

**MINUTES OF THE
SENATE SELECT COMMITTEE ON ECONOMIC GROWTH AND EMPLOYMENT**

**Seventy-sixth Session
April 8, 2011**

The Senate Select Committee on Economic Growth and Employment was called to order by Chair Ruben J. Kihuen at 1:12 p.m. on Friday, April 8, 2011, in Room 2134 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412E, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Ruben J. Kihuen, Chair
Senator John J. Lee, Vice Chair
Senator Valerie Wiener
Senator Mark A. Manendo
Senator Don Gustavson
Senator Ben Kieckhefer

COMMITTEE MEMBERS ABSENT:

Senator Greg Brower (Excused)

STAFF MEMBERS PRESENT:

Kelly Gregory, Policy Analyst
Bryan Fernley-Gonzalez, Counsel
Debra Carmichael, Committee Secretary

OTHERS PRESENT:

Chris Brooks, Director, Bombard Renewable Energy
Renny Ashleman, City of Henderson
Ted Olivas, Director of Administrative Services, City of Las Vegas
Steve Holloway, Executive Vice President, Associated General Contractors,
Las Vegas Chapter
Dan Musgrove, City of North Las Vegas

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Paul McKenzie, Building and Construction Trades Council of Northern Nevada,
AFL-CIO
Warren B. Hardy II, Ex-Senator, Associated Builders and Contractors,
Nevada Chapter; Hamilton Solar
David Goldwater, Sierra Nevada Corporation

CHAIR KIHUEN:
Today we have Senate Bill (S.B.) 401.

[SENATE BILL 401](#): Revises provisions relating to public works. (BDR 28-1142)

CHRIS BROOKS (Director, Bombard Renewable Energy):
Senate Bill 401 enacts provisions governing renewable energy projects undertaken by State and local governments. There is a loophole in the power purchase agreement (PPA), which is the funding mechanism related to renewable energy public works projects. The loophole has a potential to drive up costs to the end user and make it difficult for the contracting community to find out how to reply to the request for proposal (RFP). The PPA is a new method of delivery in the State. However, it is not new to the industry. It was not a legal method of use in the State until last year. Since it became legal, our company has signed 45 PPAs with private entities.

Section 2 of the amendment ([Exhibit C](#)) addresses chapter 338 of the *Nevada Revised Statutes* (NRS). It provides that any installation of a renewable energy system on property owned or occupied by a public body is deemed to be a public work regardless of the financing source, including PPAs. Therefore the installation of renewable energy projects must be performed in accordance with existing laws governing public works. The goal is to make sure there is a mechanism in place to put Nevadans back to work, using Nevada companies on the public works projects, paying prevailing wages and complying with the other sections of chapter 338 of NRS. Page 2, section 2, line 36 of the amendment should read "system is financed in whole or in part by private money," not public money.

Beginning on page 15, sections 9 through 11 of the amendment address chapters 332 and 333 of the NRS. They enact provisions governing the manner in which the State and local governments can enter into renewable energy PPAs. Under these sections, renewable energy PPAs are defined as agreements that a person agrees to finance, install, operate and maintain a renewable

energy system on property owned or occupied by a State agency or local government. The State agency or local government agree to purchase the energy generated by the renewable energy system for a specific period of time. I would like to propose changes to the amendment before you, such as change the language to refer to renewable energy PPAs where necessary. The section of the amendment which addresses chapters 332 and 333 of the NRS is not clear if it is referring to PPAs or specific projects. We recommend deleting subsection 4 of section 9 relating to reawarding the renewable energy PPAs. Add subsection 3 of section 2 so the public body is authorized to determine whether it will conduct the bidding process or another party to the PPA will conduct the process. If the project is not a PPA, customers want the ability to contract directly with contractors using their methods through chapter 338 of NRS. We need to work on creating best value language that would define an industry standard. Best value as defined in other sections of NRS does not apply cleanly to what best value would be in a PPA.

The NRS talks more about goods and services. Energy has its own characteristics, and a definition created by industry professionals would be more appropriate. We want to reword section 9, subsection 3, lines 33 through 35 concerning the bidding process as it states renewable energy PPAs are to be awarded individually. We do not want that to be construed as individual projects have to be awarded individually. Public works bodies in the State lump projects together and issue them as one RFP and one contract. That is effective and drives down costs. The intent was not to see that process go away. The intent is to have the PPA clearly defined to the project, not an open-ended PPA.

SENATOR KIECKHEFER:

Does it eliminate the ability of local government to have joinder agreements on renewable energy projects?

MR. BROOKS:

Not if the joinder agreement is in compliance with chapter 338 of NRS and a PPA specific to an individual project.

SENATOR LEE:

I have never seen the word "chief" used; usually it is "primary"? What is the definition of chief?

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BRYAN FERNLEY-GONZALEZ (Counsel):

Chapter 333 of NRS covers State purchasing and defines it as chief of purchasing.

SENATOR KIECKHEFER:

How does this drive down the cost of renewable energy?

MR. BROOKS:

It cannot be good for the industry or the State if a purchasing agency issued a blanket and open-ended RFP that had no competitive bidding process. There have been a few examples in the State where a RFP was let for renewable energy and the response did not clearly define the cost. Because the method of delivering renewable energy to the State is so new, we do not see well-defined RFPs.

SENATOR KIECKHEFER:

Are you talking about the master services agreement the State is under?

MR. BROOKS:

Yes, if you are talking about the Office of Energy.

SENATOR KIECKHEFER:

Is that the only example, or are there more?

MR. BROOKS:

The Nevada National Guard was the first to break ground on the new contract. It was not the best value for the customer. It would be a better value to have a more competitive process by defining the contract individually, but it could contain multiple projects. Individual PPAs with clearly defined projects as part of one contract are necessary.

RENNY ASHLEMAN (City of Henderson):

We are in support of this bill as amended in [Exhibit C](#). We will continue to work with the sponsor of the bill on drafting and definition issues. In section 9, lines 33 through 35 prohibit the joinder agreement. I am not satisfied with those lines, as the possibility of a contract covering more than one physical location is not properly defined. I reserve my support on lines 33 through 35 until further analyzation is done to determine whether we have covered the expressed intent. We do have an issue with joinder agreements, but in the interest of

moving the bill forward, we will not oppose it on that ground. There is a concern because we may do multiple things on the property of the City of Henderson in one contract at one time.

TED OLIVAS (Director of Administrative Services, City of Las Vegas):

We are in support of this bill. This bill is different because it has elements of NRS 338 which deal with construction; it has elements of NRS 332 which deal with local government purchasing, goods and services; and it has elements of NRS 333, which is state purchases. All of these play together in the process.

As a local government, our concern is that we have the ability to bid these projects. The City of Las Vegas does that now through NRS 338. But there are also other opportunities where a developer could be required to do this and would be responsible for going through the same procedures. We do multiple projects for efficiency's sake, such as our solar carport project. We bundle several locations together under various lots and award by lots for efficiency.

The amendment has clarified section 9, lines 33 through 35. The best value reference has been added to sections 9 and 11 of the bill. With those clarifications, this bill is workable.

STEVE HOLLOWAY (Executive Vice President, Associated General Contractors, Las Vegas Chapter):

Our biggest concern is making sure projects hire local contractors and workers as much as possible. This bill as amended does that. Another concern is if a project wants to add solar or other green elements, it does not have to let the contract for the green elements separately from the entire project. This bill now does that. We will continue to work with the sponsor of the bill on the language.

SENATOR GUSTAVSON:

How does this bill help with hiring local contractors and workers?

MR. HOLLOWAY:

I do not have personal knowledge, but several contractors have reported to me of cases where people with the power contracts actually served as their own prime contractors. They were not licensed in this State and brought subcontractors and workers from out of state to construct the facilities. Several

facilities in Carson City have been constructed that way. But I have no firsthand knowledge of that.

SENATOR GUSTAVSON:

I do not see anywhere in the bill where it specifies that local contractors must be used.

MR. HOLLOWAY:

Chapter 338 of NRS has the preference of local workers built into it. Projects must be built in accordance with that chapter.

DAN MUSGROVE (City of North Las Vegas):

I agree with everything said by Mr. Ashleman and Mr. Olivas. There are a number of bills before the Legislature that deal with hiring local workers as a part of public works projects. Those bills work hand in hand with this one. If those bills are approved by the Governor, we will see the local preference come more into play. We are in support of the changes to the bill.

PAUL MCKENZIE (Building and Construction Trades Council of Northern Nevada, AFL-CIO):

When we spoke about PPAs last session, our understanding was it was a similar mechanism as a lease purchase, where a private provider would construct the project, then sell the power back to the end user. It is evident that was not clarified last Session. This bill rectifies that issue. It also clarifies that while a project has private funding in the beginning stage, the public entity will ultimately pay for the installation of the project. It makes clear that utilizing the mechanisms in statute to ensure licensed local contractors are bidding the projects is essential. It makes the PPAs a workable system within the State so renewable power can be placed on buildings without using public dollars to start the process. This is a good bill to make that a workable process.

SENATOR KIECKHEFER:

If the project is funded on the front end by private dollars, the idea is the project is a public work because we will use public dollars to buy the power?

MR. MCKENZIE:

Built into a PPA is the payback for the construction cost of the power project. The end user is the one who pays for the facility over the term of the agreement. At the end of the agreement, the end user has bought the power

and paid off the investment the private developer has in building the system. If this did not happen, there would be no cause for the private investor to get involved in the system. If the private investor could not recoup the investment, no one would step forward.

There has not been a level playing field to bid on projects. It is evident there is a return on the investment. We do not know for sure what the PPAs will say in the future because they have not been written yet and there are no terms.

SENATOR KIECKHEFER:

Why is it not a competitive environment for bidding?

MR. MCKENZIE:

The process is not an open bid process or competitive. It is a backroom process. The National Guard Armory was awarded without bid. There is a long-term ability to be the sole source. The best product is not necessarily the product received because the agreement contains no terms. It is like telling a contractor he is the only contractor that can build for the State.

SENATOR KIECKHEFER:

Does the government entity own the infrastructure?

MR. MCKENZIE:

Yes.

SENATOR KIECKHEFER:

Is there something in place that the installer still owns the infrastructure if that does not happen?

MR. MCKENZIE:

The lease-purchase agreement is for buildings. There is a process in the State purchasing law that allows it to lease-purchase buildings. The Richard H. Bryan Building is an example of the lease-purchase system. The private developer of that building paid the whole investment up front. The State is paying the developer back through a lease-purchase agreement. Our understanding was the PPAs would have the same mechanism. There is no competitive bid process for PPAs right now. This bill will rectify this issue.

WARREN B. HARDY II (Ex-Senator, Associated Builders and Contractors, Nevada Chapter; Hamilton Solar):

I have not reviewed the amendment, as it just became available on the Nevada Electronic Legislative Information System as the hearing started. I would like to reserve our comment. The direction the bill and amendment are heading does seem to be the proper direction. On the wholesale movement to a definition of public works projects—if these are true public works projects, all the provisions of chapter 338 of NRS should certainly apply. It is a new process, and we are working out the bugs. The amendment does seem to go in that direction, but I would like to reserve final judgment until I have the opportunity to completely review the amendment.

DAVID GOLDWATER (Sierra Nevada Corporation.):

I am in opposition to the bill. I have provided my testimony and background on Sierra Nevada Corporation (SNC) ([Exhibit D](#)). To clarify earlier testimony, SNC is the entity that built the distribution generation project at the Nevada National Guard Armory. The bid was competitively bid but not publicly bid. It was not sole-sourced but part of a master service agreement (MSA) with the State that did not contemplate being under chapter 338 of NRS. Sierra Nevada Corporation strongly believes that public works should be under chapter 333 of NRS.

The key to understanding these projects is the financing aspect. Easily identifiable sources of revenue are required to get these projects privately financed. Aggregating the PPAs is vital. When reading the amendment, I am unclear whether the public works board will do the aggregating. If a 5 megawatt or less project cannot be aggregated, administrative and transaction costs make the private financing unavailable. If the project is financed privately, it should be subject to the public works.

SENATOR KIECKHEFER:

When SNC builds a project on a public building, does the State take ownership of the infrastructure at the end of the contractual agreement?

MR. GOLDWATER:

I am not completely sure, but the State would own the infrastructure at the end of the project. The MSAs and PPAs that have been let by the State did not contemplate in their pro forma being subject to public works. I request the Committee consider making that type of contract not subject to this current legislation and make this legislation prospective.

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CHAIR KIHUEN:

It looks like we still have some issues with the bill. Please get together with Chris Brooks to work out the issues. The hearing on S.B. 401 is closed and I adjourn the meeting at 1:47 p.m.

RESPECTFULLY SUBMITTED:

Debra Carmichael,
Committee Secretary

APPROVED BY:

Senator Ruben J. Kihuen, Chair

DATE: _____

<u>EXHIBITS</u>			
Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
S.B. 401	C	Chris Brooks	Amendment
S.B. 401	D	David Goldwater	Testimony on S.B. 401