

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

**Seventy-Sixth Session
April 6, 2011**

The Committee on Government Affairs was called to order by Chair Marilyn K. Kirkpatrick at 7:30 a.m. on Wednesday, April 6, 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/. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblywoman Marilyn K. Kirkpatrick, Chair
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
Assemblywoman Melissa Woodbury

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Assemblyman Pat Hickey, Washoe County Assembly District No. 25
Assemblyman Ira D. Hansen, Washoe County Assembly District No. 32
Assemblyman John Ocegüera, Clark County Assembly District No. 16

STAFF MEMBERS PRESENT:

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

OTHERS PRESENT:

John Wagner, State Chairman, Independent American Party
Janine Hansen, State President, Nevada Eagle Forum
Ed Rathje, Private Citizen, Reno, Nevada
Lynn Chapman, State Vice President, Nevada Eagle Forum
Jim DeGraffenreid, Chair, Nevada Republican Party
Steve Holloway, Executive Vice President, Las Vegas Chapter, Associated General Contractors
Rebecca Gasca, representing the American Civil Liberties Union of Nevada
Leissan Sadykova, Private Citizen, Reno, Nevada
Gail Tuzzolo, representing the Nevada American Federation of Labor and Congress of Industrial Organizations
Andres Ramirez, Private Citizen, Las Vegas, Nevada
Leo Murrieta, Private Citizen, Las Vegas, Nevada
Vicenta Montoya, Chair, Si Se Puede Democratic Caucus
Hannah Brown, Private Citizen, Las Vegas, Nevada
Yvette Williams, Chair, Clark County Democratic Black Caucus
Theresa Navarro, Chair, Progressive Leadership Alliance of Nevada
Mario Dela Rosa, Community Organizer, Progressive Leadership Alliance of Nevada
Jack Mallory, representing the International Union of Painters and Allied Trades District Council 15
Warren B. Hardy, representing the Associated Builders and Contractors of Nevada
Tray Abney, representing the Reno-Sparks Chamber of Commerce
Elvira Diaz, Private Citizen, Carson City, Nevada
Michael Flores, representing ProgressNow Nevada
Suzanne Nounna, Private Citizen, Las Vegas, Nevada

Mark Baxter, Private Citizen, Las Vegas, Nevada

Barry Smith, Executive Director, Nevada Press Association, Inc.

Dan Musgrove, representing the City of North Las Vegas

Ted J. Olivas, representing the City of Las Vegas

Lisa Foster, representing the Nevada League of Cities and Municipalities
and Boulder City

Susan Fisher, representing the City of Reno

P. Michael Murphy, representing Clark County

Javier Trujillo, representing the City of Henderson

Carole Vilardo, President, Nevada Taxpayers Association

Ben Graham, representing the Nevada Supreme Court

Chair Kirkpatrick:

[Roll was called.] In order to keep on task with all of our bills today, I am going to be strict about the time frame of each speaker. We will do one-half hour on each bill. We have seven bills today. We work hard in this Committee. I will stick to my guns on time frame this morning. We will start with Assembly Bill 252.

Assembly Bill 252: Requires contractors and subcontractors on a public work to use E-Verify to verify eligibility for employment for workers on the public work. (BDR 28-581)

Assemblyman Pat Hickey, Washoe County Assembly District No. 25:

Assembly Bill 252 presents an important public policy question. I would first like to give you a little bit of background on how I came to this particular issue. I have done refugee work in Central America. I was also the Director of Project Volunteer in Cabrini-Green in Chicago for a number of years. I am also a proud participant in an interracial marriage through which I have family members who have immigrated to the State of Nevada. What really brought me to the issue was a town hall meeting during the last special session of this body when we anguished over budget deficits; at that time it was somewhere in the area of \$700 million. While covering the special session for the *Nevada Appeal*, I listened to the testimony of a state worker who worked at the Temporary Assistance for Needy Families (TANF) in northwest Reno. She brought to the attention of the participants of that town hall meeting the fact that there had been, in her opinion, an unusually large number of undocumented workers who were applying for TANF benefits for their American-born children. While that is not germane to this bill, it relates to the larger question that this bill brings up. The question before us this session is whether or not we can sustain the costs of government and the impacts of certain government programs through our budgets.

A second town hall meeting also underscored some things for me. I covered one on the issue of immigration where both sides were represented. Progressive Leadership Alliance of Nevada (PLAN) and other anti-illegal immigration participants were a part of that forum. It was called "The High Cost of Cheap Labor." That led me to a 2007 Congressional Budget Office study that found that tax revenues of all types, generated by illegal immigrants, exceed the cost of the services that they use. That is especially true in education, health care, and law enforcement. In this session, especially when we are so concerned about jobs . . .

Chair Kirkpatrick:

I understand that the next few bills that we have are a little bit controversial. I want everyone to be respectful on both sides of the aisle. This bill in particular only talks to public works so can we speak to that?

Assemblyman Hickey:

That led me to the question of E-Verify with respect to public works projects. In this bill, I am echoing the sentiments of Secretary of the State Ross Miller who also had advocated to the Board of Examiners that all state contractors be required to check the citizenship status of their employees using the federal E-Verify system. You have a memo before you that goes into more detail about the system ([Exhibit C](#)). It reviews a number of things. Immigration experts believe that as long as opportunities exist, we will see people coming to our state. I would argue that we certainly invited them here for economic reasons.

The Immigration Reform and Control Act of 1986 made it illegal for employers to knowingly hire immigrants who were unauthorized to work in the country. E-Verify was created in 1997. E-Verify is a free, largely voluntary—although it would not be in the instance of public works projects if this bill passes—Internet-based program that helps verify citizenship. Currently, all federal agencies are required to use E-Verify on their new hires. As of 2009, certain federal contractors and subcontractors are required to use E-Verify for both their newly hired employees working in the United States as well as existing employees working directly under the contract. On some of the information I have provided ([Exhibit D](#)), 14 states have issued or enacted E-Verify legislation with fairly good records. We may hear opposition that it is not a totally perfect system and certainly there are not many out there that are. In overall employer satisfaction ratings, it got 82 out of 100. That is not a bad percentage when you note that this body was getting about a 20 percent satisfaction rate with our activities so far.

In conclusion, this is a small first step. This is not talking about all employers in the state but starting specifically with public works projects which are funded

by the taxpayers. The bill would simply require that any contractors who are awarded public works contracts in the State of Nevada demonstrate that they use the E-Verify system. Q & D Construction has used E-Verify for a number of years. They are the largest construction corporation in northern Nevada. They do a lot of public works projects. They have said that there is no additional cost or hassle in the use of E-Verify. This is a small first step. I offer it for our consideration to help us heal in these difficult financial times. It will possibly help a problem that has impacted us in a number of ways. There are obviously bigger solutions we have to tackle regarding this issue, but I think this is a first step.

Assemblywoman Neal:

In section 2, subsection 2 of the bill, it creates a penalty. Does this penalty apply to the subcontractor or the undocumented worker?

Assemblyman Hickey:

The Labor Commissioner might be able to better address it. This is standard language for other violations. My intention would be towards the general contractor himself who would be responsible for his subcontractors also complying with E-Verify. The intention would not be to go towards the individual person that may be in violation.

Assemblywoman Neal:

In your introduction, you made it appear that there was a special problem that you were dealing with in relation to undocumented workers. I wanted clarification that if you were in an effort to attack or diminish this particular occurrence, who you were actually seeking to penalize.

Assemblyman Hickey:

We have heard numerous testimonies in the Assembly Committee on Commerce and Labor from union representatives and others that undocumented workers on certain projects have created problems for this state and have been able to underbid other contractors that were in the state who had not been using illegal workers.

Chair Kirkpatrick:

Before we start the testimony, I will say this for all people; please be respectful of other people's opinions. There are many opinions on this issue. In order to keep us on task and topic, please refrain from going for more than a few minutes so that we have the ability for everyone to have their say. We will start with those in support of A.B. 252.

John Wagner, State Chairman, Independent American Party:

I support this bill. I feel that jobs here in Nevada should belong to Nevadans. We have people who come across the borders, but we also have a lot of people that come in legally as students or overstay their visas. They are violating the law just as much as anyone else. This is a good bill. E-Verify only takes a few seconds to do. It should be implemented everywhere.

Janine Hansen, State President, Nevada Eagle Forum:

I have a good friend in Elko who happens to be on the county commission now. He has a business which includes many different areas of northern Nevada. He has often complained to me that one of the problems he has in competing is that some companies are able to hire people who are illegal aliens while he has to obey the law. It makes it difficult for him to compete. This is a step in the right direction so that everyone is protected with regards to equal competition. It is important to recognize that there is a lot of unemployment in the state of Nevada. My son, stepson, and husband have all been unemployed recently. My daughter only has a part-time job right now. There are many people who are legally here in Nevada and have residencies. We ought to make sure that people obey the law. This is a good first step in this direction.

Ed Rathje, Private Citizen, Reno, Nevada:

I run a small company teaching instrument flying. One of my customers is the Nevada Highway Patrol (NHP), the single-engine pilots. For the Transportation Security Administration (TSA), I have to document the original birth certificate or a passport for citizens. Noncitizens have to go through an extensive TSA process costing them hundreds of dollars. I am just enforcing the law. I have no problem with that. The issue before us is much simpler. This bill simply enforces the I-9 form. If you believe the I-9 form should be enforced, E-Verify is a simple way to do it. I have submitted information ([Exhibit E](#)) about this topic. I have given the link to the February 2011 results from the federal government use of E-Verify. The statistics are very impressive. Over 98 percent of people who put through the system are qualified instantly. Of the remaining less than 2 percent, three-quarters of those people do not challenge the refusal. They walk away. The accuracy rate has been much improved since 2008. Those figures were only 96 percent accurate. The link to the latest figures for E-Verify, that is in the information that I submitted.

American workers and legal resident workers are only asking for a fair shake. We should not be rewarding people who break the law. If you get a speeding ticket, imagine an NHP officer not issuing a ticket. It would be insane to reward the speeder. We should not be rewarding people who have entered our country without our permission or overstayed a visa. We should not be rewarding them with benefits, jobs, et cetera. I also submitted a link to a poll. The vast

majority of Americans do not want mass deportations of illegal workers. They do not want amnesty. They want simple law enforcement.

If you do not enforce the law, there is an example from February 2008 in the San Francisco Bay Area. Channel 2 in Oakland had a story that there were 20 pallet manufacturers everywhere from San Jose to Richmond with illegal workers being paid \$4 to \$5 an hour minus rent. They slept on the floor in the back. All the safety equipment from the power saws were removed. I have the documentation from Immigration and Customs Enforcement (ICE) of the 20 employers and all of the infractions. That is abuse of the workers by unscrupulous employers. To stop the abuse by unscrupulous employers of illegal workers and to guarantee that legal jobs go to legal workers, we need to require the use of E-Verify to enforce the I-9 form. If you do not believe in E-Verify, you are saying you do not . . .

Chair Kirkpatrick:

I do not think that is appropriate. Please do not go down that road.

Ed Rathje:

It is simple enforcement of the I-9 form.

Lynn Chapman, State Vice President, Nevada Families:

We are in favor of this bill. I would like to remind you of the 55 illegal immigrants who were discovered as TSA supervisors. They were taken out of their jobs because they were here illegally. They were in supervisory positions. Because of E-Verify, they were identified. E-Verify also has bipartisan support in our Congress. The reauthorization passed the House of in 2008 with a vote of 407 to 2. Even House Speaker Nancy Pelosi backed E-Verify. The overall accuracy of E-Verify for the first half of 2007 was 99.5 percent. Social Security numbers were found more than twice in all the transactions. They found problems. They also rooted out bad identities. They received about three million inquiries because of E-Verify. They found 157,000 unauthorized workers. We have a lot of facts and figures over a long period of time. It works and we should look into it. We should go forward with this because it would help our state and people. We need a fair shake. We have a lot of people that need the jobs here. To say that Americans do not want these jobs is untrue. Americans want any job they can get right now. There is not much out there. Please go forward with this and help Nevadans.

Jim DeGraffenreid, Chair, Nevada Republican Party:

Most of the points have already been made. We would like to go on record as saying that E-Verify has proven to be a simple and effective method of verifying compliance with the law, and we would support its use.

Chair Kirkpatrick:

Is there anyone else who would like to testify in support of A.B. 252? [There was no one.] Those that are in opposition of A.B. 252, I will say the same thing. Please be respectful of comments and stick to the merits of the bill. We can proceed. Those that are opposed to A.B. 252.

Steve Holloway, Executive Vice President, Las Vegas Chapter, Associated General Contractors:

We are opposed to A.B. 252 for two reasons. Having the general contractor be responsible for enforcing this on the subcontractors is problematic. The reasons are, for those of you who understand construction projects, the general contractor, who is the prime contractor only, has a contractual relationship and knowledge of the first tier of subcontractors on that job. There may be two, three, or four other tiers of subcontractors on a public works job that do not have a contractual relationship with the general contractor. There are also suppliers that supply different subcontractors with whom the general contractor might not have a relationship. He has no real knowledge about some of these subcontractors. It makes it difficult for the general contractor to be able to enforce this. It does not seem fair to require him to do so.

The second problem that we have with the bill is that it will drive up the cost of public works. It is problematic for our union contractors, both generals and subcontractors, who get their employees out of a union hall, for example. When those employees come out of the union hall, they are guaranteed a minimum of two hours of pay, at which point, we are required to sit them down and wait for several hours while we process them through the E-Verify system to confirm whether they are an illegal alien or not. This becomes costly and problematic because they are already on the job site. They are not direct employees of that contractor. They are employees that come out of a union hall. The same may be said for nonunion contractors if the employees come out of some temporary employment service. It is very difficult for contractors to do E-Verify. For their regular full-time employees, many of them process them through E-Verify already. Others do not. It becomes very problematic if they are required to perform this service. We are opposed to the bill for those reasons.

Assemblyman Stewart:

Would you be agreeable to an amendment that put the responsibility on the subcontractors and the union hall to verify the citizenship of their workers?

Steve Holloway:

We would need to see the amendment.

Rebecca Gasca, representing the American Civil Liberties Union of Nevada:

We are here in opposition to this bill. It is primarily because the use of E-Verify has been litigated across the nation. It has been, most recently, considered by the U.S. Supreme Court in December 2010 in a case called *Chamber of Commerce of the United States v. Whiting*, No. 09-115 (Oral Arg.)(U.S. December 8, 2010). That was a case that originated out of the state of Arizona. It deals with the federal preemption of E-Verify. That case has not yet been decided. That is reason enough to believe that the state should hold back from moving forward with this. This was originally designed as a pilot program and is incredibly rife with errors. Throughout its history and use, E-Verify has been noted for its reliance on the Social Security Administration's database and the U.S. Citizenship and Immigration Services (USCIS) database. Like many databases, they have been found to have many flaws. As a result, there are an inordinate number of backlogged requests, not only through the Department of Homeland Security (DHS), but also through the Social Security Administration in order to get those records reconciled.

In the state of Arizona, when the E-Verify system was first implemented, many individuals who came back as a temporary nonconfirmation were automatically fired. This is one of the problems with the E-Verify system. If the government does not look at it holistically and put forth adequate due process standards, individuals, citizens, and noncitizens that are legally qualified to work will be wrongfully terminated from their employment. That is the last place that the State of Nevada wants to go at this point, given our fiscal situation. There is no process set in place for people to adequately appeal the process to their employer or correct the misinformation within the Social Security Administration, DHS, and USCIS records. That is a long process. It is very bureaucratic in nature. The National Immigration Law Center (NILC) has multiple stories of people who take a long time to go through that process. The process can be anywhere from six months to two years in order to correct that information. All the while, those individuals are being denied their right to work lawfully. For that and other reasons, is reason enough for you to hold back and not move forward with the E-Verify system.

Chair Kirkpatrick:

I would like to give everyone an opportunity to speak.

Rebecca Gasca:

I will submit the rest of my testimony ([Exhibit F](#)).

Leissan Sadykova, Private Citizen, Reno, Nevada:

I have been a U.S. citizen since the summer of 2010. I emigrated here from Russia in 1987. I was on a visa until I was 14 years old when I gained

permanent residency. I received a social security number at that time. I gained citizenship last summer in 2010. I went to the Social Security Administration Office to change the status on my social security card. In order to do that you have to give them your social security card and they send you a new one with the same social security number, however, the status behind that number is changed. I am a full-time student at the University of Nevada in Reno. I filled out a Free Application for Federal Student Aid (FAFSA) form as I do every year. This year I checked that I was a U.S. citizen. About mid-March I received a letter that said that the status on my application did not match the status at the Social Security Administration office. That was very frustrating for me. I have been here for a very long time and gained citizenship. That was in the summer, and in March they still had not updated that record. I did receive my card that states that the record was updated. It is very unfair to rely on a system that has so many flaws. It affects not only immigrants, but U.S. citizens as well.

Gail Tuzzolo, representing the Nevada American Federation of Labor and Congress of Industrial Organizations:

I would like to put a voice to those mistakes that happen in the E-Verify system and the immigration system. I have a friend in Las Vegas who came here with her parents when she was very young. For a long time, she did not realize that she was an illegal citizen. She married someone from Las Vegas who was a citizen and began to go through the process of citizenship. She got a letter from the Immigration and Naturalization Service (INS) asking her to come down for a meeting. They indicated that she would be deported immediately. She had three small children. She went back to Mexico not able to speak Spanish. It was mistaken identity. Many times that happens because of the same surnames and first names. It took us three years to get her back. They were homeowners, her husband worked two jobs, they were upstanding citizens and because of mistaken identity, her family lost her for three years.

The other story is a little different and a little more personal. My son is 35 and a teacher in Massachusetts. When I applied for his social security card right after he was born, I put the wrong year of his birth. None of us knew that until he was buying a new house recently and somehow the discrepancy and the date came about. It took him two years to work with Social Security to rectify that mistake on his social security card. If I have two mistakes that have happened in my life with Social Security Administration, then there are probably a lot of people that have been affected by them.

Chair Kirkpatrick:

If we could stay on the topic of the bill, the public works issue, and the E-Verify that would be helpful.

Andres Ramirez, Private Citizen, Las Vegas, Nevada:

I am here to testify in opposition to this bill both as a native-born citizen, a small business owner, and a member of the Latin Chamber of Commerce of Las Vegas. There has been a lot of testimony given today. I am opposed to this bill for a variety of reasons. Primarily, it is already illegal for any employer in the United States to hire undocumented immigrants for any project or any work. This bill seeks to force undue mandates on small businesses and other businesses who are competing fairly, following the rule of the law, and who are participating in the best process forward this country has to offer in the marketplace. By you placing this burden on those that are following the rules, you are creating undue, unnecessary burdens for small businesses that are here already. This bill does nothing except punish people who are already following the rules. For people who are violating the rules and hiring undocumented workers, there is already recourse for them to be fined and dealt with. This E-Verify system is extremely flawed and does nothing but punish those who are already playing by the rules.

Leo Murrieta, Private Citizen, Las Vegas, Nevada:

I have worked with the small business community in southern Nevada for quite some time with past employers and in past experiences. I come in opposition to this bill. It is a system that puts additional strain on small business owners. My personal experience, with upwards of 100 small businesses, is that small business owners do not have the processes or manpower to input and implement additional strains and processes in order to hire their employees. You have real small businesses in Nevada who are mom-and-pop shops. They currently take the time to hire Nevadans. It is a cumbersome enough process to find the best candidate in a large pool of qualified individuals. It is a process that makes hiring Nevadans more cumbersome. That is not the solution that our state and your body needs to take at this time. I would kindly ask the Committee to please consult the other respectable chambers of commerce in southern Nevada and across the state. They would be the Urban Chamber of Commerce and the Latin Chamber of Commerce. There are many chambers of commerce throughout southern Nevada that are reputable and that will stand against this bill as well.

Vicenta Montoya, Chair, Si Se Puede Democratic Caucus:

I am speaking in opposition to this bill. For the reasons that have already been stated, this bill is not a good bill for the State of Nevada. There are many flaws in the E-Verify system, as have been testified to. As an immigration attorney, I have seen this over many years of practice. I have more than 30 years of practice in immigration law. You can speak to Caesar's Palace as to the suit that it had about wrongful termination of someone who actually did have authorization to be employed. This is fraught with problems for the state.

If there was a better system, it could be used. This is flawed. Even on the federal level, they do not wish to proceed with it. We should not proceed with it in the State of Nevada.

Hannah Brown, Private Citizen, Las Vegas, Nevada:

With the research I have seen, this bill is extremely expensive for small employers. For us to do anything that is going to damage our small businesses any more than they are already being damaged is not good. We need a fair pathway for persons who entered this country illegally because they will be receiving services with or without employment.

Yvette Williams, Chair, Clark County Democratic Black Caucus:

I am in opposition to A.B. 252. I will not reiterate all of the problems that we have with the bill or the problems we have with documentation on E-Verify in general. We would like to see those issues addressed before we get into a situation where we are requiring E-Verify. It is a system that comes with the many problems and creates additional problems for legal residents in our state. African Americans are impacted by this as well. Many, especially those from southern states who are of a certain age, have had problems with obtaining documentation. My daughter was born in California. When we went to get her social security number for her driver's license, we had problems. This is something that is not just an immigration issue. It is far-reaching to people of color or any immigrant that may have come to this country. I hope you will consider that.

Theresa Navarro, Chair, Progressive Leadership Alliance of Nevada:

I have been an activist in Nevada for about 30 years. I have lived here for about 38 years. I would like to give you a couple of facts about E-Verify and why I am totally against it. There is a 15 percent discrepancy in E-Verify as far as reporting. That needs to be clarified. In February of 2009, Barnes and Noble used E-Verify on a national level. It affected the Barnes and Noble stores here in Nevada. There were 120 people that were given notice on E-Verify. Out of the 120 people, 80 of them were undocumented workers that were unable to go back to their work. The other 40 people were actual U.S. citizens and legal immigrants that were here working on visas. I am still in contact with those people. Approximately 10 of them cannot get jobs because it takes a lot of time to clear that I-9 form through the E-Verify system. There is too much discrepancy in E-Verify. It cannot take place.

Mario Dela Rosa, Community Organizer, Progressive Leadership Alliance of Nevada:

I oppose this bill. One of the reasons is that this will be a detriment to the economy of our state. This might be a barrier for the many benefits and

contributions to the economy that the immigrant and Hispanic community is doing for this state. We sent you a study ([Exhibit G](#)) that the Progressive Leadership Alliance of Nevada (PLAN) did a couple of years ago about the benefits and contributions that the Hispanic immigrant community does for this state.

Chair Kirkpatrick:

Can we stick to the merits of the bill?

Mario Dela Rosa:

I would like to emphasize the benefits to the economy. This bill might be a detriment to these benefits.

Jack Mallory, representing the International Union of Painters and Allied Trades District Council 15:

We are in opposition to this bill, not necessarily because of its intent, but because of its content. There are a couple of problems specifically with the bill. In section 1, subsection 1, it states, "Each contractor and subcontractor on a public work shall register and participate in the E-Verify system to verify the employment eligibility of all workers on the public work." That is where the critical problem is with that section. The reason is that USCIS, which is administered jointly by the Department of Homeland Security and the Social Security Administration, provides specific rules regarding utilization of the E-Verify system. It is to be used specifically for newly hired employees. The program may not be used to prescreen applicants for employment; they cannot go back and check employees that were hired prior to the company signing the memorandum of understanding (MOU) to utilize the E-Verify system. Another problem with this is that, within the industry itself, there are a number of contractors that utilize E-Verify. A number of the contractors that we partner with utilize E-Verify. The problem is that they do not understand the rules. They do not understand the way it is supposed to be applied. Interestingly enough, the Social Security Administration seems to have problems properly administering the E-Verify system. There was a report released earlier this year by the Social Security Administration's Inspector General that showed that the agency had failed to use E-Verify on nearly 20 percent of its new hires. In addition to that, they improperly ran checks on 169 volunteers and individuals who had not been hired. They violated program rules with respect to the timing of its verifications 49 percent of the time. One of agencies that is charged with jointly administering this program has problems administering the program itself.

Chair Kirkpatrick:

We need to move along. Can you submit the rest of your testimony? [He submitted ([Exhibit H](#)).] If you would like to submit other testimony I am happy to put them on the record for you.

Jack Mallory:

In relation to the questions that Assemblyman Stewart asked Mr. Holloway, he had suggested a potential amendment to the bill that would require labor organizations to use E-Verify. Labor organizations, other than the people that they employ directly, are prohibited by law from "E-Verifying" individuals that are registered with their hiring halls. The specific reason for that is because they are not employees of the union at any given time. That type of an amendment is problematic.

Chair Kirkpatrick:

We will now move to those that are neutral on this bill.

Warren B. Hardy, representing the Associated Builders and Contractors of Nevada:

We signed in as neutral because we support the concept and idea of finding a workable, reliable, and efficient method for employment verification. We are opposed to E-Verify as a way to do that. By my math, that makes us neutral. The E-Verify system is an attempt to try to do something that we support, but it has not proven to be effective. There have been many mistakes, although I will acknowledge that it has gotten slightly better. There have been incremental improvements but not enough to where we are comfortable to support this as a method of verifying employment. In addition, there are significant penalties that go directly to the employer when he is relying on something that might be unreliable. We do support the notion of doing something along these lines. In our opinion, E-Verify is not the way to do it at this point.

Tray Abney, representing the Reno-Sparks Chamber of Commerce:

I would just like to agree with a lot of the concerns that have already been addressed and agree specifically with Mr. Hardy's testimony.

Chair Kirkpatrick:

Is there anyone else who would like to testify in neutral? [There was no one.] We will now close the hearing on A.B. 252. We will now open the hearing on Assembly Bill 430.

Assembly Bill 430: Revises provisions governing aliens unlawfully present in the United States. (BDR 14-79)

We will keep the comments on both sides limited to keep the hearing moving forward.

Assemblyman Ira D. Hansen, Washoe County Assembly District No. 32:

I will handle the whole thing as best as I can. Assembly Bill 430 makes the last one look really minor. When I was running for this office, the No.1 issue that I was confronted with was the economy. The second was illegal immigration and what we were going to do about it. I am sure many people were confronted about that while campaigning. No one wants to touch it, because the truth is that if the federal government was doing its job, I would not be here today talking about this. No one is looking out, in these issues, for the little guy. I mean the average construction worker, the guy working in the fast-food industry, or the guy working in the warehouse that is faced with this unfair competition of allowing people that do not belong in the country to compete for the same job market that these people are trying to keep. Currently in Nevada we have almost 200,000 people unemployed. At the same time, we have 140,000 illegal people occupying jobs in this state. This really should be approached as a job bill. It could also be approached from the idea of reducing overcrowded classrooms. Nevada is third in the nation in overcrowding and averages 27 children per classroom. We can also look at it as a way to expand the amount of money paid in wages. If you reduce the labor pool, the value of labor goes up. It will eliminate unfair competition. One of the problems we have run into while seeking diversification of the economy is that businesses do not want to relocate to Nevada because we are 50th in the nation in the percentage of our workforce that has a high school or higher education level. If we removed the illegal population, our percentage would substantially go up.

Chair Kirkpatrick:

We need to stick to the merits of the bill.

Assemblyman Hansen:

In the second quarter of this year, foreign-born workers gained 656,000 jobs compared to the same period last year. Native-born workers lost 1.2 million jobs in construction according to a report issued by the Pew Hispanic Center. Foreign-born Hispanics gained 98,000 jobs between the second quarter of this year and the second quarter of last year. Native-born Hispanics lost 133,000 jobs. Native born non-Hispanics lost 511,000 jobs.

Chair Kirkpatrick:

You may have forgotten about the other 119 languages and multiple nationalities that are represented in this state. [Assemblyman Hansen submitted an amendment ([Exhibit I](#)).]

Assemblywoman Flores:

I would like to clarify that your bill says immigration and it does not talk about the Hispanic community specifically. You are bringing out a lot of statistics on Hispanics, but Hispanics are not all of immigration.

Assemblyman Hansen:

I am in agreement. Chair Kirkpatrick and I went over the fact that Canadians have made a significant impact. The percentage that I saw is that approximately 80 percent of immigrants are Hispanic in Nevada. That is the largest group we are talking about.

Section 1 of my bill deals with when an immigrant is arrested, law enforcement has the opportunity to apply for verification of the immigration status. That would not include an individual who can produce a valid driver's license, identification card, or any valid documentation issued by a federal, state, or local government. Sections 2 and 3 have been deleted entirely in my amendment. Section 4 deals with the Attorney General being allowed to enter into an agreement with the federal government. This would deal specifically with the Immigration and Nationality Act, Section 287 (g), which, for no cost, allows our law enforcement agencies to be trained in immigration procedure. Section 5 deals with E-Verify for public employment jobs. Section 6 also deals with that and specifically those subcontractors and contractors on public works will have to use E-Verify. Section 7 is language to clean up the bill. Section 8 says that any person, firm, or corporation that knowingly misclassifies an unauthorized alien as a legal alien shall be punished by a fine of \$50 per day. That would be a maximum fine of \$50,000. An example of that in the Reno area is the McDonald's chain was caught for intentionally hiring illegal aliens. There was some concern that they would not be able to fill those jobs because supposedly only illegal aliens would be willing to do those kinds of jobs. We found that the jobs were almost immediately filled by teenagers and senior citizens. You should also note that Nevada does have 33 percent unemployment among our teenagers.

My first amendment to the bill deals with blackmailing an illegal alien. If an employer knows he has an illegal alien working for him and he does anything to force him to perform involuntary servitude or threaten him in any way, he would be punished for that. The second amendment deals with photo identification. We should require photo identification to vote. On the next amendment, anyone who is not a citizen of the United States is not eligible to receive the Governor Guinn Millennium Scholarship. The last two would deny illegal aliens public benefits. The last would be if someone is illegally in this country, it would also deny him the ability to receive a Nevada driver's license.

If we are really serious about dealing with the illegal immigration situation, improving employment for Nevadans, and following the law, we are dealing with something that is illegal right now. If we were sincere about protecting the little guy in this state, it is the type of bill that should be passed. It is very similar to Senate Bill 1070 in Arizona. After Senate Bill 1070 was passed, even though it is tied up in the courts, they had approximately 30 percent of the illegal immigrants migrate out of the state. A fair percentage of them migrated to Nevada and were included in the census. That is something that this bill would clean up.

Chair Kirkpatrick:

There is a large fiscal note that has been added to your bill with the amendment.

Assemblyman Hansen:

The estimated cost to take care of illegal aliens in Nevada is around \$1.5 billion. The amount of tax revenue that they generate is around \$75 million. The savings for the state is huge if we were to do this.

Chair Kirkpatrick:

Those would be potential savings because we have not done a lot of research on this.

Assemblyman Munford:

In the case of the McDonald's incident in Reno, what was the penalty that was given to the business?

Assemblyman Hansen:

Luther Mack was the proprietor. I understand that his penalty was \$2 million.

Assemblyman Munford:

Is he still the owner of those McDonald's?

Assemblyman Hansen:

I am not sure. I think he ended up selling the franchise.

Assemblyman Munford:

There has already been an effort on the part of the government to crack down on these various private businesses.

Assemblyman Hansen:

I do not know the answer to that.

Assemblywoman Flores:

There are always a lot of numbers thrown around in terms of the cost that undocumented people create for the state. You threw a number out there that was in the billion-dollar range. Is it possible for you to provide the sources of those numbers for us?

Assemblyman Hansen:

I would gladly do that. I apologize. In fairness, I rushed my testimony. I have all the documentation to back it up. I received this information from the Legislative Counsel Bureau. It was provided from the Fairness and Accuracy in Reporting (FAIR) group which studies these types of things. Their paragraph said that a table in the FAIR report concludes that in Nevada, the total outlay for education, health care, corrections, and welfare is \$1.19 billion annually. In a separate table, FAIR estimates that illegal immigrants generate \$62.2 million in tax receipts. Another table shows the estimate of net fiscal costs in Nevada. The net fiscal cost of illegal immigrants is \$1.128 billion. The Pew Hispanic Organization has done a great deal of homework on it too.

Chair Kirkpatrick:

That would be helpful. I think there are two sides of it. Sticking to the points of the bill, you have seven different points in here. We want to stick with the bill. I will now call up those that are in support of A.B. 430.

John Wagner, State Chairman, Independent American Party:

I wish to speak about section 1 of this bill. It relates to police officers. I talked to a police officer just in the past week. This police officer stopped a person who had three separate identification cards with three separate names. His picture was on all three of them. The officer is Hispanic and the person he stopped was Hispanic as well and more than likely illegal. I asked the officer if the person had a driver's license. The officer said that the person he stopped had a driver's license from Oregon. He was booked into jail and then was released. He turned the information over the Immigration and Customs Enforcement (ICE), and he fully expects that he will have to hand this man over to ICE. That is if he can be found. It would have been nice if he could have done it right then and there at the booking facility, as opposed to having to release him on his own recognizance and then have to catch him again.

Jim DeGraffenreid, Chair, Nevada Republican Party:

We support the bill as written. We have not fully gone through the amendments. I am limiting my comments to what is on A.B. 430 as published so far. In section 1, the bill does nothing more than allow Nevada law enforcement to comply with federal law. It wisely limits enforcement to situations where an individual has already been arrested and booked for some

type of a violation of Nevada or federal law. Given Nevada's financial situation, we think it just makes sense to check status and avoid correctional and processing costs on something that should be handled by the federal government. The bill addresses problems with similar Arizona legislation that experienced charges of racial profiling because it allowed law enforcement to check immigration on the basis of any lawful contact. This bill limits it to people who have been arrested and booked.

Chair Kirkpatrick:

There is a large cost that is associated with this bill. In southern Nevada we have a program in place that allows them to do this so that there are trained officers. There is a 13-week program that they go through. I am not sure why Washoe County does not do it. It is a significant cost. You are fine with the cost to run this bill through?

Jim DeGraffenreid:

I am unfamiliar with the program in southern Nevada.

Chair Kirkpatrick:

I will be happy to get more information to you. It is a very big cost. We started it in 2007, and it was well in the million-dollar range to get it going.

Jim DeGraffenreid:

That was all of the testimony that I had on that section. We support that it is arrested and booked, as opposed to any lawful contact.

Janine Hansen, State President, Nevada Eagle Forum:

It was about six years ago that we were here supporting a bill to ensure that illegal aliens did not receive driver's licenses. We have been working on this issue for many years. We were some of the only ones here in support at that time. We feel that it is important. This issue is important because it has to do with public safety. In December of 2002, Saul Morales Garcia, alias Javier Duarte Chavez, shot a Las Vegas police officer, Enrique Hernandez six times. The alien had previously been deported but he illegally reentered the United States. This is an issue of those who have been deported continually coming across the border. There are incidents of where people have come across six times or more. It is an issue of public safety. We support section 1 of this bill.

In addition to that, my daughter-in-law and her husband were economically struggling. She went to a subsidized midwife clinic in Washoe County. She was the only one there receiving care that spoke English. There is a lot of money that is spent in public dollars to support those who are in our country

illegally. We need to obey the law. All the men in my life this last year have been out of work, including my son-in-law. These are important issues for the economic well-being in the state of Nevada. This is a critical issue for public safety, which is my greatest concern.

Assemblywoman Neal:

You brought up the issue of public safety and you cited a situation about a clinic that someone participated in. Under federal law, it is allowable to have some level of assistance for health, welfare, and safety of aliens. The U.S. Supreme Court Case *De Canas v. Bica*, 424 U.S. 351 (1976) stated that it is the province of the federal government but the state can only mimic what the federal government has actually allowed. To put out there that there is a problem of having ability to take care of health issues for aliens is erroneous. We would have a bigger problem on our hands if they were not able to receive health care, any level of education, or participate in the system at least in the sense of having the ability to be safe and well.

Janine Hansen:

Since that time, the clinic has closed down. I agree with you. It is a federal issue. The reason we have this problem is because the federal government has failed to enforce the law. We are left to try to respond to that in an inadequate way. Our hands are tied by the federal government. There are many dilemmas that we do not have direct control over because the law is not being enforced on the federal level.

Assemblywoman Benitez-Thompson:

I was listening to your testimony; I would like to speak to your reference to multiple people speaking Spanish at the clinic. I do not want to confuse the issue that people who speak Spanish, many of whom sit on this Committee, should not be assumed to be illegal, undocumented, or in this country in an illegal manner. I want to make sure we are speaking to the merits of the bill which are all immigrants. We should not always infer that the population is composed of Latinos and Hispanics and nothing else. That begs a larger question if we automatically default to that group.

Janine Hansen:

I did not say they did not speak Spanish. I said they did not speak English. My sister-in-law is from Columbia. When she came here, she did not speak any English either. I had an interesting opportunity to help her learn English and for me to learn Spanish. My brother went on a mission to South America. I have no issue with people speaking Spanish. I would be better able to function in our society. I appreciate that. I just said that they did not speak English and I was not trying to be negative regarding the Hispanic community. I am concerned

about those that are here illegally in the nation. They should be the first priority. I understand that there are many reasons why people come to this country.

Lynn Chapman, State Vice President, Nevada Eagle Forum:

This bill does speak to E-Verify. E-Verify does have bipartisan support. We had Ted Kennedy and John McCain putting E-Verify as a cornerstone to their immigration reform bill the Secure America and Orderly Immigration Act. We also had President Obama endorse E-Verify when he was running for the presidency. In fact, the entire federal government is using E-Verify. We are in support of this bill. When I talk to people, they are concerned about police and fire. That is what they want their taxes to go towards. This bill has to do with enforcing laws. This is the type of bill that the people want to have enforced and paid for. There are so many other things that they do not care about and that they do not want to pay for. This is something that they would be happy to pay for.

Chair Kirkpatrick:

As long as we do not forget that it is a large expense to get some of these things started. Is there anyone else who would like to testify in support of A.B. 430?

Ed Rathje, Private Citizen, Reno, Nevada:

The cost of illegal residents in this and any other state should be considered. Several months ago, there was a cover story in a Las Vegas newspaper where, in one hospital, the cost for one procedure for illegal residents was \$1 million for emergency dialysis. That means one million dollars a month, one hospital, one procedure.

Chair Kirkpatrick:

That article was for anyone that did not have insurance at the hospital. It was not specific to the illegal resident population. I have to give the other side the opportunity to debate it as well. I am trying to stick to the merits of the bill.

Ed Rathje:

I did not get a chance to read all of the details of the bill. One of the problems with catering to or allowing illegal residents in this state is that it is dangerous. The case of the Mother's Day murder is an example of that. The guilty person in 2005 was paroled by the judge after an attempted murder-accessory charge. He was paroled on a felony, and at the time he was an illegal alien. It boggles my mind that any judge in this state should be allowed to even consider parole or bail for someone who is an inherent flight risk. That makes no sense to me. If you are not here legally you are obviously a flight risk. In material I submitted

([Exhibit E](#)), I have a link to a survey done in late April of 2006. There were two bills at the federal level about immigration. The McCain-Kennedy Senate bill was criticized for various forms of amnesty. The bill in the House from December 2005 was basically strict law enforcement. The poll enclosed in those documents is the only poll which I have ever seen which offers all three choices: amnesty/forgiveness, strict law enforcement, or mass deportations. Most people who favor the McCain-Kennedy bill are against deporting massive amounts of people; therefore, we have to give them amnesty.

Chair Kirkpatrick:

I get copies of the 287(g) report from southern Nevada. There are 119 languages that we recognize within this state. On that report, which I get on a quarterly basis, it encompasses Canadians, Chinese, Russians, et cetera. In fact, there was a bill in 2007 that I personally sponsored because we had a huge influx of people trying to bring others across in tires. We had Operation Dollhouse. They were bringing young women from China to work in these performing arts shows. We learned about the prostitution rings. It is predominantly European girls that are brought in through that. We need to have a fair and open debate about this. I want to stick to the merits of the bill. There are so many nationalities that are affected. I have a Hispanic son-in-law. He speaks better Spanish than he does English. He is American-born and he is my family. His family has been here for a long time. A lot of my family is from different parts of the country. We are such a melting pot within the state. I want to stick to the merits of the bill. Anytime we single out one group or another, we do a disservice to our state as a whole. Ms. Hansen did testify with me on my bill in 2007. We have provisions on the website. I would love to debate all day long about what the federal government does, but my job is to be concerned about Nevada and its future.

Ed Rathje:

I do not believe I have mentioned any racial thing here. If China, India, or Denmark happened to be on our southern border and there was a big economic differential, we would have an invasion by Danes, Indians, and Chinese. This is not racial. It is geographical and economic. The vast majority of every category of people in that poll voted for law enforcement and attrition through law enforcement.

Chair Kirkpatrick:

Is there anyone who would like to testify in support of A.B. 430? Is there anyone who is in opposition? I will tell you the same thing; please be respectful of other people's opinions and stick to the merits of the bill. I realize there is an amendment with seven different merits but Mr. Hansen did a good job of going over it.

Theresa Navarro, Chair, Progressive Leadership Alliance of Nevada:

There has been talk about undocumented people receiving benefits in the state. That is not true. It is a myth. People that have been seen in clinics, as has been mentioned earlier, may be citizens. Right away, you make an assumption that they are not citizens. People who are undocumented parents that have children that are born in this country are entitled to benefits. There are children that are undocumented who are not born in this country and are not entitled to benefits. If you see a family getting welfare or food stamps it is usually because the child is a U.S. citizen. That is the reason they are receiving the benefits. I wanted to clear that up. As to section 1 of this bill, there is already racial profiling in the state of Nevada. I have testified many times against racial profiling in the state of Nevada. This will only enhance it.

Elvira Diaz, Private Citizen, Carson City, Nevada:

I immigrated in 1992. My mother is American. I came to Carson City with a business. I used to own Sierra Bakery. When you are a baker, you need to prepare the bread at 2 a.m. I went to my bakery and I did not stop all the way for the stop sign. I was stopped. I was arrested. My social security number was off by one number. I spent four hours in jail. I had to close my shop. I lost \$600 in product. They towed my car. I am an American citizen. My mother is American. I have an accent. I carry my documentation with me all the time to be safe. I want to advocate for victims of domestic violence. In my bakery, I had the opportunity to help many people affected by domestic violence. If we are going to apply this kind of law that is similar to the one in Arizona and put pressure on our officers to check on citizenship, we will have a lot of suffering. The Legislators are doing an outstanding job trying to balance the budget and do good things. I beg you to refrain from putting bad laws in Nevada. Nevada is wonderful. I learned how to do business in Nevada. I am now a community activist. My daughter goes to the University of Nevada, Reno. I have a little child who is transgendered. You are doing a wonderful job about that. I beg you to not put negative statutes in the state. We need to work in love. Together, we can do better.

Rebecca Gasca, representing the American Civil Liberties Union of Nevada:

I wish we had a more extended time. I would love to speak to the merits of the bill and the plentiful amendments. This opportunity would have been a good time to speak with you about all the ways these amendments and the original bill touch on so many core civil liberties issues. I hope that I can sit down with each of you in the future to talk about why things like voter identification are problematic for senior citizens, people with disabilities, et cetera. I will just hit three highlights: public safety, cost, and employer sanctions of the existing bill.

I will only elaborate on Ms. Diaz's testimony insofar as when immigrants view the larger law enforcement community as being equivalent to immigration enforcement, they are less likely to call law enforcement when they are a victim of a crime. That could be domestic violence, property crime, or any other type of crime. It creates a disconnect between the immigrant community and law enforcement as a whole which undermines the whole idea of public safety. That is something that each and every Legislator cares deeply about.

The bill as originally drafted and printed notes that there is no cost to local governments, which is a fallacy.

Chair Kirkpatrick:

Updated fiscal notes came based on the amendment.

[Chair Kirkpatrick left the room. Assemblywoman Bustamante Adams became the Vice Chair.]

Rebecca Gasca:

I will then move to the employer sanction portion of this bill. If the Legislature wants to contribute to the enforcement of immigration laws and fundamental fairness, we should begin looking at workers' rights laws that are on the books and are not being enforced. Immigrants are being driven to the black market and are working in deplorable conditions in this state. Instead of imposing employer sanctions for hiring someone who may be illegal, we need to look at those people who are hiring illegal workers and abusing them because they have no opportunity to come to law enforcement otherwise and fully express the conditions under which they work.

Vice Chair Bustamante Adams:

We will now hear testimony from Las Vegas.

[Assemblywoman Kirkpatrick reassumed the Chair.]

Vicenta Montoya, Chair, Si Se Puede Democratic Caucus:

I am very familiar with 287(g) in the Clark County area. This was initially a problematic program that was initiated. There were people who were being arrested for jaywalking. They ended up in immigration custody. I want the Committee to know that just because someone may be undocumented and goes from police custody into immigration custody does not stop the financial aspect of this. If you go into the immigration court records, there is a backlog of at least a year before that individual can have a hearing with the court. This is an unfunded mandate. With the cuts that we are having, it is reprehensible to do this. Law enforcement is not supportive of this. It was a big step for the

Las Vegas Metropolitan Police Department (LVMPD) to go into this particular area. I have not been able to find out what the exact cost is to the residents of Clark County. There are costs. People are incarcerated. That is taxpayer dollars going toward people being housed, fed, clothed, et cetera. An individual in this room just a few months ago believed that he was a permanent resident, when in fact, after a little investigation, it turned out that he was a citizen. The whole area of immigration is very complex. Even those offices in Las Vegas have had to have extensive training on it. It is not just an automatic thing. The mandate that has gone down is that it is only for serious crimes. You are clogging up the legal system, either federally or locally. We do not have the money to absorb these kinds of costs that we have right now. This does a disservice to the citizens of Nevada. I concur with Ms. Gasca; we should be looking at violations of labor law, employers who do not have workers' compensation

Chair Kirkpatrick:

We still have many other people to speak on this bill.

Vicenta Montoya:

This is an improvident type of measure that is not funded. The citizens of Nevada should not be funding something like this at this time when we have other things such as education that need to have more funding.

Michael Flores, representing ProgressNow Nevada:

I know that immigration is a very controversial and heated issue. We are concerned that this is the kind of legislation that breeds hate. This legislation can go further than the words on the page. It is very similar to the legislation in Arizona. I see a lot of similarities. I was in Arizona when that legislation was passed. I saw the economic impact that that environment created. People were not coming out of their homes. This is a federal issue that needs to be handled at the federal level. If you really want to make an impact and change the way things are going, it needs to be handled at the federal level.

Chair Kirkpatrick:

I am not trying to not give anyone their fair side on either side. If you would like to submit comments or written testimony, we will enter it into the record.

Leo Murrieta, Private Citizen, Las Vegas, Nevada:

I am against this legislation because I feel that it is not the appropriate time for our state to put legislation into effect that has damaged another state like Arizona. They have lost millions of dollars in tourism. That is our state's primary industry. This legislation would further hinder our state's ability to recover economically as well as our standing throughout the country.

This legislation is not something productive. It is not a conversation that we should be having at this time. I feel that there are more important matters that we could be addressing. There are many more revenue-producing matters that we could be addressing. For those individuals that are for this legislation, in the last election, the first Latino candidate for Nevada State Governor was elected with the lowest percentage of the Latino vote in modern history. Sixty-five percent of the Latino vote went to the Democratic candidate against the Republican candidate, who happened to be Latino, because of his harsh stance against the Latino communities and support of Arizona's Senate Bill 1070 which is much like this legislation.

Steve Holloway, Executive Vice President, Las Vegas Chapter, Associated General Contractors:

We are opposed to this bill. We are particularly opposed to the requirement for the use of E-Verify on public works for the same reasons that I enumerated when I testified earlier this morning on A.B. 252. I would like to add that we have been in support of several proposed bills that address misclassifications in public works and the misuse of the 1099 form. We think that gets to the underlying problems that this bill is trying to address. It also protects those workers, including illegal workers, in this country who are being abused. We feel that those are much better avenues for this purpose.

Gail Tuzzolo, representing the Nevada American Federation of Labor and Congress of Industrial Organizations:

We would like to go on record against this bill. When it went into effect in Arizona, they lost millions of dollars in tourism. We cannot afford that.

Jack Mallory, representing the International Union of Painters and Allied Trades District Council 15:

I will not repeat my testimony from A.B. 252 as it pertains to the public works provisions. I would like to point out for the Committee that there were several U.S. Supreme Court cases in the late '70s and early '80s regarding denying individuals' education. One in particular was *Plyler v. Doe*, 457 U.S. 202 (1982) which occurred in the state of Texas. The state had attempted to charge a \$1,000 per-pupil tuition fee for undocumented immigrants. They were found to be in violation of the 14th Amendment. I will not reiterate the concerns that have already been expressed on the potential impact on the tourism industry. It is necessary to state that Las Vegas, in particular, is an international destination and that we are potentially sending a message to the rest of the world that we are not open to all that want to come here to visit.

Chair Kirkpatrick:

Is there anyone else who would like to testify in opposition? [There was no one.] Is there anyone who is neutral that would like to testify? [There was no one.] If you have any comments on either side or in neutral, they will be submitted as part of the record to ensure that we gave ample time for both sides.

Assemblyman Hansen:

Thank you for allowing me the opportunity to present this bill. The most important matter is that we have 200,000 Nevadans that are unemployed, both legal immigrants and natives. We have an estimated 140,000 illegal immigrants occupying jobs. That is the critical thing.

Chair Kirkpatrick:

We will close the hearing on A.B. 430. We will open the hearing on Assembly Bill 325.

Assembly Bill 325: Revises provisions governing the jurisdiction and control over items manufactured or produced within this State. (BDR 19-809)

Assemblyman John Hambrick, Clark County Assembly District No. 2:

Assembly Bill 325 is relatively simple. I have been asked many times exactly what it is. Is it a gun bill? A tax bill? A job bill? The answer is all of the above. We have testimony from the south from the author of the bill. This bill will attempt to keep money within the state where there are taxes being leveled by the federal authorities on intrastate goods. That means things on manufacturing and submanufacturing within the state. It is legal. We get into some sketchy areas, but it is legally possible to keep that money within the state so manufacturers and submanufacturers can then reinvest those savings back into the business either to expand or hire. It has no effect on the counties or the state. It is a business bill and a jobs creation bill. We need to think outside-the-box on how we can get the economy going. We always hear labels of what type of bill this or that is. Hopefully, as you look at this bill you will see that it is a unique way of looking outside the box and trying to get some funds back into the state. It would revitalize some of the smaller businesses. I mean some of the smaller businesses around rural Nevada that may only have a few employees. This would give them a break. There is a witness whom I would like to bring forward in the south. She is the author of the bill. Her name is Suzanne Nounna. She will fill in more background on this.

Chair Kirkpatrick:

This bill is a little bit confusing. The crux of the whole bill is to redefine what an intrastate product is so that it is not subject to federal taxes. Is that correct?

Assemblyman Hambrick:

That is correct.

Chair Kirkpatrick:

I just wanted to make sure so that we can stay on task.

Assemblyman Anderson:

Did the Legal Division give this bill approval? Is there going to be a supremacy clause issue?

Assemblyman Hambrick:

I do not believe so. I will defer to legal counsel, but the Legal Division saw this and went through it. I always let them look at the bill closely to make sure we stay within the scope. I believe the answer is that we are on solid ground. I believe legal counsel will correct me if I am wrong.

Chair Kirkpatrick:

They will not write a bill if they feel that they will not be able to defend it constitutionally. They have figured this out before it gets to us; otherwise, they would never have let it out of drafting.

Assemblyman Hambrick:

I agree with you.

Assemblyman Goedhart:

There was an example in a state where it had guns that were made within the state and sold within the state. That would be on an intrastate basis. It had been ruled, with the state sovereignty clause, that it was their business and entities. It had been upheld in a court case. I am intrigued by your bill. This is the type of creative outside-the-box thinking that we will need to propel this state out of our current recession. I applaud the bill sponsor for bringing this forward.

Assemblyman Hambrick:

As a prime example, there is a solar panel corporation that will remain within the state. That is a perfect example of where we will be able to benefit. They could take the savings and expand their business or their workforce.

Suzanne Nounna, Private Citizen, Las Vegas, Nevada:

We started out as a committee of about 40 or 45 people. It was just a group of citizens that were concerned. We grew to about 125 people. It took us over a year and a half to get all of this work done starting from baby steps. We were definitely a strong social/economic cross section of people who did this.

We have an interesting mix of people who are in support of this bill. We have about 400 people in northern Nevada who are in support of this and about 300, or so, of them in southern Nevada. Many of them are scattered across your districts. I would like to allow Dr. Mark Baxter to go over the finer points of this bill and explain it. I am very appreciative of your time and of Assemblyman Hambrick for sponsoring this bill. It helps the state of Nevada. There is no question there. That was part of what brought this to fruition among the citizenry. Last session there were a lot of issues. Professionals and labor got together and started talking. We figured we could create some solutions. We have had a few failures, but we think this one is a winner.

Mark Baxter, Private Citizen, Las Vegas, Nevada:

We have a PowerPoint presentation that has been given to the Committee ([Exhibit J](#)). Assembly Bill 325 is a proposal to enhance Nevada state tax revenues, increase employment, enhance the business climate, and reassert Nevada's jurisdiction over intrastate commerce. The current alcohol tax revenues within the state of Nevada from December 2009 to November 2010 amounted to \$43,144,919.35. On page three of the handout you will see where Nevada alcohol tax rates are compared with the federal government. In Nevada, beer is currently taxed at \$0.16 per gallon. Wine is at \$0.70 per gallon. Spirits are taxed at \$3.60 per gallon. On the federal level, beer is taxed at \$0.58 per gallon, wine varies based upon alcohol content between \$1.07 and \$3.40 per gallon with an average of approximately \$2.10, and distilled spirits are taxed at \$10.80 per gallon. If you take a look at how those numbers compare, you will see that the federal alcohol tax rates are roughly three times the state tax rates.

On page 4, as previously mentioned, Nevada alcohol tax revenues amounted to \$43,144,919.35. On those same sales, the federal alcohol tax revenues amounted to \$129,434,758.05. That is 129 million Nevada dollars going outside the state to Washington D.C. where we have to trust that they will do what is best with those funds. The federal government collects three times more tax revenues on alcohol consumed in Nevada than Nevada does. On the next page ([Exhibit J](#), page 5) is the federal excise tax rationale. The federal excise tax on alcohol is administered by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) and it derives its jurisdiction from the Interstate Commerce clause of the *U.S. Constitution*. It states, "The Congress shall have Power . . . to regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes." Among the several states refers to interstate commerce. That is when items are transferred between the states and are sold from one state to another. The only thing that gives the federal government the power to impose excise taxes is when goods are transported across state lines. The federal government, however, taxes these items that are

produced within the state for consumption only within the state. That is intrastate commerce.

Chair Kirkpatrick:

We are also the same Committee that sits on the Assembly Committee on Taxation. This is a lot of tax discussion that I would have thought we would have had. I understand the whole purpose of this bill is to redefine intrastate and interstate so that we keep things within our state.

Assemblywoman Pierce:

You are focusing on alcohol. So we kick the federal government out of this area of business, and it will then just be a Nevada concern. I now no longer have the protection that the federal government gives me to make sure that when I open a bottle of wine, I am getting something that will not kill me. Is there any plan to have oversight? Are we just going to let everyone sell their own alcohol and hope for the best? This idea that the federal government does not do anything is strange to me. They do not do enough in terms of protecting us from bad food and firearms. We could just have anyone move here and start manufacturing guns without any regulation. There is a lot of oversight that protects us that comes from the federal government. It needs to come from the federal government because the corporations that create most of these consumer goods are not going to be scared by 63 legislators in the state. You need big government because someone has to be the counterbalance to big business and protect us from the excesses of the market.

Chair Kirkpatrick:

On your next six slides it does just that. Is that correct?

Assemblyman Anderson:

Can you cite case law that says the federal government can only collect excise taxes on interstate commerce? I am looking at Article 1, Section 8 of the *U.S. Constitution*, it says, "Congress shall have the power to lay and collect Taxes, Duties, Imposts, and Excises." It does not say anything about how it has to be interstate commerce. For regulating interstate commerce, I understand the commerce clause, if we are saying that we are going to take control over an excise that the federal government also lays, is there case law for that?

Mark Baxter:

There is extensive case law supporting the fact that the federal government only has the constitutional authority to impose taxes on those items that are involved in interstate commerce. They do not have the power, constitutionally, to impose taxes on intrastate commerce. They attempt to do so and have

succeeded up until the present time in most cases because states have been abrogating their power to enter into this area. The fact is that this legislation only pertains to what is currently handled by the ATF currently. It has nothing to do with food or firearm safety. There is extensive state and federal legislation that would continue to remain in effect that covers the public safety aspects of these items. That is really not a concern. This only pertains to where the tax revenues on these items belong.

This would not kick the federal government out. They would still be able to collect excise taxes on alcohol, tobacco, firearms, and explosives that were manufactured outside of our state and transported into our state. This would only affect those items that are currently, or in the future, manufactured within the state of Nevada and labeled that they were only for sale within the state of Nevada. It would create an incentive for microbreweries within the state of Nevada to brew beer, sell it, and have it consumed only within the state. That would no longer accrue a federal excise tax. The state of Nevada could impose an additional excise tax on those products manufactured within the state and collect considerable revenues within the state. These revenues are currently being exported to Washington D.C.

Chair Kirkpatrick:

Could you send the Committee some information on different states that are doing something similar? I would like to have a discussion with the Nevada Commission on Economic Development. We benefit so much from exports that I want to make sure this does not put this in the opposite position to what we want. I am all about trying to think outside-the-box, but I want to make sure that this particular thing does not undo other parts of the statute.

Mark Baxter:

I will provide you with that information. There has already been legislation passed in Montana and four other states. Those pieces of legislation were limited to firearms. Our legislation is more far-reaching and truer to the intentions of the founding fathers of this country when they wrote the *U.S. Constitution*. Our bill is not limited to firearms but includes firearms, alcohol, tobacco, and explosives. It would not impact our state's ability to export these items whatsoever. The companies that manufacture these items within the state have the choice of manufacturing items for sale only within the state or only for export outside the state or both. They simply have to label their products so that certain products were designated for sale only within the state and other products were labeled for sale outside the state. It would not restrict our access to the export market from Nevada to the surrounding states.

On the next page of the slide ([Exhibit J](#), page 7) it states that our proposal encourages new industry in Nevada by allowing companies to produce products within the state of Nevada for the purpose of sale and use within the State of Nevada and not come under the jurisdiction of taxation powers of the federal government because their products will not enter interstate commerce. The next page speaks to tax consequences. If this legislation passes, the federal government will stop collecting excise taxes on all products produced by Nevada manufacturers for use or consumption within the State of Nevada. That means whether it is alcohol, tobacco, firearms, explosives, or anything else the federal government should decide to tax in the future. This will encourage new industries to develop within Nevada and create thousands of new jobs. This will also create a massive new revenue stream if Nevada chooses to replace a portion of the former federal excise tax with a new state excise tax.

The total new Nevada state excise tax burden will have to be somewhat less than the current total state and federal excise tax burden in order to attract new industry to the state. If Nevada increases its own excise taxes to a degree that is equivalent to the diminished federal excise tax, then there will be the same amount of tax placed on these items. That will not encourage companies to develop manufacturing and production facilities within the state. Any new tax revenues that the state can raise with this will be considerable, but it will have to be at a somewhat lower rate than is currently raised by the federal government. There is plenty of room there. The federal government currently collects three times the amount that the state collects on these same items.

The benefit of this legislation is that it will encourage new industries; there will be new jobs and additional revenues for Nevada. It will also reassert Nevada's jurisdiction over intrastate commerce. This will help us to prevent the federal government from overstepping its constitutional authorities in other ways that we do not yet imagine. I have heard rumblings that there are efforts to give the federal government jurisdiction over the mortgage industry, although that is currently regulated within the state. They want to do that because some mortgages are sold across state lines. This would help to reassert our power to maintain control over real estate law within the state. That is an important consideration.

Here are just a few of the new industries that would be encouraged by passage of this legislation: distilleries, wineries, breweries, tobacco product manufacturers, et cetera. All of these benefit our entertainment, hotel, and casino industries. Firearms and ammunition manufacturers could also manufacture within the state, and explosive manufacturers which serve our mining industry would also be encouraged to manufacture within the state. These new industries can create thousands and even tens of thousands of new

jobs for Nevadans, including the construction trade which would be building the new production facilities.

Additional revenues would come from many sources. Revenues from corporate taxes moving into the state to benefit from the preferential tax structure here would be one. Revenues from additional excise taxes on products manufactured, sold, and consumed or used within the State of Nevada would be another. Additional property tax revenues for Nevada's counties from new companies building new production facilities would be generated. Additional state revenue due to enhanced economic growth is the final one.

In the presentation, we reference the constitutional principles of this measure. For decades, Nevada has allowed the federal government to abrogate Nevada's authority by imposing taxes and regulations not only on items entering interstate commerce, which is constitutionally authorized, but also on items remaining in intrastate commerce, which is not constitutionally authorized. This only encourages the federal government to increase intrusions into our lives. Standing up for constitutional principles now helps avoid more difficult intrusions in the future.

Taxes collected within Nevada on products not entering interstate commerce should remain in Nevada, under the control of the Nevada Legislature instead of being sent to the federal government. You all trust your own ability to spend the tax dollars raised by transactions within the state more than you trust the federal government to work with those same funds. The state of Nevada is much better able and much more likely to spend these revenues in a way that will benefit Nevada. Assembly Bill 325 is a bill for more jobs for Nevadans, a bill for Nevada's economy, a bill for Nevada's industry, and a bill for our future.

Suzanne Nounna:

I would like to express our appreciation to Assemblyman Hambrick, and I would like to thank all of you. There are people who are in all your districts that support this bill. We desire your vote for passage.

Assemblywoman Neal:

On section 3 of the bill, the language is discussing the manufacture or production of items which are imported into the state and used in the manufacture and production of items. I heard "intrastate," but when you have something imported into the state it is "interstate." In your description you said that the federal government, in that section, does not have jurisdiction or control over those items. Is that correct? That seems to be in conflict.

Mark Baxter:

Our intention with this section was to prevent the federal government from starting new excise taxes on things that might be utilized for the production of alcohol, tobacco, firearms, or explosives within the state that it does not currently impose excise taxes on. Say the federal government decided to impose an excise tax on grain that was grown in the State of Washington and export it from Washington to Nevada, where distilleries would convert that grain into alcohol. We were trying to avoid the situation where the federal government would try to go around this legislation and impose taxes on raw ingredients that were used in the manufacture of these items within the State of Nevada.

Chair Kirkpatrick:

On interstate commerce, the federal government can impose excise tax. Is that correct? If we do intrastate commerce, we can keep a portion of the money. You are saying that in the future, if they try to impose an excise tax, with more states going in this direction, that section 2 would stop that from happening. Is that correct?

Mark Baxter:

Interstate commerce refers to "commerce between the states." *Intrastate commerce* pertains to "commerce within the state." The intention of section 3 is to prevent additional excise taxes from being imposed by the federal government. In reflection, this section may not be necessary. If the federal government was going to tax grain exported from a state, it would have to tax all grain from all states, going to any state because of the general welfare clause in the *U.S. Constitution*. I do not believe this would be an issue.

Chair Kirkpatrick:

There are probably a lot more questions, but they will have to be outside of this forum because it is very complex. Although it is only six sections, you just deleted one section. That makes it five. In this Committee we have learned that if it is a two-section bill, someone will amend a whole bill onto it.

Assemblywoman Neal:

I understood that with interstate commerce, a state had police power only to control local conditions that affected what was going on inside the state. It seemed that when you had the language of importing into the state and limiting federal jurisdiction, somehow you were extending the control over local conditions because it spoke to importation into the state.

[Chair Kirkpatrick left the room. Assemblywoman Bustamante Adams became the Vice Chair.]

Mark Baxter:

This legislation was reviewed by the Legal Division. It was found to be in compliance with the law as they understand the law.

Vice Chair Bustamante Adams:

We will ask a few more questions and then transition to others that are in support of this bill.

Assemblyman Ellison:

Would you speak to the fiscal notes on this bill?

Mark Baxter:

Which page are you referring to?

Assemblyman Ellison:

The fiscal notes about public employees.

Suzanne Nounna:

The fiscal note says that there is no fiscal impact. Is that what you would like us to address?

Assemblyman Ellison:

You show that your estimate for operating expenditures' affect on future benefits as being \$145,895. Where did you come up with those numbers?

Suzanne Nounna:

Those are not our numbers.

Assemblyman Ellison:

It is in the bill.

[Assemblywoman Kirkpatrick reassumed the Chair.]

Suzanne Nounna:

Are you talking about what is on the Nevada Electronic Legislative Information System (NELIS)? We did not submit anything that would indicate a fiscal impact. All the current government agencies that collect taxes or disperse taxes will stay the same. They will keep it with the Nevada State Treasurer instead of sending it to the federal government. There is no fiscal impact. I am not sure what you are looking at. We did not submit anything. We tried to get on NELIS before, but there was a problem with the connection. I do not know what you are seeing.

Assemblyman Goedhart:

This bill will do what a lot of other bills have attempted to do. It legally and lawfully gives instate producers and manufacturers of these products a competitive advantage over people who have produced products outside the state and imported them. This is Nevadans producing jobs and products and supplying needs and goods to other Nevadans. In my three sessions here, this is one of the most outstanding economic development bills that I have ever had the pleasure of listening to. I applaud your efforts in bringing this forth.

Chair Kirkpatrick:

If there is anyone who would like to testify in support of A.B. 325, please come forward.

Janine Hansen, State President, Nevada Eagle Forum:

This is an exciting, innovative, and creative idea. It was exciting to hear the testimony to broaden my understanding of it. This will help create jobs and economic development. Individual responsibility is encouraged by a profit motive and an opportunity for this. There are many items that can be produced and consumed in the State of Nevada. In my experience, big government is often in league with big corporations. I am not concerned about that as much as I am about opening up the freedom to encourage entrepreneurship in Nevada. We fully support this bill. It is an exciting idea.

Lynn Chapman, State Vice President, Nevada Eagle Forum:

My husband works for a small manufacturing company in Sparks. They had to lay off almost two-thirds of their workers. It would be wonderful to have an economic upturn. If this bill will do that, it will be wonderful. Some of the people may be able to get their jobs back. This is a great bill, and we are in support of it.

Chair Kirkpatrick:

Is there anyone else who would like to testify in support? [There was no one.] There were also many people who could not be here today but still submitted their support of this bill ([Exhibit K](#)). Is there anyone who is in opposition? [There was no one.] Is there anyone who is neutral? [There was no one.]

Assemblyman Hambrick:

If the Committee would look at the presentation [[Exhibit J](#)], page 11], it says new industries and new jobs. As human beings, we have a tendency to look at a list and that becomes the only list. I talked about the solar panels in southern Nevada earlier. We heard testimony about a small corporation that makes subcomponents of a larger piece. Please do not feel limited by the words that are on this list. We have many small corporations throughout the state that

make subcomponents for larger units. This will affect the small manufacturers in a beneficial way. The wisdom of this Committee has a broad breadth of experience in the business community. I hope your thought processes will be brought to bear, and you will have a favorable outcome on this bill.

Chair Kirkpatrick:

We will now close the hearing on A.B. 325. We will now open the hearing on Assembly Bill 330.

Assembly Bill 330: Makes various changes to provisions relating to certain government contracts. (BDR 19-965)

Assemblyman John Ocegüera, Clark County Assembly District No. 16:

Assembly Bill 330 is a bill that will create greater public access to state contracting information. [Referred to ([Exhibit L](#)).] Under current law, all public books and records of a governmental entity must be open during office hours for inspection and copying. All departments, institutions, and other agencies of the Executive Department of the state government must submit to the Chief of the Budget Division of the Department of Administration certain information regarding existing contracts. Assembly Bill 330 defines privatization contracts as those executed by a governmental body, which contracts out services substantially similar to those and in lieu of services otherwise authorized or required to be provided by that body. That means that if a public employee is doing that service and we are now contracting that work out, that should be transparent.

We should be able to see what the cost of the contract is and why we are putting that work out. We modeled this after language from statute in the State of Rhode Island. This declares that privatization contracts are public records and guarantees public access to those records. It also requires that the governmental body must submit to the Chief of the Budget Division a copy of each contract and information regarding the duration and number of those contracts and a comparison between the use of employees and the use of regular full-time employees in a governing body. This is a transparency bill. It helps during the budget-making process. This extends the public requirements of privatization contracts and budgeting process to local governments as well. When it is preparing the budget, the governing body of a local government shall prepare and include a list of the existing contracts the local government has with persons or temporary employment services, the length or duration of those contracts, the proposed expenditures for such contracts in the next two fiscal years, the reasons for use of such persons or services, and a summary of the number of persons the local government proposes to employ pursuant to those contracts.

This bill will increase transparency and make the information available to the public. It also ensures some accountability during the budget process because it prevents the irresponsible use of contracts. It is not just an after-the-fact reporting. Currently, we do some of this reporting, but it is after the fact; they have already done it. This is during the budgeting process. It holds local governments accountable to the same standards of publicly available information during the budgeting process. There is an amendment that is going to be proposed on this bill ([Exhibit M](#)) by the City of North Las Vegas. It clarifies the services that are performed by public employees.

Assemblywoman Bustamante Adams:

Does A.B. 330 deal directly with the state? It does not necessarily cover school districts. Is that correct?

Assemblyman Ocegueda:

It covers state and local governments.

Assemblywoman Bustamante Adams:

I know that we heard another bill in this Committee which spoke to employing consultants and the requirements that we were going to ask of the school district. Is this the same thing?

Chair Kirkpatrick:

It is not the same thing. One has to do with the grants process, and this bill gives another tool for transparency. In the Assembly Committee on Taxation, we sponsored a tax expenditure report. This is another piece within that report that helps us do a better job. Assemblyman Conklin sponsored a bill that made governments more transparent as well. This bill is yet another tool to help for the long term in budgeting so we know where we are at in the grand scheme of things. Is that correct?

Assemblyman Ocegueda:

That is correct. In section 3, subsection 4, government entity means an elected or appointed officer of the state or of a political subdivision of the state; or an institution, board, commission, bureau, council, department, division, authority, or other unit of government of this state or of a political subdivision of the state. You can see a university foundation as defined in *Nevada Revised Statutes* (NRS) Chapter 396 and an educational foundation as defined in NRS Chapter 388.

Chair Kirkpatrick:

Is there anyone who would like to testify in support of this bill?

Barry Smith, Executive Director, Nevada Press Association, Inc.:

Openness, transparency, and accountability are those things that I like to support. This bill does that. I am speaking in support.

Chair Kirkpatrick:

Is there anyone who is in opposition to A.B. 330? [There was no one.] Is there anyone who would like to testify in neutral?

Dan Musgrove, representing the City of North Las Vegas:

The amendment ([Exhibit M](#)) is the product of a discussion with Assemblyman Ocegüera and his staff. Our concern was that we believe that everything that a local government does, or any governmental entity for that matter, is a public service. We are working on behalf of our constituents. The clerk that might buy a computer to make documents more transparent we would get that piece of equipment from a private entity. It would be a public service. While it does not replace any persons, under the original definition, we were worried that all those things might be considered a privatization contract. Our amendment simply adds six words into section 3, page 3, starting at line 15. It says, "'Privatization contract' means a contract executed by or on behalf of a governmental entity which authorizes a private entity to provide public services that are substantially similar to *the services performed by public employees* and in lieu of the services otherwise authorized or required to be provided by the governmental entity." Assemblyman Ocegüera's interest is in showing when privatization replaces existing public employees. With this clarification, we believe that that meets the intent of his bill and takes away all of our concerns. We stand neutral, as far as this Committee is concerned, but we are supportive of the action of Assemblyman Ocegüera.

Assemblyman Anderson:

Would this mean that this bill would not apply to something that has already been privatized? It is not something performed by public employees anymore. It is contracted out. When I look at the language in the bill it says that these are services that are required to be done by the government and not just as a public employee. Would that take out functions that have already been privatized?

Dan Musgrove:

Assemblyman Ocegüera testified that he wanted to see things as they happen and be a part of the budgeting process. We cannot go backwards and redo everything, obviously. All our contracts are public documents. We go out to requests for proposal (RFP) all the time for most of those services. We believe that is a public process. What we see as we go forward, if there is some robot that can replace lobbyists, which I am sure everyone would be happy about,

that would be a contract of privatization. A public employee would be replaced. That is what would go under this new privatization contract. All of the existing services out there and all of the contracts are public. We believe that Assemblyman Ocegüera's intent was, as we go forward, he wants that to be public, transparent, and part of the budgeting process.

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

We are neutral. We are supportive of this bill. We are fine with the amendment. When you look at the definition of privatization contract, the reason that Mr. Musgrove brought this up was everything we do could be considered being authorized or required to be provided. For example, security services for all our senior centers, community centers, et cetera. We have contracted that out for many years. Could a public employee do that? Yes, he could; however, we have contracted those things out. We have contracted out things like janitorial services to spread the wealth into the community and help the small business community. I do not believe that was the intent of this. Theoretically we could be authorized or required to provide those services. The definition could be construed as being very broad.

Assemblyman Stewart:

I am confused by Mr. Musgrove's amendment.

Assemblywoman Pierce:

The bill does want us to look at the things that Mr. Olivas just described. I support that. We should be looking at all those things. We should look at it going forward, but we should also look at what we have done as well.

Lisa Foster, representing the Nevada League of Cities and Municipalities and Boulder City:

Both my clients are neutral, but as has been previously mentioned, there are some concerns and questions. Assemblyman Ocegüera's office has clarified some of the questions we initially had and we appreciate that. The City of North Las Vegas's amendment ([Exhibit M](#)) does provide some clarity and make some improvements for the other cities. There are still some questions we have. Cities have laid off hundreds of employees in the last couple of years, eliminated many more positions, and so contracting out are still done. Every city tries to be transparent. These are public documents, and they should be putting them on websites and making their processes as public as possible. I hope to work with Assemblyman Ocegüera and the staff to get more clarity on some of the details of the bill. When it comes to looking at the employees of a firm you are contracting with, we need to figure out how to determine that and compare it to the requirements of the bill. It is a little complex, but we are looking forward to working with him on that.

Chair Kirkpatrick:

We do need to have these things fixed soon. I would suggest that you have your comments made available as soon as possible to Assemblyman Ocegüera's office. Otherwise, some of your bills are hanging out. We are trying to get them all fixed. We need to get that information as soon as possible.

Susan Fisher, representing the City of Reno:

We are supportive of the intent of the bill and transparency. We do not have any problem providing details of contracts and that sort thing. We do have some administrative issues that we anticipate with this. It could be very burdensome if we are contracting out services, for instance landscaping. We do not know, under section 8 of this bill, if we have to give specific information about how many employees, hours, et cetera. We may not know how many employees they have. One employee working eight hours or eight employees working one hour each could be a little bit of an administrative issue to get all of that information from the contractors as well.

Chair Kirkpatrick:

How hard is it to just ask for that information? If we are using the landscaping example, I wonder why it takes so much. I would want to know how many people are expected to be on the grounds. I am curious as to why we would not want that information. If I go out to clean someone's pool, he knows that it is not me and ten other people. It is me and one other person. It is safety on both instances.

Susan Fisher:

Those numbers can vary greatly from day to day on where they need to be with some of the contract services. It depends on if something is scheduled for a certain park or facility. We can certainly do it. It is just going to be an administrative burden.

P. Michael Murphy, representing Clark County:

I wanted to echo the comments that have been made by Mr. Olivas and Mr. Musgrove. We support the bill. We did have some initial concerns that have been clarified with the amendment.

Javier Trujillo, representing the City of Henderson:

The City of Henderson is also on board with the amendment proposed by Mr. Musgrove and the City of North Las Vegas.

Chair Kirkpatrick:

One of you in local government will get with the Assemblyman today to get any clarifications you will need? Is there anyone else who would like to testify as

neutral on A.B. 330? We will close the hearing on A.B. 330. We will open the hearing on Assembly Bill 402.

Assembly Bill 402: Requires a state agency to enter into or participate in a contract to allow it to accept credit cards, debit cards or electronic transfers of money to the agency unless it is impracticable for the agency to do so. (BDR 31-968)

Assemblyman John Oceguera, Clark County Assembly District No. 16:

Assembly Bill 402 is the acceptance of electronic payment by state agencies. [Referred to ([Exhibit N](#)).] In 2011, not all agencies accept credit cards or payments over the Internet. Apparently, we need to have a law to fix that. The existing law allows state agencies to enter into contracts in order to accept credit cards, debit cards, and other forms of electronic payment. Assembly Bill 402 would require state agencies to enter into these contracts for electronic payment unless it is impractical for them to do so. We do give them an out. If the state agency is unable to enter into these contracts on its own, it may participate in a contract entered into by the Department of Administration. They can do a larger contract. If it is infeasible for an agency to enter into a contract for electronic payment, it will be required to report to the Interim Finance Committee (IFC) why it could not do so.

The benefits of this are fairly obvious, but I will go through them. The ease of access for businesses and citizens is a benefit. Encouraging the modernization of outdated payment practices to meet public expectations is another benefit. When we were going over this presentation this morning, one of my interns said that he could make most of his payments on his iPhone, but I cannot do this at the state. I had to admit that that was a true statement. It will also increase compliance with fee collections. The streamlining of the payment process will benefit us. Last year, I introduced the Nevada Business Portal, modeled after the Utah Business Portal where there is one-stop shopping. You should be able to go online, enter your information, and pay your fees from the privacy of your own home and be done with it.

This means that you will not have to go stand in line at multiple state agencies. This will reduce red tape and shorten timelines. It will also reduce wait times at agencies. There is one conceptual amendment ([Exhibit O](#)) that adds a provision that will provide that agencies which enter into a contract for electronic payments will also coordinate implementation with the Office of the State Treasurer's in order to track and reconcile payment information. This is a little more complicated than was originally thought. There are a number of ways to track where the payment goes and to what account it is credited to. The Treasurer's Office is slightly concerned about that. We have talked with them.

They were concerned that this was going to make it mandatory for all agencies, and they were concerned about being able to handle that. As I have described, this is not mandatory. If it is not practical for an agency to do it, then it does not have to do it, but it does have to respond to IFC and let us know why it could not be done.

Assemblywoman Flores:

Electronic transfers can often be done without a fee associated with them, but credit card companies tend to charge on their end in order to process the transaction. Has there been thought in terms of whether or not the ease of being able to do transactions online increasing the amount of money that is coming in will offset whatever we have to pay to the credit card companies? Will there be a net loss?

Assemblyman Ocegüera:

What you said originally is the case. It would offset many of the expenses. The ease would be worth the cost. If the charge was directly to me I would be willing to pay the fee to do it from my home computer. That is my personal opinion.

Chair Kirkpatrick:

In 2007, we did our first credit card transaction bill. I could get you some information on where they limit some of the fees. That is a big discussion within the entire statute. I would assume that some of this might apply to where that works. We can look that up.

Assemblywoman Bustamante Adams:

Depending on your level of transactions, you can use one of three ways to partner with an entity to handle e-commerce. This gives the agency the flexibility to determine whether it has a high volume of transactions versus a lower volume. Is that correct?

Assemblyman Ocegüera:

That is correct. If a state agency only collects a few things, it is allowed under this bill to enter into a Department of Administration contract so that the Department could control the volume.

Chair Kirkpatrick:

Those that are in favor of A.B. 402 please come forward.

Carole Vilardo, President, Nevada Taxpayers Association:

I am speaking in support of the bill. I cannot add much more than what Assemblyman Ocegüera has already said. There is one point I would like to

bring up. Being able to process these transactions through credit cards not only has security features but allows the Treasurer to invest the money sooner. Payments from most of our agencies, so long as they are postmarked on the day it is due, still take three days at a minimum to reach the agency and then take time to manually deposit. When you look at the volume of money that the State Treasurer processes, we are looking at daily interest that is calculated and compounded. That is another important thing. We have supported this concept every time the issue has come up. It is a method of convenient security and it works both ways for the state and business.

Chair Kirkpatrick:

Is anyone else in support of A.B. 402? [There was no one.] Is there anyone who is in opposition to A.B. 402? [There was no one.] Is there anyone who is neutral on A.B. 402? [There was no one.] We will now close the hearing on A.B. 402. We will now open the hearing on Assembly Bill 403.

Assembly Bill 403: Requires the adoption of certain permanent regulations.
(BDR S-974)

Assemblyman John Ocegüera, Clark County Assembly District No. 16:

Assembly Bill 403 addresses some issues surrounding temporary regulations set to expire which were frozen by the Executive Order 2011-01. [Referred to ([Exhibit P](#)).] On January 3, 2011, the Governor issued an executive order which provided that "all proposed administrative regulations propounded by an Executive Branch agency, department, board or commission within the purview of the Governor . . . shall be frozen until January 1, 2012. During the freeze, no new regulations may be proposed or acted on unless exempted from the application of this order." There are a number of regulations out there that are temporary regulations. They are set to expire prior to this date. Those regulations need to have a permanent regulation.

The bill requires that the board, commission, or person that adopted the delineated temporary regulation adopt a permanent regulation and replace it. It requires the permanent regulation to be adopted before November 1, 2011, when the temporary regulations will expire. It requires that specific existing regulations must be permanently adopted to codify existing regulations before that expiration date. There are many regulations within my presentation. I will not go over them one by one. There is not anything here that is earth-shattering. It is a matter of cost. If these regulations are not made permanent, they will have to go through the whole regulation process again. They will have to go through public hearings and have boards meet; they will have to redo those regulations in their entirety. This does not undermine the

Governor's efforts to freeze regulations. That is fine. These are a separate set of temporary regulations that we need to make permanent.

Assemblywoman Pierce:

Did all these temporary regulations get looked at by the Legislative Commission?

Assemblyman Ocegüera:

They were looked at by the Legislative Commission or the Subcommittee to Review Regulations. They are all in place. Some of them have been in place over a year. They will expire.

Assemblyman Goedhart:

I have been involved in the regulation-making process as an outcome of some of the statutes that we pass here. Why were these regulations put in as temporary regulations in the first place instead of going through that process and being made permanent?

Assemblyman Ocegüera:

I have chaired that committee. I am not sure. They have the ability to put in a temporary regulation without going to the Legislative Commission as well. I am not sure that all of them have gone before the Legislative Commission. As you know, all the laws that we pass do not just go into effect; they have to go through the regulation process. One of the best things that we have done is having that Legislative Commission oversight. Sometimes they misinterpret what we wanted to do, and by coming back to us and us being able to look at that regulation, we can say that it needs to go back to the drawing board. I do not know if these were all temporary because they felt that they needed to put them into the temporary category without going to the Commission, or if some of them have been to the Commission. I could get that answer for you.

Chair Kirkpatrick:

I sit on the Subcommittee to Review Regulations. We have those at certain times. We may be having one in the next three weeks or so. Sometimes, with temporary regulations, it is such a long process to go back. It can take anywhere from 60 to 90 days. There were times at the end of the last fiscal year that people were trying to adopt some temporary ones so they could be in place and comply with the law. I am going off of what we did. There were regulations that they needed to go back and change based on what the Commission told them. It would be yet another 60 to 90 days in a waiting period with that. They were just making the adjustments of the Legislative Commission but they have to go back through the public process. That is why there are sometimes temporary regulations. The Office of the Governor does

have to sign off for them in order for them to be temporary. Someone does look at them. We also look at them on the Committee.

Assemblyman Goedhart:

My concern was that we had some regulations that were in the process of being formulated and were still on a probationary and temporary basis that, because of this bill, would become permanently enacted into regulation. That is my only concern. Did you have a conversation with anyone in the Governor's Office in relation to this bill? What was the response?

Assemblyman Ocegüera:

I did not have that conversation with the Governor's Office. These temporary regulations would have to go in front of the Legislative Commission or the Subcommittee.

Assemblyman Stewart:

Has this been cleared with the current administration so that we do not have conflict down the road?

Carole Vilardo, President, Nevada Taxpayers Association:

I work a lot with regulations, particularly out of the Department of Taxation. *Nevada Revised Statutes* (NRS) Chapter 233 governs all regulations. There are three types. There is an emergency regulation that the Governor has to sign off on. He has to declare the reason for the emergency. The agency does it. It is good for 120 days and may not be reauthorized. Temporary regulations occur for a one-year period. A permanent regulation is drafted by Legislative Counsel Bureau's Legal Division. It may start out with an agency, but then, to move through the process, it has to be drafted by the Legal Division. They draft it and then you have notification requirements on that. It then comes to the Legislative Commission. There is a 30-day period. It gets filed with the Secretary of State, et cetera. The Legislative Commission has to review it before it can be filed with the Secretary of State. That is the permanent regulation. Because your staff is so busy with preparing for a legislative session and cannot draft the regulation but a regulation may be necessary, that is considered a temporary regulation. It is done without the full benefit of the Legal Division. They may have started it. It does not have a file number, which is required for permanent regulations. It is in place until it can then be noticed for adoption as a permanent regulation which would be July 1, 2011. You go through the process again.

Chair Kirkpatrick:

We did have our last legislative Subcommittee to Review Regulations in December so that we could prepare for session. Is there anyone who would like

to testify in support of this bill? [There was no one.] Is there anyone who would like to testify in opposition? [There was no one.] Is there anyone who is neutral? [There was no one.] We will close the hearing on A.B. 403. We will now open the hearing on Assembly Bill 404.

Assembly Bill 404: Revises provisions regarding properties purchased or leased for use by the State. (BDR 27-381)

Assemblyman Ocegüera, Clark County Assembly District No. 16:

I am here to present A.B. 404. [Referred to ([Exhibit Q](#)).] This bill concerns the centralization and transparency of state leasing. Under existing law, the Chief of the Buildings and Grounds Division of the Department of Administration is authorized to lease and equip office rooms outside of state buildings for use by certain state offices of employees. There are some exempt agencies, such as the Gaming Control Board, the Department of Public Safety, and the Department of Motor Vehicles. Assembly Bill 404 would authorize the Chief to negotiate and execute all leasing agreements for all General Fund agencies. This would allow for centralization. It would create efficiency and transparency. It would cause savings in lease costs. In determining whether to approve a lease agreement, A.B. 404 requires that the Chief shall consider the terms of the agreement such as cost and availability of space in the existing state-owned buildings.

This means that different agencies have their own people go out and lease buildings and real property. For example, if we have had a decrease in the number of employees, if one agency had 50 slots or 5 open offices, another agency would not have that information. It is not centralized. If another agency needed to expand, it could put its five people in a different office building. I have also heard that agencies will lease space at a higher cost than our Buildings and Grounds Division would have received. They will pay more on the lease than what would have been negotiated by our Buildings and Grounds Division.

This bill causes greater transparency. There is no inventory of real property in the state. We do not actually know what we have in terms of real property in the state. It seems amazing to me that we do not know that. With this bill, we will have that information. This would also require the Chief to post to an Internet website those reports regarding leases and ownership of real property for state use. The list should include, without limitation, a brief description of the location, size, current use of the property, and the terms of the lease including the cost to the state. That would allow for more transparency and accountability by publicly posting the lease and the property. It allows businesses to potentially make an offer on unused property that the state may

have. It would allow an owner of office space to prepare a better offer to the state. It would clarify contact information. It is greater coordination between agencies. It would eliminate the need for duplicative positions in different agencies which do the same thing.

There is an amendment on this bill ([Exhibit R](#)). It is a very technical amendment. There are not any substantive changes. For example, it is changing the word "property" to "real property." The word "property" would mean that we would have to inventory all vehicles and things of that nature. That is not what this bill is trying to do. This is trying to speak to real property. They are very technical changes to the bill. There is also a conceptual amendment ([Exhibit S](#)) that would just say that the Buildings and Grounds Division would oversee the negotiation and execution of leases for everyone. That means they would oversee boards, commissions, and everyone else under the state purview.

Assemblyman Ellison:

How many long-term leases would fall under this category? Some of these agencies put money in their working budgets to go out and lease properties. This might be something where you can have your own billing cycle instead of creating whole new revenues, being that the money might already be in their budget.

Assemblyman Ocegüera:

I agree to answer the second question first. Regarding the first question, I do not know the answer. However, I know that it is a substantial amount. I do not know how to quantify it. We lease a lot of buildings.

Chair Kirkpatrick:

If you remember when we had those leasing bills, one from the counties and cities, I had talked about how in the past we had had trouble and we were giving back some of the abilities to people at the local level to lease some of these things. The whole reason to centralize this process is to keep a better handle. If we give them back some of the ability to skip the appraisals, as this Committee has discussed, we have to have something that shows exactly what they are doing. I think that we have worked with Buildings and Grounds over time. They understand the concern. That is why they have agreed to work, bring amendments, and do what is best to help expedite the transparency issue for us.

Assemblyman Goedhart:

It is a great idea to have a central registry. The outliers are going to stand out whether they are higher or lower. We are looking for the ones that are above

market value. It is going to give an impetus to let us renegotiate the lease or when this lease is up to look at somewhere else to lease. We will then be able to look at the particulars of how that deal was structured. We will hopefully be able to keep any type of personal prejudices from steering a lease in a particular direction. There are definitely a lot of positive potential consequences from this.

Assemblyman Ocegüera:

Not only could we renegotiate a contract but if there was space available somewhere else in the state, then we would have an inventory when that contract came up. We might move that agency into a place that we already have.

Assemblyman Livermore:

In section 1, it talks about the Chief overseeing any agreement for the leasing of property. The definition of "oversee" means that he is capable or able to potentially hire outside expertise in assisting. Is that correct?

Assemblyman Ocegüera:

I think that "oversee" means that he may have people in his employ. I do not know that it would go as far as to say he would employ an outside contractor. I may have the Legal Division give me a better definition. Obviously, you have people within the state agency that do this for a living. I guess they could contract out.

Assemblyman Livermore:

I am speaking to the concept of a realtor or real estate agent that may represent the chief of the department or the property that he is potentially going to purchase or lease. Generally, real estate transactions require a license.

Assemblyman Ocegüera:

The agency would be better suited to answer that question.

Chair Kirkpatrick:

We will ask them when they come up. At least we have been lucky to have the same staff in place for many years. Many of those people are retiring now. This helps future legislators; this helps future employees know everything that is available to them. There are a lot of long-term benefits. I will ask the agency that question. I am fairly sure they are qualified to do those.

Assemblywoman Bustamante Adams:

In the existing law, it says there are certain agencies that are exempt but in this bill, there are no exemptions. Do I understand that correctly?

Assemblyman Ocegüera:

That is correct.

Chair Kirkpatrick:

Will those that are in support of A.B. 404 please come forward?

Carole Vilardo, President, Nevada Taxpayers Association:

This was Spending and Government Efficiency Commission (SAGE) recommendation 19. In that recommendation, there had been other states that had gone outside to get inventories of their buildings. When something like that is done, there is generally a contract with a person who is doing the inventory for the state evaluating the status of the building and whether or not it should be sold, and then he gets an exclusive right. It is generally five years. He will lease, for a charge, any space that is needed. If the state sells anything, he gets that sale.

Governor Gibbons appointed a committee called the Blue Ribbon Implementation Panel. They were charged with looking at recommendation 19. I chaired that panel. It was a small group and we made a series of recommendations. Thirteen of them involved state building leasing. Three of the people that assisted us tremendously were Cindy Edwards, who is one of the Chiefs for Buildings and Grounds, Terry Preston, and James Lawrence. We had presentations made by the Director of the Department of Corrections, Nevada Department of Transportation, the university systems, et cetera, trying to get a handle on what we did and did not do; also, what made sense and did not make sense. With Buildings and Grounds expertise, there were four other people beside myself that were on this Committee. They were all experts. They were all involved in real estate development and knew the questions to ask. They knew how to evaluate it. One of the members went so far as to take all the leases down in southern Nevada over a five-year period and benchmark them against the commercial market. He found that, with almost no exceptions, Buildings and Grounds had negotiated leases under market. It was quite impressive.

One of the things we thought at that point is that there is no reason to go outside with the inventory. Another recommendation that is embodied in this bill is the fact that we have inventories but finding them is difficult. Trying to maneuver through websites to find where these inventories existed was not easy. We, at one point, discussed trying to create a portal so that all the agencies could have a consolidated list of all the real property. We were dreaming. That is expensive to create. This becomes a first step in getting a handle and having one place where you can absolutely look at what the state owns. We currently have it in multiple areas. Mark Stevens, whom many of

you are familiar with—he was the Senior Fiscal Analyst to the Assembly Committee on Ways and Means and now works for the University of Nevada, Reno—did the presentation on university buildings. We do not want to capture the university or the department of transportation in this. However, the university was willing to post its information and to be involved in some other recommendations that we had made that involved best practices. I thoroughly appreciate Assemblyman Ocegüera doing this. It puts us in the right direction in terms of transparency, making good monetary decisions, and acting as good stewards of the taxpayers' money in leasing out buildings or land. I urge your support of the bill.

Chair Kirkpatrick:

Are there any questions from the Committee? [There were none.] Is there anyone else who would like to testify in support of A.B. 404? [There was no one.] Is there anyone who is in opposition of A.B. 404? Is there anyone who is neutral on A.B. 404?

Ben Graham, representing the Nevada Supreme Court:

My read of this legislation, verified with the Speaker, is that the Supreme Court is not a state agency but is a different branch. This legislation does not necessarily apply to that. We do monitor spaces that are available very carefully. The Supreme Court's needs are narrow. We appreciate the efforts and are verifying that the Supreme Court is not in this legislation.

Chair Kirkpatrick:

Are there any other questions? [There were none.] Is there anyone else who would like to testify as neutral on A.B. 404? We will now close the hearing on A.B. 404.

We are adjourned [at 10:41 a.m.].

RESPECTFULLY SUBMITTED:

Jenny McMenomy
Committee Secretary

APPROVED BY:

Assemblywoman Marilyn K. Kirkpatrick, Chair

DATE: _____

EXHIBITS

Committee Name: Committee on Government Affairs

Date: April 6, 2011

Time of Meeting: 7:30 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 252	C	Assemblyman Pat Hickey	Memorandum
A.B. 252	D	Assemblyman Pat Hickey	Information on E-Verify
A.B. 252	E	Ed Rathje	Testimony
A.B. 252	F	Rebecca Gasca, representing the American Civil Liberties Union of Nevada	Testimony
A.B. 252	G	Mario De La Rosa, Progressive Leadership Alliance of Nevada	Demographic and Economic Facts
A.B. 252	H	Jack Mallory, representing the International Union of Painters and Allied Trades District Council 15	Testimony
A.B. 430	I	Assemblyman Hansen	Proposed Amendment
A.B. 325	J	Suzanne Nounna and Mark Baxter	Presentation
A.B. 325	K	Various	Testimony in Support
A.B. 330	L	Assemblyman John Ocegura	Presentation
A.B. 330	M	Dan Musgrove, representing the City of North Las Vegas	Amendment
A.B. 402	N	Assemblyman John Ocegura	Presentation
A.B. 402	O	Assemblyman John Ocegura	Conceptual Amendment

A.B. 403	P	Assemblyman John Ocegüera	Presentation
A.B. 404	Q	Assemblyman John Ocegüera	Presentation
A.B. 404	R	Assemblyman John Ocegüera	Amendment
A.B. 404	S	Assemblyman John Ocegüera	Amendment