

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

**Seventy-Sixth Session  
April 11, 2011**

The Committee on Government Affairs was called to order by Chair Marilyn K. Kirkpatrick at 8:01 a.m. on Monday, April 11, 2011, in Room 3143 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4406 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at [www.leg.state.nv.us/76th2011/committees/](http://www.leg.state.nv.us/76th2011/committees/). In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: [publications@lcb.state.nv.us](mailto:publications@lcb.state.nv.us); telephone: 775-684-6835).

**COMMITTEE MEMBERS PRESENT:**

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

**COMMITTEE MEMBERS ABSENT:**

None

**GUEST LEGISLATORS PRESENT:**

Assemblywoman Debbie Smith, Washoe County Assembly District  
No. 30  
Assemblyman Crescent Hardy, Clark County Assembly District  
No. 20  
Assemblyman John Hambrick, Clark County Assembly District  
No. 2

**STAFF MEMBERS PRESENT:**

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

**OTHERS PRESENT:**

Stephen W. Driscoll, Assistant City Manager, City of Sparks  
Cadence Matijevich, representing the City of Reno  
Susan Fisher, representing the City of Reno  
Michael Alonso, representing Caesar's Entertainment  
Paul McKenzie, representing the Building and Construction Trades  
Council of Northern Nevada  
Alfredo Alonso, representing Nevada Land, LLC  
Steven T. Polikalas, representing Watson Rounds  
Russell M. Rowe, representing The Capitol Company  
Warren B. Hardy, representing Associated Builders and  
Contractors, Inc., Nevada Chapter  
Bart Hiatt, President, A&K Earth Movers, Fallon, Nevada  
Clara Andriola, President, Associated Builders and Contractors,  
Inc., Nevada Chapter  
Terry K. Graves, representing Henderson Chamber of Commerce  
and the Nevada Motor Transport Association  
Frank Hawkins, President, National Association of the  
Advancement of Colored People, Las Vegas Branch 1111  
Carole Vilardo, President, Nevada Taxpayers Association  
Tray Abney, representing the Reno Sparks Chamber of Commerce  
Nicole Rourke, representing the Clark County School District  
Brian Kerzetski, President, Plumbing, Heating, Cooling Contractors  
of Nevada, Inc.  
James Halsey, representing the International Brotherhood of  
Electrical Workers Local No. 357

Randy Soltero, representing Sheet Metal Workers International Association Local No. 88

Greg Esposito, representing Plumbers, Pipefitters, and Heating, Ventilation, Air Conditioning and Refrigeration Technicians Local No. 525

Anthony Rogers, Southern Nevada Building and Construction Trades Council; and Bricklayers and Allied Craftworkers Local No. 13

Danny Thompson, representing the Nevada State American Federation of Labor-Congress of Industrial Organizations

Vicenta Montoya, President, Si Se Puede Latino Democratic Caucus

Michael Tanchek, State of Nevada Labor Commissioner

Michelle R. Jotz, Director of Governmental Affairs, Las Vegas Police Protective Association; and the Southern Nevada Conference of Police and Sheriffs

Chris Collins, Executive Director, Las Vegas Police Protective Association

Charles E. Kelly, Attorney, Las Vegas, Nevada

John Sullivan, Retired Deputy Chief, Las Vegas Metropolitan Police Department; and President, Sullivan and Associates, International

David Roger, District Attorney, Clark County

Eric R. Fleming, Assistant District Attorney, City and County of San Francisco, California

Philip Kohn, Private Citizen, Las Vegas Nevada

Richard Boulware, Vice President, National Association for the Advancement of Colored People, Las Vegas Branch 1111

Jose Solorio, Private Citizen, Las Vegas, Nevada

**Chair Kirkpatrick:**

We are going to start with our work session this morning. We have a heavy schedule this week. We have been working very hard to get through the deadline at the end of the week. For the Committee, please turn your attention to your work session packets. We will not be voting on Assembly Bill 1 today. There is another amendment that needs to work with the sunset commission.

**Susan Scholley, Committee Policy Analyst:**

Assembly Bill 80 was sponsored by this Committee on behalf of the Public Employees' Benefits Program (PEBP) and heard on this Committee on March 18, 2011. The bill makes a number of technical amendments to PEBP. [Read from work session document ([Exhibit C](#)).] The mock-up is the same document that the Committee saw at the hearing with the exception of page 3.

This was the final compromise amendment worked out between PEBP and Clark County. This deals with the federal legislation and making the statutes consistent with that legislation.

**Assemblyman Goedhart:**

Does this bill extend new benefits to domestic partners? If so, what was the fiscal note on that?

**Susan Scholley:**

There is no fiscal note. It does not extend any subsidies to domestic partners. It does, consistent with the PEBP action, make them eligible to join the plan, but there is no cost to that because there is no subsidy.

ASSEMBLYMAN LIVERMORE MOVED TO AMEND AND DO PASS  
ASSEMBLY BILL 80.

ASSEMBLYWOMAN BUSTAMANTE ADAMS SECONDED THE  
MOTION.

THE MOTION PASSED UNANIMOUSLY.

**Chair Kirkpatrick:**

The Committee members received the work session document a couple of days in advance. We posted it on the Nevada Electronic Legislative Information System (NELIS) this morning. We will move on to the next bill, Assembly Bill 237.

**Susan Scholley:**

Assembly Bill 237 was sponsored by the Assembly Committee on Government Affairs on behalf of the Legislative Committee to Oversee the Western Regional Water Commission. It was heard in this Committee on March 23, 2011. [Read from work session document ([Exhibit D](#)).]

**Chair Kirkpatrick:**

This was a bill that was also heard during the interim by the Legislative Committee to Oversee the Western Regional Water Commission. There was quite a bit of testimony on it.

ASSEMBLYMAN GOEDHART MOVED TO DO PASS  
ASSEMBLY BILL 237

ASSEMBLYMAN STEWART SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMAN ELLISON VOTED NO.)

**Susan Scholley:**

Assembly Bill 238 is a companion bill to A.B. 237. It was sponsored by this Committee on behalf of the Legislative Committee to Oversee the Western Regional Water Commission. It was heard on March 23, 2011. [Read from work session document ([Exhibit E](#)).]

**Chair Kirkpatrick:**

This has always been about the Truckee Meadows Water Authority (TMWA) and northern Nevada. It should stay that way. That is why I would like the bill amended to reflect that.

ASSEMBLYMAN ELLISON MOVED TO AMEND AND DO PASS  
ASSEMBLY BILL 238.

ASSEMBLYMAN GOEDHART SECONDED THE MOTION.

MOTION PASSED UNANIMOUSLY.

**Susan Scholley:**

Assembly Bill 330 was sponsored by Assemblyman Ocegueda and heard in this Committee on April 6, 2011. [Read from work session document ([Exhibit F](#)).] This bill would apply prospectively.

ASSEMBLYWOMAN PIERCE MOVED TO AMEND AND DO PASS  
ASSEMBLY BILL 330.

ASSEMBLYWOMAN BENITEZ-THOMPSON SECONDED THE  
MOTION.

THE MOTION PASSED UNANIMOUSLY.

**Chair Kirkpatrick:**

Assembly Bill 1 will be voted on at another time. We will vote on more bills tomorrow. There are a couple of changes to the agenda. Assembly Bill 334 will not be heard today.

**Assembly Bill 334:** Exempts from the limitation on the total proposed budgetary expenditures for a biennium any expenditures for the purpose of satisfying an unfunded federal mandate. (BDR 31-1009)

[This bill was not heard.] We will open the hearing on Assembly Bill 376.

**Assembly Bill 376:** Makes various changes regarding the financing of certain local improvements with revenue pledged from sales and use taxes. (BDR 21-148)

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

Assembly Bill 376 is related to Sales Tax and Revenue (STAR) bonds. I would like to give a little bit of history on these bonds because they are very complicated for people who have not encountered this issue previously. These bonds deal with tourism improvement districts (TIDs). Those were first authorized in the 2005 Session. They are affectionately known TIDs. They are similar to redevelopment districts. They are designed to facilitate a public/private partnership to increase tourism and generate new sources of sales tax revenue. The financing mechanism is sales taxes and revenue bonds. It is anticipated revenue. Under the provisions of *Nevada Revised Statutes* Chapter 271A, a local government may create a TID if it finds a preponderance of the sales tax revenue in the district will come from out-of-state tourists. That is the thing I would like you to keep in mind as we have this discussion. The focus of STAR bonds is to attract out-of-state tourists. The preponderance, or study that has to be done for someone to qualify for STAR bonds, requires that more than 50 percent of the business is anticipated to come from out-of-state tourists. We are attracting new visitors to the area to spend money, whether it be shopping, eating in restaurants, going to entertainment, et cetera, in these districts. Within the TID, the local government can pledge up to 75 percent of the sales tax revenue from the projects in the district to repay the bonds sold to finance the projects and infrastructure in the district.

Prior to this, there was nothing in these districts. We get the public/private partnership. There is now a business where there was not one before. It is generating sales tax and 75 percent of the sales tax is used to finance bonds that the developer can use to pay for the project. The remaining 25 percent goes back into the system. We have STAR bonds projects in Washoe County that have been developed and completed. We have Cabela's in Reno. That was created with STAR bonds revenue. We have the Legends mall in Sparks. We have the Reno Aces Baseball Stadium in downtown Reno. We have three STAR bonds projects in the Reno/Sparks area.

Like any concept that is new and is this complicated, the projects have had their growing pains. We have learned from these projects. We have tried to develop some mechanisms to clean up, clarify, and learn from these projects. We tried to address some of these last session and got bogged down in the waning days of session. We have more support now because some of the growing pains have continued. I did not want to be discouraged. There is some serious accountability that needs to be done. We also need to clarify some of the intentions of the language. This bill needed amendments. It is an evolving process. You have a proposed amendment ([Exhibit G](#)) before you. We may also hear testimony today that would require further amendment. I have worked with all of the parties for the last three years. It is a moving target, but we have tried to loop everyone's concerns into the amendment. I think we are close.

We have worked with both the City of Reno and the City of Sparks. They are the ones who have implemented the STAR bonds provisions. They have been dealing with the need for possible changes for the last few years. They are the ones who have the hands-on experience and know what the changes need to be. I would like to walk you through the amendment, and then there is an add-on to the amendment. We still have one page.

Section 2 in the bill is going to require an independent review of claims submitted by the developers for reimbursement to make sure taxpayers are not being overcharged. Much of this is about accountability and lessons learned from these current projects. There are some things that we need to be doing for better accountability and accounting purposes for the taxpayers. These are taxpayer dollars that are financing these projects. Section 2 also clarifies that STAR bonds cannot be used for certain soft costs of the project. This will only be used for projects going forward. In some of these provisions, we are able to go back on the current projects. I will explain that as we go. Some of the provisions are only going to be for going-forward projects. We do have lessons learned. I would imagine in Clark County there will be STAR bonds projects as the economy recovers. We will have a much better product. We will have much better projects because of these requirements and clarifications. Section 2 also addresses the Target situation, which I will explain, by prohibiting sales tax revenue from nearby businesses which relocate into the TID from being able to be used for STAR bonds.

What happened in the Target case is a situation where an existing business closed and moved into the TID. We lost the current revenue from that store. It moved into the TID. We lost 75 percent of taxes that we would have been getting when it was open in the other location before it moved. What can happen in that case is it can cost the state money. We never anticipated

STAR bonds costing the state money. When you have a loss of the local school support tax within the sales tax component, the state has to make up that difference. In a case like that, it ends up costing the General Fund. There was never that anticipation. This cleans that up and puts in the clarification that you cannot relocate a business. It was a public relations mistake to begin with. It looks bad and it costs the General Fund money. We wanted to take care of that.

On page 1 of your amendment ([Exhibit G](#)), there is a text box that talks about adding a provision clarifying that the municipality shall not be entitled to retain any revenues that are not needed for repayment of the bonds. For example, the city would not be allowed to keep any of that 75 percent for their own budget. They either use it for the developer, or it goes back into the system. This is a clarification. We want to make sure that there is no grey area. It is either used for the developer for bonds or direct payment, or it goes back into the system. That is in the text box.

Section 3 is designed to address the process for selecting subcontractors and discouraging bid shopping. That is in the add-on. If you will look at the last page of your amendment, this is the language that we are still trying to work through. The bidding portion of this bill is very complicated. Because STAR bonds are public dollars, they require the payment of prevailing wage. We have had some enforcement issues. There was just a Nevada Supreme Court ruling last week on the Cabela's project. They ruled that the Labor Commissioner is responsible for enforcing the prevailing wage provisions of STAR bonds projects. This bill will codify that. The other issue that we have within that is that they do not competitively bid because this is a private developer who is also putting up their own funds to develop these projects. There is no competitive bidding. One of the things that we have found on some of the projects is that there has been bid shopping. That means that a contractor may put out bids to local subcontractors, get those bids, and send them home to another subcontractor and ask them to match the local bids. That is not a good thing. We have worked with the entities to come up with some language that would create a process for how they could put out bids and have a process without it being competitively bid and still giving the contractor and developer the ability to pick their own contractors. When they are a private contractor, they need the ability to make those selections. This tries to clean up some of that. We heard a lot from the local contracting community over the last two cycles about their frustrations with that idea. It also goes back to the use of local businesses and employees if we can try to rein that in a little bit. That will clarify the bid shopping issue.



Section 4, on pages 2 and 3 of the amendment, requires semiannual reporting so that we can monitor whether STAR bonds are working. This is the key to the whole thing. When we put in the STAR bonds legislation originally, there was no method of reporting back so that we have any clue if this works. The preponderance study required that at least 50 percent of the business comes from out of state but we do not know if that works or not. If that is the intention of the STAR bonds project, then we should figure out if this works. By putting in this reporting system, we will be able to know. This will require the businesses to have a mechanism of ascertaining whether the shoppers or visitors to their establishment are from out of state or not. This process requires the Department of Taxation to send a form out to the businesses that are affected by STAR bonds and ask them to report the information back. We want to know how many employees have been employed because of this project and this sales tax that is generated because of them and if they can identify the out-of-state visitors. This information is proprietary. It is private information connected to the business. The information would be reported back on a confidential basis. We would then be able to learn whether or not they met their preponderance, or 50 percent out-of-state customers, or they did not. We would never see that particular business' proprietary information. That is clearly spelled out in the legislation.

Section 5 requires the Commission on Tourism to approve the list of consultants used in any future independent studies to create the new TID. This is an odd one for me to be saying after all of the talk we have had about local contractors. To ensure independence, this bill requires the consultants be from out of state. I would like to elaborate on the history of why we put this provision in the bill. The Tourism Commission is one of the bodies that are involved in the STAR bonds approval process. It is a very onerous and lengthy process that the local government and the developer go through to get this project approved. The developer is required to have this preponderance study done. It lays out all the details of the project and the methodology of getting to the 50 percent of out-of-state visitors and what all the impacts will be on the local government. When I looked at the preponderance studies from the other projects, it seemed to me that there was a very limited number of people in the state who do this kind of work. It was very hard to get someone who was impartial. We wanted to have someone completely disconnected from the locale or state doing these studies. There are so few people who do this and because of that the out-of-state provision seemed logical to me. Some of you may remember, for example, when we did the Clark County School District audit several years ago, the crux of that audit was that it was done by an out-of-state auditor for the very same reason. They need to be completely disconnected from the project or the local government. We have an absolute buy-in to have that independence.

Section 6, on pages 7 and 8 of the proposed amendment makes it very clear that not only prevailing wage would be paid but that the Labor Commissioner is responsible for enforcement. It has always been clear since the legislation was adopted in 2005 that prevailing wage would be paid. As I said previously, there was some confusion about who was responsible for enforcement. We have since had the Nevada Supreme Court ruling on *City of Reno v. Building and Construction Trades*, 127 Nev. Adv. Op. No. 10, March 31, 2011, since we started working on this legislation, but this will put it in statute and remove any doubt over the enforcement provisions.

That is the crux of this legislation. It is really about learning from our experiences, knowing whether this type of incentive works, and making sure that when 75 percent of these tax dollars are being used to finance the projects, we have absolute accountability and the taxpayers know that this is the best way to be spending taxpayer dollars. We have seen some amazing successes by use of these dollars in Washoe County. We have had our share of problems. I think this will resolve those problems.

We have had some really good partnerships going. After the STAR bonds bill died at the end of last session, the baseball people went back and did a development agreement that incorporated some of the provisions of the bill. They made some direct contributions from their STAR bonds money to schools in Washoe County. We have some schools that are in desperate need of upgrades. They were able to direct some of their funds right from their project. That came straight out of the legislation that we were working on last session. There have been some good partnerships. There have been some great things happening.

The Cabela's project has been the simplest of the three projects. It is one store. It was easier to manage the whole process of STAR bonds. The developers in that case bought their own bonds. In the end, they are the ones that hold all of the responsibility. That project had a labor issue but beyond that, the way the financing worked seemed very clean.

It has been a little bit more of a problem with the Legends project because it is very complicated. There are several businesses and all kinds of business within that one TID. There are restaurants, shopping, and entertainment. It has been over a long period of time. It is a very large project. In addition, it has been a victim of the recession. As that project was really getting off the ground, the recession took hold. It has really presented some challenges for the project and for the City of Sparks. We have had to try to look at what problems were created because of this legislation and because of the recession and try to make it all fit together.

We have several people to testify in support of this bill. Mr. Driscoll from the City of Sparks is probably the most involved in this process because of the type of project that they have had.

**Assemblyman Goedhart:**

There are a lot of good points to this bill. On the reporting mechanism, to ascertain whether or not the preponderance of business is actually from out of the state, we had talked about utilizing people's ZIP codes and addresses. There had been a problem in California with doing that. How would that business be able to get that information to ascertain the origin of their business?

**Assemblywoman Smith:**

We are still working on that. There are businesses that are able to do that. I was shopping at Legends this weekend and there are still businesses asking for ZIP codes. That is still out there. In California a couple of weeks ago, I was asked for a ZIP code. I think that issue is still being resolved. We will keep working on it. They can get some information from credit card transactions. They can count license plates. There are different ways that they can try to get an understanding of who their visitors are.

**Assemblyman Goedhart:**

Have you heard about this court case in California, *Pineda v. Williams-Sonoma Stores, Inc.* 100 Cal. Rptr.3d 458 (2009) as it related to getting information under ZIP codes?

**Assemblywoman Smith:**

Yes, I did. That is why I said I think it is still under consideration. There has been a ruling, but vendors are still moving forward until it is clarified. We will continue to watch that and see where we are.

**Assemblyman Goedhart:**

We may be able to ask on a voluntary basis that it would be able to be utilized.

**Assemblywoman Smith:**

Correct.

**Assemblywoman Woodbury:**

About the businesses located outside of the TIDs, when they move into the TID they continue to pay 100 percent of the tax to where it was already being paid?

**Assemblywoman Smith:**

No. What happens when they relocate is that 75 percent of their revenue is used for the STAR bonds. Therefore, we only get 25 percent in the system.

This is why it affects the state. We were getting 100 percent of their sales tax revenue; we are now only getting 25 percent of it.

**Assemblywoman Woodbury:**

With the bill, they would continue to pay 100 percent?

**Assemblywoman Smith:**

With the bill, they simply cannot move into the TID. If they are in that radius, they are not able to move.

**Assemblywoman Woodbury:**

If they moved and were still paying 100 percent, would that affect bond payments?

**Assemblywoman Smith:**

Yes, so the idea would be that they cannot move anymore. Kansas is where this idea started. They have completely overhauled the way they do STAR bonds now. They have eliminated retail completely. They have eliminated anyone from within the state being able to move into a TID because they had so many problems. They really had a lot of lessons learned. I think all of the people involved in this process understand it. It was an unintended consequence on that issue. I hope we do not have these issues any more.

**Assemblywoman Woodbury:**

For those businesses located outside of the three-mile radius, is there any provision to prevent them from coming into the TID? Is it less likely that they would come in?

**Assemblywoman Smith:**

There is certainly a possibility that they could come into the area. When we developed this radius last session, we were trying to compromise and be reasonable. The three-mile radius made sense. It may be something we have to take a look at later. I believe that those involved in this process understand the downside to doing this again. It is bad on the public relations front, but it also does impact us at the state level. We can reconsider that, but the three-mile radius made sense at the time.

**Assemblyman Stewart:**

Can you give us a feeling of how the bond is being paid back? Are things going well there? Are they on schedule as far as being paid back? If a business within the three-mile area wants to move into the area, and they are willing to keep paying 100 percent, it might be good for their business and good for the project. Could we put something in the bill to address that? If they are willing

to pay the 100 percent, it may be better for their business. If their business is getting old in an area and they want to come into the TID and partake of the increased traffic, is there some way to accommodate them?

**Assemblywoman Smith:**

I will let Mr. Driscoll address that when he makes his comments. I am very open to that. My bottom line is that I do not want to see the state suffering any consequences because of these projects. If that can be worked out, I am open to that. Mr. Driscoll can also respond to how the bond payments are going. We have probably seen various things happen. The Cabela's project was much simpler. They were the first project. I think they hit their stride before the recession hit. The City of Reno is also here. There have been some challenges there and some issues they have had to deal with. It is a bit of a mixed bag. The difference is in the size of the projects.

**Chair Kirkpatrick:**

I told the Committee about this bill. We were here late at night trying to get it through in 2005. It keeps coming back. We looked at this during the interim. Kansas really was the place that started these STAR bonds. Many of their properties had to go bankrupt. It was scary on where they were trying to get their tourism piece up. There are successful models like Nashville that did this type of bonding. The goal is to not allow the retailer to use the money they were already giving to the state to pay down their bonds when they move across the street. I think three miles is a lot more generous than I would have been. I think this is fair. We know we have one project approved in southern Nevada and another project in northern Nevada, but neither one has broken ground. Will they be required to do the reporting mechanism?

**Assemblywoman Smith:**

All of the projects will be required to do the reporting whether they are currently in existence or not. There is no financial impact on them by requiring them to do that. When you have bonds that are out there for these projects, you cannot clawback any money. When there are incentives, you can clawback if they do not meet their obligation. We cannot do that with STAR bonds. They have bonded on these projects and there is the obligation. I understand that, but there is nothing that prevents us from asking them to report so that we have an idea if these work. If I were a Tourism Commission member who is going to be faced with approving future projects, this is the kind of information I would want to know to help me to make my decisions. It would help me to know if this worked in the first projects or not. When they had to approve these projects initially, they did not have anything to go on. This was a new concept. It was the first project in the state. We now have the ability to gather information to help tourism commissioners figure out if this kind of financing

scheme works or not. There is no clawback. Everyone is required to meet the reporting requirements regardless of when their project was approved.

**Assemblyman Ellison:**

The Legends in Sparks is only partially done. Is that correct?

**Assemblywoman Smith:**

It is still in progress.

**Assemblyman Ellison:**

Is that going into a taxing district that makes these final recommendations or is it a vote of the people? How do you get to that point?

**Assemblywoman Smith:**

It is not a vote of the people. It is a process that is separate from any other process. It goes through the Tourism Commission with input from information provided to the county commission and school districts because they all have to know what the impacts of the projects are to them. The decision making lies with the Tourism Commission. The nexus was always the fact that these projects are designed to attract at least 50 percent out-of-state visitors. It is a long and onerous process for both the developer and the municipality to go through. Some of the project that you are referring to is not part of the STAR bonds project. Mr. Driscoll can further define that. Part of the project is from their original development around Sparks Marina, and part of it is within the STAR bonds district. It is still a project that is in the works. When the recession hit, some of things that they had planned on doing were put on hold. I understand that. Some of the things we need to clean up because of statute and some of it is because of the recession. One of the things I feel strongly about is this has been a good lesson learned for us. We need to be prepared for the worst-case scenario when we are looking at this type of funding mechanism and making sure that in no way are the taxpayers harmed in any of these decisions.

**Assemblyman Ellison:**

At what point in time does the county commission get involved in this? It would also be tied in with their budgets.

**Assemblywoman Smith:**

The county commission is an informational piece as they are going through the approvals process so that they are advised of this project that is planned. The idea is that this is money the county would not have had otherwise. They are not losing anything. Chair Kirkpatrick and I have had hundreds of discussions with people over the years about a zero-sum game. If you add a project onto a

piece of property that would have never been developed, it is only a benefit to the local government. I have become the preacher of that mantra. The idea is that the county would not be losing anything; they would only gain. Eventually the property tax value is going to go up. There will be sales tax revenue that comes on property that they never would have had otherwise. The bigger impact, theoretically, could be on a school district that may gain students without gaining the commensurate revenue. In most of these projects, it is not the type of employment numbers that bring in so many students that it is a huge impact on the district. That is one of the things that they have to do in the preponderance study. They have to lay out all the impacts on police, fire, education, and the rest of the municipality.

**Chair Kirkpatrick:**

It is about an 18-month process to get through the whole thing. There is a lot of public input through the Tourism Commission and public hearings. When it does come to local governments, the school districts tend to weigh in. It has come a long way. Redevelopment is no longer allowed to be intertwined with this. It has come a long way. Any clean up that we can do is only going to benefit us for the longer term.

**Assemblyman Ellison:**

I am familiar with General Improvement Districts (GID).

**Chair Kirkpatrick:**

It makes a GID look easy.

**Assemblyman Livermore:**

Everything starts with a concept and then a study. Earlier this session, we had Washoe County, Reno, and Sparks come before us. They discussed a lot of elements of projects that the three of them are doing. You made reference to an independent consultant. The local governments are trying to get good information. It was coincidental that all three of those projects had the same consultant. I would like to see some definition in this bill that speaks to the independence of the consultants. That same consulting firm presented a plan in Carson City. It is not a STAR bond project, but it is the method of how local government gets its information. One plan was given to me one day and was picked up five hours later, and a new plan was given to me ten days later. The numbers were changed, and it was a different story. Why an independent consultant needs to be the concrete pillar of this is because the taxpayers rely on that information to guide local government to make appropriate and proper decisions. I would like to see some definition about separation between the project, project management, ownership, and the

consultant that is providing the information to local government. He who pays for the study has influence on the outcome. Can you address that?

**Assemblywoman Smith:**

I could not agree with you more, which is why we put this language in and why we indicated that the consultant should be from out of state so that it is less likely that there is any connection. I am happy to look at whether we could further construct that so that there is a finer line. I am happy to look at that language. The Tourism Commission is very pleased with the idea that there is more independence there. They are really the ones that have the burden of making these decisions. They need all the information and the independence of that information that we can give them.

**Assemblywoman Benitez-Thompson:**

On page 2, in section 4, where you talk about the statement of wages paid and the number of full- and part-time jobs, are you looking for an aggregate of wages paid? Are you looking for a specific number of full- and part-time employees and the rates that they were paid at? Or is it just a total of the amount paid?

**Assemblywoman Smith:**

We want to know what the wages are and not the total pay. We want to know whether or not we are creating good-paying jobs in these projects.

**Assemblywoman Benitez-Thompson:**

On the reporting where the municipality would have to create a report, where the assessment of the financial impact is, the developer does the preponderance study at the beginning with their projections of what the impacts would be. Would the point of the municipality study be to compare and contrast how things are actually playing out in terms of the impact?

**Assemblywoman Smith:**

That is exactly the case. They made their projections in the preponderance study about what the impact would be on police and fire, for example. The study would then indicate what it looks like in reality. These are the problems that I see that we have never been able to gauge on how it is working and what the impacts have been.

**Stephen W. Driscoll, Assistant City Manager, City of Sparks:**

It has been a pleasure working with Assemblywoman Smith on this over the last several years. We have been involved from the very beginning. It has come through a lot of changes. We have provided a lot of information. We will continue to do so on this. I would like to answer some of the questions that are



still outstanding. The first question about the three-mile radius was a discussion that we were dealing with after we got going. There was some concern about outside companies coming in and the effect of losing the 100 percent. That three-mile radius was based on some of the studies that were done.

As far as the bond payments and the status for the Legends project itself, while they have struggled because of the economic times, based on the percentages and things that we were involved in right now, everything is fine. The amount of money that was paid out and the work that was done for it has been completed. Those bond payments have been held up by the sales tax that has been generated by that project. It has been positive to the area and the region. On the Legends project, the Tourism Commission was concerned about the independence of the report. They required the City of Sparks to have a second independent point of view. While their findings were slightly different, it did substantiate the original report because of the complexity of the project. The other projects were not so complex and they were not required to do that. Your point is well taken on their independence, Assemblyman Livermore. As far as the reporting and projection mechanism, Assemblywoman Smith represented that we would be taking and looking at the costs and exactly what happens. We do that now if there are increased fire rescue, police calls, or public works calls related to this project. We offset that by trying to do sales tax and property tax projections that are related to the projects as best we can. One of the things we definitely saw in the region, when the projects were completed, was recreation, hunting, and camping equipment sales as a category in our region go up. We made certain assumptions about that. To the best of our ability with the detail provided by the Department of Taxation, we are responsible for our own projections in concert with the Department.

[Chair Kirkpatrick left the room. Assemblywoman Bustamante Adams took over as Chair.]

**Assemblywoman Smith:**

The one thing I forgot to point out is that what is new on the selection of the consultant is that that Tourism Commission gets to pick from a list. They are going to take a look at the consultants and make their selection about who is the most independent and able-bodied. They did not have the ability to do that before. The study just came to them. That will also help with the independence of the consultant.

**Vice Chair Bustamante Adams:**

I would like to call those who are in support of A.B. 376 to testify.

**Cadence Matijevich, representing the City of Reno:**

The City of Reno is very much in support of this bill with the amendments. I would like to thank Assemblywoman Smith for her perseverance and hard work on this. We have learned a lot of lessons. This bill, with the amendment, will give us many important tools to continue with these projects and to be more efficient and transparent.

**Susan Fisher, representing the City of Reno:**

I was sitting in on the meeting last week when we went over the different amendments. It was a very good and thoughtful process. One of the important tools we feel this amendment gives us is data collection. We have asked the businesses within the redevelopment districts to provide us with some proprietary data. We have not been able to get that. This bill gives us the tools to collect that data. We appreciate Assemblywoman Smith's support in that as well.

[Assemblywoman Kirkpatrick resumed as the Chair.]

**Michael Alonso, representing Caesar's Entertainment:**

We are in support of A.B. 376. I was involved in the original STAR bond bill. They go back to 2003, which was the one done for Cabela's. In 2005, changes were made primarily in connection with the redevelopment project. Last session, we were involved with the sponsor. That bill did not go through. We support the changes to the STAR bond statute that are set forth in A.B. 376. I only got the amendment this morning, but based on my review of it, I do not think we have any concerns. We will continue to work with the sponsor on anything that does come up with respect to this bill.

**Paul McKenzie, representing the Building and Construction Trades Council of Northern Nevada:**

The STAR bonds process has had a struggling infancy as we have brought it into use in the state. The Cabela's project showed the biggest problems with the labor issues that are addressed in this legislation. Those issues continued on to Legends at Sparks Marina. When we had the baseball stadium built, we evidently hit the right button. That project had no labor issues that were associated with the STAR bonds portion of the project that we are aware of. The transparency issues that are addressed in this legislation are very important. We have watched the process of establishing these districts. One of the things that we have noticed from all of the districts is that we are using the same figures to come to our preponderance process. Their thought process is, if we double the retail space then we will double the tourists. They do not take into consideration that those tourists were here for something else. Those are the ones they are using to set up their preponderance for the imported tourism.

This transparency process will be able to test those and help us to come up with an evaluation process that truly fits what we are developing rather than just a hit-or-miss guess. We appreciate the work that Assemblywoman Smith has put into this over the last several years. We appreciate the legislation and we will work with the sponsors to fix any issues.

**Alfredo Alonso, representing Nevada Land, LLC:**

My clients are the individuals who developed the Reno Aces Ballpark and the Freight House District in downtown Reno. I wish Assemblywoman Smith's language had been in play at the time. That would have alleviated many of the concerns that we had with how this ultimately worked out for us and the city. I took a cursory look at the amendments, and I do not see anything that we would have concerns with at this time. We would like to continue working with Assemblywoman Smith. One of the biggest concerns we had was with the City of Reno choosing to reduce the percentage that we got ultimately but not bonding either. That is contrary to what this law is supposed to do. It was about creating something out of a blighted area. You may also consider revisiting the redevelopment zone issue. This does not apply to redevelopment areas now, but it should.

**Chair Kirkpatrick:**

That is a difference of opinion.

**Alfredo Alonso:**

We are the poster child for where this does not work. You have a redevelopment area that cannot create tax increment financing (TIF) in a bad economy. It cannot do very well with respect to the STAR bond. This is a time where you can look and understand why both are needed.

**Steven T. Polikalas, representing Watson Rounds:**

I have been involved in the STAR bonds concept and legislation since 2003. A lot of work went in last session to try to come to a resolution of the differences. This bill, that has been presented now, goes a long way in alleviating any concerns that we have. I have not looked at the amendment in depth. The Tessera Project in downtown Reno which, like the Freight House District, is a project involved in trying to clean up a long-blighted and difficult part of Reno for anyone to redevelop. This is a TID bill in concept. It has always been in the STAR bond legislation. It is an economic development tool in concept. With the decline of property tax values, a property tax increment is hard to come by these days. I think STAR bonds and TIDs are one of the few remaining economic development tools to exist in our state. I would like to thank Assemblywoman Smith and Chair Kirkpatrick for bring forward a bill that we can get through this session with.

**Russell M. Rowe, representing The Capitol Company:**

We worked on a number of STAR bonds projects. Some have come to fruition and some have not. We stand in support of this bill particularly with respect to the reporting requirements. It is an economic development tool in getting more transparency on where the money goes and what happens to that money after the fact. It also helps us to make sure that people who receive incentives continue to comply with requirements. That is obviously a critical component. We stand in support of this bill.

**Chair Kirkpatrick:**

Is there anyone who would like to testify in support of this bill with the amendment? [There was no one.] Is there anyone who is in opposition to the bill? [There was no one.] Is there anyone who is neutral on the bill? [There was no one.]

**Assemblywoman Smith:**

Two years makes a large difference.

**Chair Kirkpatrick:**

We will close the hearing on A.B. 376. We will open the hearing on Assembly Bill 312.

**Assembly Bill 312:** Revises provisions governing public works. (BDR 28-692)

**Assemblyman Crescent Hardy, Clark County Assembly District No. 20:**

I have made a living as a contractor for a long time. I would like to walk through this bill section by section.

**Chair Kirkpatrick:**

If you could go through the whole bill first, then we will come back to questions.

**Assemblyman Hardy:**

We will start with section 1, page 4, on line 10. This clarifies the definition of offense so that each instance of failure to pay prevailing wage is a separate offense and punishable as such. Section 1 on page 5, line 41 clarifies the definitions directly relating to benefits that are eligible to the worker at the time work is being performed. Section 2, page 6, adds the term "offense" into this section of the *Nevada Revised Statutes* (NRS). Section 3, page 6, line 26 adds graduated penalties for violations of prevailing wage and fair employment laws. The current statute only has two levels. Assembly Bill 312 would create four tiers and authorize the Labor Commissioner to adopt regulations with more detailed criteria enforcing these provisions. This change will make it easier to

have the punishment fit the crime. Section 4, on page 8, line 13 deletes the requirement of overtime pay for workers who work over 8 hours in a day, as long as the weekly total is not over 40 hours. It eliminates any such exemption in collective bargaining agreements. This flexibility is good for the workers and their families.

Section 5, page 8, on line 44 requires the Labor Commissioner to use a survey to determine prevailing wage to include all projects so long as the work is comparable. This section also requires prevailing wage to be stated as a dollar amount and not include additional rates. Prevailing wage rates should not include any travel or other allowances as a result of prevailing wage rate. It will be based on an average hourly rate. Section 6, page 11, on line 6, makes collusion to manipulate the outcome of a prevailing wage survey an unfair trade practice and punishable as such. Punishment would include being sued by the Attorney General and possibly subject to treble damages, as well as being guilty of a class D felony which is a minimum term of one-year and a maximum of four years in prison and up to a \$5,000 fine. The transitory provision of the bill in section 7 requires the Labor Commissioner to adopt regulations to carry out this bill no later than October 1, 2011.

These changes will improve prevailing wage law and make it more enforceable. It will also make it more reflective of reality. Additionally, it will be more flexible and fair. This session, we have discussed job creation. I believe that these improvements will help instill that job creation back in our state.

**Assemblyman Ellison:**

In section 5, page 8, starting on line 44, will you explain including travel and other allowances within the bill?

**Assemblyman Hardy:**

The reason this section is in place is because there is a totally unfair provision in statute currently that does not relate to prevailing wage. It is a big cost to the taxpayer. There is a classified zone rate for travel. It is only one-way. This zone rate pays for those entities that travel from the Las Vegas metropolitan area or their house of labor and go out into the rural communities. I live in Mesquite. If I bid a project in Las Vegas, it is not a fair return. I do not get to pay that zone rate for my employees unless it is on a volunteer basis. It is not in that prevailing wage rate. It is only one direction which is completely unfair. That was not the intent of the law to go that direction. If I am doing a job in Mesquite, why would I have to pay a zone rate for individuals who work in Mesquite travel time? That does not make sense. That is why that provision is in the bill.

**Assemblyman Goedhart:**

I applaud you for bringing this bill forward. In today's economic reality we have to make sure that taxpayers are getting a fair return for the money they are paying in the form of taxes. Several years ago, I was doing a big owner-builder construction project. I was paying \$200 a day for men to work 7 hours a day to lay down concrete. I had more than enough people driving from Pahrump to Amargosa Valley. One day, no one showed up to work. It turned out, they had a prevailing wage job that opened up at Rosemary Clarke Middle School. They were getting paid \$50 an hour for the prevailing wage. That is, in effect, double what the actual prevailing wage was. The system has now become less indicative of a prevailing wage but a big payback and bonus for whoever gets lucky enough to work on that job. The intent behind prevailing wage originally was to pay prevailing wages. These days, the prevailing wage is looked upon as a bonus. I do not know if we have enough money in the state budget to embark upon giveaways of taxpayer money.

**Assemblywoman Pierce:**

It is important in discussing the matters of wages to remember that when you have people that have disposable income, they support all kinds of smaller businesses in the community. There is a multiplier effect. Anytime we engage in a race to the bottom, we end up with people who have no disposable income. These people have no ability to support small businesses in the community. I believe in prevailing wage because I do not believe it is in the best interests of government to promote a race to the bottom. It does not make our communities healthy or prosperous.

**Chair Kirkpatrick:**

Are you aware of the amendment ([Exhibit H](#)), Mr. Hardy?

**Assemblyman Hardy:**

I am aware of it, and I am in support of the amendment. I would have Mr. Warren Hardy come up and explain that amendment.

**Warren B. Hardy, representing Associated Builders and Contractors, Inc., Nevada Chapter:**

We appreciate Assemblyman Hardy's willingness to have this amendment added to this bill. The Legislature is doing a lot of good work in trying to ensure and guarantee that public work that is being done in Nevada is being done by Nevada workers. I have reviewed all of the legislation that proposes to do that. This Legislature has done that in a way that does not discriminate against any Nevada contractor. If you are a Nevada contractor, you should be eligible to work in Nevada on public works projects. Unfortunately, when there is competition for public works, there is competition occurring at the local level

and proposals being submitted to unlevel that playing field somewhat. That is the purpose of this amendment.

This amendment is designed to ensure that in NRS Chapter 338 or any other provision that provides for public construction, no agreement can be written in such a way that disadvantages any Nevada contractor. Historically, there are three provisions specifically that are used to do that. Those are generally used in an agreement called a project-labor agreement. There are other agreements where these provisions are put in. We would like to have the NRS amended in such a way that the three provisions that we believe disadvantage certain contractors cannot be written into a public works contract. The amendment before you is to do that.

These are not hypothetical situations. These are actually written into agreements as they exist today. The first provision that we object to would require that a certain contractor is not able to use all of his own employees. He is able to use seven of his existing employees on an alternating basis. I will speak to project-labor agreements for a minute. Those are the agreements where these provisions most often appear. Project-labor agreements are the current applications that contain a clause that says that if you are a nonsignatory contractor you can use seven of your own employees on a rotating basis. So he would hire one of his own employees and then have to hire an employee from the union hall on an alternating basis up to seven of his own employees. He would then have to hire the remainder from the union hall. Imagine that you are a nonsignatory contractor in Nevada who is awarded a project under NRS Chapter 338. You get to go to work and announce to your 25 employees the good news and the bad news. The good news would be that you just won a bid. The bad news is that only 7 of your 25 employees get to work on the project. People who do not currently work for your company get to have the rest of those jobs. We do not believe that is appropriate or should be permitted to be included in a public works contract in this state. We believe that if you are a licensed company who employs local workers, you should be able to use all of your own workers on that job. We do not have any objection to workers after that being hired from the union hall. We do not believe that Nevada workers should be displaced because of an agreement that has been reached on a prehire labor agreement.

The second issue that we would like to see prohibited is a clause that would require the double payment of benefits. These agreements, as they exist today, would require that 100 percent of the benefit amount that is included on these contracts go into the union trust fund. There are a couple of problems with that. The first, in many cases, is that the worker on whose behalf the contribution is being put in the trust fund will probably not ever vest in that

program. Therefore, he will never receive the benefit for the money that is being paid on his behalf. That is bad enough. The other problem is that it creates a sad dilemma for the open shop or nonsignatory contractor-owner. In most cases, those contractors are now paying benefits on behalf of their employees. It has become a reality in the past ten years that you have to provide competitive benefits to work in Nevada.

The nonsignatory side of the industry has adapted to that and provides good benefits. Under the provisions that we are talking about here, because they mandate that 100 percent of the wage is paid into the union trust fund, the owner of the company is left with a dilemma. The dilemma is whether or not he continues to pay the benefits that he is currently paying for insurance and other things for this employee and pay the amount that goes into the union trust fund that they will never vest in, or does he quit paying the amount that he is currently paying and pay it all into the union trust fund. Let us say that the amount that is required for the fringe benefit is \$8 an hour under the prevailing wage law or the collectively bargained rate. The private benefit package is \$6 an hour. The choice is to pay the \$6 plus the \$8 or to eliminate the \$6 and just pay the \$8. We do not believe that a contract on a public works project ought to lead to that kind of a dilemma for a worker. For an employer to displace someone's benefits so they can work is a dilemma. We are asking for a process that is similar to what is done in prevailing wage now where you receive a benefit or credit for the amount you are currently paying. The rest can be paid directly to the worker as it is on prevailing wage.

The third issue is if a nonsignatory contractor currently decides to sign onto one of these project-labor agreements and go to work. In addition to those two significant disincentives or problems, he also does not have any representation on the dispute resolution board. If the contractor has a nonsignatory worker who has a dispute, he is going to go before a board on which his employer is not represented. We believe those three things ought to be dealt with in NRS Chapter 338. Those three provisions ought to be prohibited from occurring on a public works and taxpayer-funded project.

**Chair Kirkpatrick:**

Project-labor agreements are not currently within statute. Those are local government agreements.

**Warren Hardy:**

Yes, those are not dictated by statute. Local governments are mandating them and indicating that there is going to be a project-labor agreement on this. That brings up another interesting question. It has often been said that these are agreements between the unions and the owner, which they are. These are also



agreements that are going to impact the nonsignatory contractors. They have no input into how they are negotiated. If you are a nonsignatory contractor, you have to obligate yourself to an agreement that you had absolutely no input into developing.

**Assemblywoman Neal:**

I listened to your first provision. You wanted to have freedom to choose your own employees, which creates a fairer selection process. Why do the counties choose this process?

**Warren Hardy:**

There are arguments that there are benefits to this. First of all, they guarantee that there will be labor peace under the terms of the agreement. They guarantee that there will be no strikes or labor disruptions. Some local governments feel that there is a benefit to having uniform work rules and safety rules. We have no quarrel with that. We have no quarrel with obligating ourselves to those things. That is why they believe there is some benefit to them. There have been national studies done that indicate that it could go either way. They show that there is not really a benefit in that regard to project-labor agreements. That is not our quarrel. If the local government feels that there should be uniform work rules, we have no objection to that. We believe we should not be putting Nevada construction workers out of work because their employer chose to sign one of these pre-hiring agreements.

**Assemblyman Goedhart:**

I appreciate the amendment providing a fair, level, and even playing field. When I hear about some of these agreements and actions that local government is doing, it makes it difficult for me to feel sympathetic to their cries of not having enough money in their budget. It is incumbent upon these people to make their existing taxpayer streams as efficient as possible. This amendment, by leveling the playing field, will allow more people the opportunity to participate in these projects. It will be a benefit to the taxpayer and the employees that are currently being discriminated against. I applaud you for bringing forth this amendment.

**Warren Hardy:**

The nonsignatory section of the industry represents 85 percent of the total construction industry. Without these provisions that we are proposing today, the work that the Legislature does to guarantee Nevada work stays in Nevada is going to benefit between 15 and 20 percent of the industry. You cannot put Nevadans back to work by excluding 80 percent of them. There has been some conversation about project-labor agreements disadvantaging minority and women contractors. I want to make it clear that project-labor agreements

do not disadvantage minority- and women-owned businesses because they are such, they disadvantage them because overwhelmingly, close to 100 percent of those businesses are nonsignatory contractors. That is why these agreements disadvantage them.

**Chair Kirkpatrick:**

I will tell both sides this now, please be respectful. I will cut you off on both sides if you are not respectful of everyone's opinion. We want to have a good constructive hearing. Those that are in favor of A.B. 312 please come testify.

**Bart Hiatt, President, A&K Earth Movers, Fallon, Nevada:**

I am completely in support of the bill and the amendment ([Exhibit H](#)). It is long overdue. It is a positive thing for the workers, the taxpayers, and the companies. It gives the workers the ability to get full paychecks in regards to the overtime issue. In the past, the way it was set up, a lot our work is done in rural Nevada. We are based out of Reno and Fallon. We had to pay everything over \$8 an hour or seek a 10-hour shift. By doing so, when we had work that was 2 hours away from our home base, we could not set it up so that our workers could work 7 hours on Monday and 10 or 11 hours during the week, and then 6 or 7 hours on Friday and get home. We are required to pay the overtime. Usually contractors do not try to maneuver their employees out of overtime. You bid the job to get it done in the shortest possible period of time.

The other thing that prohibits us is, in northern Nevada, public works and Nevada Department of Transportation (NDOT) create this scenario where you cannot work most of the week during Hot August Nights. Your employees are then short-changed. It is the same way if you have an NDOT contract; you normally cannot work one day before a three-day weekend and one day after a three-day weekend. It creates a situation where the employees and contractor cannot work together to get a full workweek for their employees. In doing so, you get caught in an overtime situation. It is easier to bid straight across the board. Most of our jobs are set up that way except for jobs that have these kinds of conditions. Our employees will work 40 hours a week, and anytime they go over 40 hours, it is overtime. It does not matter how they arrive there. That is the way it works.

Cuts cost all the way across the board. It is a nightmare for the Labor Commissioner, payroll clerks, and administrators to decide where these people go. We move our people from job to job. We are nonsignatory. We try to keep all of our employees busy and make sure that they get a 40-hour week. They may be working on a prevailing wage. They may be working on a Davis-Bacon contract. They may be pouring a concrete ditch for a farmer.

All of those rates are different and have different criteria. We would like to pay everything over 40 hours, straight across. It leaves room for less confusion and fewer mistakes. That is usually how you get into trouble with the Labor Commissioner. Somebody moves from one job to the next. It is really hard to keep track of it. We do a lot of contracts out at the Naval Air Station in Fallon. There are three different prevailing wages depending on which side of the base you are on. That alone causes enough problems trying to figure out which part of the base they are working on to decide which rate is going to be used. The carpenter's rate and cement finishers rate varies on different sides of the base.

We were doing a project in southern Nevada. It has been a number of years since, but they were testing stealth aircraft. Our employees were required, because of the clause in the signatory contract, to pay the union dues to work on the facility. We were only able to bring a certain number of people from our workforce. The rest had to be hired out of the hall from Las Vegas. That gave our current employees and their families a disadvantage. We were not able to take our workforce in whole to the project. The changes to the bill and the amendment are very positive for the workers, taxpayers, contractors, and the State of Nevada in general.

**Clara Andriola, President, Associated Builders and Contractors, Inc.,  
Nevada Chapter:**

I am representing open shop contractors who employ approximately 85 percent of the construction workforce in Nevada. We stand in full support of A.B. 312 and thank Assemblyman Hardy for introducing legislation that will provide a catalyst to allow construction projects to stay in Nevada. I would like to make it clear that prevailing wage does not benefit Associated Builders and Contractors, Inc. (ABC) contractors because the wages are set. When you are bidding a project they truly are the wage that you use in your bid. It does not add to or take away from the bottom line. Our position on A.B. 312 and reforming prevailing wage is a taxpayer issue. We recognize that there is a true need to reform prevailing wage. We are also alarmed because of the renewable energy marketplace that comes and looks at Nevada. They do not actually look at staying in the area because we are continually told that the prevailing wage rates are, at a minimum, 50 percent higher than those in other states. Right now, our contractors are working out of state. Some have no jobs in Nevada. They are working in New Mexico, Arizona, et cetera; they are actually paying their workers comparable to what they are paying already. That is an important point. The primary question is, why are Nevada wages so high? Simply put, the system that places or sets the wages is flawed. I have heard testimony during this session that the prevailing wages adjust appropriately with the economy. If that were the case, why did prevailing wages increase

dramatically in the most recent survey, while wages in the private sector plummeted to historic lows?

The current wage rates for an alarm installer, performing work in Carson City, increased approximately 12 percent. In fact, the wage increase in Carson City overall is over 8.32 percent. In Churchill County, the prevailing wage rate for a sprinkler pipe fitter increased, on average, 115.51 percent over the rate last year—from \$26 an hour to a range of \$53.45 to \$58.45 an hour. A national study by the Beacon Hill Institute found that prevailing wages are inflated by approximately ten percent. If you use that conservative formula and apply it to Nevada's public works projects, that is \$224,850,857 over a 2-year period for 2009 and 2010. Beacon Hill is considered a conservative study.

The Legends mall at the Sparks Marina is a good example of what happened. The Legends had some confusion on prevailing wage. Olive Garden bid the project competitively. When they got all of the bids back, they sent the notice of award. In the meantime, I was trying to inform the City of Sparks that they need to let contractors know that it is subject to prevailing wage because that is what they decided to do: to make the entire tourism improvement district (TID) prevailing wage. Olive Garden went out to rebid and the contractors had to resubmit the bid using prevailing wage. The difference of the private rate versus the public prevailing wage rate was 40 percent. I want to disclose that many of the contractors that share this information with me offer competitive wage rates, full health insurance benefits, retirement benefits, et cetera. If you use 40 percent as a high, the state of Nevada taxpayers paid \$907,603,865 more in 2009 and 2010, if you use that figure. It is a very telling statistic that only four of the ten states with the lowest unemployment have prevailing wage requirements. Conversely, six of the ten states with the highest unemployment rates have prevailing wage requirements. One could make the argument that states that have prevailing wage requirements are less prone to recovery because their state governments tend to be less judicious with taxpayer dollars.

Our current system needs reform. Can you imagine any business attempting to justify charging one price for a private contract and a much higher price for a public contract? It is unconscionable. Yet, in public construction, that is exactly what happens. The fact that union contractors negotiate a lower rate for private work and a higher rate for public works projects illustrates the point and begs another important question: why? Before the economic downturn, there were only a few collective bargaining agreements that had a reduced rate of approximately four to five dollars less for private work than for public work. Many are now exploring reducing those rates to be competitive. For some trades, they use job targeting or even industry funds, in which the union uses

member dues to subsidize the bids of signatory contractors so they can underbid the project and be awarded whether it is private or public. We are hearing from developers who are very concerned about coming to Nevada. We want all Nevadans to work, whether they are signatory or not. The fact is, the system is truly flawed. We would like to ask for a possible increase of the threshold from \$100,000 to \$1,000,000 and, at the very least, attach it to the Producer Price Index (PPI) which is used in other industries with state government. We are here for all Nevadans. We are here to put Nevada families back to work. The fact that contractors are working out of state is unconscionable. We have 70 percent unemployment in the construction industry across all trades. We want to be able to create jobs through reasonable wages and give job opportunities for all Nevadans to prosper.

**Chair Kirkpatrick:**

Is the threshold a separate amendment?

**Clara Andriola:**

Yes.

**Assemblywoman Flores:**

In terms of the survey and increase in wages, would that be addressed by the provision that is being added in section 5, on page 8 where it says, "The survey must solicit and use all wages reported for comparable work performed in the county . . ." It says here that in order to determine prevailing wage, they already do an annual survey that contractors who have performed work in the county participate in. If the contractors are being surveyed already and reporting their wages, how could it go up exponentially? How would this be addressed in the section I just read?

**Clara Andriola:**

The reason that it happens is very simple. If the survey hours are turned in and the union prevails, they do not use any of the data that was collected in the survey. It goes straight to the collective bargaining agreement. This bill will allow for all of the wages to be paid and represented in the survey, then have an average of those wages set the wage rate.

**Chair Kirkpatrick:**

Last session we went around about making the survey mandatory because it should be the responsibility of the contractors to fill that out. We had extensive discussion on that last session.

**Clara Andriola:**

Yes we did.

**Terry K. Graves, representing City of Henderson Chamber of Commerce and the Nevada Motor Transport Association:**

The Chamber thinks this bill has merit in leveling the playing field. We have testified in support of the 40-hour workweek. Trucking gets involved. We have members involved in project labor agreements (PLAs) in terms of moving concrete, dirt, and supply delivery, and crane equipment operation. We support A.B. 312.

**Frank Hawkins, President, Las Vegas National Association of the Advancement of Colored People, Las Vegas Branch 1111:**

We are in support of A.B. 312. We agree with the amendments and what Mr. Hardy has already said. We have been working with Clark County for the past two years trying to craft a PLA that is beneficial to all people and allows for all Nevadans to be able to work. One of our biggest issues is the core employee language as it relates to minority contractors. If a minority contractor has 15 employees and he is a subcontractor and he wins the bid, he would be forced to bring only seven of his people to work and leave the others at home. We think that is not what the state law has intended. We are a right-to-work state. We do support the prevailing wages regardless of the county. The issue is not the PLA; the issue is to ensure that everyone can work and that there is no undue treatment or unintended consequences applied to the minority businesses, which has been the case.

**Carole Vilardo, President, Nevada Taxpayers Association:**

I am speaking in support of this bill. I would like to address the 40-hour workweek. Early last fall we surveyed our members and asked them what law, regulation, ordinance would help them employ people and put them back to work. We received a number of responses. One of the responses was the overtime issue and the fact that Nevada is one of very few states that has an 8-hour rule and does not follow the federal 40-hour rule. We are very supportive of moving to a 40-hour rule, which is contained in this bill. The other issue we have had in previous sessions that supported this is the fact that we think prevailing wage should be raised. It was last set in 1985 at \$100,000. It has not been moved since. When we surveyed members, I consolidated those responses. We heard that everyone wanted to change prevailing wage by increasing the base and exempting the rural communities and school construction from it. The base was to be raised to \$2,000,000. Ms. Andriola has spoken to \$1,000,000. Any increase that you would look at, given how long ago the prevailing wage was raised is then indexed to the PPI. The PPI is not a consumer index. It is an index used by government. In fact, this legislative body in 2007 passed the PPI for increasing fuel taxes in Washoe County. It relies heavily on what is purchased for construction

materials rather than consumer goods like food, rent, and taxes paid, et cetera. We would be supportive of that.

**Assemblyman Ellison:**

How many people answered the survey that you mentioned?

**Carole Vilardo:**

There were 208 responses on the survey from all members. I cannot tell you the number of employees that each represents because we did not survey on that. For our membership, those were two of ten suggestions that were made that would assist with putting employees back to work and letting them hire.

**Assemblyman Ellison:**

You mentioned raising the cap. Have you done anything to survey the financial impact on the state in that regard?

**Carole Vilardo:**

We started supporting modifying the prevailing wage back in the early 1990s. We would like to increase it and have it indexed. I know, from one of the former county commissioners in Elko, that on one of the construction projects for an extension of the county complex or courthouse, that the numbers that were available were approximately 22 percent more for the cost of that. From a state like Minnesota, they exempted schools from their prevailing wage requirements. When they added schools, the cost was an increase of 10 percent.

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

In my few short years, I have come to find that if I follow Ms. Andriola and Ms. Vilardo that there is not much that needs to be added. We would like to see fairness for all of our construction members and for the taxpayers. Ms. Vilardo brought up the daily overtime piece, which is a big deal. That is one of the things that came up over the interim. We appreciate that and urge your support.

**Nicole Rourke, representing the Clark County School District:**

The Clark County School District recognizes that the funds made available to us for school construction renovation projects are generated from taxpayer dollars. We regard ourselves as the stewards of taxpayer money and feel it is our obligation to ensure that every nickel is spent appropriately. If there are ways we can increase the spending power of these funds, we would be supportive of it.

**Brian Kerzetski, President, Plumbing, Heating, Cooling Contractors of Nevada, Inc.:**

I echo everything that has already been stated. Recently, we have been working on a new terminal project for McCarran Airport. It was originally under federal Davis-Bacon wages. We were then asked to reprice it at Nevada prevailing wage standards. Our price went up about 40 percent. It was not only prevailing wage but also included PLAs. Our price went through the roof. Our workers are equally as trained as union employees are. With PLAs, our biggest concern is that we will not be able to use our workforce. Those workers would be displaced. We would also have to bring on new workers who we would have to train in the ways that we do things. I would encourage your support.

**Chair Kirkpatrick:**

Is there any one else who would like to testify in support of this bill? [There was no one.] I will now go to opposition.

**James Halsey, representing the International Brotherhood of Electrical Workers Local No. 357:**

I represent over 3500 electrical workers in southern Nevada. We are against A.B. 312. This bill is another in the long line of attacks on the working men and women of this state. For the construction workers in Nevada, this slowdown has not just been a recession, it has been a depression. It continues to be that way for many of us. For those that still have a job, work is very slow. Many only work four to six months out of a year. This bill is an attack on those workers. Have the workers of this state suffered enough? I am not surprised to see the names of a couple of contractors as cosigners of this bill. I am disheartened that in these depressing economic times for construction workers in Nevada, some elected officials would go after the wages of their struggling constituents. This bill is the equivalent of kicking someone when they are already down. I stand against this bill.

**Randy Soltero, representing Sheet Metal Workers' International Association Local No. 88:**

The most important issue this session is trying to fix the economy and get the state back on track. You cannot fix the economy by lowering wages or making opportunities scarce for workers. At the end of the day, that is who will be paying the taxes. I would like to first address section 4, subsection 3. I heard earlier testimony that this is not good for workers and their families. I am not sure how being paid fairly for the job that is performed is not good for the worker and his family. I have a problem with eliminating the 8-hour day or even the four 10-hour days. That could be negotiated with the crew or the contractor. That is also helpful. Eliminating the section that talks about being



covered by a collective bargaining agreement is asking the state to, effectively, break a contract that workers have with the union. We are talking about the workers. I have heard a lot from contractors saying that they are representing their workers but this is not good for workers and their families. Section 5, subsection 2, talks about limiting the allowance for per diem, and subsistence or zone pay is the same thing. The way that the Labor Commissioner does the surveys and takes the numbers and whoever's wage prevails in that area is the one that does that. If it includes this type of monetary allowance, then it should be allowed. Mr. Hardy had said that 85 percent of the contractors are nonsignatory. Year after year, the collective bargaining agreement that is usually attached to one of the unions is the one that prevails. We are participating in that survey. Those are the two sections that are the most important to me.

**Assemblywoman Neal:**

You cited section 4, subsection 3, where there was a deletion of the 8-hour day but had left the 40-hour workweek and the prevailing wage language in. What is the issue that you have with this? You said that it eliminates flexibility for the four 10-hour day workweek.

**Randy Soltero:**

It eliminates all of those things. It eliminates overtime after 8 hours, which is how it is now. In many of the collective bargaining agreements that do prevail in the survey that the Labor Commissioner conducts, it also does not allow the four-day 10-hour workweek arrangement, which is something that can be negotiated locally. It only allows for overtime after 40 hours. My argument is that if a worker is performing more than 8 hours in a day, they should be paid overtime for such work.

**Assemblywoman Neal:**

In your statement, you said that a construction worker is allowed to get overtime after the 40 hours. Is that correct? That is a negative aspect?

**Randy Soltero:**

I referred to section 4, subsection 3, paragraph (b). That starts with the 8 hours in the day. Paragraph (a) still says that there are still 40 hours in a workweek. Anything over would be overtime.

**Chair Kirkpatrick:**

Ms. Neal, maybe Mr. Soltero is saying that if someone works 12 hours, two days a week and cannot work on the next day because the weather is bad and then works the next two days they would not get paid overtime for the

12-hour days, they would just get straight 8-hour time. If they went over 40 hours within the week they would get that. Is that correct?

**Randy Soltero:**

Yes, that is correct.

**Assemblywoman Flores:**

How can wages increase at such a dramatic rate one year over the next?

**Randy Soltero:**

The prevailing rate that is established every year by the Labor Commissioner is done by a survey. Sometimes there is a county where the survey will prevail where there is not a collective bargaining agreement attached to that. We have seen Nye County have it where one year they have a collective bargaining agreement attached to that wage and some years it is not. It is consistent with the collective bargaining agreement in that area. Sometimes there is a huge increase, but there are also years where there is a huge decrease. I am sure that the people who are in favor of this did not mention that. Some years there is a big decrease as well.

**Assemblywoman Flores:**

Can you provide some of those examples where there was a big decrease?

**Randy Soltero:**

I will defer that to Mr. Esposito.

**Assemblyman Anderson:**

How long do most public works projects last?

**Randy Soltero:**

It depends on the project. If you look at projects like PLAs, prevailing wage is paid on the sanitation district in Las Vegas or on the airport. Those are jobs that go on for years. They are subject to prevailing wage every year. Some projects like that are very long. There are very short-term highway projects that can go a couple of months for repairs. It depends. It is all over the place at this point. There are not a whole lot of public projects. Some of the counties are trying to gear up. With some of the other legislation maybe some of those jobs will be jump-started.

**Assemblyman Anderson:**

Compared to most private projects, would they be shorter in general? Casinos, for a long time, dominated the economy. We will not be talking about anything that is that long. Is that correct?

**Randy Soltero:**

Generally, other than some infrastructure projects and renovation projects, I think a lot of jobs will be shorter term now.

**Chair Kirkpatrick:**

Are there a lot of jobs, regardless of whether they are PLAs or not?

**Randy Soltero:**

Yes, whether they are PLAs, private, or anything else. The number and the time it will take to will be less.

**Chair Kirkpatrick:**

A lot of that has to do with the dollars available for capital projects.

**Randy Soltero:**

That is correct.

**Greg Esposito, representing Plumbers, Pipefitters, and Heating, Ventilation, Air Conditioning and Refrigeration Technicians Local No. 525:**

This is a very important issue. To quickly answer Assemblywoman Flores' question, in Nye County last year the plumbing classification dropped almost \$30 an hour. It was because there was no work out there. No one submitted any surveys and the law states that you then go to the county closest to the county seat. Since Tonopah is closer to the county to the north, the wage dropped by \$30 an hour. That is unfortunate because there were workers out there that were looking forward to working on the high school and the prison.

Prevailing wages were set up to provide for working families. I understand that we live in a world where a two-income household is almost a necessity these days, but it is nice to know that when you go to work in the morning at your construction job, that you can earn enough money to provide health insurance for your children, a future for your retirement, and enough to support your family. I have worked nonunion. I have worked open shop on residential construction and I was paid just enough to live two to a one-bedroom apartment and hope I had enough money to cover the cost of food. The construction industry is cutthroat. There are unscrupulous contractors who will get away with anything they can. Prevailing wages protect from that. We have to remember that.

Overtime is not desirable. The workers that I represent do not want to work overtime. They want to enjoy time with their families, but when they get called at the last minute that the project management needs them to finish, the workers have to scramble because maybe they were going to pick up children

from school, go to the bank, or go shopping. If you are going to request a worker to go above and beyond, it is fair that you compensate him for that. The contractors and workers do not want to do overtime. It is sometimes an unnecessary evil for a job site. When I was working for the open-shop contractors, they would come to us and say that we were either working overtime or we did not have to bother showing up tomorrow. They would then cut us out on Friday. They would presume that since a worker did 10 hours on Monday and Tuesday they did not want to pay the overtime after 40 hours. That is what would happen. They would shorten people's schedules. The statement that this is good for the workers and families, I do not agree with. It is not good for workers or their families. The way this bill is written, it is more beneficial to the contractors. Those are the problems that we see with section 4 in cutting out overtime after 8 hours.

Section 5, subsection 2 says, "The survey must solicit and use all wages reported for comparable work performed in the county, regardless of whether the work was performed on a comparable project." There is a severe skill difference and demand difference for a residential unit and a water treatment facility, for example. The way the survey is set up right now, the craftsman on the water treatment facility, paid prevailing wages, has more skill and training than those on the residential projects. If that were to come to pass, the residential workers would influence the more industrial wages. That would not be fair to the workers. In section 6, we need to define what "collusion" is. Sometimes, we work with our contractors to fill out the forms. We do not fill them out; we encourage them to fill them out. We make phone calls and ask them to make sure that they fill them out. If they are in an agreement, it prohibits them from being in agreements where you fill them out. There are a couple of organizations that do have them in their agreements where you should fill them out. It does benefit the community as a whole.

The amendment that Mr. Hardy submitted is what I would like to briefly touch on. As far as the seven employees, that standard has been upheld in court. It has gone to trial and the seven core employees have been considered a fair standard for these agreements. These are local agreements. These agreements are between a county or a city and the workforce. It is really not a state issue and it may not belong in statute.

**Chair Kirkpatrick:**

It is germane. We made sure to check.

**Greg Esposito:**

That is fine. Those municipalities can choose. Those municipalities currently have, and should keep the ability to choose whether they want to enter into

these agreements because PLAs protect projects. They protect workers and projects that they are on from work stoppages and unscrupulous contracting practices. There are requirements you have to go through in order to get a PLA on a project. There are studies that must be done to make sure it is good for the community. If you do not do those studies, you cannot do the PLA. The protections of the community and the taxpayers are already in place when it comes to PLAs. We do not support this bill, and we do not support the amendment ([Exhibit H](#)).

**Assemblywoman Neal:**

I thought the intent of the bill was because this was public works and taxpayer money, that there is a need to level out how much is expended. The second thing that I understood was that there was a need to create fairness. When the discussion of the amendment came up, it was not a discussion of the safeguards but dealing with the prehire and having fairness within the scope of who was able to work in a right-to-work state. Please help me deal with those two concepts together and show me where it is flawed.

**Greg Esposito:**

I want to make sure I understood you clearly when you are speaking about the amendment and the hiring procedures under PLAs. This is an extensive topic, but what I can say is that any contractor can bid on a public works project, regardless of whether it is a PLA or not. There are no restrictions as to who can bid it and no restrictions as to who can work on it. Any claims that PLAs do not allow you to go to work are not true. I can show you our dispatching procedure. It is the most fair and equitable dispatching procedure possible. That goes for any project that we dispatch to, whether it is a PLA or not.

**Chair Kirkpatrick:**

I will ask someone like the airport authority or the Southern Nevada Water Authority (SNWA) to get us a copy of their PLAs.

**Assemblyman Ellison:**

A lot of these issues that have been brought up are areas outside of the city boundaries. I can tell you that my employees make a good fair wage in a nonunion shop. I do not like to bid these projects because of the problems you see here today. I refuse to bid them. I can send a guy out for 10 hours a day. The reason he wants to work 10 hours a day is because then he can take time off on Friday to run errands. It is not because they have to; it is because they want to. That argument does not hold a lot of water. We are doing a project outside of my hometown. It is 2 1/2 hours one way. If I based my wages by your recommendation, by the time they get their tools out and got on the project, it would be time to come back. It is a waste of time. If I sent them out

there for 8 hours a day, it would not be worth it. I allow my men to make that decision. If they have something that is going to hold them up, I will let them go. How many projects are being killed right now based on prevailing wages on school projects because of the amount of money that is being charged?

**Chair Kirkpatrick:**

We need to stay on the topic of the bill. I do not know the answer to that, and I am sure that he does not know either. We are over our time limit.

**Assemblyman Ellison:**

This would be good to do in a workshop at a later date. There are other bills in our Committee based on the problems and discussions that we are having.

**Chair Kirkpatrick:**

I do not disagree. We have been having this discussion as long as I have been here. We try to have full discussion. If they would like to get the information to you, they are happy to do that.

**Anthony Rogers, Southern Nevada Building and Construction Trades Council; and Bricklayers and Allied Craftworkers Local No. 13:**

I would like to agree with my colleagues. Unions built the middle class. It is because of decent wages that middle classes were created. This is another attack to bring down unions and the middle class. We are not for this bill. I do not see, if we are not paying for schools right now, how do we take money out of the pockets of people who build the schools? It is just a big circle. I hope you see that. It is coming down all across America.

**Paul McKenzie, representing the Building and Construction Trades Council of Northern Nevada:**

I want to bring up two quick points. The first point is that materials are the majority of the cost of most construction projects. Labor, depending on what kind of work we are doing, may hit 40 percent. You heard testimony earlier that the change in wages caused a 40 percent change in cost. That would tell me that the contractor, to avoid having prevailing wage, was not going to pay his workers on the project. The second point is that the amendment is probably an attempt to circumvent the protections of collective bargaining that are offered under the federal law. I can see Mr. Hardy's point in trying to get the state to interject a law because he has not been able to win these points in the federal court system because this protection exists. This amendment ([Exhibit H](#)) is an attempt to get it into state law so that those federal collective bargaining laws can be circumvented. I would question whether it would withstand the test of federal challenge.

**Danny Thompson, representing the Nevada State American Federation of Labor-Congress of Industrial Organizations:**

Prevailing wage ensures that you have a local workforce that is paid what would be paid in the community. Prevailing wages were established by Davis-Bacon. The federal law was established by two Republicans. States that have done away with prevailing wage have found that it becomes a race to the bottom. You take the money from the workers, the next thing that happens is the contractors lowball each other. States that have done that, you find that their contractors have simply stopped bidding on this kind of work because they cannot make any money doing it. The other thing that happens is the qualified workforce leaves your state because these skilled tradesmen go to school for four years to learn their trade. In a race to the bottom situation, they cannot make a living. This bill is not new to this Legislature. It has been here many times before. We are opposed to everything in this bill. The eight-hour law has long been established, starting with the mining industry. People died to get the eight-hour law in this state. As far as PLAs are concerned, most of the hotels on the Strip were built with a PLA. The reason is, they want the job done on time, under budget, and without any problems. That is what we sell, qualified workers. In the case of the SNWA job, the largest public works in the state of Nevada was done with a PLA because they needed qualified people. This bill would be a race to the bottom and would drive qualified people away from this state. We are adamantly opposed to this bill.

**Vicenta Montoya, President, Si Se Puede Latino Democratic Caucus:**

We concur in opposition to this bill. We believe this bill attacks workers. The basic foundation for the workforce in the state of Nevada, in terms of construction, is Latino. We have been hurt and are desperate. This is another measure to undercut us further.

**Chair Kirkpatrick:**

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

**Michael Tanchek, State of Nevada Labor Commissioner:**

I am neutral on this bill. I have heard a lot of people explaining how prevailing wage works. I am here to answer any questions that you have relative to the issues that have been brought up.

**Assemblyman Hardy:**

One of the things that have been brought up is comparing residential work to public works projects. This bill does not allow those job comparisons with residential. It only allows those that are comparable work to the same type of work that is being done. This is not an attack on unions. These are things that

are costing our economy. We are not able to afford the things we should be able to do. We are a right-to-work state and should always let the competition prevail where it is at. I have recently had the opportunity to discuss some issues with a gentleman. He wanted to come to this state. He had a great desire to come here and do any energy project. Due to the environment of this state he stated that prevailing wage was extraordinarily high as compared to the surrounding states. The business climate in Nevada is unnecessarily politically polarized. That is something that we should be aware of as individuals of the Legislature. He noted that there was little room for discussion of adjusting wages to a more reasonable level to make the developer more competitive. In fact, he was surprised that interested parties were looking at creating abatements that would have lowered the prices for the Nevada consumer. After spending a great deal of time and trying to find a viable solution and address the concerns that he had with the prevailing wage, the company finally gave up and spent their money in Arizona. That is a sad statement for this state. If we want jobs, we need to make it competitive here. We want to make it work.

I would like to clear up the confusion about the overtime. If I have individuals and I work the four ten-hour days, if I have two days on Monday and Tuesday where they work those ten-hour days, and because of weather delays for the rest of the week, if my employees want to come back and make those hours up after those bad weather days, they are not able to. I still have to pay overtime for those two days for anything after eight hours. Would it not be a better opportunity for the employees to get those full eight-hour days if they can? I can go to straight eight-hour days. I am then not required to pay that overtime if I do not want to. Those employees have a great desire to work those four ten-hour days so they have those extra days off with their families. There were a number of things brought up about the PLAs. It does not make it up for the taxpayer. The PLA, if it is fair, then it needs to be fair. We will go from there.

**Chair Kirkpatrick:**

The PLA was a new twist to it today. I am sure there will be plenty of our colleagues who have questions. We will close the hearing on A.B. 312. We will not be able to hear Assembly Bill 468 or Assembly Bill 471. We will put those bills on the top of the agenda tomorrow.

Assembly Bill 468:      Revises provisions relating to redevelopment.  
(BDR 22-1118)

[Not heard.]



**Assembly Bill 471:** Revises provisions relating to enterprise funds.  
(BDR 31-915)

[Not heard.] We will open the hearing on Assembly Bill 320.

**Assembly Bill 320:** Revises provisions governing coroners' inquests.  
(BDR 20-1024)

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

The bill before you is going to be another sensitive bill. There will be much testimony on each side. I will ask this Committee to keep in mind as we go through the different portions of this bill that the bill we are looking at is going to examine what a police officer did or did not do in a moment of time. There is nothing before that time frame or after. The experts will try to go through the process. The current process that is now in place is somewhat cumbersome. We know that the rank and file of the police officers are very hesitant to come forward because they view it as an adversarial program. With my 30 years of federal law enforcement, inquests traditionally have been purely fact-finding and nonadversarial to find out what happened in that moment of time. I will defer to the experts.

**Michelle R. Jotz, Director of Governmental Affairs, Las Vegas Police Protective Association; and the Southern Nevada Conference of Police and Sheriffs:**

We would like to thank Assemblyman Hambrick for bringing this bill forward and this Committee for hearing it. Assembly Bill 320 makes parity between Clark County and the remaining counties in the state of Nevada as it relates to how officer-involved deaths are handled. Not only does it bring parity within the state, it actually brings parity within the country. Approximately 99 percent of the other agencies across the country do the process we are actually proposing. [Read from prepared text ([Exhibit I](#)).]

**Assemblywoman Flores:**

I know this has become an adversarial process and people are refusing to give voluntary statements. What, as it stands now, is the ultimate purpose of the coroner's inquest?

**Michelle Jotz:**

The purpose of the coroner's inquest process is to determine where the incident happened, when it happened, who the officers involved were, and how the person died. That is the extent of what the new process determines. That is all the same information that the coroner's office already would have.

**Assemblyman Ellison:**

There is still a process behind this that under civil penalties could go onto another step. This does not exclude that process. Is that correct?

**Michelle Jotz:**

That is correct. We will actually walk you through all of the other processes that are reviewed for this. There are eight other processes involved.

**Assemblyman Ellison:**

The reason I asked is because motions can be taken out of this and we can focus on the issue at hand and not other details that can divert it all over the place. Is that correct?

**Michelle Jotz:**

That is correct.

**Assemblyman Munford:**

Has this policy of the coroner's inquest already been addressed at the county level? They have policy in place that they have designed to how the inquest should be handled. What are you asking us to do?

**Michelle Jotz:**

Yes, it has. The new process that went into place is not working, and because of the new process officers are refusing to participate in the process.

**Assemblyman Munford:**

Are you saying that officers are not permitted to testify in the new policy?

**Michelle Jotz:**

They are permitted to do so. They are choosing not to. We are asking for this body to make the determination that the district attorney's office is the one that makes the determination whether or not something is criminal. That is what the coroner's inquest process was doing before these recent changes. It is no longer doing that. We believe it should be left in the hands of the district attorney.

**Chris Collins, Executive Director, Las Vegas Police Protective Association:**

I represent over 95 percent of the law enforcement men and women in Clark County. I came to speak to you about a process that is in place that is used to investigate situations where force is used that either results in the death of a citizen or injury to a citizen. At the Las Vegas Metropolitan Police Department (LVMPD), we have what is referred to as the Force Investigative Team (FIT). The chain of command through FIT, which responds to every one

of these incidents, includes a deputy chief, captain, lieutenant, sergeant, and six hand-picked detectives. All of them are deemed to be experts in this field. Also, most recently, Sheriff Douglas Gillespie has ordered that one of his assistant sheriffs also respond to the scene. There are many people out there with years of investigating experience.

This FIT team takes the investigation on from the criminal view to determine if there was any criminal activity on the part of the officers involved. The next step in the review and these members also respond to the scene of the incident, is what we refer to as the Critical Incident Review Team. They directly report to an assistant sheriff. They consist of a lieutenant, a sergeant, and three or four detectives responding to the scene. It is their job to review the incident at hand from the administrative point of view. They investigate whether there were any policy violations, or if there was not a policy in place that covered the situation that occurred. That Critical Incident Review Team then takes the officers who are involved, gives them a statement of complaint notice under the Police Officer's Bill of Rights that they are entitled to 48 hours before making a compelled statement. They are brought forward before that group. They are given a *Garrity* warning. They must answer the questions asked of them or they are terminated from their employment. Those questions get into all of our administrative procedures. We ask what happened, what they were doing, were they within policy, et cetera.

When that interview is concluded, within 72 hours the sheriff is briefed on the circumstances of the shooting and made aware of everything that has been known to have taken place. That Critical Incident Review Team sometime in the next 30 to 60 days makes a presentation to the Use of Force Board. That consists of a deputy chief—generally the deputy chief of investigations who chairs the committee. There are two captains from the agency that sit as voting members of that block. The officer also has a peer-member and four civilians on the board. There are civilians involved in the process who have a say in whether or not the use of force was deemed to be justified. During that presentation, whoever makes the presentation has with them the homicide or FIT detectives who were out on the scene when the incident occurred. The presentation is made to that panel. That panel then takes a vote to determine if all the rules within our agency were being complied with. If not, a statement of complaint is opened. That statement of complaint is sent onto the Internal Affairs office which is overseen by a deputy chief, captain, lieutenant, six sergeants, and approximately 30 detectives. The officer is brought back into that office to explain his actions and why he did what he did. Through that investigation, he is either adjudicated through an exoneration that states that what was done was within the scope and boundaries of his duties or that the officer stepped outside the duties. The penalty for stepping outside those

boundaries can be anything from a written reprimand to termination. Please hear the voices of the people in professional law enforcement. All they are asking of you is to be treated with parity, as is every other law enforcement officer in the state of Nevada and 99 percent of law enforcement officers across our country.

**Assemblyman Goedhart:**

This is a new area for me. You were talking about being treated with parity, is the current inquest process different than it is with 99 percent of the other people in law enforcement?

**Chris Collins:**

Yes it is. We are only aware of one other jurisdiction in the entire United States that has an inquest process similar to Clark County's. That is King County in Washington.

**Assemblyman Goedhart:**

Are you referring to Clark County as it currently is after the latest change?

**Chris Collins:**

As it is with the latest change or even prior to the changes, we believe there was only one other county that has any coroner's inquest process at all. That would be King County in Washington.

**Assemblyman Goedhart:**

Normally, in other jurisdictions the incident is just referred to the district attorney's office for investigation without going through the inquest process. Is that how this works?

**Chris Collins:**

Yes. The reports are taken after the investigation is complete and presented to the district attorney for his or her review as any other criminal case would be in that county. It would then be up to the district attorney or his staff to determine whether criminal charges are warranted or not.

**Assemblyman Goedhart:**

I was not aware how rare that inquest process actually is. I thought that was standard practice but from the sound of it, it is a unique and isolated type of practice to carry forward.

**Charles E. Kelly, Attorney, Las Vegas, Nevada:**

I will give you my background which would address some of the reasons why I have been asked to speak pertaining to the Fifth Amendment ramifications of

the current process. I began as a civil lawyer; I practiced for ten years as a partner in a major Midwestern institutional law firm where I did Fortune 500-type litigation. After doing so, I came to Las Vegas and began to work with the United States Attorney's Office as a federal prosecutor. I did that between 1991 and 1995. I prosecuted cases in conjunction with the Federal Bureau of Investigation (FBI), Drug Enforcement Administration (DEA), and the Bureau of Alcohol, Tobacco, and Firearms and Explosives (ATF), worked with grand juries, and I conducted jury trials. I have had extensive experience with regard to the law enforcement aspects of the Fifth Amendment privileges. After I left the U.S. Attorney's Office, I opened my own practice, which I continue today. I am an independent criminal defense lawyer. I have the unique perspective of being able to address the real problem that we have that has been created by virtue of this recent amorphous inquest process.

The Fifth Amendment is now hamstringing the ability of law enforcement officers to be able to do their job and participate in the actual investigation and subsequent inquest process. I began to provide counsel to law enforcement officers in officer-involved shootings last year. I worked with two controversial cases that have brought this issue to the forefront. The Trevon Cole shooting and the Costco shooting both occurred last summer. Both of those compelled the issue to be addressed at the local level in Las Vegas. I participated in the Trevon Cole hearing, and I witnessed the Clark County Office of the District Attorney conduct the proceeding. They provided a very vigorous cross-examination of all of the officers that were involved. The cross-examination got to the point where, I, as the criminal defense lawyer, became concerned about whether or not the officers should continue to participate and provide the much-needed testimony. At one point, I considered admonishing them to not even participate.

The police officers as a whole, during my experience, always want to participate. They always want to provide their testimony and tell their story. There are a lot of reasons for that. With regard to where we are at right now, the police officers are being advised by me and other lawyers that they cannot afford to waive their Fifth Amendment privilege and testify or even give statements at the outset, other than the bare minimum that is required under the law. There is concern about whether or not police officers are entitled to invoke the Fifth Amendment privilege. That is unfounded. The United States Supreme Court decision *Slochower v. Board of Education*, 350 U.S. 151 (1956) is very clear on a number of issues that are particularly germane today. They state, "At the outset we must condemn the practice of imputing a sinister meaning to the exercise of a person's constitutional right under the Fifth Amendment." The Court specifically noted that it wanted to discharge the assumption that only criminals or perjurers could claim the privilege.

The privilege against self-incrimination would be reduced to a hollow mockery if its exercise could be taken as the equivalent of either a confession of guilt or the conclusive presumption of perjury. A witness may have a reasonable fear of prosecution and be innocent of any wrongdoing. Perhaps most importantly, the privilege serves to protect the innocent who might be ensnared by ambiguous circumstances. That case is very helpful for us to appreciate how the current process is putting police officers in an ambiguous circumstance in which they could become ensnared. The current situation that they are faced with subjects them to cross-examination without representation. They are testifying under oath, faced with potential subsequent criminal and civil liability. The invocation prevents them from testifying, but it inhibits the underlying criminal investigation. The officers are not cooperating. The underlying criminal event that triggered the entire thing becomes hamstrung because officers are providing the bare minimum. That is balanced against the fact that the officers want to tell their story, to come forward and provide the facts that are involved in the case. As a lawyer practicing for almost 30 years, I cannot counsel them to put themselves in a position where they would become unwittingly ensnared in this ambiguous situation that has been created by this new attempt to legislate themselves into a position where the state of Nevada is totally unique, other than King County, Washington, in the United States.

**Assemblywoman Neal:**

You said that at this time the police officers now have to testify under oath. What is the difference between the fact-finding situations that occurred in the past, which was a year ago, to what is currently happening now where they are asked to give their information to the district attorney's office?

**Charles Kelly:**

The references in the new legislation have made it a more adversarial proceeding. The ombudsman that has been provided to represent the enabled party, the victim's family, to be able to vigorously cross-examine the officers, it puts them in much more jeopardy than before.

**Assemblywoman Neal:**

The situation was created because there was a need for independence, is that correct? The families or whoever was involved in the process felt there was not enough information ascertained and that the District Attorney was in a position where he was not only the fact finder but also the prosecutor. There was a question as to the independent nature of the process.

**Charles Kelly:**

That would really question whether or not the District Attorney's Office was able to conduct the proceeding in a fair and appropriate fashion. Having

witnessed the District Attorney's Office do that in regard to two of these controversial type of scenes, I would have to say that I disagree. The ability of the District Attorney's Office to conduct the proceeding would be more appropriate and would enable the police officers to testify as they have repeatedly in the past. Under the new situation, they are not able to do that. The public has been deprived of what these officers want to say.

**Chair Kirkpatrick:**

I would like for other people to testify. This is an unintended consequence of when the county gets involved in a situation. If they do not like the answer, it comes to us.

**John Sullivan, Retired Deputy Chief, Las Vegas Metropolitan Police Department:**

In 1995, I retired after a 30-year career with the LVMPD. The last 12 years that I was with the LVMPD, I was the Deputy Chief, Chief of Detectives. Before that, I was in charge of the Office of Internal Affairs. Anytime that we would have an officer-involved deadly force incident, I would respond to the situation and personally supervise and sometimes be involved in the investigation myself. In the 1970s, during a period of some civil unrest and law enforcement being the target of some very radical groups, it was proposed that we have an open hearing as to any officer-involved incidents that resulted in the death of a citizen. It was meant to inform and be transparent to the community. There were ups and downs during that process. It was nothing like we are seeing today or that we are debating today. There were a couple of officers that were found at fault. They were liable for the deaths. They went beyond the realm of their duties and responsibilities. The department would wait for the District Attorney's Office to take action. Often times, the District Attorney's Office found that there was not good enough evidence to warrant an indictment for the officer. The police department had, however, fired the officer in wake of the incident itself.

There were several controversial shootings. Anytime you get into an officer involved shooting, there is always the potential of a controversial action. Some elements of the society or community will deem it excessive. The department will deem it excessive oftentimes and take the appropriate action. In 1989, we had an incident happen locally.

The sheriff advised me to reevaluate our use of force policy. In doing so, I checked with several communities within the western United States that have been known to be progressive organizations. I looked at how they structured their review of officer-involved deadly force incidents. I submitted to administrative staff the revised use of force policy. It was a three-phase policy. Number one is the policy itself, what an officer is allowed to do and what he is

not allowed to do when it comes to use of force. It is a boilerplate-type policy that is recognized throughout the nation by the International Association of Chiefs of Police and the accreditation process.

The second phase is the administrative review of the use of force. That is where the Use of Force Board was established. It is composed of three citizens and four officers. After the District Attorney's Office has exonerated the officers or announced that they are not going to pursue any type of criminal liability against the officer, then the administration would hear the case. I chaired this board for five years from 1990 to 1995. We were getting some feedback from some of the community that they felt that it was no wonder that we were exonerating these officers because we had the majority vote which was four officers versus three citizens. The sheriff at the time then flipped it. We then had four citizens and three officers voting on the officer's actions. The process outcome was the same. I found that the citizens were benevolent toward police officers. I have had many of them say that they could not be paid enough to do that job. Many of the citizens felt sorry for some of the young officers that wind up getting themselves in a predicament where they have to make that ultimate decision. I have been in that situation a couple of times in my career. It is not a pleasant one. There are a lot of far-reaching repercussions in the personal arena as well.

Since I have retired, I have monitored the activities of LVMPD. Sheriff Gillespie has made some amendments and refined the process even more. In 1995, I established Sullivan and Associates, International. It is a litigation consulting firm that gives expert testimony and consults in cases of officer-involved shooting situations where the officer used deadly force. I have had that company for 16 years. I have testified in federal courts as an expert in the field. I have been recognized throughout the nation in various state courts as an expert in the field. I do not recall a single case that had a process like the LVMPD. We have created a major bureaucracy in reviewing that. What A.B. 320 proposes is to give that responsibility to the person who is in the business of evaluating these cases. The district attorney's office does this each and every day in deciding if a case is criminal or not. That is the way the vast majority of the departments across the nation operate. They leave it to the man who is skilled, trained, and educated in this field. He does this on a daily basis. You are never going to satisfy the American Civil Liberties Union (ACLU).

**Chair Kirkpatrick:**

We are running short on time. We need to expedite.



**John Sullivan:**

I have covered the main points. You will not satisfy the survivors of a person who was killed. That is tragic, but it happens.

**David Roger, District Attorney, Clark County:**

I have been a prosecutor since 1987 and the District Attorney since 2003. I am here to testify in support of this bill because I feel that the county commission has it wrong. The current process is costly, cumbersome, and provides very little benefit to the citizens of Clark County. We are the only county in the State of Nevada which has a coroner's inquest system. We are one of the few counties in the United States that has a coroner's inquest system. I can tell you, from research, we are the only county in the United States that provides taxpayer dollars to provide an attorney for a decedent's family. My obligation is to prosecute people who commit crimes. It is not always popular or easy, but it is a responsibility that I accept. I have prosecuted police officers, firefighters, media representatives, politicians, et cetera. It really does not matter what the race, status, or gender is. If you commit a crime in Clark County, you will be prosecuted.

That is what I do with police officers. In cases where police officers have committed crimes and I can prove beyond a reasonable doubt that they acted inadequately, I will prosecute. This inquest system adds absolutely nothing to my ability to do the job. Under the prior inquest system, if there was sufficient evidence to prove that a police officer had committed a crime and had killed someone in the line of duty, we have prosecuted the case. That case did not go to the inquest system.

It is important for you to understand what the fiscal impact is. Under the present process, there is an attorney who is appointed to represent the decedent's family.

**Chair Kirkpatrick:**

Is this the present process that the county just now approved or is this present process from before? I understood that there is not currently a process in place.

**David Roger:**

I am referencing the process that the Clark County Board of Commissioners passed several months ago. We have a number of inquests that are waiting. We had to delay the process because the ombudsmen had to be appointed. There is an ombudsman. That means a defense lawyer who is going to represent the decedent's family. The union has an attorney who represents the police officer and can ask questions during the hearing. There is a prosecutor who presents the case. Interested parties can ask questions through the court.

There are a number of meetings. Lawyers like to meet, and this is not exception. There is an initial meeting between the coroner and the hearing master. There is a subsequent meeting where all of the parties get together, they are given discovery, and they discuss the scope of the evidence. There is a third meeting where the court determines what the interrogatories are or the fact finding questions that will be asked. The scope of the evidence is deliberated again.

In talking to a prosecutor in King County, Washington, as well as an attorney who represents the governmental interests up there, I am told that the process is cumbersome because it takes a great deal of time to get all of the attorneys together. In King County, they do not appoint a lawyer to represent the decedent's family. If they can get a lawyer, then that lawyer is allowed to participate in the process, but in King County, there are generally no lawyers who represent the decedent's family. These inquests last a minimum of four days. You can add more days because there is cross-examination from the free attorney that we appoint to the decedent's family.

Each and every one of you deals with budgets every day. It is a terrible process that we have to go through and in Clark County, it is no different. I have lost 80 positions in my office. The Office of the Public Defender has not lost any. I have lost 24 lawyers. The public defender's office has not lost any. Today, the Clark County Commission is asking me to cut another 9 percent. I cannot afford to participate as I have in the past in this process. I cannot afford to put two lawyers and an investigator in there throughout this process. I have an obligation to represent the county in the process, and I understand that. From my best estimate, it is going to cost me about \$11,000 per inquest. We do about ten inquests a year at a minimum. That is \$110,000. Coroner Murphy might be able to provide some additional numbers. When you add it all up, it is going to be about \$440,000 a year to go through this process. I am willing to do my part if you decide to pass the bill and the Governor decides to sign it. I will post all of the reports, photographs, videotapes, and audiotapes online so that the public can have access to this information with some exceptions. We will withhold social security numbers and some very graphic photos. There will be transparency to the best of my ability, and I will make the call. I will determine whether or not there is sufficient evidence to move forward with the criminal prosecution.

**Eric R. Fleming, Assistant District Attorney, City and County of San Francisco, California:**

I am assigned to the homicide unit and am on our officer-involved shooting team. Our goal for the officer-involved shooting team is to accurately, thoroughly, and objectively investigate to determine whether or not there is

criminal liability or lack thereof. This is the same goal of all the district attorneys in California. Los Angeles has a justice system integrity division that investigates officer-involved shootings. San Diego has their own special unit that takes care of officer-involved shootings. In San Francisco, we have a special prosecutions unit. In Los Angeles, there are about 27 officer-involved shootings in which a person is injured per year. In San Diego, there are nine to ten. In San Francisco, we have about six. Each district attorney is entrusted by their community to determine whether or not there is criminal liability. You just heard from Mr. Roger, stating that he would post everything online. He is going farther than a lot of district attorneys in California.

In San Francisco, we have the trust of our community. Everyone knows that San Francisco is a very liberal city. Officers do not receive the benefit of the doubt in San Francisco and citizens are very skeptical of the officer. We have put a system in place that allows for transparency. The reason it works is because we have our own investigators and a district attorney who immediately go out to the scene of the crime. We will go out and conduct an independent investigation. We interview the witnesses independently. We take our own photographs and our own recordings, then, the officers agree to speak with us. Based on the coroner's inquest, you will not have that in Clark County.

The fact that the officers speak with us allows us to have a competent investigation. The officers will speak with us, we will ask those questions as the district attorney, and we will record that conversation with the officers. Once that is done, we collect all of the evidence. Evidence is not simply gathered at the scene. There are toxicology reports, DNA evidence, and ballistics evidence. This does not come through until two or three months after the initial investigation. Once all the evidence is gathered, you are able to put together a competent and structured investigation to determine what the right outcome is. That is what is best for the community, for the officer involved, the victim, and the victim's family. With that outcome, we are able to give the community what it is that they need. There are times when we decided that there was no criminal liability but the victim's family did not accept that. We meet with the victim's family, just as we would in any homicide case, and show them the evidence. We show them why we believe there to be no criminal liability. There have been two times when the victim's family has been against what our findings were. Both times they have gone to federal court. Both times we have been vindicated. Recently, the family of a young lady who was shot to death by a California Highway Patrol officer sued the state and they were given a judgment of \$60,000. However, the United States Court of Appeals for the Ninth Circuit overturned that judgment based on the

officer's split-second decision-making process and the stress the officer was going through at that time.

**Chair Kirkpatrick:**

We have to get to the Assembly floor. I will give you a couple of options: we can either reconvene right after floor for an additional 15 or 20 minutes to finish this hearing or I can continue this tomorrow morning.

**Chris Collins:**

Most of our witnesses have flown in just for this today. Mr. Fleming is involved in a homicide trial in San Francisco. I do not believe tomorrow morning would work.

**Chair Kirkpatrick:**

We will continue this after floor then. We are pressed for time.

**Eric Fleming:**

I would just like to conclude by saying that the process that we use in determining criminal liability is the same process that we use for civilians who have also committed crimes. You take the competent evidence, look at whether or not you can prove your case beyond a reasonable doubt, and you foresee any defenses from the victim's family. We then make that decision based on those factors. That is what the district attorney's office is instructed to do. That is what the district attorney's office has an ethical obligation to do. That is how it is done in California, and that is how Mr. Roger will be operating.

**Chair Kirkpatrick:**

We will recess to go to the floor.

[The Committee recessed at 11:16 a.m.].

[The Committee reconvened at 2:35 p.m.].

**Chair Kirkpatrick:**

We will go to opposition first. I apologize for making you wait for three hours. We have to be out of this Committee at 2:45 p.m. I will have a Subcommittee meeting on Thursday after the Committee on Taxation so that we can give the opponents their time speak.

**Philip Kohn, Private Citizen, Las Vegas Nevada:**

I am a defense attorney in Clark County. I served on the committee that put forth the proposals for the new coroner's inquest. I was also on the committee

in 2007 that looked at it the first time. I implore you to give this a two-year opportunity to see how it is going to work. I think back on the comments that Assemblyman Hambrick made to start this discussion; he talked about the one moment in time that an officer has to make a decision. What is relevant in this coroner's inquest is the moment when the police officer had to make that decision whether or not to take a life. That is what the coroner's inquest should be about. After hours of debate and compromise, we came up with the ombudsman as a way to make sure we look at that moment in time.

The two coroner's inquests from last year that Charles Kelly referred to involving Trevon Cole and Erik Scott were cases where the coroner's inquest put on lengthy testimony about things that happened in Mr. Cole's life for days and weeks before the shooting and in Mr. Scott's life for days, weeks, and months before the incident occurred. A lot of that evidence would be irrelevant. Unless you have a check on the power of the district attorney, until you have someone there to represent both the public and the decedent, it is not fair. That is what the ombudsman was created for—to represent both interests at the same time. It was also to make sure that in those meetings that Mr. Roger talked about that will precede the coroner's inquest that we define what is appropriate and not appropriate for the committee. You have a very unfair system and that is the way it is right now. Mr. Kelly talked about Fifth Amendment rights as a criminal defense attorney. I am concerned about everyone's Fifth Amendment rights. If the police officers have been willing to testify throughout history, and if the police officers felt that answering questions from the district attorney did not in any way violate those rights, if we hear from Mr. Roger and everyone else that it was a fair system and we did not pull any punches, then what is the fear of an independent person asking questions? We have gone to great lengths to get people to work as ombudsmen who are the leaders in our legal community and do not have any kind of ax to grind with any LVMPD officer.

One of the people to do the first coroner's inquests is David Wall, who was recently a district court judge and was the prosecutor in the Binion case. One of the other men who have signed up to be on ombudsmen is Mark Hutchison. He represents the State of Nevada in the health care issue. We need to give this system a chance. We have spent a lot of time on it. I implore you to give at least two years of watching this system work in Clark County before we pull the rug out from under it.

**Richard Boulware, Vice President, National Association for the Advancement of Colored People, Las Vegas Branch 1111:**

I am also a federal public defender. I was also a member of the panel that made the recommendations to the commission. It is important to recognize that this

panel went through a very public and deliberative process. Initially, the commission appointed a panel of individuals who go through and have meetings on this issue. We had several meetings. There was public comment at each of the meetings. We went through various drafts of different recommendations. After that, we reached a decision about the recommendations. The recommendations were a compromise. There were many who wanted stronger measures placed into the recommendations, and those were not adopted. We reached a compromise in which eight out of ten of the panel members supported the recommendations. These eight panel members included former Supreme Court Justice Bill Maupin, the sheriff, the coroner, and a professor from the University of Nevada, Las Vegas, Boyd School of Law, Christopher Blakesley, who was the chairperson of the panel. I want the Committee to understand that this was a deliberative public process.

One of the things I wanted to address was the notion that this was a process unique to Las Vegas and Nevada. That is incorrect. Most jurisdictions have some form of oversight through a police commission or a special prosecutor's office. As Mr. Fleming testified to, they have a special office in place to do this. We do not have that office. That is one of the methods that is often used. When this was proposed to the District Attorney, he declined to implement it. He has now agreed to do this while testifying before this Committee. We had, before these changes, one of the least transparent and independent processes in the country, despite having a very high number of killings per capita by police officers. I also want to clarify that a disproportionate number of minorities are impacted in terms of the inquest. It is important to recognize that this is one of the first attempts made to set up an independent process for reviewing the taking of a life of a citizen. Before this, there was no public information in terms of how the District Attorney arrived at his decisions. We asked him to issue a public opinion about that. He declined to do so. I would like to be clear about some of the misperceptions that have occurred.

This is an adversarial process. The reality is, even according to the argument of the District Attorney and those involved, if the District Attorney was asking vigorous questions; it is very likely those would be the same questions being asked by the ombudsman. It seems to me that this is really a disagreement about who is asking the questions when the reality is, part of the purpose of this was to create independence and transparency so the public would have confidence. This started because of two very unfortunate shootings. One of them involved Trevon Cole, an African American man who was shot on his knees in the bathroom with no weapon. There was a public outcry related to that. There was also an unfortunate shooting of Erik Scott in front of Costco in

Summerlin. There was a very loud voice saying that we needed to make changes and have some transparency and independence.

There are many processes that occur where the officers do not have to participate in order for us to be able to have information given to the public. As a defense attorney, I would strongly support officers invoking their Fifth Amendment privilege whenever they thought it was appropriate to do so. I do not think that the invocation should undermine the process that we have created. It is only one step in a process toward creating greater trust. The fact of the matter is that there has been a loss of trust in our community. That is why this process was initiated. That is what the recommendations support. I would urge this Committee to follow the recommendations of the panel, the commission, and the people of our community that have been arrived at through this process.

**Assemblyman Goedhart:**

Do you have numbers to validate your assertion that we have a higher per capita number of shootings than most other municipalities?

**Richard Boulware:**

I can submit that information to the Committee. I did not bring those numbers with me.

**Jose Solorio, Private Citizen, Las Vegas, Nevada:**

I am a member of the Clark County Coroner's Inquest Review Panel. I was appointed to represent the Latino community with support from Hispanics in Politics, Si Se Puede Latino Democratic Caucus, and the Latin Chamber of Commerce. I view the recommendations made by the panel and approved by the Clark County Commission as a giant step forward in improving relations between our police and community. Time and again Latinos have died at the hands of actions by police: Swuave Lopez, a teen who was shot and killed while running handcuffed, Ivan Carrillo was killed in a high-speed police chase, and Eduardo Lopez-Hernandez was Tased and killed by a Nevada Highway Patrolman. The process of having the District Attorney as a sole presenter of facts, the same District Attorney who has previously chosen not to prosecute in the death, is viewed as unfair, unjust, and only serves to widen the Latino community's mistrust of our police and judicial process. As a member of Sheriff Gillespie's LVMPD Multi-cultural Advisory Council, I meet monthly to discuss how we can improve relations and trust between the LVMPD and the Latino community. The newly adopted Clark County Coroner's inquest review process does that. With the sharing of evidence prior to the inquest, an appointed ombudsman to represent the public and family, the result is an open and fair process. It is supported by Sheriff Gillespie. The bill before you guts all

of this hard work. Both the District Attorney and the police union have taken this issue to the state because they did not get the result that they like that the community put together. The ombudsman's ability to ask questions, which makes the process fair, does not sit well with them. As we all know, only the accused can invoke the Fifth Amendment, but the police union has threatened to not have any policemen participate. This is not just their choice. For a complete review of the facts, the ombudsman's role is critical, not just the District Attorney who has vested interests. The Clark County Board of Commissioners, with input from all major stakeholders in the county's community including the Latino community, has produced a fair coroner's inquest process. Do not fall for political maneuvering to kill our local efforts. Do not support this bill.

**Chair Kirkpatrick:**

At this time we will close the hearing on A.B. 320. We will repost it in a Subcommittee upon adjournment of Thursday's Taxation meeting. We will have plenty of time to hear both sides. We will start with the opposition. I apologize for the wait. Is there any public comment? [There was none.]

[The meeting was adjourned at 2:51 p.m.]

RESPECTFULLY SUBMITTED:

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Jenny McMenomy  
Committee Secretary

APPROVED BY:

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Assemblywoman Marilyn K. Kirkpatrick, Chair

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



**EXHIBITS**

**Committee Name:** Committee on Government Affairs

**Date:** April 11, 2011

**Time of Meeting:** 8:01 a.m.

<b>Bill</b>	<b>Exhibit</b>	<b>Witness / Agency</b>	<b>Description</b>
	A		Agenda
	B		Attendance Roster
A.B. 80	C	Susan Scholley, Committee Policy Analyst	Work Session Document
A.B. 237	D	Susan Scholley, Committee Policy Analyst	Work Session Document
A.B. 238	E	Susan Scholley, Committee Policy Analyst	Work Session Document
A.B. 330	F	Susan Scholley, Committee Policy Analyst	Work Session Document
A.B. 376	G	Assemblywoman Debbie Smith	Amendment
A.B. 312	H	Warren Hardy, representing the Associated Builders and Contractors of Nevada	Conceptual Amendment
A.B. 320	I	Michelle Jotz, Police Protective Association	Prepared Testimony