

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

**Seventy-Sixth Session
April 22, 2011**

The Committee on Government Affairs was called to order by Chair Marilyn K. Kirkpatrick at 9:02 a.m. on Friday, April 22, 2011, in Room 3143 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4406 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/76th2011/committees/. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

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

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Senator David R. Parks, Clark County Senatorial District No. 7

STAFF MEMBERS PRESENT:

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

OTHERS PRESENT:

Terry Care, representing Saguaro Power Company
Michael Harwell, Franchise Manager, Department of Business License,
Clark County
Debra Gallo, Director, Government and State Regulatory Affairs,
Southwest Gas Corporation
Judy Stokey, Director, Government and External Affairs, NV Energy
Keith Munro, First Assistant Attorney General, Office of the
Attorney General
Jim Earl, Executive Director, Nevada Technological Crime Advisory Board
Christopher Ipsen, Chief Information Security Officer, Department of
Information Technology
Chris Wilding, Chief Information Officer, City of Henderson
Ted Olivas, Director, Administrative Services, City of Las Vegas
Javier Trujillo, Intergovernmental Relations Specialist, City of Henderson
David Fraser, Executive Director, Nevada League of Cities
and Municipalities
P. Michael Murphy, representing Clark County

Chair Kirkpatrick:

[The roll is called.] We will go out of order this morning, and will open the hearing with Senate Bill 109.

Senate Bill 109: Revises provisions relating to local financial administration.
(BDR 31-825)

Senator David R. Parks, Clark County Senatorial District No. 7:

Senate Bill 109 revises limitations on fees for business licenses imposed by local governments on public utilities. Existing law authorizes the governing body of a city or county in the state to impose certain fees for a business license on public utilities. The amount of such a fee for a business license may be based only upon the revenue delivered by the public utility from customers located within the jurisdiction of the city or county. This bill provides that any proceeds from the interstate sale of natural gas to a wholesale provider of electric energy

are not considered revenue for the purposes of imposing certain fees for business licenses.

It is a fairly simple bill. Here with me, is former Senator Terry Care, who can provide an additional explanation of the bill.

Chair Kirkpatrick:

Thank you, Senator Parks. There is an amendment on the bill ([Exhibit C](#)). Have you seen the amendment?

Senator Parks:

I have seen the amendment, and I have some concerns about it. I am thinking that the amendment may put us back to the point that brought us here. I have some very strong concerns about the amendment.

Assemblyman Ellison:

When I read the amendment, I became confused. I believe we are trying to clean things up; however, we seem to be going back into the same problem with the proposed amendment. Is that correct?

Senator Parks:

Yes, that is correct. What we are trying to do is to tie down the legislative intent in passing of the initial bill in 2003. We are hoping to preclude what former Senator Townsend had indicated, which was a fear that some of the wholesalers would end up paying a double tax. That is exactly what has appeared to have occurred.

Chair Kirkpatrick:

Senator Parks, I know that there are some people from southern Nevada wishing to testify. You know that when it goes from one side to the other, both sides want to be clear on the intent of the amendment. I want to be sure that the people in southern Nevada have a chance to answer those questions. I do not see that the legislative intent has changed between the two time frames. I would like to be clear on what happened. Senator Parks, perhaps you can tell us about the original bill from 1995.

Senator Parks:

Assembly Bill No. 32 of the 72nd Session revises certain provisions governing public utilities, alternative sellers, providers of discretionary natural gas service, providers of new electric resources, and eligible customers. At one of the Senate Commerce and Labor hearings, there was a discussion where Chairman Townsend wanted the assurance that we would not be double

collecting a franchise fee from alternative providers. I hope that will clarify it for you.

Assemblyman Livermore:

As I read this bill, it says provisions governing limitations on fees for business licenses. In this case, the business license for some municipalities is no more than a franchise fee. Am I correct?

Senator Parks:

You are totally correct. It is like a sales tax because it is based on a percentage. It is referred to and categorized as a franchise tax.

Assemblyman Livermore:

Most municipalities are limited to a maximum of 5 percent. If this was to become a reality, would this exclude the 5 percent cap and create a double payment of franchise fees?

Senator Parks:

It is my understanding that the cap remains in place.

Assemblyman Livermore:

I understand that, but are you going to circumvent the 5 percent cap? The local government is going to charge the utility producer a business license or franchise fee, however it is applied on a bill. The cap is 5 percent. So what I am asking is if somewhere in between will there be an additional business license fee?

Senator Parks:

My understanding is that we would not. We would collect one tax and one tax only. This bill seeks to make it clear that there will be only one tax collected.

Assemblyman Livermore:

My point is when a consumer's bill is paid, there will be a business license or franchise fee included in the bill. The commodity charge which will be part of that bill includes an additional business tax that had been imposed beforehand.

Senator Parks:

What recently occurred was two taxes were being collected. This bill seeks to allow for only one tax.

Assemblyman Goedhart:

This bill is to basically clean it up, paying one tax, one time, at the retail end. Is that correct?

Senator Parks:

You are totally correct.

Assemblyman Goedhart:

To level the playing field, it will ensure that a wholesale provider of power does not have to pay it a second time, putting it on a competitive playing field with NV Energy. Is that also correct?

Senator Parks:

That is correct. We do have experts at the table who know better than me the actual mechanics of the bill.

Assemblywoman Pierce:

What is a wholesale provider of electric energy? Can you provide me with a few examples?

Senator Parks:

I would like to pass that off to the experts.

Terry Care, representing Saguaro Power Company:

First let me explain what Saguaro Power Company is. It is a Nevada limited liability company. It is located at the Basic Management Incorporated (BMI) complex at Lake Mead. Many of you have driven by that area on many occasions. It has been operating for nearly 26 years. It purchases natural gas, and uses that natural gas to produce steam and electricity, which it sells exclusively on a wholesale provision to NV Energy. There is a contract which says that NV Energy must purchase electricity from Saguaro under certain circumstances. That may not be a textbook definition, but that is what Saguaro Power Company does. I will add that there are about a half dozen of these independent power producers scattered throughout the Las Vegas valley. In our case, we do not do anything except sell that electricity to NV Energy, which then sells it to its customers. [Submitted [Exhibit D](#)].

Assemblywoman Pierce:

The company owns the plant but sells the power?

Terry Care:

That is correct.

Assemblyman Stewart:

I believe the process we are trying to prevent is called pancaking where you place one fee on top of the other, which is passed on to the consumer. Is that correct?

Terry Care:

Senator Parks has touched upon it, and he has discussed the 2003 legislation. In 1995, the Legislature authorized local governments to mandate utilities, as defined under the statute, to obtain business licenses. That was done, and it was only in the last year that Clark County determined that it was okay to impose a sales tax on Saguaro Power for the purchase of natural gas. They want Saguaro to pay a 5 percent sales tax. It can be called a business fee or any other name, but that is really what it amounts to. We sell electricity to NV Energy who turns around and sells it to its retail customers. There is also a tax on that end. If you look at the minutes from 1995 and 1997, all the discussion is about the telecommunications industry. We cannot discern that there was ever any intent to include the purchase of natural gas. This bill is intended to make clear what was not clarified in 1995 and 1997, so that after 15 years, Clark County cannot impose a tax that it had not been charging before.

Chair Kirkpatrick:

Are there any other questions? Did you want to put anything else on the record?

Terry Care:

We have had conversations with the county and we do not agree with the amendment. We do not think that it adds anything. In fact, we believe that it muddies up the water, which is evident after the discussions we have had here this morning.

Chair Kirkpatrick:

I would like to move to the people in southern Nevada, because they have submitted the amendment. I am trying to understand what the amendment is supposed to do. I also think it will be helpful for everyone else to hear them first.

Michael Harwell, Franchise Manager, Department of Business License, Clark County:

We have proposed an amendment to S.B. 109. As former Senator Care has mentioned, we have had several discussions with him and attorneys from his firm regarding his client, Saguaro Power. To provide you some background on the county's position, in 1995 sections of the *Nevada Revised Statutes* (NRS) were added to Chapter 354 limiting and making consistent regulations regarding local governments' ability to impose a fee on customers of public utilities to be collected by the public utility and remitted to the local governments. Personally, I do not like defining words by what they are not, but that is what we have to work with.

Nevada Revised Statutes (NRS) 354.598818 says:

Limitations on fees applicable to public utilities: "Revenue" defined.
"Revenue" does not include:

1. Any proceeds from the interstate sale of natural gas to a provider of electric energy that holds a certificate of public convenience and necessity issued by the Public Utilities Commission of Nevada; or
2. Any revenue of a provider of a telecommunication service other than intrastate revenue that the provider collects from retail customers.

When we adopted our code following the 1997 Legislative Session, the definition of revenue did not change. It is still the same today. We feel that the definition of revenue is clear. It indicates that if you are going to buy natural gas from outside the state, and you do not have a certificate issued by the Public Utilities Commission of Nevada (PUCN), that revenue is subject to the calculation of the local jurisdiction's fees or taxes.

In 2003, Assembly Bill No. 32 of the 72nd Session was adopted. If you look at the legislative history of that bill and the discussions that ensued, there were many concerns regarding former customers of local public utilities going outside the state and purchasing natural gas to avoid taxes which would have been assessed if purchased from the local public utility, whose rates are regulated by the PUCN. Assembly Bill No. 32 of the 72nd Session set some requirements for discretionary natural gas and alternative sellers of natural gas. There are about a dozen companies now licensed by the PUCN, one of which was one of Saguaro Power's suppliers. Prior to the 2003 amendment, we were only assessing the fee on the transportation side. Southwest Gas came to us in 1997, when we adopted our ordinance. They presented their concern that they were afraid that people would stop buying gas from them and purchase it out of state to avoid the tax. When we adopted our code, we took their concern into consideration and excluded the equivalent of the commodity cost of the gas from the calculation of the fee. In 2003, after the amendment was made to NRS Chapter 704—requiring sellers of discretionary natural gas and alternate sellers of natural gas to comply in collecting the fees from their customers that the customers would have otherwise paid had the gas been purchased by the local utility—we met with Southwest Gas. We adopted an ordinance to reduce that exclusion by phasing it out over time gradually, until we reached the full 5 percent that all other cities in the county were at, which is the maximum set by state law. We sought out the other utilities outside the state to license them as they were being registered with the PUCN. At no point in time did we realize that the out-of-state companies misunderstood the section of the NRS and the

Clark County Code that defined revenue. It should be included if the customer's electric energy provider does not have a Certificate of Public Convenience and Necessity (CPCN.) We do audits of companies and businesses in Clark County to make sure they are in compliance with various regulations and to make sure they are paying their fees properly.

In 2006, the supplier of energy who was supplying Saguaro Energy became licensed with us. We try to audit companies every three or four years. In early 2010, we audited this company and determined that it was not collecting properly, according to the definition of revenue in state law and county code. We assessed a fee. They did not like it, but they paid.

Looking at the 2003 legislation, I believe the issue was they tried to put in provisions to protect local government from intermediate utility companies that generate power or seek to purchase gas out of state to avoid being assessed the fee. Throughout our discussions with former Senator Care, it seemed we understood each other's sides. Double taxation is a word that nobody likes to hear. I cringe when I hear it too. I would like to clarify one point, however. The position has been made that when Saguaro Power pays the tax on the front end, it is buying natural gas at a wholesale value. They add value to that with the amount of energy that they produce and sell to NV Energy, which is at a substantially higher rate. I have reviewed the annual filings with the U.S. Securities and Exchange Commission (SEC) in order to obtain these figures. Their gross margin was approximately 89 percent last year. The tax on the fuel that they purchase to generate electricity is much less by the time it gets to the end user. Once sold to NV Energy, the energy is mixed with the energy that they produce and then sold to the end users, who are the customers in Clark County. I believe there is chart on the Nevada Electronic Legislative Information System (NELIS) ([Exhibit D](#)), which shows an example of the local fees. There would be no fee on the front end, and there would be \$1 on the back end. Without this bill, there is a \$1 fee on both ends. To me, that is misrepresentation or not very accurate information. According to my calculations, based on the gross profit margin of the intermediate utility, the \$2 should be more like \$1.02. I provided that information to former Senator Care and his colleagues.

Chair Kirkpatrick:

Can we ask a couple of questions? I specifically want to talk about the amendment. You talk about the retail and the wholesale part. Could the same be same be said for Southern Nevada Water Authority? The Las Vegas Valley Water District provides retail business for consumers. We also have Southern Nevada Water Authority, which is a wholesale provider, selling to the

retail providers. They do not double tax, at least not as far as I have seen. What is the difference?

Michael Harwell:

I am not familiar with the way the Water District handles it. Talking about double taxation, normally what to consider is taking a product and buying it at wholesale . . .

Chair Kirkpatrick:

I just want to talk about the profits, because it is in their best interest to buy and sell at the right price. They should not be punished because they are buying and selling at the right price. I live that every day. It is my job to have the best price for croissants, and to stock up on supplies for long-term protection. What I would like for you to talk about is the section specifically excluding intrastate transportation charges, which says that anything done within the state should be included in the revenue. What would the purpose of the bill be? Who else could unintentionally fall into this particular situation? I think that we do this often, which is one of my rubs with quasi-public agencies. We are on both sides. One time we are defending the retail side, and the other time we are defending the wholesale side. At the end of the day, we are benefitting from both. I would like you to explain that for the Committee, because it is not my job to tell them how much profit they can make. It is the utilities' job to make sure the consumer is getting the best price for all ratepayers. I would like to address that issue specifically, because excluding intrastate transmission charges is everything. I keep hearing you talking about the people coming from out of state. I just want to understand it.

Michael Harwell:

The bill without the amendment seeks to exclude the purchase of out-of-state natural gas from the calculation that local governments use to assess or impose the local fee. In our discussions with former Senator Care, it is our understanding that there is no question or issue regarding the transportation charges. There are basically two parts in the purchase of gas. There is the commodity cost, which is the actual gas itself. Then, there is the transportation charge, which is the cost the public utility incurs to deliver it to your service address. Southwest Gas provides us with a list of transportation-only customers. They have been charging Saguaro Power on the transportation side all this time. This bill only addresses the intrastate purchase of natural gas. The reason our amendment sounds like it is a double negative is because the definition of revenue starts out as a negative. We would prefer it be written on a positive note versus the negative. What our amendment seeks to do is to clarify that the interstate purchase of natural gas is excluded from revenue for wholesale providers of electric energy. The intrastate delivery or transportation

charges that use the rights-of-way of the county or jurisdiction still are subject to that fee that is currently being assessed to all providers including electric providers.

Chair Kirkpatrick:

Currently, Clark County would get the business license fee. Is there anything else, such as personal property tax, in Clark County?

Michael Harwell:

I believe the companies would still be subject to property tax. Any business or property owner would be.

Chair Kirkpatrick:

Personal property tax is where we collect the real dollars for the county, and the consumer is getting the rate added into his bill because it is part of the overall franchise fee. The county also gets a piece of the franchise fee. Is that also correct?

Michael Harwell:

Whether you call it a business license fee, or a franchise fee, the 5 percent which is assessed through the public utility to the customer using the public utility does come to the county for the general fund.

Chair Kirkpatrick:

A business would also have a regular business license fee for doing business in the county on top of the franchise fee? Is that correct? I am just trying to add up the fees. It appears that there are four fees already to the county. At the end of the day, I care about the consumer because there are numerous consumers in my district who are struggling to pay gas or power currently. The consumer is paying the franchise fee and the rate. How is the consumer benefitting from this bill?

Michael Harwell:

For the consumer buying electricity, the impact is probably a neutral one on the front end for natural gas. As in the example provided to former Senator Care, if a customer received a bill for \$100 from Nevada Energy, he would pay 5 percent or \$5 with this exclusion in place. If the fee continues to be assessed on the out-of-state natural gas purchase, \$5 would end up being \$5.11 on a consumer bill for \$100.

Chair Kirkpatrick:

Are you saying that without the amendment it would be \$5.11?

Michael Harwell:

Yes, that is right. With the amendment, it would be approximately \$5.06. We have been told by Southwest Gas that the transportation charge is about 55 percent of the total customer bill. The approximate commodity cost consumes about 45 percent of the customer's bill. We were told that many years ago, but I do not know what it is today.

Chair Kirkpatrick:

As transportation costs rise, what does that mean to the consumer?

Michael Harwell:

There are issues with the way the 2003 legislation was worded. The utilities in the middle that do not have a Certificate of Public Convenience and Necessity (CPCN) issued by the PUCN, have unregulated rates. They are market driven. As far as the rates for transportation charges, Southwest Gas is regulated by the PUCN, and any increase in transportation cost would have to go before the PUCN. That is where the protection to the public is maintained.

Chair Kirkpatrick:

I have a hard time understanding why, since 1995, we have talked about this but all of a sudden it is an issue. It just seems that it is bad timing to now become an issue after it has been in place a long time. I can tell you about day cares within my district that have suddenly been audited for things they have been doing all along. It sends a mixed signal to business in the long run. I do not know how we correct it because we cannot change the rules in the middle of the game, especially if there are agreements out there. Do they have any agreements? I do not know how you determine that because you base your agreements on costs. If your costs are changing, it is difficult to recover that. If you say that they make a substantial profit, that may be true on paper, but there may be expenditures with natural gas prices not as stabilized as they were a few years ago. It is a 52-week business, and you have to be able to adjust. I only say that because I sell cheese, which is the biggest commodity out there. Some weeks are good and some weeks are bad, but you have to hope that it balances out at the end of the year. I am not lecturing you. I am just trying to understand why the audit took so long.

Michael Harwell:

The audit occurred about three to four years after the natural gas supplier became licensed. Once they become licensed with us, they were put on an audit schedule. We try to audit companies every three to four years. Obviously, we cannot audit every company every three to four years. We have a responsibility to the state for auditing all the resort hotels every three years. It is a big job. Even when times are tough, audits must continue, which is

unfortunate. When the out-of-state supplier was audited, we determined it was not collecting monies appropriately according to the definition of revenue, which has been in our code since 1997. That is when we also began auditing other like companies, as they become registered with the PUCN. It has only been since approximately 2005 that we even knew of the existence of these companies.

Chair Kirkpatrick:

I do have another question. If this legislation passed with your amendment, are we sure that there would not be some other quasi-public agencies or other wholesale providers that would not come in and do the same thing?

Michael Harwell:

I do not believe it would affect them. The definition of a public utility is stated in NRS Chapter 354, rather narrowly, to be customers of providers of electric energy, natural gas, telecommunications, and personal wireless.

Chair Kirkpatrick:

The City of Henderson has its own wholesale provider of utilities. Some of the mining companies have the ability to go off the grid to provide theirs. Some of the hotels also do. Southern Nevada Water Authority runs a few cogeneration plants. There is a cogeneration plant in Moapa Valley. Some of those are wholesale providers. The Colorado River Commission is a wholesale provider. I know it is narrowly defined, but it really does apply. This would allow the Colorado River Commission to do the same thing because it is a wholesale provider as well. I want the intent to be clear for the record.

Michael Harwell:

This tax does not apply to the providers such as the resort hotels that generate their own electricity. They are buying natural gas and they are paying the fee on the purchase. They are not paying it on the other end because they are using it for their own purposes. The Colorado River Commission is not licensed by us. It is sort of a quasi-government entity, and therefore, we believe would not be subject to those fees. Other providers like Saguaro Power that sell to NV Energy would be subject to the fees on the transportation side, if the bill passes with the amendment. We are mainly trying to clarify and codify what we understand, through our discussions with former Senator Care, what his client is comfortable with.

Chair Kirkpatrick:

This statute applies to the whole state. Is there anyone else who wants to testify? Do you want to further review the amendment?

Michael Harwell:

I think it is clear as mud, as it is written. If I had the choice, I would rewrite the section on revenue to make the whole section more clear. We are starting with a negative, so I have to make it a double negative.

Chair Kirkpatrick:

Is there anyone wishing to testify in support of S.B. 109?

Debra Gallo, Director, Government and State Regulatory Affairs, Southwest Gas Corporation:

I was going to provide some explanation. Natural gas is a deregulated commodity, which means it is based on what the market will bear. That is why you see it broken down in your bill. The cost of gas is a separate line item with everything else. Transportation, insurance, and safety are all the sort of things that Mr. Harwell was talking about in the transportation charge. That is considered revenue, and what we base our business license fee on. Obviously, when deregulation of natural gas occurred, our revenues dropped significantly because customers were all buying their gas from us. Large customers began leaving the system to purchase their gas directly from suppliers, which is allowed. As Mr. Harwell expressed, we were concerned. It took us a few years to redesign our rates to where now everything is separated and we are indifferent. Our large customers purchase their own gas, and they pay us a charge to deliver gas to their property.

What A.B. No. 32 of the 72nd Session clarified is what we consider revenue. For NV Energy, a customer of ours, the amount of the transportation charge is not included in our calculation of revenue, which we pay our franchise or business license fee on. For Saguaro Power, we do currently assess the franchise fee on its part of our revenues. The proposed amendment would keep things status quo. We collect it now and remit it to the local government. We would continue to do so. Without the amendment, we would treat them as we treat NV Energy and would stop collecting that. A representative from NV Energy is here and can explain it better, but the reason is because NV Energy collects it on its revenue. Ms. Stokey can probably explain it better than I can.

Judy Stokey, Director, Government and External Affairs, NV Energy:

We are in support of S.B. 109. Ms. Gallo explained very well how it is collected. I just want to make sure that things would not change and we would be charged for transportation, because our customers would be paying twice. We support the bill the way it is written.

Assemblyman Stewart:

Do you both support the original bill, without the amendment?

Debra Gallo:

We will abide by any decision the Legislature makes because we are collecting it now. If Legislature changes, we will stop collecting it. We will abide by whatever is decided.

Assemblyman Goedhart:

I have a question for Ms. Stokey. How much is being assessed and collected in franchise fees currently for NV Energy's customers in Clark County?

Judy Stokey:

The 2010 annual figure is close to \$60 million.

Assemblyman Goedhart:

I take it that fee is passed on to the customers. If we were to assess another fee, it would also be paid for by the customers. Is that correct?

Judy Stokey:

Yes, that is correct.

Assemblyman Livermore:

Along the same lines, if the bill was passed, would the consumer see a reduction in his utility rates?

Judy Stokey:

I do not believe so, because we are not getting charged on the transportation side, as Ms. Gallo stated.

Assemblyman Livermore:

How is it passed on to the consumer now?

Judy Stokey:

We charge our consumer for electricity based on revenue, which is where the figure of \$60 million comes from. What Ms. Gallo was explaining was that Southwest Gas currently does not charge us for the transportation, and if we were to assess that fee, it would be passed on to the customers.

Assemblyman Livermore:

When you buy energy from Saguaro Power, does it reflect potential savings?

Judy Stokey:

No, wholesale purchases are not assessed, although retail purchases are.

Assemblywoman Pierce:

Does the \$60 million represent the transportation or the fees you must pay on it?

Judy Stokey:

That is for the retail sales to our customers based on our revenue. It is approximately \$60 million we pay Clark County in franchise fees.

Assemblywoman Pierce:

If this bill was passed with the amendment, what would the amount be?

Judy Stokey:

I do not know. I believe the gentleman from Clark County indicated an amount earlier. I believe if the bill passes, the way it is right now, there will not be any additional assessment.

Assemblywoman Pierce:

In the bill without the amendment, there is nothing additional. Is there an amount that goes away?

Judy Stokey:

Nothing goes away. That is based on Saguaro Power. NV Energy is treated differently than Saguaro Power.

Chair Kirkpatrick:

With the amendment, you would all have to be treated the same. Is that correct?

Judy Stokey:

I believe so.

Chair Kirkpatrick:

That is where it comes back to the consumer. It is somewhat confusing. Without the amendment, things stay status quo. With the amendment, it becomes very clear that everyone is excluded and will pay the fee. There could be a potential impact to the consumers. Is that correct?

Judy Stokey:

Yes.

Assemblywoman Pierce:

I understand that, however, I would like to know a dollar amount.

Judy Stokey:

I believe I can get that for you.

Chair Kirkpatrick:

There is a cap on the franchise fee. Is that correct? The interstate transportation could increase on the county side. Do you know what it is?

Judy Stokey:

For Clark County, we are currently at 5 percent.

Debra Gallo:

Our attorneys are looking at that to be clear. Our tax department believes that we would have to collect it on the transportation of natural gas that we provide to NV Energy. We do not do that currently. That would be an additional cost which we would have to assess. It would then become part of our revenues. Currently it is excluded from our revenues. If it was included, we would have to collect and there would be an additional charge to NV Energy. I can find out how much it would be.

Chair Kirkpatrick:

Is there anyone else wishing to testify in support? Is there anyone in opposition? Mr. Harwell, would you like to say anything else?

Michael Harwell:

I would like to thank the Committee for allowing us to provide testimony. I know it is a confusing topic, because of all the numbers and taxation involved. Based on the information I have from Saguaro Power and NV Energy, our amendment would retain the status quo on the transportation charges to customers such as Saguaro Power, and would have very little, if any, noticeable impact to the end user of NV Energy.

NV Energy uses less than 50 percent of purchased power, according to its filings. They generate much of their energy themselves. There is no transportation charge because they are a provider of energy with a CPCN from the PUCN. This does not change that, which is why the amendment is in section 1, subsection 1, paragraph (b) of S.B. 109. Paragraph (a) is really defining NV Energy. The wholesale providers are currently being assessed a franchise fee for their transportation only from their local provider. This would try to clarify or retain the current status, which would continue to calculate the

tax by the provider or the delivery company, which in our case is Southwest Gas.

Chair Kirkpatrick:

Mr. Harwell, can you find out which other wholesale providers might be affected? I think that when excluding intrastate providers, everybody else is included. I am worried if another auditor reads it differently in four years, where would we be? In the end, we have to worry about the consumer.

Michael Harwell:

I understand your concern, and I do not like the way we have to make it a double negative. The intent is to exclude from what is not revenue, which means that transportation charges will still be included. This is for wholesale providers. There are about a half dozen in Clark County. I am not sure how many there are throughout the state. In Clark County, we have Saguaro Power, Nevada Sun-Peak Ltd., Nevada Cogeneration Associates, and Las Vegas Power Company, which is out at Apex Industrial Park. Those are the ones which would be impacted by this. If Southwest Gas is currently charging them a transportation franchise fee, they would continue to do so with our amendment. Our amendment is just to clarify that.

Chair Kirkpatrick:

Are there any questions? Is there anyone else who would like to testify? We will close the hearing on S.B. 109. We will now open the hearing on Senate Bill 82 (1st Reprint).

Senate Bill 82 (1st Reprint): Makes various changes relating to governmental information systems. (BDR 19-267)

Keith Munro, First Assistant Attorney General, Office of the Attorney General:

I serve as First Assistant Attorney General for Attorney General Catherine Cortez Masto. This legislation comes as a result of the work of the Nevada Technological Crime Advisory Board (TCAB.) The Attorney General serves as Chair of the TCAB. A group of accomplished individuals serve along with the Attorney General, specifically members of the Legislature. I believe Assemblywoman Pierce formerly served, along with the Department of Information Technology (DoIT,) local, state, and federal law enforcement officials, and experts in the cyber field. The Legislature, pursuant to state law, has directed members of the TCAB to support computer forensic and investigated task forces in Reno and Las Vegas. The TCAB will coordinate training, public outreach, and awareness on cyber issues. Additionally, they will assist DoIT to secure government information systems, and to recommend

changes in civil and criminal laws in response to projected changes in technology. Senate Bill 82 (1st Reprint) came to light in furtherance of these legislative directive duties. This bill passed through the Senate, and I believe it was unanimous. Our friends in the Department of Public Safety (DPS) raised a concern about the bill. I would like to make one clarification before TCAB Executive Director Jim Earl goes through the sections of the bill.

After the bill's initial introduction, the DPS expressed concerns relating to the Nevada Criminal Justice Information System (NCJIS) and its interface with the FBI Criminal Justice Information Services Division. We discussed these legitimate concerns with both DoIT and the DPS. On behalf of those departments and the Attorney General, I would like to state for the record the intent of this bill is not to interfere with federal regulation of state systems as it is currently. With that I will turn it over to Mr. Earl.

Jim Earl, Executive Director, Nevada Technological Crime Advisory Board:

Since the last legislative session, the TCAB has received several high-level briefings on current and projected cyber threats and the challenges they pose to government information systems. The obvious problem at all levels of state government is how to do more to meet the threats with fewer financial resources. Currently, DoIT can provide information, technology, goods, and services to counties and municipalities, if it has excess capacity to provide those services. The Department of Information Technology has not had excess capacity for years and clearly will not have in the future. The present statutory provision limits the needed collaboration to protect government information systems in light of future and current threats.

Current computer hardware and software in all of our government agencies, at all levels, is being kept in service longer than planned because there are insufficient funds to comply with normal replacement cycles. We see this in state government, and you have seen it in the Legislature as well. Failure to replace equipment and software on normal replacement cycles can have significant security implications. How do we get the best deal in terms of price and security? Senate Bill 82 (R1) enables DoIT to provide information technology (IT) goods and services, specifically including procurement services, to counties and cities with the following three provisions: (1) The counties and cities must request DoIT assistance, (2) DoIT is appropriately compensated under the present statute, (3) The state saves money on any bundled transaction. The chief information officers of Clark and Washoe Counties, and the Cities of Reno, Las Vegas, and Henderson supported S.B. 82 (R1) at the Board's last meeting. Senator Wiener chaired that meeting. Her questions and the testimony of the county and city Chief Information Officers can be found on

pages 27 through 32 of the board minutes, which you have as part of my written submission ([Exhibit E](#)).

It is important to realize that paying less for hardware and software is a fool's bargain unless that hardware and software are secure and the systems of which they are a part are also secure. Senate Bill 82 (R1) contains information security requirements designed to meet current and foreseen threats. The changes that S.B. 82 (R1) would make to the current DoIT statute are found on the middle of the page, shown on my cover sheet. I will be more than happy to talk more about it, in conjunction with Chief Information Security Officer Christopher Ipsen, who is presently present in Las Vegas.

The bill also refines membership of the DoIT Advisory Board and makes confirming changes to state procurement and criminal statutes. Looking at the bill as a whole, it is best seen as part of a continuum of legislative measures, making Nevada an information-secure locale, therefore more attractive to businesses dependent on information security. Importantly, from our perspective, the bill will also help protect the tremendous amount of citizen data and other information contained in government computers systems, at all levels within Nevada. That concludes my oral remarks.

Nevada's Chief Information Security Officer Christopher Ipsen is standing by in Las Vegas. Mr. Ipsen is also a member of the TCAB, and a new member of Nevada's Commission on Homeland Security (NCHS). He will indicate the commission's current recognition of the importance of cyber threats and homeland security.

Chair Kirkpatrick:

Specifically what portions within this bill do you have concerns with? I thought I heard in your opening statement that you had some concerns which you wanted to address.

Jim Earl:

The bill addresses those concerns in the existing statute. We are delighted to be able to place this bill before you.

Chair Kirkpatrick:

I have a concern with services, referenced in sections 21 and 22. I do not understand why local government and the state cannot do some purchasing together.

Keith Munro:

That is why we are here today to make sure it is clear.

Chair Kirkpatrick:

I hear concerns all the time from DoIT regarding its audit. They have some of their own issues. I also hear that local governments cannot share data because they all have different computer systems.

Keith Munro:

I think you will see that the locals and DoIT are all in support of this bill because it is a newly founded collaboration, which we are trying to set forth in statute.

Chair Kirkpatrick:

I find that interesting because, recently, representatives from the local government were here, and that was their biggest complaint. They were stating that there was a problem in working together. I just do not get it.

Jim Earl:

We know that state government, all the local and county governments, along with all the schools throughout the state are going to have to replace standard desktop computers when funds become available. Is it better for all of us within the state to bundle that purchase into one large purchase, taking advantage of significant discounts? The answer is clearly, yes. The present statute, which DoIT operates, requires DoIT to provide services to counties and state agencies only if it has sufficient resources to do so. That is not a particularly good test. The test that the bill would put into practice is the three-pronged test that I mentioned earlier. It would allow DoIT to provide IT services and goods, including procurement services. It would allow for bundling of bulk purchases, if counties and cities requested it, if they were able to compensate DoIT for it under the terms of the existing statute. Additionally, the combined bundled transaction must save money for the state. We are essentially replacing the old statutory test with a new one. We understand your points entirely with regard to whether counties and cities would be on board with that change in the statute. Our discussions with counties and cities began about a year ago. There was an initial temporary conclusion reached in the TCAB meeting held in November. Mr. Ipsen and I produced a model bill draft request (BDR) with the statutory changes included. Having gone through the model with the various city and county CIOs, at the advisory board meeting, they all supported what is now known as S.B. 82 (R1). The reasons why it was supported can be found in the board's minutes, which I have submitted.

Chair Kirkpatrick:

I do not disagree with that. What I do not understand is why I keep hearing how IT has been an issue that the various agencies cannot work together on. It is surprising to me that we hear reports on how it cannot be done, and now

we should clarify the law so that it can be done. I will take that issue up with local government when it testifies.

Jim Earl:

I think that Mr. Ipsen, who is standing by in Las Vegas, is essentially on that type of mission, to provide further collaboration with city and county IT personnel.

Chair Kirkpatrick:

My point is that communication goes a long way in this building, and I will leave it at that for now. Can you explain the security validation as shown in section 6? What is that specifically about?

Jim Earl:

Perhaps Mr. Ipsen is the best one to address that question from a technical level, but essentially security validation means that some independent third party or agency is testing a technique to ensure that it really is valid. For example, security validation may mean simply not taking the vendor's word that a particular piece of hardware or software increases security the way the vendor is telling you.

Chair Kirkpatrick:

In section 22, is this a cleanup for public works? The last time I checked *Nevada Revised Statutes* (NRS) Chapter 338 was Public Works. I am wondering why we are cleaning it up because we just had five public works bills, and nobody asked for this area to be cleaned up.

Jim Earl:

Yes, when Mr. Ipsen and I were in discussions last summer with various county and city chief information officers, we also had several discussions with the Administrator of the Purchasing Division. We were concerned and wanted to assure ourselves that nothing in the bill would run afoul of the requirements or procedures that the Purchasing Division had in place. We were sure that was not the case, but we were asked to do several things. One of the things we were asked to do was to provide a provision in S.B. 82 (R1) that would allow the state to give public notice of procurement activities via the Internet. Essentially, as facts later developed, that would save the state about \$10,000 per year, if it gave that type of public notice as opposed to publication in the newspapers. On the Senate side, during the Committee on Government Affairs presentation, the cities and counties wanted to take advantage of that provision as well. The newspapers were opposed to allowing Internet notification to completely substitute for publication in newspapers.

Chair Kirkpatrick:

Assembly Bill 239 did not make it out of this Committee because so many local governments had an issue with not being able to provide Internet service. Yet, section 23 is saying "if the county maintains an Internet website" This is a mixed signal to the residents on how to find this information. We heard from some of the smaller counties that they could not possibly live with A.B. 239, which was about an open meeting website, because they did not have access to the websites. We specifically heard that testimony on March 9, 2011. You can read the minutes for details on that.

Jim Earl:

I believe I was sitting in the audience for that.

Chair Kirkpatrick:

Now, we are putting it back in, yet I do not have those same local governments signed up to oppose it. I am confused and frustrated when issues come from one side to the other.

Jim Earl:

Section 22 of this bill deals only with posting on an Internet website of a local government, if the local government maintains an Internet website. There is no requirement that a local government or county must create a website for the purposes of compliance.

Chair Kirkpatrick:

How is a person supposed to know which direction he should go looking for this information?

Jim Earl:

At present, the party interested in obtaining notice of a request for proposal at a state, county, or city level, goes to the newspaper of record, which is the standard existing provision in the statutes that apply to procurements currently. Rather than requiring only Internet notification, after hearing from state, county, and local agencies, the Senate Committee saw fit to require both the existing newspaper notification and an Internet notification for those local governments that maintain an Internet website.

Assemblywoman Benitez-Thompson:

I am looking for some clarification between section 15 and section 4. In section 15, a state agency or an elected state officer is mandated under the language "shall report" anytime either one suspects there has been unauthorized access to an information system. The Office of Information Security will investigate it and if it confirms there was unauthorized access, the director gets involved.

I am wondering why in section 4, subsection 2, there is permissive language that the chief of the Office of Information Security may inform the TCAB and the NCHS. In the instances in which unauthorized access has been confirmed, why are we not mandated to share that information with those other boards?

Jim Earl:

It would depend on the seriousness of the breach notification that was under investigation or confirmed. The statutes dealing with breach notification would apply to security concerns that do not reach that statutory threshold in terms of the reporting that a state agency must do. Some will not rise to a level which members of the Legislature would want to know about. There is no provision in law for informing members of the Legislature, even in the event of serious security breaches. We think that is an oversight and recall that the TCAB is a joint executive-legislative agency. We think that there are circumstances in which legislators should be informed based on the seriousness of the breach, and the way it may affect the population in Nevada, or may require additional money to solve the underlying concerns. For that reason, we want to have language that would allow the chief information security officer and the CIO to inform key legislators in the event of a breach of security. In a TCAB meeting, Mr. Ipsen expressed concern that he did not have that particular power, and there were times where he would have liked to have had the statutory ability to inform members of the Legislature about a serious issue.

Assemblywoman Benitez-Thompson:

If the Office of Information Security confirms an unauthorized access, I believe it should be shared.

Keith Munro:

The purpose of this provision is to bring this information to these groups. Our intent was not to bring in every single one if some were not deemed worthy. If the Committee wants us to bring in every single one, we certainly will.

Christopher Ipsen, Chief Information Security Officer, Department of Information Technology:

I believe that Mr. Munro and Mr. Earl have conveyed the intents of the law quite readily. The security challenges of state data are increasing. Our fiduciary responsibility is increasing, and this legislation is our response to attempt to do a better job, as civil servants, on behalf of the citizens.

In many cases, states are the largest aggregator of data. One of the challenges we face is that states also have the capability to require citizens to provide certain information which may not normally be required in a business circumstance. It is our stance to do a better job in protecting citizens' data, and

we believe that this legislation helps us in protecting the data. If there is an ambiguity, I am more than happy to discuss it. Primarily our goal is to increase the visibility of cyber security and to perform a better job in protecting citizens' data. When we have that fiduciary responsibility, and we have the ability to compel people to give us information, our attempt is to make sure our response is concurrent with that responsibility. This legislation represents a ratcheting up of our capabilities to proactively assess systems that contain state data, protecting that data in a better fashion.

With respect to the collaboration, we have been actively working with counties and cities. With me is Mr. Chris Wilding, who is representing the CIOs. To give you an example of a successful collaboration, as Mr. Earl previously mentioned, CIOs from Clark and Washoe Counties came together with representatives from the City of Las Vegas, City of Reno, City of Sparks, and City of Henderson to support this law. I consider this to be one of my proudest moments as a civil servant. The reason is that we do talk, and we are working together. One of the questions I asked earlier was what is different about this? We are talking, we are including people, and we are trying to come up with a response to address this daunting challenge that we are all faced with. Without further elaborating, I can assure you that it is our goal to increase the security responses on sensitive data that we collect and to do a better job. As Mr. Earl so aptly put it earlier, we need to do more with less. By increasing our collaboration, we believe we can reduce costs. The fact that they are willing to adjoin is representative of that. As a group, we came together to present a model that will work. We want to be able to work together closely with the counties and cities. Where there are statutory limitations such as the rule about excess capacity, which is a federally dictated rule in terms of our billing methodology, we want to have a different standard which allows us to proactively include them in our responses to vendors while achieving a better cost for citizens.

With respect to the security of the data, it is challenging. The threats are increasing, and our hope is that by clarifying our respective responsibilities, we will increase communication with the Legislature and also with citizens regarding cyber response. This will improve our stature moving forward. I would like to turn the microphone over to Mr. Wilding, who represents the City of Henderson as its CIO.

Chair Kirkpatrick:

We do have to get to our floor session soon, but I really want to sit down with the four of you, because I am a bit stunned by what has transpired today. I do support working together, collaboratively. On the state side, I want to ensure our own security is in place before taking on additional matters. Looking at the

last audit, there were quite a few things that needed to be cleaned up first. I would fully enjoy a conversation next week concerning this bill.

Keith Munro:

We will be more than happy to have that conversation. I want to be clear about your concerns on section 2, as well. This is a substantive bill. That provision is more of a procedural provision. We do not want a procedural provision to interfere with carrying out the good substance set forth in this bill. It is just a suggestion. We are willing to change it if the Committee feels there is a better procedure for carrying out the substantive goal set forth.

Chair Kirkpatrick:

We have about five more minutes available before we have to leave for the floor session. Let us go to Mr. Wilding.

Chris Wilding, Chief Information Officer, City of Henderson:

We are in full support of this bill. We have worked closely with the other state agencies and the Office of the Attorney General. I believe it will further enable collaboration between the local and state governments in terms of shared service opportunities.

Ted Olivas, Director, Administrative Services, City of Las Vegas:

We are in support of the bill. As you heard in previous testimony, we have a representative on the state committee. We are working closely with them. I would just like to bring your attention to section 23. Going through the provisions, I noticed that section 23, subsection 1, paragraph (a) talks about advertising for the public works process for the traditional way of bidding. Lines 22 through 23 read, ". . . unless it advertises on the Internet website of the county" I believe that it should say "the website of the state or governing body." This will make it consistent with the provisions shown above in the same section. This is simply a clarification for your consideration.

Javier Trujillo, Intergovernmental Relations Specialist, City of Henderson:

The City of Henderson is in support of this bill, specifically section 11. We worked closely with the Attorney General's Office and DoIT to ensure that the protections afforded to state government with respect to IT systems have expanded to include local government. Currently, we do not have the same protections and would appreciate having the same protections that are afforded to the state under NRS Chapter 242.

Chair Kirkpatrick:

Does that deal with homeland security issues?

Javier Trujillo:

Yes, it would ensure the protection of many of our IT security documents and access. Currently, any person that makes a public request for those records may receive them. We have attempted in the past to obtain protection through an executive order, but have been unsuccessful. This is the section that we worked on, together with the Attorney General and DoIT, to include local government.

Chair Kirkpatrick:

When we meet next week, I would like to discuss that. Back in 2007, there was a concern that the City of Henderson brought forward. They indicated that they did not want to share any of that information with anyone else. This is saying the opposite, and I am confused.

Javier Trujillo:

We would love to have that conversation with you. The timeline you indicate was prior to my time with the city, but I am prepared to have the conversation.

Chair Kirkpatrick:

The minutes are in my office, and I will get them for you.

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

I would like to express the League's support for this bill, particularly section 11, which addresses the homeland security issues. I believe it is a very important section and we appreciate the local government's inclusion in that. I would like to commend you on your memory.

Chair Kirkpatrick:

Is there anyone else to support the bill? Is there anyone in opposition or neutral?

P. Michael Murphy, representing Clark County:

I waited because you said you wanted to hear from local government. We are supportive of the bill, yet I wanted to remain neutral for the record. We had submitted an amendment on the Senate side. That amendment talked about our ability to place an ad in at least one newspaper "or" on the Internet. When it came through the Senate, it was shown as both. Our only concern is that in section 19, subsection 1, paragraphs (a) and (b) should indicate "or" rather than "and." I do not know if you want us to withdraw the amendment or ask that you just consider a friendly amendment indicating "or."

Chair Kirkpatrick:

After speaking with the Chairman of the Senate Committee, I believe he wanted to go with "and."

P. Michael Murphy:

I understand, but I was asked to bring the issue forward.

Chair Kirkpatrick:

Is there anyone else who would like to testify on S.B. 82 (R1)? We will close the hearing on S.B. 82 (R1). Is there any public comment? For the Committee, there are deadlines Monday and Tuesday. We have over 60 amendments pending. There are 155 bills to process before Tuesday. There will be no Government Affairs meeting on Monday, and there will be no Assembly Committee on Taxation meeting on Tuesday. We are adjourned [at 10:36 a.m.].

[A letter was submitted, dated April 19, 2011 from Attorney General Catherine Cortez Masto, which was not discussed ([Exhibit F](#)).]

RESPECTFULLY SUBMITTED:

Jenny McMenomy
Recording Secretary

RESPECTFULLY SUBMITTED:

Lenore Carfora-Nye
Transcribing Secretary

APPROVED BY:

Assemblywoman Marilyn K. Kirkpatrick, Chair

DATE: _____

EXHIBITS

Committee Name: Committee on Government Affairs

Date: April 22, 2011

Time of Meeting: 9:02 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
S.B. 109	C	Clark County	Proposed Amendment
S.B. 109	D	Ex-Senator Terry Care	Local Fees on Purchases of Natural Gas
S.B. 82	E	Jim Earl, Technological Crime Advisory Board	Overview of the bill
S.B. 82	F	Attorney General Catherine Cortez Masto, Office of the Attorney General	Written Testimony