work?

**Chair Kirkpatrick:**

For every dollar the state spends, \$1.47 is generated within the economy. For the small business owner and constituent, nothing makes them more upset than having that money go to large companies. I will use a lockbox as an example. The larger banks require lockboxes, where you send licensing forms and fees, which are out of state. Nothing makes my constituents more upset than having to license their dog and send those fees to Arizona. Now, they just do not license their dog. We have lost doubly. There are times when it is hard to explain that process to the general public, who does not have a place within the game. That just adds insult to injury. It is just frustrating. I would almost rather have them send the licensing to the local governments and mail them all. That is the public perception from the basic constituency. That is the hardest question to answer. I have called the City of Las Vegas many times for my constituents asking why we are mailing licensing forms and such to Arizona. It is a purchasing issue that is attempting to save money. For the constituents, they would rather license their dog at home.

Are there any more questions? We appreciate the dialogue, and we have come a long way since last session as far as working together for the benefit of Nevada. We will now go to the Humboldt River Basin Water Authority.

**Mike L. Baughman, Executive Director, Humboldt River Basin Water Authority:**

I have been Executive Director for the Humboldt River Basin Water Authority (HRBWA) for the past 18 years. I have worked with many members of the Legislature on a variety of issues. I have provided a handout ([Exhibit C](#)) that has all the essential elements. It has a description of the HRBWA in it.

The HRBWA encompasses a very large area of Nevada. There is a map on the third page which shows the extent of the HRBWA and the river basin itself. It also shows the five counties that make up the HRBWA; which are Elko, Eureka, Lander, Humboldt, and Pershing Counties. The river basin is 7,000 square miles. The water that comes off the Humboldt River, on average, is about 296,000 acre-feet per year. The State Engineer and various court decrees have permitted about 690,000 acre-feet of water. That amount of water is available for use in an area of 690,000 acre-feet of water when there are only 296,000 acre-feet generated by natural forces through highly efficient reuse systems, primarily in the agricultural industries. Our area contains the largest gold mines in North America. We also have a growing number of renewable and fossil fuel energy projects.

The economy of the area is diverse. It is heavily dependent on natural resources. The annual variations in flow in the area do produce economic and environmental uncertainty. The pictures on the cover of the handout ([Exhibit C](#)) are the river at the same location, running completely dry at one point in the year, and at the other point in the year running at the banks. The five counties within the Humboldt River Basin Area, with Elko County and Eureka County at the point, have enjoyed the lowest unemployment rates in our state during this recession period. That is largely attributed to the five counties dependency on natural resources. It is a cornerstone of their economies. Natural resources and natural resource-based economies require water to perform. Mining is a good example of this. Agriculture is another good example. The HRBWA and the five counties that are incorporated are interested in and concerned about making sure the water resources that are in the area are available for economic purposes. It will sustain their economy. It has helped the state through the recession. It is also to provide for environmental and other recreational benefits.

The Humboldt River Basin Water Authority was established in 1993 by the five county commissions. It was created to respond to a very large water export proposal to move about 350,000 acre-feet of water out of the basin and into the lower Truckee and Carson systems. This move was made to supply the needs of the Reno and Sparks areas. We were organized under the Interlocal Cooperation Act of NRS Chapter 277. It is a very effective tool for bringing local governments together to address issues of common concern. That five county cooperation allows the HRBWA to operate in a large area and cover a

great deal of issues with an annual budget of roughly \$30,000 to \$40,000. With the vigilance that is provided and the kinds of activities provided for the counties, that is a really good deal. We meet every three or four months. The board includes one county commissioner from each of the five counties. It is a 15-member board. The board represents a variety of interests.

The major roles and responsibilities are spelled out in a very comprehensive interlocal agreement that was adopted by the five counties. Number one is to recognize and protect all existing decreed and certificated water rights. In the Humboldt River Basin, all of the surface water has been appropriated through decree. These are principally through federal or state court decrees. The water in many of the groundwater basins in the five counties is fully appropriated. If you were to go onto the State Engineer's website and look at the listings of water right applications in any particular month, you would see that most of the applications are to change the manner and place of use of water. It is not to appropriate new water. Much of the water in the state has already been appropriated. We formulate positions for presentation to relevant state, local, and federal agencies.

We get involved with legislative matters. The Humboldt River Basin Water Authority took a big role in 1994 and 1995 when the federal government proposed new regulations in something called "Rangeland Reform 1994." It would have basically taken the State Engineer's authority on stock water rights away. The federal government proposed that any water that was required for use by livestock permitted and run on public lands had to be in the name of the federal government. That was in contrast to state law and previous federal policy. We fought that with the help of the Nevada Legislature. Legislation was adopted that survives to this day which stemmed that situation. The federal government subsequently amended their policy to make it more consistent with our state law, which is the way our or federal government should respond to issues.

We have developed many technical publications for use in addressing issues to support the decisions that the HRBWA makes to inform other local, state, and federal decision makers. We have benefitted from programs by the Legislature. A few sessions ago Senate Bill No. 62 of the 73rd Session was adopted in 2005 providing grant funds for water resources technical work. We did receive some of those funds and produced four different technical studies that are listed here ([Exhibit C](#)).

I will now discuss some of the key issues for the HRBWA. There is a need for additional underground storage during years of below average runoff because of the uneven flows and variations from year to year in terms of how much water comes off the system. We are looking at opportunities for water banking. That

will enable us to take that water out of the system in years of very high flows. This will help us to put that water in the ground and store it. In years of very low flow we will take it out of the ground and put it back into the system. We will use it to meet existing decreed and certificated water rights.

We are also concerned with interbasin transfers of water, specifically where that interbasin transfer is to somehow impair the future local economic expansion or conditions in an area. We monitor federal acquisition of water rights in springs and seep sites, and we are particularly concerned about the growing federal role on public lands with regard to private interests.

We monitor the industrial uses of water that have the affect of impacting base flow on the river. All five counties are strong supporters of the Nevada mining industry. We work closely with the mining industry. There are impacts associated with mining that have the potential to affect existing water rights. The HRBWA works to try to minimize those impacts as best as we can. A particular issue that we have with the federal government occurs when approving some of these projects on public lands. If the environmental impact statement (EIS) shows the potential for an impact to a baseflow on the river, the Bureau of Land Management (BLM) is reticent to do anything about that. They feel that it is an offsite impact issue. Offsite mitigation is required in this case. The BLM does not get involved with offsite mitigation. That is an issue that needs to be taken up with the State Engineer. It is a concern to us. It has not been significant so far but every drop of water on the Humboldt River belongs to someone. When that water is used for industrial purposes someone is impacted.

Another issue is, long-term consumptive use associated with mine-related pit lake evaporation. An example of this would be the Lone Tree Mine, which is now closed. There is a very large pit lake there. That lake will act like a very large well for perpetuity. It draws water from the surrounding alluvium, comes into the surface of that lake, it evaporates off the top. As it pulls that water off the lake it pulls it from the surrounding groundwater basin. It acts like a very large well operating that way forever. There are no water rights associated with those. That is a concern that we have. Those pit lake evaporations are not included in the State Engineer's water budgets in terms of what is available in a basin to be appropriated. We went to the Legislative Committee on Public Lands during the interim. We made a presentation to them in November. We requested, among other things, legislation that water rights be obtained for pit lakes. We initially included gravel pits but have dropped that from our legislation. It is a very small issue. Pit lake evaporation is a big issue. There is a bill draft request (BDR) which has not been introduced yet. It addresses the

issue of pit lake evaporation. We look forward to working with you and the industry as that legislation comes forward.

**Assemblyman Goedhart:**

On that pit lake evaporation, are you estimating about 2 or 3 acre-feet per year? Is that what the net is?

**Mike Baughman:**

It is about 24 to 36 inches. It depends on where you are in the state. In the northeast part of the state it is in the 24- to 36-inch range probably.

**Assemblyman Goedhart:**

Is there something that has to be done with water quality that would allow it to be stored underground? Do you have to go through some sort of process to bring that water up to the standards of the water that is already in the aquifer?

**Mike Baughman:**

That is an issue that we have not looked into yet. It depends on the quality of water going into the system. We are not talking about reinjection. If the water was reinjected into the basin, it would probably have to be treated to meet those standards. However, if we are going to infiltrate it through the ground, depending upon the quality of water going into the ground, that infiltration process, in and of itself has the ability to clean that water naturally.

**Assemblyman Goedhart:**

Are you referring mostly to rapid infiltration bases?

**Mike Baughman:**

That is correct. It is a technology that mines use a lot of in northeastern Nevada.

**Assemblyman Ellison:**

Elko County has representatives on the board of the HRBWA. They always come back and give the commission a full presentation. There was a lot of information that would come out of that board. Would you please keep me informed of what is going on in the HRBWA? I think it is so important in what happens.

**Chair Kirkpatrick:**

The HRBWA has been very helpful as far as getting people information. Do you have a website?

**Mike Baughman:**

The HRBWA does not have a website. We are a low-budget operation.

**Chair Kirkpatrick:**

We need to up these contributions so that you can get a website.

**Mike Baughman:**

This is a fiscally conservative area. We have done very well during the recession. Some of it is attributed to their fiscal conservativeness. We will provide you all the information that we can.

**Chair Kirkpatrick:**

Are there any other questions? I always appreciate it when you testify in our Committee. We have 21 water bills this session, and the Committee needs to understand the structure of how water law works for the state.

[Committee recessed at 10:10 a.m. Committee called back to order at 10:27 a.m.]

**Chair Kirkpatrick:**

We are going to hear Assembly Bill 122.

**Assembly Bill 122: Authorizes the imposition of certain reasonable restrictions or requirements relating to systems for obtaining wind and solar energy. (BDR 22-592)**

**Assemblyman Pete Livermore, Assembly District No. 40:**

The intent of A.B. 122 is not to restrict the use of wind turbines and solar devices. It is to cause them to be more urban friendly. When the sun hits a shiny wind turbine, it sends a strobe light into neighboring homes. It can also cause temporary blindness for drivers in the neighborhood. The noise can be so loud that people cannot sit outside in their yard. They are forced to go inside, close the blinds, and turn on the air conditioner, thereby using more energy rather than less. The neighbors with the wind turbines might be saving energy, but surrounding homes will be using more. This bill will allow planning commissioners to require a muffle for the noise. The present law, as interpreted by many attorneys, does not allow this. Section 2 adds two words. The word "appearance" may have to be amended. I never intended that the homeowners' association would require certain colors. The word "finish" might be a better word than "appearance." Location would have to be governed by the requirements of the wind turbine itself and then the disturbance to surrounding neighbors.

While there is not yet written proof, clearly, if someone cannot enjoy his yard and his home, the value of the home and the property taxes are decreased. Neither of the restrictions in this bill are unreasonable. This clarifying amendment could provide for communities to better adjust to new and emerging technology. Solar panels in residential neighborhoods do not seem to be an issue. Other applications have emerged, especially in residential neighborhoods. Large solar array structures were not seen in residential neighborhoods of single family homes. Several are planned, however. Local school grounds of an acre or more are setting projects up with funding from government grants. When there is a choice of location, the Carson City Board of Supervisors has been able to have some say. Where there is no choice, surrounding homeowners have lost the view, lost enjoyment of their private property, and experienced decreasing value of their property.

**Chair Kirkpatrick:**

Could you clarify, is this for all renewable energy or just wind turbines in particular?

**Assemblyman Livermore:**

I am speaking of wind and solar energy in this case. I am speaking mainly in residential locations. I have prepared a presentation for this bill ([Exhibit D](#)). On page 2 is a message from me to the Committee regarding the development of renewable resources, wind and solar in particular. It speaks to solar panel installation in residential areas. These were fairly common and rarely controversial. The new 30,000- to 60,000-square-foot solar arrays next to homes were uncommon.

Page 3 is an article dated July 20, 2010 from the *Nevada Appeal*. I would like to quote from this article: "'There is a big noise factor. I hear it all the time. It's a whine, like a siren, and sometimes it really rattles. This neighborhood has turned into the Hatfields and McCoys,' said Bob Grosulak, who lives on North View Drive near a turbine owned by Tim Howard on Valley View Drive" ([Exhibit D](#)). The article continues on: "'I'm not against green energy, but solar is a lot more efficient and affordable,' he said, 'I think landowners should have a say in what goes into their neighborhood.'" The article quotes Valerie Wiens: "'Tim and Janet Howard are friends of ours, and I don't want this to come between us,' she said, 'I was in favor of the wind generator initially, assuming that the ordinance would take care of neighbors in the sense of noise limits. That has not happened. It is noisy.'"

On page four is a picture of the wind turbine on Valley View Drive. To quote the first paragraph, "'While all this nonsense has been going on, a neighbor on the opposite end of the block quietly put up a series of solar panels, which have

been quietly and successfully energizing their home ever since. No fuss, no noise, no animosity, just quiet efficient use of the sun's energy.'"

On page five there is a situation similar to the one I just mentioned. [Read from statement on page 5 ([Exhibit D](#)).]

On page 6 there is a picture of a wind turbine on West Washington Street. It has the wind turbine and solar panel. Page 7 is story published in the *Nevada Appeal* on January 7, 2011. [Read from article on page 7 ([Exhibit D](#)).]

On page 9, there is a schematic of the school site. The solar array that is being constructed in the back of the school site that abuts the residential neighborhoods is present in the schematic. Mr. Paul Eastwood is in the audience and will testify on this issue further. This is a 60,000-square-foot solar array. To speak about the second school site, there is an article from the *Nevada Appeal* on page 10. [Read from article on page 10 ([Exhibit D](#)).]

On page 12, there is an example of what a solar array looks like. This is a solar array that was constructed in the National Guard armory on Fairview Drive and Edmonds Drive. This is an extensive solar array. It does not abut any residential homes; there has been no controversy about the construction of it or the location. It simply gives an example of what these people would be living with outside of their homes. On page 13 is a picture of Pinion Hills in the Carson City area. It is a site that has both solar and wind energy. At this location, both of these applications, a wind turbine and solar panel, were installed long ago and raised no public objection. On page 14, there are a couple of other examples of renewable energy sites on Eastlake Blvd., in Washoe Valley. The parallel or vertical pole is visible. It is about 65 feet high. It is the same with the Dry Creek Gardens on U.S. Highway 395. There have been no complaints on either of these sites. The way they are located and applied they are not in the proximity of neighbors. They are good applications.

On page 15, there is an example of additional methods of alternative energy of wind. These are windspires. These are 35 feet high. They are located in Pleasant Valley. They appear to be of no concern to their neighbors. On page 16 is a picture of a wind turbine on Brenda Way in Washoe Valley. There have been numerous complaints of noise and proximity to the power lines. The erection and appearance, compared to previous example I have given, make this particular turbine problematic. On page 17, there is a Carson City Board of Supervisors Notice of Public Hearing that will take place. This is an appeal by the Carson City Planning Commission. This is not from neighbors but from the applicant. This applicant originally proposed to the planning commission a tower of 160 feet with a wind turbine on it. Just for measurement comparison,

the Ormsby House is roughly about 110 feet. That would be one and a half times the size of the Ormsby House. The planning commission has requested to lower the proposed height to 111 feet. Even that is an extreme height. Look at the parcel size that this is being constructed on. It is being constructed in an area zoned single family residential with a minimum lot size of 6,000 square feet on Schultz Drive.

**Assemblywoman Neal:**

You added the word "location" because you feel it will reduce the noise. Is that correct?

**Assemblyman Livermore:**

In solar arrays, the height and the magnitude are the problem. "Location" was initially the selection of the word. Planning commissions and local governments should have a right, although setbacks are important to this and by most times, it is a usable term. In the case of the school site, a "location" could have been better worked out in an arrangement with professionals from the city, school, and residents in the area. This would have been better because the residents would have better cooperated and blessed these projects. That is why I chose the word "location."

**Assemblyman Ellison:**

Does the permitting process to building permits require an appearance in front of the planning commission in your district? Also, from the planning commission then it goes to the board of supervisors if the decision is challenged. Is that the correct process?

**Assemblyman Livermore:**

That is the general process. With the ordinance that we have developed, it does allow for installation of certain projects under an application process. The administrative part of the planning department has a right to approve. If there are size setbacks or other elements, then the planning commission does have some small control within the balance of what is in statute.

**Assemblyman Ellison:**

This bill looks like it is confined within city boundaries. Is that correct?

**Assemblyman Livermore:**

Carson City is a city. There are urban and rural parts. We do not separate them however. It only has one planning department and one board of supervisors to oversee the entire city. There are objections within the residential neighborhood. That is the reason I am bringing this bill forward. My constituents have spoken about their problems. The answer from the planning

department has always been that they are restricted by state statute about what they can and cannot do. I offered a couple of changes. It is a way to give the planning commission and the planning department some tools to work with. It is not my intention to restrict the creation of new technology.

**Chair Kirkpatrick:**

I believe that *Nevada Revised Statutes* (NRS) Chapter 278 applies to everyone in the state. If I remember correctly, this was Senate Bill No. 437 of the 74th Session. This was Senator Townsend's bill. They were having trouble with homeowners' associations allowing solar development. This is where this bill was generated. I thought that the local governments had the ability to write ordinances based on what worked for that particular government. Each entity is going to have their issues on what works. That is what made that bill unique.

**Assemblyman Livermore:**

I would like to introduce Mr. Bruce Kittess for his testimony.

**Chair Kirkpatrick:**

We are going to go in order. All those that are for this bill will testify first. Those that have an amendment qualify under the neutral category and will go second.

**Bruce Kittess, Private Citizen, Carson City, Nevada:**

My name is Bruce Kittess. I am 76 years old and retired here in Carson City. I spent my career in land development and residential subdivisions. I speak today as an interested private citizen. [Read from prepared statement ([Exhibit E](#)).]

[Assemblymen Anderson, Munford, Neal, and Stewart left the meeting.]

**Assemblywoman Benitez-Thompson:**

In the testimony and the presentation ([Exhibit D](#)), there seem to be many complaints about the wind turbines and the amount of noise they make. Under the current statute, noise is a factor that can be considered within those restrictions. Is there a proper remedy without further legislation?

**Assemblyman Livermore:**

Noise has already been embedded in the ordinance. The local government body needs to address the issue of noise in its own accord. I am not amending anything. For the residents that I have spoken with and the applications that are here, that is the issue they are facing at this time.

**Bruce Kittess:**

We have a 65-foot wind turbine in my neighborhood. The city code says that it cannot exceed 50 decibels. It has been tested at higher than 50 decibels. The homeowner has spent \$15,000 to \$20,000 on this turbine. What is the city going to do? The city does not want to spend money on litigation. It is already there. It cannot just be moved.

**Paul Eastwood, Private Citizen, Carson City, Nevada:**

I live in the Seeliger Elementary School area on Shady Oak Drive. I am in support of A.B. 122. Is there any idea of what the renewable energy project at Seeliger School will look like after it is installed? The ground work has been laid already. The area has been cleared. It will give you an idea of how large this ground-mounted solar array is. It is larger than I had suspected. My concern is, it is 60,000 square feet. It is a football field long and approximately 40 feet wider than a football field. It is going to generate electricity; it will have an inverter that will convert it from DC to AC power. It will connect into the school. It will be approximately 6 1/2 feet high. It will have a chain-link fence around it. That is not even a challenge for children. That is one of the major concerns that my neighbors and I have. During a meeting last week at Empire Elementary, the principal noticed that there were children that were snowboarding off the top of the roof of the school.

It is also a property value issue. It is definitely going to decrease my property value because my property abuts the area. A family from Rhode Island stopped to look at a house two homes down from mine. I explained what was going on with the solar project at the school. He walked away from the property. I called the realtor for my own information, simply because I believe that it will decrease my property value quite a bit. With the clearing of the land alone, the realtor lowered the price on the house being sold already. It is a definite problem. It is something that can be placed somewhere else. The school project at Eagle Valley Middle School had three alternative sites. We were not that lucky. The other sites, like the one at Carson Middle School, have the shaded area that was tastefully done. The other two sections did not need permits because they are in areas that are residential.

The way the board of supervisors looked at it, their hands were tied. There was nothing that they could do about it because of certain regulations. It is terrible something of this size would be installed in an established neighborhood like we have near Seeliger Elementary School.

**Chair Kirkpatrick:**

It would be helpful if the Carson City Planning Division was in on this discussion. I am not sure what information they have. I am not sure what their opinion on this bill is, but I would like to hear from them. I served for four years

on a planning commission. I understand noise attenuation. The planning commission in Las Vegas has made people take things down that do not meet the city's criteria. For instance, car wash vacuums have to be fewer than 65 decibels. They have made people actually remove those from neighborhoods. I am curious as to what they were presented. It seems more restrictive than most codes. I was curious whether you presented the 60,000-square-foot solar panel when the planning commission heard it the first time. Were they aware of that?

**Paul Eastwood:**

Yes. I went before the planning commission. I am the one that appealed to the board of supervisors. I wanted to carry it through so that I could sleep at night knowing that I tried to stop this from going in. We stated the same thing that the planning commission felt that they had no regulations. It voids every restriction in our master plan here in Carson City. It is the height and setback requirements. The decibels on the inverter itself are at 65 decibels. If you have a map of the area, this 60,000-square-foot array is going to run parallel along the soccer field. This is used by neighbors' children. I have seen individuals walking in that area. They have it fenced off because of the construction, but people in the neighborhood can still get access to that area.

**Chair Kirkpatrick:**

Did the planning commission have the ability to orient the product?

**Paul Eastwood:**

They did. Hamilton Solar and Mike Mitchell Management, LLC moved it from 30 feet to 90 feet off the property line. That was a break for the residents on the north side. They have made a little concession. When you actually look closer, 90 feet is not much. If you look at the pictures, it is similar to looking at the back end of a bleacher at a football stadium. It is not pleasant to look at.

**Chair Kirkpatrick:**

Did the school make a statement on why they picked this particular type of solar panel? There have been grants for all schools in order to make them more energy efficient. Across the state people used the American Recovery and Reinvestment Act (ARRA) to put solar panels in schools. Did they specify why they used this particular type of solar panel?

**Paul Eastwood:**

This was the next to cheapest. The least inexpensive are roof-mounted. The second least expensive are ground-mounted panels. The most expensive are the overhead shaded structures. I have timed the sun in the front and back of the school. It is the same amount of sun. There is no deflection from the

mountains. The cost is the large issue. It would cost quite a bit more to have the panels out front. One of the other issues I discussed, I was hoping this would be part of ARRA. Most companies are going to China for their solar panels. That is defeating the purpose of the ARRA funds.

**Chair Kirkpatrick:**

We are trying to get companies to build solar panels in Nevada.

**Paul Eastwood:**

We have a small number of solar panel manufacturers within the United States. One went out of business because he could not compete with the companies from China. As far as this particular area is concerned, they call it infill. That means that it is a vacant lot. It actually was not. It was great for wildlife. The locals use it year round for various outdoor activities. The school called it infill and now it is no longer there.

**Assemblyman Ellison:**

I am looking at the panels that are shown on page 9 ([Exhibit D](#)). Your house is facing the area. Is that correct?

**Paul Eastwood:**

The back end of my house faces south. I will look at the rear end of these solar panels.

**Assemblyman Ellison:**

I can understand where the school district is coming from; \$400,000 a year is quite a bit of money for the school district to save. I did not see an alternative location to put these solar panels.

**Paul Eastwood:**

In the front of the school there is a large grassy area where these panels could be installed. It would be great for drop-off and parking.

**Assemblyman Ellison:**

What about the rooflines? Could they be installed there?

**Paul Eastwood:**

I was told that the roof was failing. The roof needs to be repaired every three to five years. That would have been the ideal place. My idea was to refurbish the roof and install the solar panels, but that was not their way of thinking. The other problem that arose was that we are being restricted to the size of the facility. Carson High School is going to receive 100,000 square feet of these solar panels. The school is limited to that amount because of the usage at the

school. They have a huge area at the back of the school that is agricultural. That is why Carson High School did not have to apply for a permit there. If there were not restrictions, they could have taken this solar array and put it behind Carson High School and still receive the credit.

**Assemblyman Ellison:**

I am not trying to get into the design of the school. I was just trying to figure out if there was an alternate space by the permitting process through the planning commission.

**Chair Kirkpatrick:**

That is the same reason I was asking about the planning commission. We have not seen this problem at all because I am from southern Nevada. I have not heard any of these problems with the exception of a windmill problem.

**Paul Eastwood:**

It has to be constructed by July 1, 2011, or they have to ask for an extension.

**Chair Kirkpatrick:**

Is that because this is ARRA money being spent?

**Paul Eastwood:**

It is stated by NV Energy. They are receiving rebates from the school.

**Bob Grosulak, Private Citizen, Carson City, Nevada:**

I am aware of what is going on in Carson City. I have been before the planning commission and the board of supervisors addressing issues on this problem that we are discussing here today. A big issue I would like to address is noise. Appearance, safety, and home values are also important. I was out in my backyard the other day when we had spring weather. It was a breezy day. The turbine near my house was doing its thing. I stopped and looked around. I thought to myself, I could potentially have six or eight turbines around my property. What would the noise factor be then? In my neighborhood, we are on 1 1/2-acre parcels. The way my property is situated, I am in the middle. I could have six or eight of these windmills around me. They could be put up according to the planning commission and the city's authorization. The noise that they emit can go from a dull hitting to a siren. When the wind is blowing they can sound like a helicopter. They have supposedly done another study on these. According to this study, they are above the allowable decibel level in the residential areas. Nothing is happening about it. From the city planning commission we receive word that the commission cannot restrict these windmills. The reason is because the underlying fear is that the state will sue the commission for violating the law.

We are coming into spring, summer, and fall. That means that we will all be outside a lot. I am an outdoor person. I will not be able to enjoy the outdoors at night. I will have to listen to a siren or helicopter. It is whatever description you want to put on the sound. My home has provided me a place of peace and solace. I believe everyone has that right. I believe that wind turbines do not belong in residential areas.

**Chair Kirkpatrick:**

Cellular towers were a big deal a few years ago. They were a big monstrosity and no one wanted them anywhere within five miles of their home. As technology changes, if these windmills were cut down in height or a smaller design would that make a difference? Or, are you just opposed to wind turbines altogether?

**Bob Grosulak:**

I am not opposed to wind turbines altogether. I am simply opposed to the noise that they create. We are not addressing what needs to be done right now.

**Chair Kirkpatrick:**

I was just trying to get to the heart of the issue.

**Bob Grosulak:**

At the moment, I am living with the ugliness of it. I can accept one, but another half a dozen more around me would be another issue.

**Gary Carsten, Private Citizen, Gardnerville, Nevada:**

I would like to applaud the effort of Assemblyman Livermore on this issue. It is way overdue. I am in support of reasonably restricting the wind turbines. During the 2005 Legislature, Assembly Bill No. 236 of the 73rd Session was proposed that gave power to the local governments to regulate the issue of wind turbines. There was also a mandate that local governments come up with an ordinance on it. Douglas County has done that as well as some other counties. During the 2007 legislative session, Senate Bill No. 114 of the 74th Session was proposed. The bill states that if a wind turbine is installed and the local ordinances restrict the efficiency of the turbine, then the restrictive ordinances are null and void. That is pretty heavy-handed. That is not cooperation from the state in dealing with this issue. The large wind turbines are not neighborhood friendly. The newer technology that does not have to reach above the roofline and the tree line is just as effective, and you can have multiple turbines. They are very compatible with residential areas. I am not against that. I am against the larger turbines that compromise a person's quality of life. I would like to see it restricted to where the turbines do not decimate the whole neighborhood.

**Chair Kirkpatrick:**

We will now hear the opposition.

**Jason Geddes, Environmental Services Administrator, City of Reno:**

We have been participating in this renewable energy program. We have installed nine wind turbines on city property. There are another 16 that have been installed in the City of Reno. We are in opposition because we believe that the way the law stands now is working. The City of Reno went through a public process and updated our code in 2008 to be in compliance with the law. We put in standards such as noise at property line, setback, color of poles, and installations. We also use code enforcement if someone is not adhering to the code that is in statute. We have had two amendments since we first put that into effect in February 2008. The City of Reno feels that it works very well. It is an open and public process. We publish what the codes state. We allow people to come and testify. We created our ordinance that way. We feel what you have in statute is working well. We get nervous if words like "appearance" make it difficult to install solar arrays or wind turbines. It also makes it difficult for code officers and building officials to interpret.

**Chair Kirkpatrick:**

Do you have a copy of the ordinance that the City of Reno created that you could send to the members of the Committee? I will ask that of every local government. I thought that there was the ability to create an ordinance that worked. Does your ordinance address large-scale renewable energy above 25,000 square feet?

**Jason Geddes:**

Yes, I will submit a copy of the ordinance. We have two different sections. One is for small wind turbines and solar installations, and the other is for what we call utility scale that goes through a special use permit process. In ours, we distinguish based on the property type as to what the codes are and how they are applied.

**Chair Kirkpatrick:**

Mr. Geddes is very knowledgeable in this field.

**Assemblyman Ellison:**

Your codes address wind turbines. Do they also address solar panels?

**Jason Geddes:**

Yes, we have a section on solar panels in our ordinance. We require screening of solar panels as long as it does not block the performance of the panels per the NRS.

**Assemblywoman Benitez-Thompson:**

What is the City of Reno's process for people who have concerns about noise? Assemblyman Livermore's constituents do have a big concern with noise, and it seems to be that the local process does not empower them. Does that apply in the City of Reno?

**Jason Geddes:**

We have a very strong code enforcement office at the City of Reno. They go out when they receive a complaint or are on routine inspections. If they see issues of concern, they will write a citation. They will give a person a certain amount of time to correct the problem. If not, they will fine the offending person and make them take the system down. We addressed noise in our code because it was the biggest issue. We set our code at 60 decibels at property line with some exceptions for high wind events. Outdoor air conditioners are required to have 60 decibels or below and that is the same standard we hold with wind turbines. Our rule is they can be as noisy as an air conditioner. If someone was outside and his neighbor's air conditioner was going, we only authorize the wind turbine to be just as loud as the air conditioner. If it does exceed the specific high wind situation, we will make them take it down.

**Assemblyman Ellison:**

Do you issue permits on a temporary basis? If I put \$25,000 into a wind turbine, I would want to know ahead of time if I would be out of compliance of the ordinance. Is your permit revocable?

**Jason Geddes:**

I would have to look at that issue specifically. I am not an expert in that area. We require that a professional engineer certifies the plans and that they are in compliance with the law.

**Assemblyman Ellison:**

If you are going to issue a citation stating that someone is outside of compliance, that is one thing. To remove, you would have to have some kind of revocable permit.

**Chair Kirkpatrick:**

When you get a special use permit, you are agreeing to all of these conditions. Your vested right can be revoked if you do not comply with all of those regulations set forth in the permit. As I understand it, the processes are that if someone is in violation of these conditions, then they are given citations several times for compliance issues. If it is not rectified, then the local government can ask for it to be removed. In my recollection, there was a flagpole that was causing essentially the same problem. It took a while, but it ended up being

removed. When someone agrees to all of the conditions on the permit, it is a contract.

**Assemblyman Ellison:**

I have seen this challenge here recently. That is why I am asking what kind of permit is used, and whether or not it is revocable.

**Chair Kirkpatrick:**

I believe they are all under special use permits.

**Jason Geddes:**

The City of Reno always tries to contact everyone in the neighborhood as well. We always try to make sure that the system is appropriate for the place it is being installed. We installed two turbines next to a residential high-rise in downtown Reno that does not have air conditioning and has to have their windows open. We put in two very quiet turbines right next to the high-rise. It fits the environment. In our industrial setting, we can put in louder wind turbines.

**Jack Mallory, Director of Government Affairs, International Union of Painters and Allied Trades District Council 15:**

We are opposed to this bill on some base principles. Section one adds the provisions regarding restrictions related to location and appearance. Obviously, it applies the majority of provisions in section two on solar energy facilities. These are industrial-type pieces of equipment. While some wind turbines may have something of a graceful look to them, they are industrial equipment. I know that we have had problems in southern Nevada with the pig farm. People bought homes in the vicinity of the pig farm and they tried to make the pig farm move. The pig farm was there first. I know that this is not necessarily a good example as it compares to this specific situation. This is only relevant because people put lipstick on a pig in order to make it appear to be appropriate for that setting. This bill would put in statute the same types of requirements regarding the installation of renewable energy equipment that were stripped away from homeowners associations in the previous legislature.

**Kyle Davis, Policy Director, Nevada Conservation League and Education Fund:**

We are opposed to the bill in its current form. Our organization supports the development of distributed generation of renewable energy that does not require large plots of land and reduces our reliance on fossil fuels. I spoke with Assemblyman Livermore last week. I understand what he is trying to accomplish with this bill. As the bill is currently written, the language is too broad and can result in restrictions that would shut down the industry and not allow for installations to occur. Specifically regarding the issue of wind, we feel

that the words "appearance" and "location" are too broad. With those considered as reasonable restrictions there would be a way to write an ordinance that would not allow for installations to occur. Many of the issues that we have heard during testimony this morning are not unique to wind installations. We are currently able to regulate on height, noise, and safety.

In Mr. Geddes' testimony, he stated that they implemented an ordinance that stated that in a residential area, the noise of a wind turbine could not exceed that of the sound of an air conditioner. Some of these issues are not unique to wind turbines. This issue is not new to the Legislature. We dealt with this issue last session, as well as the session before, in terms of finding a way to not have local rules that put such restriction on the installation of these systems that we would not allow for it to happen. I have heard the arguments about solar energy. I do not feel that we are talking about an issue significant enough to justify putting this language into statute. I am willing to work with Assemblyman Livermore. I would like to continue to try to solve some of these issues. We cannot support any language that will potentially set up a situation that will prohibit future installations. We feel it is a very important part of building our renewable energy economy.

**Assemblyman Goedhart:**

Do we have different laws, rules, regulations, and zoning in the Carson City area than in the City of Reno? It seems like in the Reno area they have been able to work collaboratively with people on all sides of the issue. Is there something that we can do in the Carson City area to emulate the process that seems to be working in the Reno area without having to do a legislative change?

**Assemblyman Livermore:**

I have never looked at Reno's code. I have no information or knowledge of what is written in their ordinance. I served as a member on the Carson City Board of Supervisors. When we debated the issue two years ago and created the ordinance, we were limited to what we could impose. You have heard in the last couple of testimonies the impediments that the industry is moving towards. I am not trying to inhibit the growth of this industry. I am trying to give some relief to my local residents who, because of the current installations, are hindered by this process. I am not speaking about commercial zonings or zonings that do not require a special use permit. Mr. Davis spoke about solar panels. I am speaking about the issue of solar arrays in residential neighborhoods. Those may not be what we understood in 2009. I no longer serve on the commission. However, I can speak to the mayor about reopening that issue and discussing it again.

**Randell S. Hynes, representing Nevada Solar Authority, Ltd.:**

I was glad to hear the City of Reno speak on this issue and state that the law does work. It seems that during the early part of the hearing, some of the issues that we tried to address were municipal issues. The City of Reno is doing it right. I would like to echo Mr. Davis' comments about subjective terms having the ability to shut down projects. I have a copy of my full statement regarding this bill ([Exhibit F](#)). I would like to read my closing from that statement. [He reads paragraphs four and five of ([Exhibit F](#)).]

**Chair Kirkpatrick:**

There has been talk about 60,000 square feet at once. That is a sizable amount of space. Is there an industry footprint or area size for the stand-up solar arrays versus the rooftop-installed solar panels? Is there something that we could get in writing that shows the area used up by both of those types of panels? It is for us so that, as local governments do put their own ordinances in, they could address both footprints?

**Randell Hynes:**

Do you mean how many watts there are to a square foot?

**Chair Kirkpatrick:**

I would like to see a diagram of what both are supposed to look like. The difference between the two types of solar energy fields was never discussed. We have commercial businesses wanting to do more construction in that field. If we are going to address the concerns, then we need a basic idea to help us understand how much area is actually being used. I thought the industry might have something that could show us this.

**Randell Hynes:**

The delineation is between net metering connections and stand-alone systems of 1 megawatt (MW). It is 1,000 kilowatts (kW) and there are about 13 watts to every square foot that we install.

**Chair Kirkpatrick:**

I understand that. However, my constituents do not understand how much that is. Does that mean half a football field or does that mean a parking space? We work on this heavily with zoning issues, so I understand what it means. In planning there is a lot of detail. I was just wondering if there were some industry standards that help these entities that do not understand these things to take a closer look at it. I will use cellular towers for an example. You can now get a pine tree, palm tree, or stealth design to hide these towers. The industry has different things out there. At the end of the day, it still states that the tower has to be 23 feet on the bottom and it has to be a minimum of

50 feet high. I am trying to address my constituents concerns while giving them some direction on the local ordinance side. I know that the industry does have some standards. That is what I am looking for some direction on.

**Randell Hynes:**

I have all of those numbers in my head, but I would bore you talking about them all day. There are standards in terms of how many watts are in a square foot or how far apart they need to be spread so that the full 100 percent is not used. It is in the neighborhood of two-thirds of the neighborhood's actual panels. The other issue is open space that can be driven through to get maintenance access.

**Chair Kirkpatrick:**

If you could get some of that information to the Committee, that would be helpful.

**Leslie Medeiros, Business Owner, The Solar Store:**

We have been in business since 2006. We are a struggling small business. I have heard that Nevada is friendly to small business. If you implement the changes on A.B. 122, it tells my business to go away. The most difficult part of our job is that we have a diverse clientele. Each and every client that comes in the door may come from a different county or city. We have to deal with each and every "location" or "appearance" as stated in the bill. It would complicate our job. We would be spending all of our time dealing with ordinance restrictions that are subjective rather than the general NRS. I feel that it was well thought out and well created. The expense, in terms of time, that we have to invest is great. I appreciate the access that the State of Nevada gives to a small business. I can go into the Attorney General's and Secretary of State's Offices and be greeted personally rather than getting voicemail or an office that is closed to me. Putting another layer of restriction that would filter that process would be detrimental to small business in Nevada. As Nevada has been blessed with an abundance of solar power and wind power, we need to make use of that. It is an extension of the talent that we were given. Are we going to bury it in the ground or are we going to make use of it?

There are appropriate places for large and small solar arrays as well as larger and smaller wind turbines. For people that are not familiar with the things that were mentioned earlier, the roof tiles are perfect for places like Florida or Arizona, places where it is not as cold as it is here. Those thin films also require two to three times the amount of area. That means roof space. These tiles do not do well in the cold. They have not been proven as a regular solar panel has that is monocrystalline or polycrystalline. When speaking about wind production, the consistent wind is what is being sought. The wind turbine

needs to be up higher. The wind turbine radius needs to be at least 120 feet from the base of the turbine. That is why the height is needed. That is where the wind production is. The wind spires that were mentioned are a lawn toy. It does not cover the normal household needs of 750 kW usage, which is the average in Nevada. You would need at least three wind spires to generate that electricity. That would be prohibitively expensive. It would require three basic installations, three concrete foundations, three points of wiring to the panels, and so on. Putting up one wind turbine would make more sense.

The other issue is that "not in my backyard" is going to come back and bite us. I consider a wind turbine to be beautiful when I see one going. I see the one in Washoe Valley on my trips to Reno. It rotates slowly. The beauty is in the eye of the beholder. What someone considers ugly, someone else considers beautiful. Appearance is subjective. Each of us has a different appearance and each of us has different hearing levels. That needs to be considered as well. When our gas is \$5 or \$7 a gallon, how much more ugly or beautiful will it be? Please consider that before you make adjustments to this statute.

**Assemblyman Goedhart:**

Have you seen an improvement on the decibel rating on the newer generation of wind turbines? For some people there is an acknowledgement of the benefit and worth of having to make a sacrifice with their old view. One of the complaints I hear is about the noise levels that these wind turbines make in the residential areas. I hear from some people that it is only as loud as an air conditioner, and from some of the testimony that I have heard today, it sounds like it is an air raid siren. Can you elaborate on that a bit?

**Leslie Medeiros:**

One of the wind turbines put up in Washoe Valley was put up on a home that met the requirements of Washoe County. The requirement was a fairly new ordinance. However, the home was built 25 to 30 years ago. The NV Energy line was not appropriate to the wind turbine itself. We found this out from the manufacturer, who has put up five or six hundred wind turbines in the world. They told us when it was put up that there could be a possible problem with the line. It was an NV Energy problem. They have since changed it, and they changed it promptly. They have had monitoring on the wind turbine. If there is an incompatibility, sometimes it is not the wind turbine. It is the NV Energy line that is being supplied to the house. Where the line goes to the house is a different connection. That is what happened in the Washoe instance.

These wind turbine manufacturers have done measured decibel levels. Some of them are from the National Renewable Energy Laboratory, which is an independent organization. Unfortunately, even though those statistics are

presented as independent organizations, residents of the neighborhood may not realize that they have been living with ambient noise that is equivalent to the wind turbine noise that is created. At the property line of some of these installs, the ambient noise was 40 decibels. For example, in Carson City the noise level on a property less than an acre is 25 decibels. That means that they do not want a wind turbine anywhere next to that kind of property. The ambient noise is already 40 decibels. This is an example of being too specific. If they said the wind turbine created noise above the ambient noise by five decibels would not be allowed that would make sense. To put a number and get so specific does not make sense. The residents have not realized that their neighborhood is changing.

**Rose McKinney-James, representing The Solar Alliance:**

The Solar Alliance is a national association of solar electric manufacturers, installers, integrators, and financiers. We have reviewed A.B. 122. We are opposed to the measure as it is currently written. Many of the reasons that we are opposed have already been articulated. It is important for us to recognize that when we look at public policy, it is a balancing act. For those of us that are advocating for a more renewable development in the state and for giving residents more opportunities to make these investments, we certainly support their opportunity to do that. We think that it should be done balancing the interest of the residents in the communities in which these projects are being developed. We would like to be a part of the conversation going forward. As this bill is currently written, specifically in section 2, I think that we have some work to do. I am only speaking to the solar component. We need to have some additional clarification. We are looking at the use of the word "appearance." That has already been identified as a problematic area. I agree that it is subjective. Consistent with prior testimony, beauty is in the eye of the beholder. If we are talking about balancing safety and the noise considerations, we can arrive at a reasonable accommodation. I would like to go back to my clients and identify an answer to an earlier question with respect to standards and configuration. I believe the answer is going to be that it depends on the nature of the project. With respect to current restrictions around that metering, the largest configuration would be 1 MW. When we are looking at commercial installations, it is our hope to expand and distribute generation to commercial. Mr. Livermore has clarified that he is only focused on residential. We can arrive at some accommodations, and we would like to be a part of that discussion going forward.

**Chair Kirkpatrick:**

If we are going to address the residential, then we might as well address the commercial because in two years we will have to address that as well.

**Joe Johnson, representing the Sierra Club, Toiyabe Chapter:**

We are in opposition to the bill as written. The complaints that you have heard are valid complaints. The resolution of those may require the wisdom of Solomon. This is a continuing issue. It has been discussed in numerous sessions. The problem is finding reasonable terms that have some application to utilization in the industry and the recognition of individual property rights. The defining of a process to resolve the conflict between those also needs to be resolved. I will respond to the question about why an ordinance in Reno or Washoe County may be significantly different from those in Carson City. Part of it is the impact of Dillon's Rule and the interpretation of how strict the statutory requirements are. This is something that model ordinances may be able to address. In some cases, we do not want to make one size fit all. There are model ordinances out there that have gone through the process of vetting in various places. We would like to continue the discussion and be party to the discussion on this bill.

**Chair Kirkpatrick:**

Is there anyone else who would like to testify in opposition to A.B. 122? [There was no one.] We are going to start with the amendments first.

**Mary Pierczynski, representing Ann Hall:**

Mrs. Hall is a Reno resident who has had personal experience with the wind energy project located next door to her home in Reno. She would like to tell you a little bit about her experience. We support this bill and have offered a friendly amendment to the bill ([Exhibit G](#)). That has been discussed with the sponsor. We would appreciate an opportunity for Mrs. Hall to speak to you and the members of the Committee.

**Chair Kirkpatrick:**

Please go through the amendment section.

**Ann O. Hall, Private Citizen, Reno, Nevada:**

I have recently been involved in litigation involving NRS 278.02077, which is the statute addressed by A.B. 122, the wind turbine section. Because I have been through this legal proceeding with the wind turbines, I was hopeful that I could serve as a resource to the Committee on these issues. You have heard a lot about aesthetics and other issues. Those are important, but my focus is a little bit different. My neighbor purchased a property on December 22, 2010. On January 5, 2011, he broke ground on a 75-foot, 25,000-watt system. This is an individual man who lives by himself. He is a pilot. He is only in his house 3 1/2 days per week. As with most issues, it is the unscrupulous companies which bring issues in laws and bills to the forefront. I believe that it has happened in this instance. This company was charging this man \$130,000 to install this system. They took \$50,000 in profit off the top. They sold a single

man that was home 3 1/2 days out of the week a 25,000-watt system. The expert testimony during the legal proceedings was that a family of four only needed 5,000 kW. We filed a complaint and received a temporary restraining order. We got a preliminary injunction and then received a permanent injunction. When this person would not stop, we got a hold of Washoe County and got an order to show cause as to why he did not follow the judge's orders. He did not get a special use permit. Ultimately, the project was red-tagged by the county. I did need to go through the entire injunction trial. I was granted a permanent injunction.

With respect to NRS 278.02077, subsection 1, paragraph (b), there are three property restrictions. The restrictions are in the chain of title. Those are easements and covenants. Those are covenants, conditions, and restrictions. There are zoning and public planning laws. Those are enforced by the government. There is also a body of law under the heading of "nuisance." These are, what are called, the "three horseman." This example shows how private property rights, covenants, conditions, and restrictions can collide with the zoning regulations. Many times at a board of assessment meeting, a private citizen will complain that the covenants, conditions, and restrictions protect him from certain zoning laws. It is not the job of the board of assessment to enforce private property rights. That is not what the government does. Those are your covenants, conditions, and restrictions for your private property. Here, the issue with paragraph (b) is that you are stating that any restriction is void because of this zoning law. By legislative fiat, you are overriding vested private property rights.

In my case, the covenants, conditions, and restrictions in my neighborhood are very strict. They went into effect in 1986. Our neighborhood does not allow anything over ten feet. All utilities are buried. There are no telephone poles or other utilities in my neighborhood. When this person bought the property a month ago, they came in with notice of these restrictions but, because of the unscrupulousness of this situation, they felt that NRS Chapter 278 protected them. They felt that there was nothing that anyone could do to stop the installation of this 75-foot wind turbine. You are opening yourself up to a tremendous constitutional challenge because you are taking away vested property rights by legislative fiat with no due process. It is going to be an issue of protracted and ongoing litigation. One way that you could seek to address that is by having prospective application in section b. This way people know it will not affect their covenants, conditions, and restrictions. Going forward, please know that you can not unreasonably restrict wind.

With respect to the unreasonable restrictions in subsection 3, this became a big issue at our trial because this can be interpreted incorrectly. "Unreasonably

restrict" means that you cannot allow for a system, at a substantially comparable cost with substantial comparable efficiency and performance. The way this was interpreted is that it needs to be a comparable wind system. All areas in Washoe County are not suitable for wind energy. Some areas are better suited for geothermal or solar energy. At the beginning of NRS Chapter 278 the enabling portion of it says that the stated purpose is to promote renewable energy. Most ethical companies in Nevada will do a site assessment. They will analyze whether wind is appropriate in a specific site. They will then look at other renewable energy that suits the site. In my particular case, there were no anemometer readings. There was no site assessment. This company wanted their \$50,000. It became abundantly clear that the only green they were interested in was money. They did not care about the renewable energy or that it was not going to generate kW. The stated purpose was to get the dependents off of the Tracy power plant and avoid the dependence on fossil fuels.

The way this bill is written, the wording could be changed to say, "use of an alternative renewable energy system." In other words, to promote renewable energy, it could be geothermal, solar, wind, et cetera. There needs to be some kind of assessment for efficiency. If someone spends \$130,000 to put up an 80-foot turbine, they are not going to want to take it down. There was a 94-year payback period in this case for a 58-year-old man. The company did not care. They wanted to sell the turbine. That does not make sense for anyone. It does not get anyone off the grid. There are so many ethical companies in Nevada that live and breathe renewable energy. This is their life. They came up with the site assessment. That is subsection 4 of the amendment ([Exhibit G](#)). Every ethical company is giving site assessments anyway. They are not trying to sell someone something that does not work. They are trying to generate kW. That is why we suggested that if it is requested, that there should be a site assessment by someone with no financial interest in the outcome of the project.

**Chair Kirkpatrick:**

If that site assessment is completed what type of person would be responsible for that within the local government? Would it be public works?

**Ann Hall:**

It is important that it is a company that does the site assessment. The reason is because the county is overloaded, and they do not want to be involved in the process. In my case, they were making a decision as to whether this even fell under special use permit jurisdiction. The local governments do not have the resources to do those private site assessments. Any company in Nevada that

provides multiple avenues of renewable energy could do the site assessment, as long as they do not have a financial interest in the outcome.

**Chair Kirkpatrick:**

That does create another cottage industry for local government. We have been down this road before. If we have public works people, we might as well utilize them. Is there a criterion that is given? They will figure out to site it just right if they want to. We saw last session where some of these businesses are all in the family. I am at arm's length plus a mile on this issue.

**Ann Hall:**

In this case, the wind in our area blows at about six-miles-an-hour. The machine does not even turn on until you get to ten-miles-an-hour. It was pretty clear that this big machine was not going to generate kW. In terms of what the criteria for the company and how to make it at arm's length, I do not have a solution for you at this time.

**Chair Kirkpatrick:**

We will keep your amendment for consideration.

**Lawrence A. Werner, City Manager, Carson City:**

Carson City supports the bill with the amendment that we saw from the City of Henderson ([Exhibit H](#)). Our concern was the word "appearance." It is suggested that it is hard to define through the process. We believe that the idea of location is better addressed as "setback." We are able to set higher and more definable standards with those words as opposed to the words "appearance" and "location." We do believe in renewable energy. We believe that we need to do more with renewable energy in this country. We believe that Assemblyman Livermore had a lot of concerns at heart. We understand that.

**Chair Kirkpatrick:**

Do you have the ability to adopt an ordinance that addresses a couple of different issues within it?

**Lawrence Werner:**

We did adopt the ordinance that related to both solar and wind. We did it based on height versus distance from the adjoining property owners. We did it based on a noise threshold at the property line. I heard some of the testimony about the noise levels being exceeded. I was not aware that we had had actual excesses. We do have code enforcement, and if the noise level is being exceeded, then there are steps that we can take.

As far as the issue with the solar array in the school district, the way we were interpreting our statutes in the district attorney's office is once an application is made to us for a special use permit to place the array by the applicant, they have to meet our criteria. In this case, the school district had met that criteria, based on their studies, as far as setbacks and installation. When it came to the planning commission, they viewed it from the standpoint that it met the standards that we had adopted from our codes. We then took testimony from the neighborhood about issues and concerns with the array. Our planning commission did request that the school district look into alternative locations. We were strapped on our unit coming before us and saying that we are into that 10 percent rule, which means that it will impact the ability of the array to produce within 10 percent of what it was originally designed to produce. When it came to the board of supervisors, the same argument was made. The board asked the school district that they consider where the array is placed based on their properties. We do not see, as the city, any conflict with what we had on the rule books, but there was not much we could do.

**Lee Plemel, Planning Director, Carson City:**

Mr. Werner accurately represented that situation about the school district. In addition to considering city standards, state law was also considered throughout the discussion and the limits of what the planning commission and board of supervisors can do in terms of the efficiency. Within the last two years, we adopted an ordinance that used Washoe County and Reno as models. We had our own public process and input from residents. We ended up with a stricter standard than Washoe County or the City of Reno. Our maximum height is 60 feet, as opposed to 75 feet, before you need a special use permit. Our noise level at the property line is 50 decibels, not 60 decibels. We certify that prior to erection. It is a standard where we certify that the machine makes a certain amount of noise, a decibel at one meter. You can do a regression analysis. Sound degenerates over time and distance. At the property line it should be less than whatever decibel the standard is held at. There is ambient and wind noise. It never fully masks the additional noise that is being generated; it adds to it. I understand the residents' concerns. You still hear these wind machines and their different noise regardless of ambient or wind noise. You have heard that the bill is too restrictive and not restrictive enough. We are in the position of trying to find a balance as well.

**Chair Kirkpatrick:**

Are the residents aware that at the highest time of wind is when the noise attenuation takes place? Or is it to assume that it is 65 decibels all the time? Take for instance, a car vacuum at a carwash. If a car wash is in a neighborhood, the car vacuum is supposed to be at 65 decibels. The roadway that the carwash is next to runs 100 decibels. Many constituents are under the

impression that 65 decibels is supposed to be quiet compared to the roadway. What I am asking is are the residents aware that it is supposed to be 65 decibels at its highest time? For example, if the wind was blowing constantly for a day, it would be 65 decibels all day long; but more often than not the wind turbine would not be that loud because the winds are not blowing that much. Do you explain that to them?

**Lee Plemel:**

We have an exception for severe wind events when it would exceed the decibel level. Our standard is 50 decibels. We have explained our ordinance and how the exceeds work. We have also explained how it is measured. We still seem to have the noise complaints. I would also note that we have had two small wind turbine installations in Carson City in the last few years. The comments on the wind turbines that have been discussed are limited to two instances.

**Chair Kirkpatrick:**

Has there ever been an instance where you have not given schools a special use permit? For instance, a school in southern Nevada wanted artistic ironwork around the kindergarten yard. The residents were very upset that we were not able to keep within what the rest of the community has done at this school. It seems that the schools in Carson City are really leaning toward solar energy. Have you ever turned them down, in the hope that they would come back with something different?

**Lee Plemel:**

We have had two examples of the school district requesting solar panel installations. The first was discussed earlier in this meeting. The second was a situation where the school district's first proposed location was denied by Carson City because they felt that it did impact the residents more than an alternative location on the site.

**Chair Kirkpatrick:**

May I have a copy of your ordinance? I would like to compare every city and county's ordinance on this issue in the state.

**Lawrence Werner:**

On the City of Henderson's amendment ([Exhibit H](#)), they only refer to section 1. We would like to have that same amendment applied to section 2 so that the word "appearance" is struck on both and the "location" is changed to "setback."

**Chair Kirkpatrick:**

Is the "setback" in order for you to determine what the setback is for placement concerns? If something that has been installed cannot work in a specific place would you deny the application altogether, or would you be able to waive it?

**Lawrence Werner:**

We are hearing that some jurisdictions are using setback today. Our district attorney felt that it was not clear. We would set a setback and maybe in certain lots and under certain circumstances you could not do it based on the parameters of the size and location. I cannot presume that today, but what we would do is to go through a public process to determine what those setback limits would be. We would then have the community set that standard.

**Luke Andrew Busby, representing Clean Energy Center, LLC:**

Clean Energy Center is a renewable energy developer located in Reno. They do small and large projects. We are opposed to the bill in its present form. We have submitted proposed amendments to the relevant statutory provisions ([Exhibit I](#)). Although the provisions in the current law are designed to protect the right of property owners to build small projects, current provisions in the law present substantial barriers to the development. The proposed bill would make those barriers higher. The vagueness of the provision prescribing "reasonableness" allows local jurisdictions to prohibit the build out turbines in some cases. When this happens the burden is squarely placed on small companies and consumers to spend substantial monies to appeal decisions when permits for projects are denied. This comes at a cost which the projects cannot justify. Minimum standards, if inserted in this statute, would create a bright-line rule which will help create certainty in the marketplace for small wind developers and consumers. As an example of this problem, I am counsel for The Solar Store in Carson City. I will represent them before the Carson City Planning Board. In that case, the code provision which applies to their project limits noise to 25 decibels because there is an abutting property which is less than one acre. Twenty-five decibels is less than the ambient noise in a quiet library or a quiet theater. I have a decibel meter on my phone. If we are quiet, the ambient noise in this room is around 60 decibels. That is the noise level of a quiet office or rainfall. Twenty-five decibels is five decibels less than a quiet library or theater. Twenty decibels is whispering. It is a very low standard. The statute simply prescribes "reasonable." It is difficult to argue unless you take the seat of your county to court, which is prohibitively expensive. We would like to insert actual provisions in the statute that say exactly the threshold below which the local government cannot regulate. We recommend for height 75 feet on premises that are five acres or less and over 100 feet on properties that are five acres or more. Fifty-five A-weighted decibels is a reasonable standard. That is halfway between a normal conversation at three

feet and a quiet office or a rainfall. For safety, we believe that an established certification process through a structural engineer or another organization approved by the Director of the Nevada State Office of Energy would provide certainty in the marketplace for what is safe and what is not.

Our other amendments address clarifying the provisions in statute related to who is protected ([Exhibit I](#)). Right now it prescribes that property owners are. Third party power purchase (PPA) and lease agreements are becoming the preferred financing vehicle for small projects and, therefore, we would like those protections extended to leaseholders as well. Finally, we are seeking insertion of a provision to this statute which will provide that if a large project has to go through the National Environmental Policy Act or the state's Utility Environmental Protection Act (UEPA) review, they would basically be excluded from local jurisdiction and control, if it is built outside of an incorporated city. This will be a substantial move towards removing barriers for development of projects. It will lower regulatory risk for investors and developers. It will help the build out of central transmission systems to help get renewable energy to market. It will streamline the regulatory process. It will allow projects to be built faster. It will give Nevada a competitive advantage over other jurisdictions for projects. It provides another incremental step in the process of making Nevada the best place to build renewable energy projects in the West.

**Chair Kirkpatrick:**

You put "owner" or "owner of the system" in your amendment. Will you explain that?

**Luke Busby:**

Most homeowners or small businesses cannot afford to pay for a renewable energy project all at once. Many developers are providing a financing vehicle whereby they charge the customer for the energy that is generated by the system. This was specifically allowed by the Legislature during the last session. There was an issue as to whether they would be defined as a public utility and subjected to the jurisdiction of the Public Utilities Commission of Nevada (PUCN). This clarifies and clears up any ambiguity as to the protections that the Legislature has established. The provisions that have been applied to homeowners' associations and local governments would also apply to these holders as well as the property owners.

**Chair Kirkpatrick:**

Are you referring to Assembly Bill No. 186 of the 75th Session, Assemblywoman Leslie's bill about third party leasing? On these specificities, 75 feet on less than five acres applies to most of the people in Carson City.

What happens if we put this in statute as opposed to the city creating an ordinance regarding technology changes?

**Luke Busby:**

The trend over time is that technology is getting quieter to address the concerns of urban environments. No wind energy developer wants a neighbor to be angry, because they want them to buy a system as well. This threshold is set low enough to balance the interests of the customer who wants to generate the electricity and the neighbors. The higher you put the tower, the quieter it will be. That seems to be the major concern that has been brought up to this Committee by interested persons. We feel that setting the tower higher rather than lower will help the noise issue. Setting the sound requirement at 55 A-weighted decibels is a low threshold. It is similar to what the City of Reno and Washoe County have done. With adequate and proper enforcement, such a standard is appropriate and balances the interests of both consumers who want to build turbines and neighbors who have the right to the quiet use and enjoyment of their property. No one is going to deny that, and no one wants the sound of something akin to a helicopter in their backyard. If there is an objective measure that a developer is violating the ordinance, then it should be removed.

**Chair Kirkpatrick:**

Can you explain section 2, subsection 3?

**Luke Busby:**

Currently, the statute allows the local government to say specifically what the safety of a system is. This follows the logic that we think is appropriate where a structural engineer can certify the safety of the turbine. Another organization approved by the Director of the Nevada State Office of Energy could certify that turbine as well. If there is some organization that has a good certification process we do not think there is any reason why they should be excluded.

**Tom Clark, representing the Interwest Energy Alliance and Cleanpath Renewable Development:**

We would like to state our support for this particular amendment. We coauthored it with Mr. Busby. We are having conversations across the entire state on this issue. I am working with Elko County, Storey County, and Washoe County. Having some guidelines in the statute for the smaller counties to understand what is "reasonable" will go a long way to helping us answer questions. Some of our counties do not even have building departments, but if we have a standard set in the legislation then developers, builders, and owners know exactly what standard they must fit. We support this amendment.

**Chair Kirkpatrick:**

Does Washoe County have a regional planning commission where everyone could adopt a standard ordinance?

**Tom Clark:**

There is a regional planning governing board in Washoe County that approves and works on projects of significance. Most of the projects of this size would not fit under the definition of a significant project.

**Chair Kirkpatrick:**

It would or would not?

**Tom Clark:**

I do not believe that it would. You would have to go through the local government for those planning processes.

**James Martines, Assistant City Attorney, City of Henderson:**

The first part of the amendment that I would like to discuss is in subsection 2, adding the words "and 3" ([Exhibit H](#)). We are experiencing a pushback where applicants are insisting that the reasonable restrictions called out in subsection 2 are also restricted by subsection 3. It is my understanding that was never the intent of this bill or the previous bill in the 2009 Legislative Session. One example of where this becomes an issue is when we are regulating safety. Say, for example, we determine that it is unsafe to place one of these towers within a certain distance of a property line and we are refuted by the current bill that significantly decreases the efficiency and performance of the system. Suddenly, they would be allowed to put that system in an unsafe location. It does not make sense for us to interpret the law that way, however, we would like to save the taxpayer's dollars and not have to litigate these issues every time they come up. So placing just the words "and three" in subsection 2 will make a big difference in furthering the original intent of the bill.

The second part is taking the word "appearance" out. We have heard a lot of testimony saying the word "appearance" is against the original intent of the bill. Assemblyman Livermore proposed the word "finish." We are fine with using the word "finish," however, I would like to add that in our current ordinance we do regulate the finish. We do so under subsection 1. Subsection 1 basically states that we are not allowed to prohibit or unreasonably restrict. We interpret this as that we are allowed to reasonably restrict these systems as long as they do not violate subsection 3. We have regulated the finish as long as we do not violate subsection 3.

We believe that the word "location" is a broad term. It could be used to be in conflict with the original intent. We put the word "setback" in our amendment in its place. We believe that regulating height and setback will allow us to pick the appropriate locations. The only other thing that the Legislature may want to consider is regulating the actual size of lots. If it is not intended that a freestanding system of 45 feet should go on a 5,000-square-foot lot, that is something to consider putting in the bill as well. In California, they regulate it to a minimum of 2-acre lots. I do not know what would be appropriate for Nevada. I do believe we can better regulate on height and setbacks rather than the actual location.

**Chair Kirkpatrick:**

You present a good point. That is why I was asking about the footprint. I could see some of these zero lot lines having problems with this law. It goes back to the satellite dishes that were everywhere. They have now become part of the process. I think that is a good part of the discussion. I wish all of these district attorneys could get together and interpret the bill the same way. Is there anyone else who is neutral who would like to testify? [There was no one.] Do you have any more to say on this bill, Assemblyman Livermore?

**Assemblyman Livermore:**

I have listened to both sides of the issue. What I have heard here today comes in different forms. There are property owners who want to use their property right. The mantra is "my individual home is my castle." You also heard the industry and business that is invested in creating opportunities for investment of sales and installation. There is also the technology side that is evolving, especially in the form of solar arrays. My intent was, as a local elected official, to deal with friction zones. Friction zones are the unintended consequences of legislation. Once legislation is approved, friction zones are created, and they must be lived with. It will not change. The next resident or owner acquires the same friction zone. I also heard about beauty being in the eye of the beholder. I think that, Chair Kirkpatrick, your particular request about footprints is important. No one size fits all. There is a program on television today that says we sell wind turbines in small, medium, and large. Those are the three criterions. That is wrong if we are going to live in a civil society and urban setting. Thank you for allowing me to present this bill to the Committee today.

**Chair Kirkpatrick:**

This bill needs some work. There will be more discussion on this bill. I would like to see the ordinances for the rest of the Committee. I would like to give the rest of the Committee the opportunity to hear the testimony today.

We will now close the hearing on A.B. 122. I will now open the hearing on Assembly Bill 58.

**Assembly Bill 58**: Authorizes the governing body of a city to enter into a contract to mitigate the price volatility of a city's fleet fuel. (BDR 21-399)

**David Fraser, Executive Director, Nevada League of Cities and Municipalities:**

I have Mr. Dan Musgrove, representing the City of North Las Vegas. In the south we have Skip Grey, the Assistant Director for Administrative Services for the City of North Las Vegas, and Ron Corbett, the Manager for Fleet Operations for the City of North Las Vegas. I would like to turn the time over to Mr. Musgrove to go over the bill. We also have some comments from the south.

**Dan Musgrove, representing the City of North Las Vegas:**

Assembly Bill 158 is a three-section bill. The reason it is three sections is that it amends both *Nevada Revised Statutes* (NRS) Chapters 266 and 268. Chapter 266 affects general law cities. Chapter 268 affects charter cities. Section 3 puts these two amendments into effect. There will be a friendly amendment that we support from Clark County which would put the same language in Chapter 244. We are asking for the authority to enter into energy risk management contracts for the purchase of fuel. This bill gives us enabling language to negotiate contracts with fuel companies. Some of the other testimony will expound upon what it does for jurisdictions across the state.

**Skip Grey, Assistant Director for Administrative Services, City of North Las Vegas:**

Our timing could not get better on passing this bill. We are seeing a lot of strife in the Middle East. There are predictions of four- to five-dollars-a-gallon gas at the pump. The City of North Las Vegas and just about every other city in the state are very concerned about our fuel budgets. We need to be able to fuel our fleet vehicles should prices rise to that level. The purpose of this legislation is to allow a city, if they would like to, to establish an energy price risk management program. It will help contain fuel costs for city fleets. This is something similar to what the airlines have been doing for a number of years to mitigate the fluctuation of fuel prices for their aircrafts. For example, the City of North Las Vegas purchases approximately 500,000 gallons of fuel each year. That is a fairly consistent number from year-to-year.

With this legislation, we hope to decrease the volatility of our fuel costs and increase the likelihood that our net fuel cost will remain below our budgeted cost. Any time we can lock in our budget to make sure it does not extend our budget in these times that is good thing. The purpose of this program is not to

make money but to manage the risk. This is not an investment. Any cash flows produced or consumed by the program will be considered a part of our fuel cost.

I am not an expert in the financial aspects of this program, but the way this is done is by using various financial instruments and establishing a futures account with a futures broker. The objective is to set a floor and a ceiling. Using these various financial instruments, there can be an upper and a lower limit transposed upon energy prices. For instance, North Las Vegas may be able to get \$3 for the floor price and \$3.50 for the ceiling price. If fuel prices then rise above \$3.50 a gallon to \$3.75, then the futures broker writes a check to the city for the number of gallons used times the \$0.25 differential. Those funds will flow back into the city's fuel budget to offset the price increase. If that price of fuel falls below that \$3 floor, to say, \$2.75 per gallon, the city writes a check to the futures broker for \$0.25 times the number of gallons used. Even though the city is unable to take advantage of market-priced decreases, it allows the municipality to have a fixed fuel budget for the majority of its fuel purchases. I say the majority of fuel purchases because we do not have the entire amount. We would not put our entire 500,000 gallons into this program. We might do 75 percent or so. That is up to the city to decide.

The amount of fuel to be put into this program can be chosen by the city as well as the time frame. A city can lock themselves in for a three-month period, a six-month period, or a one-year period. I would like to stress that I am by no means an expert on the financial aspects of this. Very similar legislation has been enacted in Ohio. Various entities are using it to their benefit, specifically the Greater Cleveland Regional Transit Authority. The sooner this bill can be enacted, the better. As prices rise, we are concerned with our budgets. We hope that this will be endorsed.

**Assemblywoman Pierce:**

I am not sure how futures trading works. It says in the bill that the city is not contracting to buy the fuel. When it comes time to buy the fuel, the city will buy the fuel from someone who has no connection to the futures trader. Is that correct?

**Skip Grey:**

That is correct. It is an independent entity. It is simply a financial instrument. It does not have anything to do with our fuel suppliers.

**Assemblywoman Pierce:**

Are there other places where this is being done aside from Ohio?

**Skip Grey:**

I know that Ohio is one where the legislation passed several years ago. I am not aware of any other states. There may be though.

**Chair Kirkpatrick:**

Typically, when you have a broker as a middleman it ends up costing someone more. It is similar to the example with the olives that I used earlier in this meeting. That is the simplest way that I can explain it. We are projecting long-term that this is how much we are going to use so we want to keep a lock on the price. Is that not allowed with fuel, as it is with other goods?

**Skip Grey:**

You can certainly get a contract with a fuel supplier to lock in the price for a certain period of time. For those cities that do not have tanks and cannot buy bulk fuel purchases, they are unable to do that. Even if you do buy fuel on a large scale, prices can still escalate over time. Some cities might be able to have the ability to lock in a fuel contract for some period of time, but this allows a city to keep independent from the fuel company. Looking at the price of oil on the market is what this is tied to. You can lock in a price within that band. As far as using a broker, typically what they will do is go out and get a number of organizations to get a large enough amount. Our 500,000 gallons might not be enough to enter into a put or call. We may join with Clark County, the City of Las Vegas, Henderson, Reno, and Sparks to do this transaction.

**Chair Kirkpatrick:**

I understand that. I work in an industry where cheese and chocolate are commodities. Every time oil goes up, plastic goes up, and so forth. I understand the whole commodity market. However, this particular bill states that every single city will have the ability to go out and do this. Who are these brokers? How do we ensure that the taxpayers' dollars are being well spent and looked after?

**Skip Grey:**

We would do some sort of request for proposal (RFP) to put this out. I came from the state of Ohio. KeyBank is one that they used. I am sure there are financial institutions that have brokerage arms that can handle this type of transaction. We will put something out to get the most competitive brokers. There will be fees associated with that. They will not be exorbitant. We will get a competitive bid process.

**Chair Kirkpatrick:**

I am a North Las Vegas Resident. I know we cannot afford to be the wrong way on fuel, but I am worried about some of these other entities across the

states that are smaller. It seems like there should be some criteria for these brokers. This should be a consolidated piece for all the cities and counties.

**Dan Musgrove:**

The earlier testimony that was given from the people at the state purchasing offices used the example of fuel, in that the people from Reno and Carson City have to get their fuel from San Francisco and southern Nevada has to get it from southern California. The nice thing about this bill is that we are using the commodities broker to lock in a price for the whole state if we wanted to. It does not matter where we are buying it because of the way we have bet on the futures market. We all get the opportunity to share in the price that we, as a collective group, have negotiated. That is something that the purchasing managers and directors will work on as a group. It has to make sense for every entity. That is why we would like this to be flexible. I think the better we can collaborate, the better the prices we will receive. That allows us to work statewide because it does not depend on where the fuel comes from. We have locked in with one commodities broker to get a certain price set.

**Assemblyman Goedhart:**

There are two different parts of the market. You could enter into a contract at any particular point in time to exercise a buy over a period of time of different delivery amounts. You could also go through the Chicago Mercantile Exchange (CME) and lock into a futures price, which is what you are talking about in this bill. That is allaying the risk. I believe Southwest Airlines has done that very effectively in the past. When fuel prices are low, they will oftentimes go into the future. They will look at where they are in historical context. They will go ahead and put in the option that diversifies their risk on the upside swing. The only point of caution is that you could be right seven times out of ten, and the seven times you are right, it goes unnoticed. Three times out of ten if you lock in a higher price you will get all sorts of grief. That is something to be cognizant of: you get more grief on the three times out of ten you guessed wrong.

**Assemblyman Ellison:**

I saw a program about precious metals where a mining company locked in a low price on precious metals, and about a year later, the market fell out. It kept that company stable. It has its pros and its cons. That is one that worked out for them. It does work though.

**Chair Kirkpatrick:**

Where would this be within the budget process so the regular constituent can figure out how to watch this?

**Skip Grey:**

Our finance department would manage this. The Greater Cleveland Regional Transit Authority hired a financial advisor to help them make these decisions. The cities' finance departments would handle this process. The idea of consolidating is an excellent one. The legislation just allows us to do this. We sit down with all the entities that have fleets all over the state and get together as a group and decide what we want to do and how we want to do it. The City of North Las Vegas cannot do this on its own. We do not have enough fuel. We would work together with all of our finance and fleet departments as a group and go together to decide the best way to do this and monitor it. The downside to this is that we would not be able to take advantage of when the market goes down. If you establish the ceiling and the floor, we are unable to take advantage of a major price decrease and come out ahead. The objective is not to make money. It is to stabilize our budgets. We have a \$1.6 million fuel budget in the City of North Las Vegas. It is going to be blown away in the next six months. We are really worried about that.

**Chair Kirkpatrick:**

I would hope this includes the school districts. They did get into a situation last time where they did not have enough money secured. I worry about what happens when enough is not secured in our fuel costs.

**Assemblywoman Pierce:**

Would this bill allow municipalities to join together to do this purchasing agreement as it is currently written? I do not have a lot of faith in the authorities overseeing the financial sector these days. Is the futures market overseen by anyone?

**Ron Corbett, Manager, Fleet Operations and Purchasing, City of North Las Vegas:**

This bill just gives cities the permission to do this. We would make sure that the RFPs and contracts would have the ability for everyone to participate. I would suggest that we treat this much like we did when we started out with biodiesel. We got a group of people together, came up with a consortium, ideas, how to regulate, et cetera. This bill just gives us the opportunity to see if we can make another purchasing choice. We all know where we are at today in that we do not have any ability to regulate this fuel. This is just a method to take a possible insurance policy, for lack of a better term.

**Assemblywoman Pierce:**

What about the regulation of the futures market?

**Assemblyman Goedhart:**

The futures market is regulated. Right now they are looking at further regulations seeing how much money goes in and out of that market to diminish some of the volatility. For example, people are now looking at putting money into commodities because they know that if the dollar falls, the price of the money they have invested is going to be worth more in terms of that commodity. Many people use this method for budgeting help. For instance, a school district wants to use one million gallons of gas a year. If that school district can lock in \$3 a gallon, if it is more than \$3 a gallon the school district gets the extra money back from the option that is put in. Obviously, if it drops below \$3 a gallon the school district will have to pay money to that futures investor. If it goes down to \$2.50 a gallon then the school district still has to pay \$3 a gallon. It is a hedge against volatility on one of your key inputs. It is a budgeting tool. That would actually help, when someone is doing a budget, on factoring in the actual costs of the large inputs. It is almost like a wage-labor agreement.

**Chair Kirkpatrick:**

As an average constituent, where in the budget would this be? I understand the finance departments handling this, but where would it be in the budget so that it can be regulated?

**Skip Grey:**

The intent is that all of the proceeds go into the fleet budget—the fuel budget which is housed in the fleet department. If the difference has to be paid, that comes out of the fleet budget. It is budgeted. If money is given back from the futures broker, it goes back into the fleet budget.

**Dan Musgrove:**

It would behoove us to have a specific line item in the budget that shows the transactions that take place on the futures. It is a new idea and for transparency sake, it would make sense for us to come up with some kind of line item in our budget where taxpayers could watch it. Any approval of a contract would always be posted in a public meeting.

**Chair Kirkpatrick:**

I cannot be at every meeting. I try.

**Assemblyman Ellison:**

This is not an energy strict power. This is strictly for fuel consumption. This will go into the cities which will buy in large quantities. Someone has to deliver that fuel.

**Dan Musgrove:**

This is strictly talking about the price of fuel. It does not change how it is purchased or where it is purchased from. All we are looking at in this case is a way to lock in the price so that if we go out and buy it from someone else at \$3.75 a gallon because that is the cheapest we can get it that day, our future cap with our traders at \$3.50 is reimbursed to us.

**Assemblywoman Bustamante Adams:**

In my research, I only saw that the State of Ohio has done this process. That concerns me that other states have not picked up on this. What other checks and balances are in place for this type of contract?

**Dan Musgrove:**

It would come in the request for information (RFI) or RFP process. Whatever brokers that we work with, we would want to have some kind of guarantee. If it is not something that we feel comfortable about, it is something that the city feels comfortable about, it is something they have to use. We were trying to get one more option to attempt to lock in some sustainability in our fuel costs. Right now, we are riding such a wave and the wave is going up. If we could lock it in we might be able to save. We could start off with 3-month contracts as a trial. I think that is part of the RFI or RFP process. It will help us see what kind of guarantees and agreements we can reach with our vendors to make sure it is in the best interest of our taxpayers.

**Assemblyman Livermore:**

I would like to compliment North Las Vegas on broad thinking about how to manage the resources of your community. You spoke about the power of purchasing. I am sure there are other commodities like asphalt that we could use this process on. I am not suggesting that we make something big out of this, but you could watch what is being done with that. The volumes of asphalt purchased are similar to what we buy for oil. We purchase on the same kind of market as that. Be careful that you do not buy high and sell low. I think you have placed an opportunity before us.

**Assemblywoman Pierce:**

My concern is that there are municipalities that went broke in this country because they bought credit through default swaps which sounded like a good deal at the time. Bear Stearns was still rated very high 24 hours before it went under. I am not that confident that the financial sector of this country is regulated. It makes me nervous.

**Assemblyman Goedhart:**

I would like to correct something that I said earlier. I believe that oil futures are traded on the New York Mercantile Exchange. Unlike the credit default swaps where you are making a judgment on the validity of the future health of those swaps and the payback, where something can be credited incorrectly, the risk with the futures market is not that a barrel of oil is not a barrel of oil. The risk with putting a futures option in is that are you going to be putting your floor and ceiling in at the top of the market, the middle of the market, or the bottom of the market. The risk comes from actually jumping into the market. The way politics works is that you can make the right decision seven times out of ten and make a wrong decision three times out of ten. You will get more grief for the three times you made an incorrect mistake. It is always easier to go into those markets with your own money. When you go in with other people's money, you expose yourself to a lot of criticism.

**Dan Musgrove:**

The nice thing about this is that it gives us budget certainty. If we do bet on \$3 a gallon, then we know, based on the number of gallons that we are going to purchase at that amount, at least it is not going to go above or beyond that. The trouble is that if the price keeps going higher it depletes our fuel budget. At least this way we can buy 200,000 gallons within that dollar range, whereas on the other 200,000 gallons that we buy naturally we can get stuck with \$4 a gallon of gas. None of us are going to put all of our dollars into one pocket. We have to spread our risk. This gives us a tool that we have never had before, that we would like to attempt to see if it does provide a benefit to the constituent and the taxpayer.

**Chair Kirkpatrick:**

Is there anyone who would like to testify in support of A.B. 58? [There was no one.] Is there anyone who would like to testify in opposition? [There was no one.] Is there anyone who is neutral?

**P. Michael Murphy, representing Clark County:**

We have a friendly amendment ([Exhibit J](#)) for this bill. We would like to compliment the Nevada League of Cities and Municipalities and the City of North Las Vegas for bringing this forward. It is very forward thinking. The concept is looking at economies of scale for consolidation of resources and the ability to purchase in a larger amount. That always has a tendency to lower price. If you want to use the olive example, the more olives you buy, the less they cost. The more gas you buy the less it costs. It is a concept that works out very well. Our amendment deals with NRS Chapter 244. It is just stating that the counties would like the opportunity to be involved in this process. We understand that fuel costs are rising, budgets are hard to predict, and, if you

can, do anything to level that playing field for the tax dollars. It gives us the ability to budget appropriately and not have to search for those dollars as prices go up. I have also spoken with Jeff Fontaine from the Nevada Association of Counties and Washoe County, and they have given me permission to say that they also support our friendly amendment.

**Chair Kirkpatrick:**

I specifically asked twice where the money goes based on the market. The bill says, "It is to be paid into the general fund of the city." Why would it not say that it is to be paid into the fund that buys the fuel? The general fund is a big fund. It needs to specifically go back where it came from.

**Dan Musgrove:**

We would be happy if you would like to clarify that. That portion of our budget is a part of the general fund. That is the only reason why we looked at it from that angle. If you would like to specify returns to the fuel account we have no issue with that.

**Chair Kirkpatrick:**

It just needs to be clearer. It needs to state that the money is going to go back to where it came from.

**Dan Musgrove:**

That money resides in the general fund.

**Chair Kirkpatrick:**

It has to be clearer than that. Do you agree with that, Mr. Murphy?

**P. Michael Murphy:**

I have to get back to you on that.

**Chair Kirkpatrick:**

I will now close the hearing on A.B. 58. I will now open the hearing on Assembly Bill 16.

**Assembly Bill 16:** Provides for additional compensation to be paid to certain senior psychiatrists and senior physicians employed by the Department of Corrections for being available to be called in to work during periods in which they are not regularly scheduled to work. (BDR 23-451)

**Charles H. Schardin, Medical Administrator, Department of Corrections:**

The Department of Corrections is seeking to allow our unclassified providers to receive compensation for being on call outside of regular business hours for

inmate health issues 24 hours a day and seven days a week. The department is budgeted to compensate providers for being on call. Currently, only classified providers can receive compensation for being on call. All provider positions were changed from "classified" to "unclassified." Existing providers were given the option to remain classified. The number of remaining classified providers is dwindling as we have turnover. The pool of providers to be on call is not adequate. This measure was inadvertently left off Senate Bill No. 433 of the 75th Session, section 12, during the last session. It authorized the Department of Health and Human Services to compensate its providers from \$60 to \$100 when on call after hours. The Nevada Department of Corrections (DOC) is requesting to be awarded the same authority, with the intent to allow unclassified providers to participate in the pool of on call providers for the DOC. The proposed change will not impose any additional cost on the State of Nevada. The revision is meant to reduce the burden currently imposed on the Nevada Department of Corrections' small pool of classified employees that are available for on call duty.

**Assemblywoman Benitez-Thompson:**

I interpreted this bill that someone could be called into work at any time regardless of if they were on call or not on call. As you explain the bill, the intent is that when a person is on call for them to be compensated, not for them to be at the call of work at any time. Is that correct?

**Charles Schardin:**

That is correct. This is something that is very standard in the community. Doctors will be on call for a group. We have doctors on call in various parts of the state outside of regular business hours. We are compensating them now, but they are only the classified providers. We are trying to add the unclassified so we have a bigger pool to draw from. With furlough days, vacations, and sick leave, it is hard to keep it covered.

**Assemblyman Livermore:**

How did you develop a call cost?

**Charles Schardin:**

I have been with the department for nine years, and we have used the same costs for nine years.

**Assemblyman Livermore:**

This is just a negotiated figure between physician and management?

**Charles Schardin:**

It is a figure that was arrived at some time ago, and we have continued to use that.

**Assemblyman Livermore:**

Do you get paid differently for 24-hour call versus hourly call?

**Charles Schardin:**

We do not offer hourly call. We just need someone to cover for those hours outside of business hours.

**Assemblyman Livermore:**

Business hours can be Saturday and Sunday or 24 hours.

**Charles Schardin:**

Our regular business hours for the providers are Monday through Friday.

**Assemblyman Livermore:**

How much more is it for a Saturday or a Sunday? Is it equal to what is paid during regular business hours?

**Charles Schardin:**

We pay \$60 during the week to cover the 16 hours, and we pay \$100 for a weekend.

**Assemblyman Livermore:**

I just wanted to make sure there was a difference between the two.

**Assemblywoman Pierce:**

What is the difference between classified and unclassified?

**Charles Schardin:**

Unclassified would be an at-will employee. The state made a decision to switch all of our providers from being classified to unclassified.

**Assemblywoman Pierce:**

Do these providers have an employment contract or an agreement when they get hired?

**Charles Schardin:**

They do not have an employment contract. They are an at-will employee. They are exempt.

**Assemblywoman Pierce:**

The only thing that is agreed upon when they get hired is a base salary?

**Charles Schardin:**

Yes, also benefits. They are still state employees. They get a salary and benefits.

**Assemblywoman Pierce:**

Right now the *Nevada Revised Statutes* (NRS) say that, as part of that agreement with an unclassified employee, you cannot have them on call?

**Charles Schardin:**

I do not know the exact statute. Basically an unclassified employee works for a set salary. We need to get authority in the form of this bill to allow us to pay them above and beyond what that salary is set at for this on call provision.

**Assemblyman Goedhart:**

"Exempt" and "not exempt" and "classified" and "unclassified" are oftentimes interchangeable. The exempted status means they are not able to be paid overtime because you pay them for the job that they do. If you have an "exempt job" as an accountant, your employer can say that these are the demands of the job and however long it takes you to do the job is you have to do. Is that correct?

**Charles Schardin:**

Yes.

**Assemblyman Livermore:**

Weeknights are \$60 an hour or a night?

**Charles Schardin:**

It is \$60 a night.

**Chair Kirkpatrick:**

This has already been tagged by the Committee on Ways and Means as a potential impact to the budget. We could debate all day or just send it to Ways and Means. We will take some time to think about it and make a decision. It does have to go back to Ways and Means. Is there anyone else who would like to testify in support of A.B. 16? [There was no one.] Is there anyone who is in opposition of A.B. 16? [There was no one.] We will close the hearing on A.B. 16. I will keep you informed, Mr. Schardin. Is there any public comment? [There was none.]

Meeting is adjourned [at 1:18 p.m.].

RESPECTFULLY SUBMITTED:

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Jenny McMenemy  
Committee Secretary

APPROVED BY:

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Assemblywoman Marilyn K. Kirkpatrick, Chair

DATE: \_\_\_\_\_

**EXHIBITS**

**Committee Name:** Committee on Government Affairs

**Date:** February 28, 2011

**Time of Meeting:** 9:02 a.m.

<b>Bill</b>	<b>Exhibit</b>	<b>Witness / Agency</b>	<b>Description</b>
	A		Agenda
	B		Attendance Roster
	C	Mike L. Baughman, Humboldt River Basin Authority	Presentation
A.B. 122	D	Assemblyman Pete Livermore	Presentation
A.B. 122	E	Bruce Kittess	Prepared Testimony
A.B. 122	F	Randell S. Hynes, Nevada Solar Authority	Letter
A.B. 122	G	Mary Pierczynski and Ann O. Hall	Proposed Amendment
A.B. 122	H	City of Henderson	Proposed Amendment
A.B. 122	I	Luke Andrew Busby	Proposed Amendment
A.B. 58	J	P. Michael Murphy, representing Clark County	Proposed Amendment