

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

**Seventy-sixth Session
April 15, 2011**

The Senate Select Committee on Economic Growth and Employment was called to order by Chair Ruben J. Kihuen at 1:22 p.m. on Friday, April 15, 2011, in Room 2134 of the Legislative Building, Carson City, 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
Senator Greg Brower

STAFF MEMBERS PRESENT:

Kelly Gregory, Policy Analyst
Bryan Fernley-Gonzalez, Counsel
Leslie Sexton, Committee Secretary

OTHERS PRESENT:

Steve G. George, Chief of Staff, Office of the State Treasurer
Chris Brooks, Director, Bombard Renewable Energy
Stacey Crowley, Director, Office of Energy, Office of the Governor
David Goldwater, Sierra Nevada Corporation
Rose McKinney-James, Bombard Electric

CHAIR KIHUEN:

We will begin today with a work session on Senate Bill (S.B.) 75.

SENATE BILL 75: Establishes a program to provide private equity funding to businesses engaged in certain industries in this State. (BDR 31-523)

KELLY GREGORY (Policy Analyst):

Senate Bill 75 requires the State Treasurer to form an independent corporation for public benefit to act as a limited partner of limited partnerships or as a shareholder or member of limited-liability companies that provide private equity funding to businesses that engage in certain industries. These industries include, but are not limited to: health care and life sciences, cyber security, homeland security and defense, alternative energy, advanced materials and manufacturing, and information technology as outlined in our work session document ([Exhibit C](#)).

The bill authorizes the State Treasurer to transfer an amount not to exceed \$50 million from the State Permanent School Fund to the independent corporation for investment, if the State Treasurer obtains a judicial determination that such an investment does not violate the provisions of section 9 of Article 8 of the *Constitution of the State of Nevada*. At least 70 percent of the investments made by the independent corporation must be provided to businesses located or seeking to locate in Nevada. The bill was heard by this Committee on April 6, 2011. There have been no amendments.

SENATOR LEE:

Have we received an opinion from the Attorney General on the constitutionality of this bill?

STEVE G. GEORGE (Chief of Staff, Office of the State Treasurer):

The State Treasurer has filed for a judicial determination with the First Judicial District. The Attorney General wrote that request. The court is in the process of advertising that request. Based on information from the Attorney General, we expect a hearing to take place on that request before the Legislature reaches *sine die*.

SENATOR LEE:

The interest that we are earning on the State Permanent School Fund is too low. I applaud the Treasurer's efforts with this bill to invest at a higher rate of interest. For me to vote in favor of this bill, there would have to be a favorable opinion from the Attorney General. A study should be done and the bill resubmitted in two years with perhaps a less aggressive return on the money than is proposed here. Instead of trying to get 10 percent or 11 percent, I would favor a more conservative approach of 5 percent or 6 percent. We were told that approximately one in ten of these kinds of ventures would succeed. That is

not how we should invest public money that belongs to our children's futures. It is better to err on the side of being conservative when we are holding money in trust. I will be voting no on this bill, unless you want an amendment that allows the Attorney General to give a favorable opinion, provides for a study involving enough people in the government and mirrors our investments with those of the Public Employees' Retirement System.

SENATOR BROWER:

I share some of Senator Lee's concerns. On balance, this is something we should seriously consider. I am willing to move the bill forward today and make sure we are on solid legal footing. I appreciate the fact that a judicial determination on constitutionality is required by the bill. We need to start doing things differently in educational funding and in attracting investors and investment opportunities. This bill addresses both. We should keep this bill alive and move it forward with proper scrutiny. There are success stories in other states where similar programs have been adopted. We can emulate that success with the end goal of enhancing the way we fund education in Nevada. I will support the bill at this time.

SENATOR GUSTAVSON:

I share previously expressed concerns. The issue of constitutionality is unresolved. The intent of the bill is good. I have concerns about how the money will be invested and who will make the investment decisions. I do not want to stop the bill at this time. We should go forward and do something to improve the economy of the State and the education system. I will support the bill at this time.

SENATOR BROWER:

This is a bill that will receive a lot of scrutiny by the Legislature as it moves forward. I am sure the Office of the State Treasurer welcomes that. Surely, if this bill is allowed to go forward, the Legislature will regularly and carefully scrutinize everything that happens with respect to this program to make sure funds are being invested appropriately. With that oversight, the program may work.

SENATOR KIECKHEFER MOVED TO DO PASS S.B. 75.

SENATOR WIENER SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR LEE VOTED NO.)

CHAIR KIHUEN:

We will now consider S.B. 401.

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

MS. GREGORY:

This bill was heard in Committee on April 8, 2011. The bill, as originally heard, specifies that a contract for a public work that is new construction, repair or reconstruction of a public building must go to the contractor whose bid provides the best value to the public body awarding the contract. The bill also specifies that a contract for a public work relating to the generation of renewable energy must be awarded individually and not in conjunction with a contract for any other public work. When the Committee heard the bill, a mock-up was submitted in place of the original bill. Since that time, the parties have met and prepared a new mock-up ([Exhibit D](#)) to replace the original amendment.

BRYAN FERNLEY-GONZALEZ (COUNSEL):

The new mock-up, [Exhibit D](#), is the old mock-up with a few changes. The mock-up, as a whole, enacts provisions governing renewable-energy projects on property owned or occupied by the State or local governments.

Sections 9 through 11, [Exhibit D](#), enact provisions governing the manner in which State and local governments enter into renewable-energy power purchase agreements (PPAs). Renewable-energy PPAs are defined as agreements pursuant to which 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 agrees to purchase the energy generated by the renewable-energy system for a specified period.

Section 9 governs the local governments. It is an amendment to *Nevada Revised Statutes* (NRS) 332. Subsection 1 of section 9 requires the

local government to award the PPA in accordance with NRS 332. Subsection 2 of the original mock-up required local government to award a PPA to secure best value. This new mock-up defines best value as the highest quality system with the lowest cost per produced unit of energy. Subsection 3 defines a public work for the purposes of NRS 338 and any applicable provision of NRS 341 as the installation of a renewable-energy system on property owned or occupied by a public body where the public body owns, operates or purchases the energy from the system, regardless of whether or not the installation of the renewable-energy system is financed in whole or in part by private money. The original mock-up specified public money rather than private money. This change was made to clarify that even if the installation of the system is financed by a private entity, it is a public work. Subsection 4 of section 9 is new in this mock-up. It specifies the consequences of a PPA contemplating the installation of more than one renewable-energy system on multiple properties. The agreement must set forth the date on which the process of bidding for each project to install a system will begin, and each individual project for the installation of a renewable-energy system is deemed to be a separate public work. Subsection 5 defines the terms.

Section 11, [Exhibit D](#), covers the same provisions but pertains to the State. The PPAs would be under the NRS chapter 333.

Section 2 provides that the installation of a renewable-energy system on property owned or occupied by a public body where the public body owns, operates or purchases energy from the renewable-energy system is deemed to be a public work regardless of whether or not the installation of the system is financed in full or in part by private money. The second mock-up, proposed amendment 5998, adds the phrase "where the public body owns, operates or purchases energy from the renewable-energy system... ." It also replaces public money with private money. Subsection 2 of section 2 states the amount of any incentive issued by a utility relating to the installation of a renewable-energy system on property owned or occupied by a public body may not be used to reduce the cost of the project to an amount which would exempt the project from the requirements of NRS 338. Subsection 3 of section 2 specifies that the public body which has entered into the PPA determines whether the public body or the other party to the PPA will conduct the process of bidding for the award of contracts for the installation of a renewable-energy system on the property of the public body. Whether or not the public body elects to conduct that process, the installation is still a public work.

SENATOR KIECKHEFER:

What is the intent of section 2, subsection 2, [Exhibit D](#)?

MR. FERNLEY-GONZALEZ:

It is copied from a provision of NRS 701B enacted in 2009. Under that provision, utilities give rebates on the solar energy that is purchased. The amount of those rebates cannot be used to reduce the cost of the project below an amount that would exclude it from the definition of a public work.

SENATOR KIECKHEFER:

Is it common on these projects that the rebates are significant enough to drop the cost to the public body that far?

MR. FERNLEY-GONZALEZ:

I do not know.

SENATOR BROWER:

Whose proposed amendment, [Exhibit D](#), is this? Do we know from where this came?

CHAIR KIHUEN:

Chris Brooks submitted the amendment.

CHRIS BROOKS (Director, Bombard Renewable Energy):

We are a Nevada company that installs, owns and operates renewable-energy systems in the State. I and several stakeholders developed this amendment. The purpose of the proposed amendment is to define renewable-energy projects for public works regardless of the mechanism for purchasing them. The PPA is a new idea in Nevada. The developer of a renewable-energy system can build a renewable-energy system on land owned or occupied by the State or a public body or agency for that public body and sell energy to that public body. The public body would finance the system through the energy purchases they make over a long period of time. Some of the projects in process now have not been viewed as public works even though they are on land owned or occupied by a public body, ultimately using public funds to pay for portions of the project.

SENATOR BROWER:

Will the amended bill categorize certain renewable projects as public works projects (PWPs) even in the absence of State money funding the projects?

MR. BROOKS:

It is a financing mechanism in which the up-front monies come from a private investor and the service on that loan is the stream of revenue that is the PPA from the State or other public body. While the public body does not pay money up front, combined with tax credits and rebates, the price they are charging the end user for the energy units they are selling is the way they are generating return on that investment.

SENATOR BROWER:

How does the proposed amended bill benefit the State?

MR. BROOKS:

It uses NRS 338 provisions to encourage local contractors and local businesses to be the construction entities and to use prevailing wages.

SENATOR BROWER:

That makes the project more expensive.

MR. BROOKS:

It also puts a mechanism in place that provides transparency. Currently, there are open-ended contracts that can go into perpetuity without competitive bid processes. If everything went through the process as defined in NRS 338, whether it is a PPA, or a lease or a bid-build contract, you could use all of the contracting methodologies within NRS 338. You could still use PPA and competitively bid that process. *Nevada Revised Statutes* 338 guarantees that you are comparing apples to apples and that the State gets the best product. Without NRS 338 in place, the public body that will ultimately pay for the project through their long-term payments does not necessarily have the protections to deliver the highest-quality project.

SENATOR KIECKHEFER:

When you bid on a project with multiple installations, can you bid at a lower price because of the volume?

MR. BROOKS:

Yes. Nothing in this provision is meant to prohibit any public body from bundling several projects as long as they are identified with a PWP number.

SENATOR KIECKHEFER:

Looking at section 9, subsection 4, [Exhibit D](#), can you tell me how that works? What I see is that if you are going to do a renewable-energy project on more than one property, then each separate entity is deemed a public work and would have to be bid separately.

MR. BROOKS:

Not necessarily. Currently you can have several projects bundled together and each project is reported on separately and is viewed as its own project but let under an aggregated contract.

SENATOR KIECKHEFER:

After the last hearing, we talked about the nexus of how the money flows. This proposed amendment does not reflect that. This amendment states that the public entity is incorporated into this now only if it purchases energy from the infrastructure. It may not be the owner of the infrastructure. I can see a possible scenario where the State could rent space in a building and the owner of the building could decide to enter into a PPA and allocate the costs among the tenants of the building. Then it would be a public work under this bill. Is that accurate?

MR. BROOKS:

I do not know if that would be true. I would have to contemplate that scenario. The bill is not meant to prohibit the State, or any public entity, from leasing out or selling land to a private developer who may or may not develop a renewable-energy project with a utility, either inside or outside the State, using a PPA.

SENATOR BROWER:

I am concerned that we may be doing something we do not need to do. If we pass this bill, we may make our goal to develop renewable energy more restrictive and expensive for the State.

STACEY CROWLEY (Director, Office of Energy, Office of the Governor):

We do have some projects in process that would be affected by this bill. We are trying to look at the long-term effects of the language in this bill. There is concern that this bill is restrictive. It does narrow our financing options for renewable-energy projects. We need to ask concerned individuals on the municipal level how the bill would affect them. In financial times like this, and

given that the renewable-energy industry is new, there are many ways to finance projects. We do not want to unduly restrict the creative solutions that people can develop to provide low-cost, renewable and sustainable power. There was a lot of work done on the Master Services Agreement (MSA). Ten State agencies thought there was value in grouping together and finding economies of scale through this method.

SENATOR BROWER:

Would S.B. 401 be helpful to the State's efforts?

MS. CROWLEY:

There are some unanswered questions regarding how this bill would be implemented. The Office of Energy, Office of the Governor, is acting as an intermediary between the agencies and the selected contractor because we understand the issues and what renewable energy does. Renewable-energy contracts can be classified as PWPs. Without this bill, these things can still happen. The bill is restrictive and we would like to keep our options open.

SENATOR KIECKHEFER:

This bill appears to be a reaction to the MSA. Are you happy with the MSA and how it is functioning now?

MS. CROWLEY:

It has been working well so far. It is still early. We developed the MSA with many off-ramps so that if we do find that it is not the proper method we are able to move on. We want to move forward with different options, opportunities and creative solutions that will allow the best value for the State. Our intention is to find the best value and best price for the State and municipal agencies.

SENATOR LEE:

I am still contemplating these issues. Something does not make sense to me. We have private money that can be used for renewable-energy projects. But if we put those systems on buildings or land owned by a public entity then it has to go through the provisions of NRS 338. I have a question about the status of the energy produced.

MR. BROOKS:

Bombard has developed, owns and operates 55 contracts with private entities in Nevada. This method has only been allowed in Nevada for approximately

one year. It is new to the State but not to the renewable-energy industry. We are taking private money up-front, rebates through the renewable-energy rebate program under NRS 701B, federal tax credits and using federal tax depreciation schedules and monetizing them for the public body or the nonprofit client because they do not have the ability to monetize those items. We finance the construction of the project. We apply the credits and rebates and charge the State, the public body or the nonprofit client for the balance. It is similar to building a project for the client and then charging rent for the use of the project. It is not deemed a lease or a rental agreement. It is deemed a PPA. The project is not viable without the cash flow from the end user. It is a combination of public and private funds. In the end, the revenue stream is from the end user.

SENATOR LEE:

The conundrum is these projects would not proceed without the private funds in the beginning, or without the rebates and credits.

MR. BROOKS:

Some have been built through the public works bidding process and public bond issues. The City of Las Vegas uses rebate money for which they applied, adds it to their own money and puts the project out for bid. The PPA is a tool to drive down costs and affords flexibility to public bodies. We need to see transparency in the competitive bid process. Senate Bill 401, as amended by the current mock-up, [Exhibit D](#), is an attempt to achieve that. If there is a PPA, the public works process must be used, regardless of the project size to ensure competitive bidding in an open market. The process calls for a best-value decision process.

DAVID GOLDWATER (Sierra Nevada Corporation):

We are talking about being able to use private financing to build these projects. There is an old way to build things and create assets within the State. That is NRS 338, the public works process. It is not perfect. Throughout the history of that statute, multiple layers have been added to it to protect the State while building assets. We are talking about using new and innovative methods to build solar generation and distribution projects or procure things for use by the State. Because we have chosen new ways, private financing became available. Sierra Nevada Corporation is able to use some of their equity and search for investment partners to finance the build projects such as parking garages with solar panels. Senate Bill 401 restricts the ability of anyone who wants to provide financing for these projects by increasing the cost of funds and the cost

of construction. The result will be that projects will not get done privately. The State may still want to step in and provide the funds.

ROSE MCKINNEY-JAMES (Bombard Electric):

I am always looking for a mechanism that will advance solar power. When considering S.B. 401 with the proposed amendment, we need to separate the public policy from the mechanism. We are talking about public facilities and we want to find as many options as possible to finance these projects. It can be argued that public facilities need to be held to a different standard. I do not want to impede the development of solar projects.

There are several projects underway by Bombard. It is a private company that has used a variety of financing tools. The question is whether or not we are going to have the checks and balances that are set forth in NRS 338 to allow us to ensure that when a public building is being financed, we follow all of the rules that anyone else would have to follow. We are not talking about ignoring creative options or precluding private financing. We want to make sure that the playing field is level and appropriate from a public policy standpoint when we discuss public facilities.

SENATOR KIECKHEFER:

How many PPAs are on private property versus public property? To clarify: how many of the existing PPAs would fall under this bill?

MS. MCKINNEY-JAMES:

The distinction is that if you are installing a residential or commercial system on private property, you would have to enter into a net-metering arrangement and remain connected to the grid. If the system is on a public facility, there are a different set of standards. I cannot give you a number or even a percentage in answer to your question.

MR. BROOKS:

The 55 current projects in which we are involved are all with nonprofit organizations that are not public entities. We are in discussions with a few public entities in Nevada using the same model. There is not a lot of history yet because this is a new concept in Nevada. There is a project at Nellis Air Force Base where there is a PPA between the owner of that system and the U.S. Air Force base. There is also a renewable-energy credit agreement between the utility and the owner of that system. The only other public system of which

I am aware is a PPA between the Nevada National Guard and that private owner in which the Nevada National Guard pays 15 cents per kilowatt-hour.

MR. GOLDWATER:

Just because it is a privately financed project under the MSA, does not mean that there are no checks and balances on these systems. They are still let through the Purchasing Division, Department of Administration, rather than the public works system. The State Public Works Board still reviews the plans for the facility to be built. The contracts are still reviewed by the Energy Office. The State Board of Examiners still approves the final contracts that are let. It is something new and innovative.

SENATOR KIECKHEFER:

What impact would this bill have on your ability to fulfill what you committed to under the MSA based on the changes you would have to follow in this legislation?

MR. GOLDWATER:

If this were to be deemed retrospective under the MSA, it would be unlikely that you would find any private financing partners to do any of these projects in the future.

MS. MCKINNEY-JAMES:

In the solar industry, a PPA specifies that by using the solar power generated by the project, the utility bill or rate will be equal to or less than what the client is paying before the project. That really is the creative aspect of this. The agency can determine under a number of scenarios whether or not they want to go forward. It has less to do with the ability of the agency to have access to creative financing or additional financing from private sources. It has more to do procedurally with how you move forward. When you purchase something, you purchase a commodity. When you build something, you build it consistent with specifications and other public policy considerations. There is a distinction. This bill is attempting to draw that distinction.

SENATOR BROWER:

I hear what Ms. McKinney-James has said. The difference in my mind and why I am troubled by this bill is that PPAs traditionally are projects that include public money. This bill, as amended, would subject projects that do not include public money to all of the logical rules that do apply to public money. There are

reasons why we subject public money projects to public works laws. I do not agree with the idea of subjecting private money projects to onerous and expensive public works laws.

MS. MCKINNEY-JAMES:

If the projects that are being described are going to exclusively use private dollars, I can understand your concern about the lack of a nexus. I am not sure that is the case. I will defer to Mr. Goldwater and his client about their plan. I know they want to infuse a percentage of private dollars. My understanding is that they will also take advantage, to the extent it pencils out, of rebates and other incentives available so that they can make the case to the agency that they can bring in their projects under that cost. We are still talking about public facilities.

MR. GOLDWATER:

That is correct to a point. It is financed exclusively with private money. However, there may be cases where a rebate works. The revenue stream for this can come from all kinds of different places, such as tax credits, rebates and ratepayers. It is complicated enough to say that the financing model to build these things, to declare them public works, when it is not a distinctive tax dollar. It is not a tax dollar that goes in. It is an important distinction. That is the call you have to make. If we are going to be creative, if we are going to be innovative, if we are going to build this industry and the State is going to be a leader in that, more options are better than fewer. That is the point of economic growth.

SENATOR KIECKHEFER:

I cannot support this bill. I worry that it is significantly too broad for what we are trying to accomplish. I generally believe there are things that are not envisioned that would be encapsulated here. The nexus, as it was originally described, was that these are purchase agreements where the public body ultimately owns the infrastructure. That is not the case with this second mock-up, [Exhibit D](#). It provides that if the public body, as an owner or as a tenant of the building, even buys the energy from the system, this bill would apply to that project. Ultimately, the public works process will drive up the cost of doing these projects. This is not how to incentivize renewable energy.

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SENATOR GUSTAVSON:

We all support alternative energies and the resources they provide. Alternative energy costs more to produce than the energy we use today. My concern with S.B. 401 is that should this bill pass, it will increase production costs of alternative energy. We should be looking at ways to decrease the cost. I cannot support this bill.

SENATOR WIENER MOVED TO AMEND AND DO PASS S.B. 401.

SENATOR MANENDO SECONDED THE MOTION.

THE MOTION FAILED. (SENATORS BROWER, GUSTAVSON, KIECKHEFER AND LEE VOTED NO.)

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CHAIR KIHUEN:

There being no public comment and further business to come before this Committee, the meeting is adjourned at 2:15 p.m.

RESPECTFULLY SUBMITTED:

Leslie Sexton,
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. 75	C	Kelly Gregory	Work Session Document
S.B. 401	D	Kelly Gregory	Work Session Document