

**MINUTES OF THE  
SENATE COMMITTEE ON GOVERNMENT AFFAIRS**

**Seventy-sixth Session  
May 9, 2011**

The Senate Committee on Government Affairs was called to order by Chair John J. Lee at 8:08 a.m. on Monday, May 9, 2011, in Room 2135 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 John J. Lee, Chair  
Senator Mark A. Manendo, Vice Chair  
Senator Michael A. Schneider  
Senator Joseph (Joe) P. Hardy  
Senator James A. Settelmeyer

**GUEST LEGISLATORS PRESENT:**

Assemblywoman Debbie Smith, Assembly District No. 30

**STAFF MEMBERS PRESENT:**

Michael Stewart, Policy Analyst  
Heidi Chlarson, Counsel  
Lorne J. Malkiewich, Director, Legislative Counsel Bureau  
Cynthia Ross, Committee Secretary

**OTHERS PRESENT:**

Jerrie C. Tipton, Mineral County Commissioner  
Wes Henderson, Deputy Director, Nevada Association of Counties  
Bjorn Selinder, Churchill County; Eureka County; Elko County  
Cadence Matijevich, City of Reno  
Alex C. Woodley, Code Enforcement Manager, City of Reno  
Juanita Cox, Citizens in Action; People Organized for the Next Generation  
Gary Schmidt  
Jennifer Lazovich, Nevada Partnership for Homeless Youth  
Ronald P. Dreher, Washoe County Public Attorneys' Association

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Kelli Anne Vilorio, President, Washoe County Public Attorneys' Association  
Cheryl Bond, Vice President, Washoe County Public Attorneys' Association  
Paige Dollinger, Washoe County Public Attorneys' Association  
Tim Kuzanek, Captain, Washoe County Sheriff's Office  
Richard Gammick, Washoe County District Attorney  
Orrin J. H. Johnson, Washoe County Public Defender's Office  
Connie J. Steinheimer, Chief Judge, Department 4, Second Judicial District  
Clay Brust, Vice President, Washoe County Bar Association  
Ben Graham, Administrative Office of the Courts; Nevada Supreme Court  
Stephen W. Driscoll, Assistant City Manager, City of Sparks  
Larry Friedman, Interim Director, Commission on Tourism  
Michael Alonso, Caesar's Entertainment  
John Griffin, The Capitol Company  
Jack Mallory, International Union of Painters and Allied Trades District Council 15; Southern Nevada Building and Construction Trades Council  
Steve Polikalas, Northern Nevada Urban Development Company, LLC; Urban Development and Management Company, Inc.  
Paul McKenzie, Building and Construction Trades Council of Northern Nevada  
Alfredo Alonso, Nevada Land Company

CHAIR LEE:

I begin this meeting by opening the hearing on Assembly Bill (A.B.) 42.

**ASSEMBLY BILL 42 (1st Reprint)**: Authorizes a county to lease certain real property acquired from the Federal Government in certain circumstances without obtaining an appraisal. (BDR 20-187)

JERRIE C. TIPTON (Mineral County Commissioner):

Mineral County received a piece of property from the U.S. Department of Defense, which now is our airport. The property is over 100 acres. The federal government gave it to us with various terms and conditions, and if the government wants the property back, we have to return it within 30 days.

In the 1970s, the Mineral County Board of Commissioners decided to carve out an industrial section at the airport without asking permission from the Federal Aviation Administration (FAA). It happened and we live with it. We lease property to industrial companies. We have a bulk fuel plant, towing service and propane storage. Difficulty arises when we go to do appraisals. A commercial appraisal in Mineral County costs about \$5,000. We give leases to people who

are unable to borrow money to construct buildings and fences, and we turn around and hit these people with the \$5,000 appraisal price. We want to remove the requirement for us to lease the land. The leases go out with the terms and conditions placed upon us by the federal government, making leases vulnerable to be broken within 30 days. Leasing the property is a challenge. Mineral County cannot afford the \$5,000 appraisal that is good for six months. Nye County is in the same position with the Tonopah airport, except Nye is unable to attain commercial appraisals.

CHAIR LEE:

If appraisals are not made, how will you pursue?

MS. TIPTON:

When the Board of Commissioners carved out the industrial park, they received a U.S. Economic Development Administration (EDA) grant to put in streets, curbs and gutters. Part of the EDA grant was to lease under appraised value. The appraised value is set at \$25 an acre. The FAA said airport property cannot be leased for more than 20 years. There is a lease in place going on the fifteenth year of its 55-year lease. This is the boat plant. It was appraised at \$25 an acre for the first ten years, \$300 dollars an acre for the next number of years and \$500 an acre for the last ten years of the lease. The FAA told us we could not lease the land for more than 20 years at a time. This put us in another bind, and we had to change the lease. We are now saying \$25 an acre for the first five years, \$300 an acre for the next seven years and \$500 an acre for the remaining eight years. This gives private businesses the opportunity to put the money out there for the building, landscaping, fencing and infrastructure that we require and not have to pay a fortune on the lease. The latest lease at \$25 an acre was 2.8 acres, and the lessee paid \$5,500 for the appraisal and another \$500 for a five-year lease. The infrastructure returns to the County after the 20-year lease. Businesses will not come if they have to pay \$300,000 to \$400,000 out of their pockets for a building that will go to the County in 20 years and get hit with an appraisal on the front end. The County gets several buildings once the lease expires and the business has the option to re-lease the building. Once the County has property with infrastructure, appraisals will be done. I might not want to charge the appraised value, but I will get what I can.

CHAIR LEE:

You are talking about hundreds of acres.

MS. TIPTON:

Yes. We have over 1,000 acres. Hangars less than 100 square feet do not need appraisals. If MedFlight wants to put up a 1,000 square-foot structure, it needs to have an appraisal, and the County owns the land. Eventually, the County will own the hangar.

CHAIR LEE:

Has the population cap of less than 45,000 been discussed with the other counties? Is your situation unique because of the military?

MS. TIPTON:

Yes. The only airport I know is the one in Tonopah. It was given to the county with the condition that if the federal government wants the property, it is to revert back.

WES HENDERSON (Deputy Director, Nevada Association of Counties):

We are in support of A.B. 42. This bill creates a limited exception to the requirement to get appraisals for the lease of county-owned land. The exception is in smaller counties where land has been given by the federal government with strings attached and where the federal government can demand the land back. It applies to Mineral County and also applies to Tonopah Airport in Nye County. This bill will create a mechanism that has a reversion clause for counties to lease county-owned land to spur economic development.

BJORN SELINDER (Churchill County; Eureka County; Elko County):

We support A.B. 42. I am hard-pressed to think of a specific example in the counties of Churchill, Eureka and Elko, but we are behind the efforts of Mineral County and Nye County if there is a need.

CHAIR LEE:

The hearing is closed on A.B. 42, and I open the hearing on A.B. 360.

**ASSEMBLY BILL 360 (1st Reprint)**: Revises provisions governing the imposition of civil penalties for violations of city or county ordinances regarding the abatement of certain conditions and nuisances on property within the city or county. (BDR 21-266)

CADENCE MATIJEVICH (City of Reno):

I am presenting on behalf of Assemblyman David P. Bobzien who represents Assembly District No. 24. He brought this bill forward for the City of Reno.

Assembly Bill 360 as amended will assist cities and counties in addressing chronic nuisance properties and abandoned properties within our communities. The City of Reno has encountered a number of property owners who repetitively create or allow nuisance conditions on their properties and fail to abate these problems. In certain circumstances, the cost for the City to abate these nuisances is excessive or deemed an unwise use of taxpayer dollars. There is reason to believe the property owner will cause or allow the nuisance to return.

Assembly Bill 360 will authorize cities and counties to collect civil penalties against chronic and abandoned nuisance properties as a special assessment in cases where penalties exceed \$5,000 and have been unpaid for more than a year. The bill also increases the maximum penalty amount for chronic commercial nuisance properties to \$1,000 per day. It is proving difficult for cities to collect these penalties, particularly when a property owner repetitively files for bankruptcy as the civil penalties have no priority in those proceedings. Permitting civil penalties to be assessed against the property with the same priority as a county tax lien creates a mechanism whereby the city can enforce those civil penalties, providing an incentive for owners to promptly remediate the condition.

We have provided the Committee with photos ([Exhibit C](#)) depicting the types of chronic and abandoned nuisances that would be addressed with this legislation. The photos demonstrate the issues that pose a threat to the health and safety of our community. A property with blight of this magnitude does not impact one or two properties but impacts an entire neighborhood or business district. Assembly Bill 360 will give cities and counties another tool to address these issues in our communities.

Questions were raised regarding the language we added into the bill as to the definition of residential property. We have a proposed amendment ([Exhibit D](#)) to refine the definition. On page 6 of the proposed amendment, we would delete lines 37 through 45 continuing on page 7, deleting lines 1 through 3. The language repeats in the amendment on page 9, lines 36 through 45 and continuing on page 10, lines 1 and 2. The language is also in the amendment on page 14, lines 35 through 44 and lines 1 and 2. The new language would read

"As used in this section, 'Residential property' means a parcel of real estate not defined as 'commercial real estate' pursuant to NRS 645.8711."

ALEX C. WOODLEY (Code Enforcement Manager, City of Reno):

The City of Reno is having difficulties with the fiscal conditions. We have surpassed our abatement funds. This legislation will assist us to continue addressing the nuisances throughout the City.

CHAIR LEE:

I see the nuisances in residential and commercial properties in [Exhibit C](#). Which type of nuisance is the City's largest challenge? Commercial properties can afford to sit longer. Will this legislation stimulate these properties to spend money to lessen blight?

MS. MATIJEVICH:

This bill is a tool that will help us address residential and commercial property. It will assist us to address quality of life issues in residential neighborhoods, and it will help us in commercial areas. One property in Reno has been an issue for years. This legislation might be the needed tool to help us deal with this property.

MR. WOODLEY:

The photos in [Exhibit C](#) show more commercial property, but the challenge with nuisance properties is about 50-50. For example, property B on pages 6 through 9 is a residential property. We have been dealing with this property owner for about 15 years. He recently completed serving 12 months in jail because of his chronic nuisance property. The neighbors are again calling because the property is returning to a state of nuisance.

JUANITA COX (Citizens in Action; People Organized for the Next Generation):

I am a citizen activist. Properties labeled as chronic nuisances have become unauthorized takings. The people targeted are black, seniors or those who live in poverty. They have difficulties making ends meet and government has unfairly targeted them. A federal program called Weed and Seed receives federal money to displace people that governments consider as not up to caliber. Washoe County had a team composed of governmental and private agencies including cable companies and Sierra Pacific Power Company that were spying on people and turning them in. For example, if this group decided a person had guns, he or she would be turned in and become a target. I learned about this

and sued the group. The government agencies backed off because the private industries did not want to give up information. Another example is helicopters that were illegally used for spying on properties. The helicopter would fly below 400 feet. I was successful in shutting down these helicopter searches. Another example involves a senior widow who was disabled. Her bushes were overgrown and the City judged her house as not meeting standards. The government cut the bushes. This is common practice. The government also had the houses painted. Once the work is completed, the homeowner is charged. At times, charges are more than average costs for comparable work. The charges are placed on the property owners' tax bill, and if the owners cannot pay, the charges cause them to lose their homes. This authority by government is not right. It is unauthorized takings.

CHAIR LEE:

The City's downtown has blighted commercial buildings, and blight exists in residential neighborhoods. What can be done to help these people rather than to relieve them of their residences? Certain houses are a constant nuisance. [Exhibit C](#) demonstrates one homeowner who either needs help or is blatantly disregarding the City. Also, the world has messy people.

Ms. COX:

I agree. Government needs to step in for issues affecting the health, safety and welfare of the greater community but not for neighbor-to-neighbor disputes. The photos in [Exhibit C](#) are bad, and I understand your concern. We cannot allow government too much power in targeting people. A number of seniors are affected. Blights are one thing, and health, safety and welfare is authorized power. I understand from the photos that those properties could harbor vermin, and the government should be called in to assist. We should also have church groups, families and neighbors helping people in need. We should have empathy for people, and governments should not take people's homes and put more people out in the street.

CHAIR LEE:

I agree with your concerns, and I want to work with people too.

SENATOR MANENDO:

Are the people in need reaching out to church groups, neighbors and community outreach programs?

Ms. COX:

I have talked with people who are devastated and do not know where to turn. Government comes in and tells them their houses are the wrong color, and they are barely making their mortgage payments or getting food on the table.

SENATOR MANENDO:

Government cannot tell a homeowner what color to paint their house unless a home is within a homeowners' association (HOA) where specific rules and regulations apply.

Ms. COX:

Government is coming in and acting like HOAs. It is overstepping its jurisdiction in power regarding health, safety and welfare of the community.

SENATOR MANENDO:

Can you provide a copy of a letter sent by a city to a resident regarding the color of a home not in an HOA?

Ms. COX:

Yes, I will try as well as to provide other evidence regarding my testimony.

CHAIR LEE:

If a person is needy, makes property tax payments but needs help, is there a service to turn to?

MR. WOODLEY:

Any actions that any city or government takes prior to going onto a property requires a warrant, and there is a specific process before we get to that point. Regarding notices and actions taken by the City, we send a notice. Every notice and citation can be appealed. We have been contacted by seniors or individuals who considered themselves destitute, and we put them in contact with community resources. One resource we have used is the Weed and Seed program. The program has funding to help people with cleaning, painting and fixing their properties. As former president of the Nevada Association of Code Enforcement Officers, I can testify no cities in Nevada regulate the color of homes. We regulate specifically as it relates to health and welfare of the community and public at large for the greater good.



MS. MATIJEVICH:

This bill is not seeking to address the routine code enforcement issues such as weeds and bushes. In the bill, section 3 details the process by which any local government entity would have to go through to have one of the properties defined as chronic nuisance or as an abandoned nuisance. An entire court process takes place, and this is what this bill is seeking to address. It is about repeat offenders with \$5,000 or more in civil penalties. These are not day-in, day-out code enforcement issues. The City of Reno has an excellent Code Enforcement Division that works with people. Property owners engaged with us and working to abate the nuisance will not reach this point. Property owners exist who do not care to engage with us or care about the impact caused by their nuisance properties.

CHAIR LEE:

Some people rent properties in the community and live elsewhere. They do not care what the property looks like as long as they receive their money.

GARY SCHMIDT:

I live in Washoe and have resided in Nevada for about 40 years. I have properties in several counties and have extensive experience with nuisance matters. I have attended meetings addressing nuisances, I have assisted people when they have been cited for nuisances, and I am responsible for causing Washoe County to cite itself for a public nuisance. The County was citing persons for unregistered inoperable vehicles without plates visible from a public road. The County had an unregistered inoperable vehicle in one of its own parks, and I brought the issue forward. The matter came close to litigation. It was difficult for the County to cite itself over its unregistered inoperable vehicle but the County did it and towed off the vehicle.

One example of a nuisance case I was involved with occurred in Sun Valley. I own property there. At one time, Sun Valley was called the largest trailer park in America. Most of the private parcels are one-third acres. In the late 1950s or 1960s, it started with 5,000 lots. Most properties in Sun Valley are starter properties. It is the most economical place in Washoe County close to job centers, such as Reno and Sparks, where one can own property. At one time, over half of the parcels in Sun Valley have had inoperable cars or unlicensed cars visible from a public street. My example involves an elderly couple who were my neighbors. The husband collected and worked on classic cars. He was cited for the cars because they were visible from a public street. The husband

had to take a second mortgage to borrow \$6,000 on his \$60,000 property to erect fencing. Shortly afterwards, he passed away and his wife could not make both mortgage payments. Subsequently, she lost the property and home the couple had lived in for 30 years.

I completely oppose A.B. 360. Laws and processes are in place for government entities to recover fines from persons. Law allows them to clean up nuisance properties and place liens on the property for the bill. I do not know of any properties in Sun Valley that could not be cleaned for under \$10,000. Washoe County can issue a \$1,000 nuisance citation a day, and considers each day a new violation. The properties in Sun Valley are worth \$30,000 to \$45,000. The legislation is highly inappropriate, and the combination of law allowing \$1,000 a day in fines with the addition of attaching fines to property liens is highly prejudicial to economically challenged communities and people. This action will not occur in the affluent areas, but it will happen in the lower socioeconomic areas. People struggle to maintain their homes. This includes elderly people and people with physical disabilities who have difficulties maintaining their properties to a standard. The bill is abusive legislation that targets the needy and challenged among us, and it is unnecessary. Counties and cities have authority to clean up properties and lien them for the cost. Laws in statute are more than sufficient, and to move further is unjust action.

SENATOR MANENDO:

Is there anybody here representing Clark County on this bill? What a shame.

CHAIR LEE:

The hearing is closed on A.B. 360. Moving forward, I open the hearing on A.B. 472.

[ASSEMBLY BILL 472 \(1st Reprint\)](#): Revises provisions relating to youth shelters.  
(BDR 20-1134)

JENNIFER LAZOVICH (Nevada Partnership for Homeless Youth):

Under State law, there is limited immunity for youth shelters and the directors, employees, agents and volunteers relating to runaway or homeless youth. The immunity does not cover acts of gross negligence or recklessness. Limited immunity was granted if a county approved a specific ordinance that approved youth shelters. Clark County never adopted the ordinance as prescribed in State law. The County did meet the intent of the State law by approving the activities

of Nevada Partnership for Homeless Youth through zoning and business licensing.

Assembly Bill 472 does two things. First, it grants immunity for youth shelters as defined in State law regardless of whether the county approved a specific ordinance set forth in State law. Two, it repeals the section of State law that requires the county to adopt a specific ordinance. To have the county adopt a specific ordinance pertaining to youth shelters would be redundant since the use was approved through zoning and business licensing.

CHAIR LEE:

I want this bill further explained. Can you explain the immunity for certain acts or omissions relating to runaway or homeless youth? What does this bill do?

MS. LAZOVICH:

A specific instance did not occur requiring us to come forth with this bill. When the original law was contemplated in 2001, it extended the limited immunity to youth shelters as operators made decisions involving the homeless youth who would come to them. It does not cover anything relating to gross negligence. It is limited immunity. If a decision was made that rose to the level of gross negligence or recklessness, it is not covered. Limited immunity covers the day-to-day operations of decisions made by volunteers, directors or agents as it relates to decisions made as the youth come to the shelter for help and assistance.

CHAIR LEE:

What do you want with the liability?

MS. LAZOVICH:

I can obtain specific examples. The county was to adopt a specific ordinance pertaining to the youth shelters, but it never did. I am not requesting additional immunity that was not put into place in 2001. For ten years, the county did not adopt the ordinance adopted by State law. In regard to what kind of immunity, I can find out and let you know.

CHAIR LEE:

The hearing is closed on A.B. 472. We will now hear A.B. 545.

[ASSEMBLY BILL 545 \(1st Reprint\)](#): Makes changes to the population basis for the exercise of certain powers by local governments. (BDR 20-548)

LORNE J. MALKIEWICH, (Director, Legislative Counsel Bureau):

I am here to present [A.B. 545](#). I am not here to urge or oppose the bill but to explain the bill and why it is before you.

This bill was requested by the Legislative Counsel to bring the issue before you. The same thing happened in 2001 and in 1989. Why? We have population thresholds throughout our statutes. Article 4, section 20 and section 21 of the Nevada Constitution prohibit special and local acts, and Article 4, section 25 requires uniform county and township government. However, the Nevada Supreme Court has upheld that the population threshold can be used so long as distinctions are not odious, absurd or bizarre. We have a population definition at the beginning of *Nevada Revised Statute* (NRS) 0.050 in the preliminary chapter that says throughout NRS, "except as otherwise expressly provided ... ." A population threshold means the population as expressed in the last U.S. Census. The latest Census shows Nevada's population at 2.7 million instead of a 1,998,000. The population numbers will take effect July 1.

[Assembly Bill 545](#) will allow this Committee to review the classifications and decide if changes are desired. In the handout ([Exhibit E](#)), I indicated the most important section in [A.B. 545](#) is 314. It says the Legislature has to review population thresholds and determine population classifications are appropriate.

How the bill was compiled is also presented in [Exhibit E](#). Population breaks for cities and counties are presented in ([Exhibit F](#)). The bill carries forward the same breaks. If you want the same statutes to apply to the same local governments, this is what you would do. This bill is a starting point for discussion. The idea is that this Committee, the two chambers and all public testimony will review the classifications in statute to determine which local governments you want subject to which laws. If you want the law to continue to apply, you leave them alone as in this bill. There are a few exceptions. A few counties and cities have grown too rapidly to allow the exact statutes to apply. Lyon County has surpassed Elko and Douglas Counties, Lincoln County has passed Mineral County, and the Cities of Mesquite and Fernley have passed the Cities of Elko and Boulder City. Page 3 of [Exhibit E](#) lists the statutes affected. It is entirely at the discretion of this Committee to decide the statutes applying to the entities. You can apply all, some or none of them. The Committee cannot

have a statute that applies to Elko County, Douglas County and counties with greater populations and not apply it to Lyon County because Lyon County has passed them.

This bill is a starting point, showing where we are in population and breaking points. The Committee can make changes as deemed appropriate.

The fourth document ([Exhibit G](#)) shows all the classifications, not only those in statutes. All classifications should be reviewed to determine whether any classifications not included in the bill should be changed.

The Assembly amended the bill. Two pair of changes were made to section 43 and section 46, and section 42 and section 47. You need to review the changes and determine which counties you want apply to which laws. The point of the bill is to review the population classifications and determine which to keep and which to change.

CHAIR LEE:

Washoe County has hit the 400,000 population threshold. Why do we limit Clark County to 700,000, instead of counties over 1 million? Where does the 700,000 number come from?

Mr. MALKIEWICH:

This bill is a starting point. In creating this bill to maintain the population thresholds, we needed to change the 400,000 threshold of a large county. We came up with 700,000, but some people might think a large county is 1 million. The point of the classification is to say that if it is over 100,000, you will include Clark and Washoe Counties and if it is over 700,000, it will only include Clark County. Thresholds can be set at whatever figures you want. Whatever thresholds are decided upon, those thresholds will not change in the next ten years because the definition in NRS 0.050 says the last U.S. Census figures are used. Some statutes say to look at the annual projection of population from the State Demographer. The distributions of Consolidated Tax Distribution (CTX) are based upon annual changes in population. Most provisions in NRS referencing a county whose population is 400,000 or more or a city whose population is 100,000 by definition refer to the previous U.S. Census. It is not saying that once a county reaches a number, there will be a change. It says that we determine counties of a particular size should be subject to these statutes.

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CHAIR LEE:

Does the State Demographer think that in ten years Washoe County would be close to 700,000? I am looking at how we hit the population breaks.

Mr. MALKIEWICH:

Whether those population breaks are at 500,000 or 700,000, Washoe County will not grow into it because the definition in the statute says we look at the U.S. Census as of 2011.

SENATOR SCHNEIDER:

When did we start using population thresholds?

Mr. MALKIEWICH:

The Legislative Digest references case law, *County of Clark v. City of Las Vegas*, 97 Nev. 260, 264 (1981). This case upheld population classifications and distinguished between counties on a challenge to special and local and on a challenge to a uniform system of government. Since this case law was determined, we have been using population thresholds. In 1989 and again in 2001, we amended many statutes to adjust the thresholds. It was around 1981 when we began using thresholds.

SENATOR SCHNEIDER:

In 1981, Clark County's population was under 1 million.

Mr. MALKIEWICH:

Clark County's population was much lower than 1 million. Until the recent U.S. Census, the State population in 2001 was 1,998,000, 1.2 million in 1991 and about 800,000 in 1981.

SENATOR SCHNEIDER:

I was wondering—as we exempt counties now the size of Clark County when we started—when do other areas grow up?

Mr. MALKIEWICH:

This is the decision the Committee needs to make. It needs to be decided when it is appropriate to subject particular counties to particular laws. For example, we have different laws concerning county fair and recreation boards. It makes sense. In a small county, that board might run the county fair. In a large county, it is the Las Vegas Convention and Visitors Authority. The laws relative to the

Las Vegas Convention and Visitors Authority are different than laws applying to the county fair and recreation board in Esmeralda County.

RONALD P. DREHER (Washoe County Public Attorneys' Association):

This bill comes before you once every ten years. We are asking for your support in passing A.B. 545 as amended in the first reprint. A proposed amendment to this bill returns to its original language. We ask this Committee to oppose that amendment.

Assembly Bill 545, by leaving the population at the 400,000 level or by reducing that amount to what is in section 43 and section 46 of the amended bill from the Legislative Counsel Bureau (LCB), allows public lawyers in the Association to be part of the merit personnel system in Washoe County. In the Sixty-seventh Session, a bill was brought before the Senate Committee on Government Affairs by Ben Graham who represented the District Attorney (DA) in Clark County over this issue. It was the appropriate time to bring the lawyers within the merit personnel system and to avoid a newly elected public official from throwing out the attorneys he or she did not like without just cause.

The Washoe County Public Attorneys' Association (WCPAA) consists of deputy DAs, deputy public defenders and deputy alternative public defenders. There are approximately 100 attorneys in this class of employees. It is ironic that the number remains the same today as from 1993. Assembly Bill 545 provides equity, fairness and job stability to these professionals who have dedicated their legal careers to public service.

The Washoe County Public Attorneys' Association was formed by Richard Gammick, who is now Washoe County DA and opposed to this bill. Mr. Gammick stated, in an open meeting to his staff little over a week ago, words to the effect that he would have supported the amendments to this bill had he lost the most recent election in Washoe County.

KELLI ANNE VILORIA (President, Washoe County Public Attorneys' Association):

I want to reiterate that we did not seek this bill and it is not about Richard Gammick or department heads. We are seeking consistency in the law in fairness, equity and just-cause termination. We want merit protection. We seek your support in passing the first reprint of A.B. 545 with the amendments to section 43 and section 46.

Assembly Bill 545 as amended fixes a glaring inconsistency in law. There are inconsistent competing statutes for the counties. *Nevada Revised Statutes* 245 is the law that sets forth for counties who must get merit protection in the counties and who can be excluded. *Nevada Revised Statutes* 252 and 260 address the DA and the Public Defender (PD). Both groups are based upon population.

*Nevada Revised Statutes* 245 provides that counties over 100,000 must have merit protection. These counties are Washoe and Clark. The law states these counties must have merit protection and that department heads, elected personnel and their 3 percent staff and temporary employees can be excluded. *Nevada Revised Statutes* 252 and 260, as amended in 1993 during the Sixty-seventh Session, state that when population is over 400,000, deputy DAs and deputy PDs are governed by the merit system. The result is they are terminated for just cause. This amendment provided only Clark County's attorneys merit protection because it was the only county in the State over 400,000. The justification in legislative history is provided in our position paper ([Exhibit H](#)). The size of Clark County was over 400,000, and the number of attorneys provided merit protection was nearly 100. It was initiated to protect them from political retaliation. A new person was running for DA who had every intention of getting rid of office members for political retaliation. Washoe County now has met the 400,000 threshold. The number of the lawyers is nearly 100, and we also need protection from political retaliation. We saw that in the last DA election, which was heated, and we are seeing it now that this bill has passed the Assembly.

We wanted to keep the bill simple. We saw it exempt the DA and the PD statutes, leaving them at the 400,000 mark, and we would have the just cause termination protection. This would become effective July 1. The Legislative Counsel Bureau and the Assembly saw the inconsistency and changed the amendment to 100,000 in population. As amended, NRS 245, NRS 252 and NRS 260 are now consistent. This prevents Washoe County from being the only county in the State allowed by law to exclude its public lawyers. No other county in the State is excluded, and there is no rational basis to allow for it to continue in Washoe County. The opposition is proposing new amendments. If the amendments are accepted, Washoe County will sit within a hole and be subject to its own interpretation of the law.



There are no additional fiscal costs to providing the merit system protection. The department heads of Washoe County already provide merit and just cause protection to a majority of its staff. Systems are in place to implement the program with the attorneys, and any cost from additional litigation already exists. The merit system protection will limit the County's liability because a known set of rules will be established. This bill was not put forth in the Assembly Ways and Means Committee, and we are only talking about 100 people out of 2,000 existing employees who already receive merit protection.

We are not looking for political power or gain and have no political agenda. We are here fighting for our careers, families and our ability to ensure criminal justice to our community. The Association voted nearly unanimously, with all but one member, to seek merit protection. Time is urgent. Attorneys are terrified they will lose their careers as the economy and political climate make the threat real. We do not seek entitlement or guarantee of employment. We do not seek to take power and control from department heads. They will retain full ability, power and control to fire, hire and discharge employees. We are asking for the same merit protection our staff is provided, and that is termination with just cause.

This is a Census-driven bill. We have waited ten years to come before you today and would have to wait another ten years if this bill is not passed as amended in the first reprint.

As attorneys, we are loyal to the office, not to department heads. These laws will long be in effect after department heads are gone. Please support the first reprint of A.B. 545. We are merely seeking what is justified by the law, what is right and what is fair. Assembly Bill 545 as amended in the first reprint is the vehicle.

CHERYL BOND (Vice President, Washoe County Public Attorneys' Association):  
Over the weekend, the Washoe County DA retaliated against our Association's president for action in seeking the amendments in the first reprint of A.B. 545. The DA's Office took away a death penalty case she was working on when less than two weeks prior she had been praised for her work performance. Over the weekend and without notice, the case file disappeared and was taken away from her. She attempted to contact John Helzer, the Assistant DA, and Richard Gammick, the DA, and neither person would speak to her. This is not

the only retaliation that has occurred with the WCPAA for our efforts on this bill.

Richard Gammick met with his chief and his deputy DA IVs and told them they were in violation of the law unless they quit WCPAA. Over the weekend, I was informed that Jeremy T. Bosler, the Washoe County PD, has done the same with his chief deputies. This leads to my initial area of concern. What will change within the public attorney departments if the amendments we asked for are passed? What will not change in large part is how the departments operate. All three department heads—Mr. Gammick, Mr. Bosler and Jennifer Lunt of the Alternate Public Defender's Office—have employees under merit personnel protection. This includes the secretaries, investigators, records clerks and receptionists. The process is in place. The County has many employees in the merit personnel system and has the procedures in place. No new personnel, procedures or paperwork is needed because all three departments use the system.

The change that will occur by passing A.B. 545 as amended in the first reprint is public attorneys will no longer work in fear of unpredictable reactions and retaliation. Mr. Gammick held a staff meeting for his criminal division attorneys after the bill passed out of the Assembly. He spent the first several minutes berating WCPAA and its president, who is Ms. Vilorio. Ms. Vilorio is a criminal division deputy in the Office and was present. He berated the Association for seeking the amendments to the bill. He claims to have been blindsided about the issue despite the fact that we have been discussing the issue with our department heads in the County for several years. He stated that he does not like to lose and that he might never get over the fact we sought the amendments. His remarks created an atmosphere of fear for those employees in the DA's Office. Another meeting was held by Mr. Gammick where he told deputies that they would be in violation of law if they did not quit the Association. Also, Mr. Bosler announced at this PD staff meeting that he would officially oppose the amendments to A.B. 545 in the first reprint.

After these staff meetings, several deputy DAs who were long-term members of the WCPAA ended their membership in the Association. Several deputy PDs who were preparing to appear here today told us they were afraid for their jobs and they would not appear on behalf of this bill.

Public attorneys in our Association also fear unpredictable layoffs. The budget in Washoe County continues to shrink and prosecutors and defenders have expressed constant concern to the executive board of the Association about whether they will be laid off. There is no predictability as to how the department heads will make those decisions. Will they lay off people because of personal dislike? Will they draw names out of a hat? Will they close certain divisions, and if an attorney is employed in that division, will he or she lose his or her job? Nobody knows. The secretaries, receptionists and the investigators in the District Attorney's Office, Public Defender's Office and the Alternate Public Defender's Office do not live with that uncertainty. They know how lay off decisions will be made through the merit personnel system.

I have worked for Washoe County 18 years. I worked 4.5 years as a deputy DA and 13.5 years as a deputy PD. I left the DA's Office in large part because I could not live with the uncertainty of never knowing whether I would have the next day. In my 13 years as a deputy public defender, I am told my work performance is excellent, but I am left to worry if I will be laid off because my name will be drawn out of a hat.

As Vice President of WCPAA, I became concerned when PD Jeremy T. Bosler, my boss, sent a letter in opposition to our position on this bill. Mr. Bosler became the Public Defender in 2005. He has exhibited the utmost concern for due process. He advocates every person deserves due process, knows the charges, has an opportunity to defend against those allegations, has representation in defending against those allegations and has a neutral third party decide if he or she committed the charges against him or her. These are the fundamentals of due process which must occur before an accused criminal might be subjected to punishment. I was shocked to learn that Mr. Bosler opposed the same due process procedures to the attorneys in the Office.

We are asking that the public attorneys be subject to the same merit personnel system classification provided to other employee groups in Washoe County. I ask for your support on A.B. 545 as amended in the Assembly.

PAIGE DOLLINGER (Washoe County Public Attorneys' Association):

I concur with the remarks made by Mr. Dreher, Ms. Vilorio and Ms. Bond regarding A.B. 545. We request your support in passing A.B. 545 as amended out of the Assembly.

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TIM KUZANEK (Captain, Washoe County Sheriff's Office):

We support A.B. 545 as amended in the Assembly. There is an amendment by the Second Judicial District Court as it relates to section 42, and we oppose that amendment.

Assembly Bill 545 as amended in the first reprint provides for the Sheriff to no longer be statutorily required to attend all meetings of the district court in person or represented by a deputy. Washoe County's population and structure has grown to where we can make our own decisions on how to move forward efficiently and effectively. Over the past four years under the stewardship of Sheriff Mike Haley, the approximately \$100 million budget has been reduced by \$21 million, and we maintained most of the services we traditionally provide. We have worked with the Washoe County Board of Commissioners and others through operational effectiveness committees to maintain, streamline and find efficiencies in county governments which have allowed us to continue providing effective and efficient services.

*Nevada Revised Statute* 248.100 requires the Sheriff to attend all sessions of district court. There is no reason for people to engage in conversation as it relates to security services within the courts. The Washoe County Sheriff has no immediate intention to remove deputy sheriffs or leave the district courts without security. The Sheriff would like to have a discussion and, with legislation, be given the ability to have the discussion so that we can determine the most efficient and effective manner to maintain security within the courts. This will be possible by A.B. 545 as amended in the Assembly and by opposing the amendment brought forward by the Second Judicial Court.

SENATOR HARDY:

I want clarification on amendments. When you are addressing A.B. 545 as amended on the Assembly side, you are referring to the first reprint of A.B. 545.

MR. KUZANEK:

Yes.

CHAIR LEE:

Bailiffs are in the courtroom.

MR. KUZANEK:  
Yes.

CHAIR LEE:  
Under this bill, neither the Sheriff nor deputy sheriffs would need to be in the district courts. Bailiffs would still be present and if an incident occurs, the Sheriff's Office would respond.

MR. KUZANEK:  
Category 1 deputy sheriffs are assigned to the courts to act as bailiffs. By supporting the first reprint of A.B. 545, we are provided the opportunity to have a discussion on whether we should continue to provide category 1 deputy sheriffs or if we should adopt a different model and use bailiffs or marshals that are hired and controlled through the courts. The strict language in law does not allow us the ability to have the discussion because we are required to be in the courts. The passage of A.B. 545 in the first reprint will allow us to look at several security models and choose what fits best.

CHAIR LEE:  
How does Clark County provide the security in its district courtrooms?

MR. KUZANEK:  
The courts in Clark County use a bailiff system.

CHAIR LEE:  
Clark County uses a different system.

RICHARD GAMMICK (Washoe County District Attorney):  
I want to start my testimony by responding to comments made concerning things I have said. It amazes me that people who are not present can come in and quote me. I want to clarify those issues before explaining what is occurring with the public attorneys and this bill.

I did hold a meeting with my prosecutors after A.B. 545 came out of the Assembly Committee on Government Affairs. I was disappointed in the legislation. We have been working for several years on the classification program, and we have discussed negotiating it as part of a contract. The WCPAA filed a lawsuit. We were aware of it and what it concerned. There has been open communication throughout the process.

Washoe County submitted this bill for population thresholds, and we expected it to be a bill on population thresholds. I do not have any people attending meetings of the Senate and Assembly Committees on Government Affairs because most of what we do here at the Legislature concerns the Senate and Assembly Committees on Judiciary. I have people in these Committees full time.

The first time Mr. Bosler, Ms. Lunt and I heard about the amendment to A.B. 545 affecting us was after the Assembly Committee on Government Affairs met on the bill and before the work session. We submitted letters to the Assembly Committee on Government Affairs, but we did not have an opportunity to testify.

In the meeting, I said that in the 16.5 years as the DA and in my 10 years prior as a deputy and chief deputy, I have been open with my employees. I mentioned I was extremely disappointed that I was ambushed by the amendment because I had no notice of it and was not happy about it. Most of the attorneys who approached me after the meeting told me they also did not know about the amendment.

In every letter sent to the Legislature, the letters claim that deputies are not in the merit personnel system. I will show where they are and to what extent. I know, as I am the one who went to the County in 1992 and negotiated with the County for the attorneys to be recognized in the merit personnel system. Sometimes I question that decision.

We do not exclude the public attorneys from the merit personnel system. The attorneys also do not have to wait ten years if they want to return to the Legislature with another bill. It can be done two years from now in the Seventy-seventh Session. The vehicle of A.B. 545 is also not the only way to address the issue.

We are told on one hand that the attorneys are not here to try to take over management responsibilities or authority, yet on the other hand, Ms. Bond mentioned I violated Fourth Amendment rights by transferring a case from Ms. Vilorio. As DA, NRS 288 gives me the authority to transfer cases and work assignments and to do things as I see appropriate. A question of trust is present, and I transferred that case for that reason. Regarding the deputy district attorney IVs, NRS 288.170 says that supervisors cannot be in the same bargaining group as the people they supervise. I have not addressed this

because the issue never faced us until now. I did notify the DA IVs that I have asked the County through our negotiation people to make arrangements that DA IVs be removed from the Association. In their job description with Human Resources, they are described as supervisors, and so do not belong in the Association. If we need to do more than asked of us today, I will need those supervisors. They cannot be in the same Association as the people they are supervising and rating and doing other functions for these people.

I have met with my entire staff five or six times, including the attorneys, to address concerns over layoffs having no predictability. I have talked to the attorneys as a group and have told them that if we start to lay off attorneys, that will come through the supervisors, the assistant DAs and me. Personnel layoffs are no fun, and we have had to do it. I had 210 personnel, and we are down to 170. We have lost 40 people due to the County budget. I am well aware of what happens, and I am aware they are at-will employees. When I ran for DA, I talked to the existing DA, and she fired me. I fully expected it, as I knew what at-will meant, and I knew the risk I was taking.

Laws unique to Clark County because of its population have been passed since the 1980s; this was the population threshold over 400,000. Washoe County went over 400,000 during the last U.S. Census. Assembly Bill 545 was drafted to increase that threshold from 400,000 to 700,000. The bill is enormous. It is 281 pages, and about 240 laws are affected by this bill. The reason for the bill's size is that there are things unique to Clark County that other counties did not need or want. It is imperative that this bill becomes law.

I am supportive of A.B. 545. The bill passed out of the Assembly Committee on Government Affairs with Amendment No. 399 and also passed out of the House. It amends four sections. Section 42 and section 47 were submitted by the Washoe County Sheriff's Office and section 43 and section 46 affect the public attorneys in Washoe County. Section 43 on page 36 of the bill applies to DAs and section 46 on page 38 applies to the public defenders. It is only subsection 6 that is of concern in each section. It is one small issue. The population was put at 700,000. The main amendment was intended to reduce the population down to 400,000 but somehow in the process was reduced to 100,000. The amendment we offer today ([Exhibit I](#)) is to take out the 400,000 and the 100,000 and return to the 700,000 population threshold as written in the original bill.

Washoe County PD Jeremy T. Bosler has also sent a letter ([Exhibit J](#)) that opposes the passed amendment and supports the bill as originally submitted. There are approximately 243 State laws unique to Clark County. Clark County brought district attorneys into total coverage of the merit personnel system because former Clark County DA Rex Bell requested it. One of the opponents running for DA came into the Office, looked at several of the major prosecutors and told them she was going to fire every one of them if she was elected DA. Based on that, Rex Bell recommended legislation in the Sixty-seventh Legislative Session to make prosecutors full merit personnel, and the law was passed. The year before, Washoe County had already included the attorneys in the merit personnel system. This is placed in Washoe County Code, Chapter 5. I am glad to furnish you with a copy of the Code.

You were told the passed amendment would have no fiscal impact to Washoe County, but I disagree. People who belong to associations can have grievances or issues and bring them forward. It takes attorneys to defend them. It also takes time away from work to defend the allegations and grievances, and it can wind up in the arbitration process. It takes time and money for arbitrators, and the dispute can wind up in court. There is a fiscal impact as it is common sense that money will be spent if a situation develops. You have also been told that Washoe County is the only county that has at-will attorneys. The municipality of Carson City, Douglas County, Lyon County, Churchill County and Nye County have at-will public attorneys.

The first letter sent to the Legislature by President Kelli Vilorio of the WCPAA stated that Washoe County is the only county in the State that does not include its public attorneys in the classified merit personnel system. She sent a second letter stating the same thing. Washoe County Code 5.094, which is titled *Legal professional employee: Rights, privileges and benefits; inapplicability of certain code provisions*, was passed in 1992. There was a lawsuit before Senior District Judge Peter I. Breen in the Second Judicial District Court. He upheld what was done with that particular Code section. It went to the Nevada Supreme Court and the Justices upheld it. This section is good law. It gives the attorneys collective bargaining. It leaves to the department heads, the Washoe County DA and PD, the right to hire and fire who they wish, as the attorneys are at-will employees. It also gives them the right to enact punishment in respect to exempt employees because it is restricted. Senior District Judge Breen in his opinion pointed out there is a difference with the attorneys. The nature of the attorney's position is the underpinning of the way Washoe County has treated



attorneys under its Code. Attorneys are officers of the court and licensed by the Nevada Supreme Court. Senior District Judge Breen said, "The discipline of a lawyer does not lend itself to standardization. Lawyers exercise independent, professional judgment requiring a high level of ethics and a high level of performance. The lawyer's duty is owed to his or her client." There are several provisions within the *Nevada Revised Statutes* that give the deputy DAs as much power as I have, and they have a lot of latitude and discretion. Stronger protections are granted to other Washoe County employees and people across the State, but they do not make an average salary of \$153,000 a year with benefits. The attorneys are paid money so we can compete with private attorneys. I am not aware of a single law firm in Nevada that offers these protections, or when clients hire them, they can set it up to where clients cannot discharge them at their discretion.

In light of the foregoing, is this not an area that lends itself to home rule? The Washoe County Board of Commissioners made provisions to include the County attorneys in the merit personnel system in 1992, a year before the Legislature acted on behalf of Clark County. It makes sense to take the discussion back to the Board of County Commissioners and present desired changes to them. The action has been upheld by the Second Judicial District Court and Nevada Supreme Court.

Comments were made that I made remarks to the attorneys at the time I ran for reelection that I would protect them. Knowing the shortages of my opponent and the fact he did not have budget or personnel management experience, my comments were, if I lose this election, I have between November and January to do something to help you. It was never spelled out and I never said anything further because I was running in the primary and general elections while running the DA's Office.

Questions have been raised whether a newly elected DA should be allowed to replace attorney staff. A federal appeals court wrote in 1992: "[A] public agency would be unmanageable if its head had to ... retain his political enemies ... in positions of confidence or positions in which they would be ... exercising discretion in the implementation of policy." My relationship and the PD's relationship with the attorneys are highly confidential and strongly based on trust. These people have the authority to do many things under law. Another statutory provision says we are responsible for their conduct.

In my 16.5 years as Washoe County DA, part of every hiring interview for attorneys includes an open, frank discussion about the position as an at-will employment and serving at my pleasure. I explain how the system works, what I expect and what needs to be done. I conclude by asking if the potential employee has any concerns or questions about at-will employment or serving at my pleasure. I have yet to get one single question or concern expressed. The attorneys go into their jobs knowing their position and status.

Washoe County PD Jeremy Bosler has said, "This is not a simple issue. It should be saved for another day when it can be addressed on its own merits and not as an add-on to a crucial bill with unrelated primary intent." I quote him because his statement is true. The amendment should be its own bill so we can flesh it out. I remind you that Rex Bell asked for the change in Clark County. I spoke with David Roger, who is Clark County DA, and he inherited it. He knows nothing else and has adapted to it and uses it the best he can.

I request the Committee adopt our proposed amendment, [Exhibit I](#), to return the population threshold to 700,000 as originally intended in subsection 6 of section 43 and section 46 as applicable to deputy public DAs and PDs.

CHAIR LEE:

It is a forgone conclusion this bill will pass because of the population thresholds. The amendment acts as a bill on its own as we know the bill is going to pass. It is its own individual bill between Washoe County and the Legislature. Former Clark County DA Rex Bell saw a problem and post-Richard Gammick, there can be another problem. Attorneys are laid off as fast as any other group. The ability of your Office to reach out and obtain brighter attorneys has never been better. Attorneys with time vested in the system know competition is steep and they can be replaced. A replacement fear exists. Mr. Gammick, you are a fair man, but what happens after Richard Gammick is gone? Can you see how this amendment helps to preserve their tenure?

MR. GAMMICK:

I can understand that position, but philosophically, I do not agree. I went to law school knowing I would be an at-will employee when I went to work for the government. I have been fired. I have a wife and two children, but I knew it was coming. I have been in the Office almost 27 years, and I have worked hard to establish professional prosecutors who can run for DA after I retire. The Washoe County DAs Office was established in 1864. Out of the 35 DAs,

I found only one case filed by a disgruntled deputy DA because he did not agree the DA had the right or grounds to fire him. The Nevada Supreme Court upheld the firing. I have not fired an attorney in 16.5 years. Every attorney I have asked to resign has because there were grounds and reasons. I go away with a clear conscience. I do not take it lightly. Those are difficult decisions for anyone in the position.

ORRIN J. H. JOHNSON (Washoe County Public Defender's Office):

Assembly Bill 545 is a critical bill, and it will pass. It is 281 pages with a ton of sections and issues. This one issue needs to get fleshed out. We urge you to maintain the population thresholds as set in the original bill and leave the status quo in place to allow the debate to happen on its own merit. This can happen in several ways. Mr. Gammick's proposed amendment provides an alternative. We do not object. Instead of legislatively mandating it, let Washoe County make the decision regarding Washoe County employees. It makes more sense. The County knows its budget numbers, and it is a compromised position. I cannot speak for the Association, but the PD's Office can support this process.

The bill as amended will add significant expense. We did initial research in other jurisdictions that had merit-based systems, and the complexities are enormous for attorneys. A new system would be created specifically for attorneys. We use the tools when dealing with the attorneys, but adding it will be expensive. All it takes is one or two complaints to begin litigation, and that also is expensive. We operate on a tight budget. We do extraordinary things in our Office to protect the due process rights of people accused of crimes. Additional bureaucracy layers will be detrimental to our clients, and it will add expense and time to our Office.

The merit personnel service is unnecessary. The Washoe County Public Defender's Office enjoys one of the highest retention rates of any department in Washoe County, and this is with the at-will status. Testimony mentioned a culture of fear. I do not recognize this in our Office other than the generalized worry about the economy, but this is true of my colleagues who work in private law firms. Effective collective bargaining rights remain in place. This certainly is not a union argument. This bill might reduce accountability for powerful employees. No government employees with the possible exception of those in the police department are more powerful than a deputy DA. Direct accountability to the voters matters with that level of employee. Deputy public defenders do not have the power prosecutors have, but we have tremendous

power and authority over our clients' lives. Accountability, and swift accountability when necessary, needs to be maintained.

No political retaliation has occurred in the Office. Mr. Bosler informed the employees in his staff meeting that he would oppose the amendment. He spoke in favor of employee collective bargaining rights and employees' right to disagree with his position on their own time. Anyone who thinks Mr. Bosler is going to threaten his employees unfairly does not know Mr. Bosler and does not work in the Office.

CONNIE J. STEINHEIMER (Chief Judge, Department 4, Second Judicial District Court):

On behalf of the Second Judicial District, we oppose section 42 of A.B. 545. Written testimony ([Exhibit K](#)) addresses preliminary considerations including existing language in statute, deputies in district court, timing, courthouse security as a fundamental component of the justice system, the requirement of professionalism and expertise in the courtroom, the insecure structure of the Washoe County Courthouse, Nevada and Washoe County courtroom violence and improper training of personnel leading to injustice and costs.

CLAY BRUST (Vice President, Washoe County Bar Association):

I am speaking to section 42. We heard about the amendment four days ago and did not have time to get a poll out to our bar members, but we did have time to request comments. The comments received are overwhelmingly against section 42. The lawyers want sheriffs in the courtrooms. The decorum and atmosphere of a courtroom is affected by the presence of a sheriff. The deputy sheriffs are well-trained. Anything short of official law enforcement would not be as effective. In Washoe County, judges preside over many cases. I do not want judges monitoring litigants and others in the courtroom while they are listening to and deciphering arguments in a case. It would be similar if Senators had to monitor the security in committee rooms or call for further paid assistance while in a contentious hearing.

Courtrooms are where people in our community bring forth the most serious issues. The cases are often contentious and the calming effect of official law enforcement present cannot be overstated.

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SENATOR HARDY:

I am asking future testifiers on this bill to refer to the original bill or the first reprint because the word "amendment" is not definitive as to which amendment is addressed at any one time under this bill. The only paperwork we have regarding action taken on the Assembly side is the bill's first reprint. We can return to the original bill, but the hearing is on the first reprint of A.B. 545.

DISTRICT JUDGE STEINHEIMER:

The Second Judicial Court is opposed to the first reprint, and we submitted an amendment to the first reprint ([Exhibit L](#)).

SENATOR HARDY:

What is your amendment?

DISTRICT JUDGE STEINHEIMER:

[Exhibit L](#) that was handed out addresses section 42.

SENATOR MANENDO:

In section 42, you want to go back to the population threshold of 400,000.

DISTRICT JUDGE STEINHEIMER:

We want to return to the 700,000 threshold. On the amendment, the number is double underlined and colored orange. Mr. Brust is in opposition to the first reprint.

Ms. Cox:

The bill sections I favor are sections 222 and 223 with the population threshold at 700,000. This would help to resolve the issue of fluoride. This bill is large. There are many discussions, changes and amendments. I reference an editorial by Gary Schmidt calling this bill the "Buffet Bill from Hell." I have followed his complaints, letters and appeals with the Legislative Counsel Bureau about the merits or legality of A.B. 545. I was here when Clark County forced the change of using population thresholds. I disagreed then and continue to disagree. I have never agreed with DA Richard Gammick until today. Most of the bills in A.B. 545 should have been approached separately. This would allow us to work through the bills and gain understanding to their intent, amendments and end result. I have concerns and have received calls over this bill. This bill is overwhelming.

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SENATOR MANENDO:

We have a lot of work to do and have 120 days to do it as mandated by the people in this State. Ms. Cox, are you in favor of addressing section 222 and section 223 of the first reprint?

Ms. Cox:

I am working from the original bill. I am hoping the fluoride issue is in section 222 and section 223 is set at the 700,000 population threshold. This would lessen the problems with fluoride and lack of public notice.

SENATOR MANENDO:

The bill has been out for some time. The issue is not a lack of notice as much as a research issue.

Ms. Cox:

Correct. Also, I support Gary Schmidt's amendment.

BEN GRAHAM (Administrative Office of the Courts; Nevada Supreme Court):

I have participated 30 years in the U.S. Census bill-type adjustments. This is the first time substantive matters have been placed into the population threshold bill, and it muddies up the waters.

My concern is in the first reprint; it is asking that section 42 of the bill as discussed by District Judge Steinheimer be returned to its original form. Section 47 of the bill adds a measure that will allow dialogue between now and 2013 with regard to the security system in Washoe County. Over the weekend, I heard from several Justices who oppose the addition of section 42 in the bill's first reprint. One Justice said it was mystical that for more than 100 years, Washoe County sheriffs who fought for and have protected the Second Judicial District now seek to jeopardize that role. The passage of the amended version would place the public, staff and members of the judiciary in harm's way. If section 42 of the bill were removed and section 47 of the bill remained, this would allow for good dialogue between 2011 and 2013. Adequate time has not been vested to flesh out the consequences. Leave the security provision in place with an option to be discussed if section 47 passes.

SENATOR MANENDO:

Mr. Graham, you are good with the bill's section 47 and you want to make section 42 introduce the population threshold of 700,000.

MR. GRAHAM:

Correct. This sentiment was expressed in the Assembly but on short order and before the Justices had a chance to look at it.

MR. SCHMIDT:

I am a former member of the Washoe County Board of Equalization, and for 38 years I have been a regular attendee of the Washoe County Board of Supervisors, Reno City Council, Sparks City Council and other public meetings, including State hearings. I am a property owner and business operator in Washoe County. My Website is < <http://www.reformnevadapolitics.com> > . I am also the author of the editorial titled "Buffet Bill from Hell." I have sent Legislators and involved people this editorial and other extensive communications relating to A.B. 545. I have placed duplicate copies on the record today ([Exhibit M](#)). Terry Tiernay, who is a long-time Washoe County resident, has researched this bill extensively, and his written testimony is also found in [Exhibit M](#).

I seldom am in agreement with Richard Gammick, but I agree with his testimony concerning the issue of merit protection and how it should be a separate bill. There are approximately 400 changes to State law in this bill. This bill will not be finished in 120 days. This bill will not be finished until the Nevada Supreme Court rules on it. This bill will be discussed in a special session, in the next Session, and many Senators and Assemblymen and Assemblywomen will be appearing in district court. It is necessary to address the 400 changes in law in separate hearings before the proper committees. Not all 400 changes in law should be before the Assembly and Senate Committees on Government Affairs.

[Exhibit M](#) references the 1976 Nevada Supreme Court ruling, *County of Clark v. City of Las Vegas*, 92 Nev. 323, 550 P.2d 779 (1976). Lawyers have reviewed this case ruling, and misstatements have been made regarding the ruling. Mr. Malkiewich made an adverse admission. He said this bill is the way to address legislation to specific counties. The Nevada Supreme Court has ruled that legislation cannot be addressed to specific counties. That admission by Mr. Malkiewich is basis for an action against this bill.

I submitted an amendment to the Assembly Committee on Government Affairs addressing a law within A.B. 545. The amendment was not acted upon in the Assembly. I will submit it again. The amendment addresses section 1 and section 2. The law for decades has stated that when a county reaches

400,000, the county is entitled to and shall have seven county commissioners. The LCB has determined that the 400,000 population threshold figure should arbitrarily move to 700,000. This will cause the number of County Commissioners in Washoe County to remain at five. My amendment proposes to remove section 1 and section 2. This would allow the law to remain at the population threshold of 400,000, giving Washoe County—having reached 400,000—the right to have seven county commissioners. Clark County has had seven county commissioners for decades.

The Nevada Constitution in Article 4, section 17 states "Act to embrace one subject only." Each law enacted by the Legislature shall embrace but one subject. Assembly Bill 545 has 400 law changes, and they do not address one subject. There are approximate 275 to 300 subjects in this bill.

Regardless of the amendments, A.B. 545, if passed in any form, will be ripe for adjudication and will make its way to the Nevada Supreme Court. All legislative votes are tracked and posted on <<http://www.reformnevadapolitics.com>> , <<http://www.nevadatrends.com>> , Facebook pages and political sites throughout the State. Legislators, you can support or defy the Nevada Constitution.

Another Nevada Constitution provision is applicable to this bill. It addresses the 1981 Nevada Supreme Court ruling on *County of Clark v. City of Las Vegas*, 97 Nev. 260, 628 P.2d 1120 (1981), in section 20 and section 2 of the bill. The sections say that general law is to have uniform application throughout the State. The population threshold test was hatched by the Legislature about 40 years ago to enact legislation for specific counties. It is prevalently used with Clark County and Washoe County. It was a scheme for the Legislature to apply laws to specific counties in defiance of the Nevada Constitution. The issue found its way to the Nevada Supreme Court in 1981. The case concerned the consolidation of a sheriff's department with a metropolitan police department in a city that also had the county seat. In that case, the Nevada Supreme Court affirmed the right to pass legislation related to populations and not to specific counties, as Mr. Malkiewich stated today. A Senator last week identified the bill as the population threshold bill: what is used to pass laws specific to Clark County or Washoe County. I will not identify the Senator, but I will subpoena him if this bill goes to district court.



The Court stated that a population threshold test can be used, but it cannot be odious, absurd or bizarre. The population threshold test must have meaning. At least 50 percent of the law changes and enacted laws in A.B. 545 are odious, absurd and bizarre.

The Legislature can determine the number of county commissioners by population. It makes sense. Storey County should not have seven commissioners. Clark County needs seven commissioners. The law states that counties under 100,000 have an option by the vote of the people to have three to five county commissioners. Counties between 100,000 and 400,000 have five county commissioners, and counties over 400,000 have seven county commissioners. The LCB has acted in an arbitrary, capricious and illegal manner when it changed the population thresholds for counties, targeting Washoe County and submitting A.B. 545. What is the reason to move the population threshold to 700,000? Why in the eleventh hour should a county over 400,000 now have five county commissioners instead of seven? The reason has not been stated. I provided statutory citations in [Exhibit M](#). The LCB can only submit legislation if there is a conflict or when clarity is needed, and these instances do not apply with A.B. 545. Assembly Bill 545 is odious, absurd and bizarre. The LCB must not oppose or support legislation. When the LCB submitted A.B. 545 and crossed out 400,000 and added 700,000, it proposed or urged this legislation. No one other than the LCB proposed the 700,000 figure. The LCB is on the record saying it proposed this bill to maintain the status quo between counties with no consideration to what is appropriate for specific populations. The LCB is in defiance of the 1981 Nevada Supreme Court ruling on *County of Clark v. City of Las Vegas*, and I will take this to the Court.

The drafters of the Nevada Constitution have been vindicated when they said to address one subject at a time. This morning, four to five sections of A.B. 545 have been addressed, and there are 395 more. You will not finish in 120 days and you will not finish in 120 weeks. You will not finish until the Nevada Supreme Court slaps the hands of those who voted for this bill and congratulates those who stood up for the Constitution by voting against it.

A section in Assembly Bill 545 says that in counties over 400,000, a nonprofit organization can apply—and the county must license and give the nonprofit organization the right upon a fee payment—to stand in a traffic median and hold a promotional advertising sign. This is authorized by State law. A person cannot

do it in Washoe County or Lander County. The law is odious, absurd and bizarre. The LCB is making fools of you in asking for you to affirm the error of the past and to move the population threshold from 400,000 to 700,000. In counties over 400,000 or more, State law says nonprofits can get a permit and stand in a traffic median and hold a sign. If this bill passes, that threshold will move to 700,000. I cannot wait to have a person on the stand explain the justification for the law and follow it up by justifying moving it from 400,000 to 700,000 in light of the fact that all laws should be general and uniform throughout the State.

SENATOR MANENDO:

We have two more bills before floor session. Can you wrap up your testimony? Your exhibits will be submitted for the record.

MR. SCHMIDT:

I am prepared to go through the other 395 issues addressed in this bill. If I am denied, I want the record to reflect it.

SENATOR MANENDO:

You can submit written testimony for the record.

MR. SCHMIDT:

I am exercising my opportunity to speak in a public hearing.

SENATOR MANENDO:

Yes, and you are getting that opportunity.

MR. SCHMIDT:

Another example of change resulting from this bill affects county fair board members. The law says populations over 400,000 get 14 instead of 13. If the bill passes, the population threshold jumps to 700,000 and the status quo will be maintained. Washoe County will remain at 13 fair board members and Clark County will have 14.

I sent out a press release over a week ago stating that Assemblywoman Debbie Smith voted on April 25 for Washoe County to retain the right to license prostitution. Thirty-one Assemblymen did. By law, Clark County is the only county that cannot license prostitution because the law says counties over 400,000 cannot license prostitution. The LCB had proposed

to change that threshold to 700,000. This results in the LCB proposing and Assemblywoman Smith supporting Washoe County and the other counties, except for Clark County, the right to maintain the licensing of prostitution. What fun this will be to determine the odiousness, absurdness and bizarreness of these laws and this bill. Counties can have a local ordinance making prostitution illegal. Washoe County has this type of ordinance. If this bill passes, counties can change their county ordinance in 30 days and can establish the process for licensing prostitution. There are vendor stands, notices of zoning ... Counties over 400,000 require submission of a residential disclosure with an escrow package including a zoning map for casinos. Why is that relevant to populations over 400,000 or 700,000 as proposed? It is either good for the State or not.

Look deep into your conscience. Read the 1981 Nevada Supreme Court case law and read the Nevada Constitution. Reject this bill and begin to examine each law as to its applicability and constitutionality. A good percentage of the laws in A.B. 545 are permissive. They allow certain things but do not mandate them over a certain threshold. An example, in the 100,000-to-400,000 population threshold, the bill allows members of a general improvement district to make a report to the general improvement district board regarding a property within the district not properly billed for the improvement district fees. This would include the name and address of the property owner and the reasons why the property is not billed properly. This is permissive legislation. General improvement district board members can do this within the 100,000 to 400,000 population threshold, but they cannot over the 400,000 population threshold and under the 100,000 threshold. Assembly Bill 545 proposes a change from 100,000 to 700,000. This is bizarre.

MR. DREHER:

We are asking for support of the first reprint of A.B. 545 with the amendments to section 43 and section 46 of the bill. Ten years is what we have and to take care of the Washoe County public attorneys becoming merit personnel. There is not another way to address this issue.

To respond to Senator Schneider's comment, it is time for Washoe County to grow up. Washoe County has met the 400,000 threshold and the public attorneys should become a part of merit personnel. I want to respond to comments made referring to NRS 288.170 that DA IVs would have to be removed from the Washoe County Public Attorneys' Association. The Association was formed with the categories of DA and public attorneys

including the supervisors. To say in the past week and one-half that they must get out of the Association contradicts what they have in their agreement with Washoe County.

This legislation is not personal. It has no reflection on Richard Gammick, Jeremy T. Bosler or Jennifer Lunt, who is the alternative Public Defender. They have abided with the agreements and have done a good job with them. This legislation is about what will occur after Richard Gammick leaves office. Do you want the new DA to clean house? We do not. This is a due process issue.

Before the Washoe County deputy public defender testified before the Assembly, he made Mr. Bosler aware that he was going to testify to the Legislature. We were told the comments would be neutral.

MS. BOND:

I have two comments to make. My first comment addresses Mr. Gammick's comments about the 1992 Nevada Supreme Court decision. When the Legislature changed the law in the Sixty-seventh Session, Mr. Graham made a comment in the Legislative history on how an attorney personnel system would work, and he stated that the 46 largest jurisdictions in California and the cities of Tucson and Phoenix in Arizona are all under a merit program. Clark County has had the merit personnel program since 1993. As Mr. Gammick noted, the DA is David Roger, and he uses the system because it has been in place since 1993. I will give Mr. Gammick credit for his hard work. I have known him for 18 years, and I give him credit to be able to adapt to the merit personnel system under the first reprint of A.B. 545 with sections 43 and 46 of the bill. There would be no difference for the Washoe County DA and the Clark County DA or for the elected Sheriff in Washoe County whose deputies have more power than the DAs and who are under the merit personnel system.

Mr. Johnson requested the issue of merit personnel remain permissive and that Washoe County should be able to work with the Association. This is the status quo. We work with the County to get the merit personnel system into the collective bargaining agreement, but they refuse to discuss it. It is not an issue where we can make it permissive and allow the county to deal with it.

Concerning the fiscal expense issue, Nye County in 1997 came before the Legislature and asked that in counties under 100,000, attorneys be included in merit personnel, and the County specifically said it was a fiscal problem not to

have attorneys in the merit personnel system because the County was facing lawsuit after lawsuit for wrongful termination when the elected officials including the DA were turning over in office. Mr. Johnson acknowledged that he is not a member of the WCPAA. He also said he is unaware of any fear within any office, and that is probably why. The attorneys who are afraid for their jobs are not going to approach Mr. Bosler's personal representative at the Legislature, who is not even a member of the Association, and tell this representative they are afraid that the boss might fire them. They will come to their Association's member representative. While we were sitting here in this hearing waiting to rebut, Ms. Vioria received an e-mail from a chief deputy in the Washoe County Public Defender's Office saying that after Mr. Gammick's remarks last week to his chief deputies, he wanted to talk to her about resigning his position in the Association.

SENATOR MANENDO:

The hearing is closed on A.B. 545 and we will open the hearing on A.B. 376.

**ASSEMBLY BILL 376 (1st Reprint)**: Makes various changes regarding the financing of certain local improvements with revenue pledged from sales and use taxes. (BDR 21-148)

ASSEMBLYWOMAN DEBBIE SMITH (Assembly District No. 30):

Assembly Bill 376 deals with Sales Tax Anticipated Revenue (STAR) bonds. Sales Tax Anticipated Revenue Bonds addressed tourism improvement districts (TIDs), which were first authorized in S.B. No. 306 of the 73rd Session. The TIDs are similar to redevelopment districts and are designed to facilitate public-private partnerships to increase tourism and generate new sources of sales tax revenue.

The financing mechanism is sales tax and revenue bonds or STAR bonds. The idea behind a STAR bond is to increase tourism to the area by developing projects that attract tourists. This is done in exchange for anticipated sales tax revenue to finance the bonds and to make the projects feasible.

Under the provisions of NRS 271A, a local government can create a TID if it finds a preponderance of the sales tax revenue in the district will come from out-of-state tourists. Out-of-state tourists are important in this discussion, and the preponderance is defined as 50 percent or more. A preponderance test has

to occur on these projects, and the studies have to find that more than 50 percent of those people visiting these projects would be from out of state. I do not oppose STAR bond projects, and I do not oppose the private-public partnerships these projects create. I want the information to come back to us, telling us if STAR bonds are working. If the program is not working, we need to find another way to increase tourism and financing. If it is working, the findings will help us to better define future projects and see if we are heading in the right direction. We need information to let the public know that their tax dollars are well-utilized and accomplishing established goals. Local governments can pledge up to 75 percent of the sales tax revenue from the projects. This allows bond repayment to finance the projects and infrastructure within that district.

We have three projects in Washoe County utilizing STAR bonds. We now have a variety of projects that can provide us lessons to help reshape the structure, with the possibility for the expansion of STAR bond projects in Washoe County and into Clark County where the environment is ripe for funding. We want more accountability in place before that happens.

In the City of Reno, the two STAR bond projects are the Cabela's store and the baseball STAR bond district. The third project is the Legends at Sparks Marina project in the City of Sparks. The STAR bonds idea has had growing pains, and we have learned from these projects.

Assembly Bill 376 will create change. Change will apply to new projects while others will be retroactive. There are no clawback provisions. Once a local government has committed to a project, bonds have been sold and a developer has made an obligation based on what they know to be true as far as availability of funds, money would not be taken away because the obligation has been made. No provisions are in place to take money away from any project in place.

Section 2 of the bill requires an independent review of claims submitted by the developers for reimbursement. This is to ensure taxpayers are not overcharged. It is an accountability provision. It also clarifies that STAR bonds cannot be used for certain soft costs on projects. This provision will apply to projects approved going forward because that already has happened in the prior projects. Soft costs in that section are obligations developers should meet. The working group has been working on STAR bonds for about three years. A bill last Session did not make it through. Since then, the bill's language has been massaged.

Section 2 also addresses the situation referred to as the "Target situation." It states that if a business is operating outside a STAR bonds district or TID, it cannot relocate within the district and receive the same benefit. We had a situation where a business was operating a short distance from the STAR bonds project. The business closed. We lost sales tax revenue. The business moved into the TID, where now we are only getting 25 percent of the revenue. This is a State loss. We lost the Local School Support Tax and the State has to make up the difference. We never considered the loss of revenue that could impact the State when STAR bonds originally passed. When developing STAR bonds, we looked to Kansas, which highly utilized STAR bonds. Kansas has disallowed any business in the State to relocate within a STAR bonds district or TID to stop the loss of tax revenue. It is good practice to look at those that came before to see the lessons learned. This section clarifies the issue.

We worked with developers, contractors and the labor community on section 3 in this bill to design language that helps to rein in bid shopping. The STAR bond projects are private exercises. They do not require to bid like a public project. Local contractors and the labor force complained that bid shopping was occurring. This is where general contractors would shop local bids, return to where they are from, get a better bid back home and bring in those out-of-state contractors to do the work. It was difficult to develop language that solves this problem, but we think the language is a good effort to rein in those bids. The language puts a process in place that everyone agreed should work.

Section 4 requires semiannual reporting so we can monitor whether STAR bonds are working. This requires merchants to ask customers where they reside. Each of us visits stores where that information is asked so this is not new. I was at one of the STAR bonds projects a few weeks ago, and two different merchants asked for my information—not for this purpose but for their own because they use it for marketing. This is proprietary information. There is no concept this information would be shared. It would be handled in the same manner as in law where the Department of Taxation receives the information. The Department can share information with LCB staff on a confidential basis, and the Legislature can be advised if projects are meeting the 50 percent goal. This would not be publicly reported. The law clearly spells out how to handle sales tax information.

Section 5 of the bill talks about the Commission on Tourism and approving a list of consultants for future independent studies. There was a lot of concern about

having a truly independent consultant do the preponderance tests. Nevada is a small state. If an out-of-state contractor does the work, we would be more likely get an independent study. This was done with the Clark County School District audit, and we have the same concept. Independence is vital.

Section 6 makes clear that prevailing wages must be paid on projects built with STAR bonds, and the Labor Commissioner is responsible for enforcing the prevailing wages. Controversy over this issue exists because the original legislation was clear STAR bonds projects would be prevailing wage jobs because they are built with tax dollars. There was no enforcement provision. The enforcement controversy has been tied up in court on one project for some time, and in fact, the Nevada Supreme Court recently ruled that it was the responsibility of the Labor Commissioner. We are clarifying that in law so there will be no issues going forward.

The bill is about accountability and transparency to the public, which contributes a significant amount of money to these projects. The bill will allow us to know if STAR bond financing works by establishing the reporting mechanism. If STAR bonds are not working, we can reformulate, but until we have the necessary information, we will not know.

SENATOR HARDY:

What is considered a significant amount of money for STAR bond projects in Washoe County?

ASSEMBLYWOMAN SMITH:

A significant amount of money is hundreds of millions of dollars over time. The cities can give investment details of each project. The Legends project is still under construction and the money can potentially amount to hundreds of millions of dollars.

SENATOR HARDY:

Can the cities tell me the money figures to date?

ASSEMBLYWOMAN SMITH:

Yes.



STEPHEN W. DRISCOLL (Assistant City Manager, City of Sparks):

We worked with the Chair to not have conflicting issues related to current projects. This legislation is predominately prospective, and although our project is not built out to full capacity, it enjoys the original legislation and works under the development agreements in place at the time the project began.

There was plenty of discussion about the reporting mechanisms that Assemblywoman Smith addressed. In several instances, it was difficult to determine who could gather the data and what jurisdiction they had to gather it. Most important is the extent to which the information is private for a retailer's use whose business depends upon that information. We have protected that information, and it will remain confidential.

Senator Hardy, the Legends project development was estimated at \$1.3 billion. The development agreement was that STAR bonds provide \$161 million for infrastructure and to make the project marketable as a tourist destination. The project is not fully developed. We have spent a lot of the money, but we are not at the full \$161 million. It is based on growth of development. This gives us the ability to create the STAR bond repayment.

MS. MATIJEVICH:

The City of Reno has learned a lot through this process, and we hope STAR bonds will continue to be a valuable tool. With the increased transparency and reporting in this bill, we will find out that these projects are successful in meeting its tourism goals. Senator Hardy, I do not have the figures for our projects, but I will send the up-to-date figures to you when I return to the office.

LARRY FRIEDMAN (Interim Director, Commission on Tourism):

We support STAR bonds. *Nevada Revised Statutes* 271A require the Commission on Tourism to determine if a preponderance of anticipated sales tax generated by STAR bond projects will come from out-of-state tourists. Law explicitly requires only that the preponderance of anticipated sales tax comes from out-of-state visitors. References in the legislative record from 2005 indicate that the intent for STAR bond projects is to have a net-positive impact on the community and to bring new visitors and businesses. Our concern is the potential for displacement or substitution and that STAR bonds could be used for projects that do not bring new visitors or new dollars to the State. It is essential the funding mechanism be used for projects that enhance an area as a destination, not reorganize or replace tourism attractions and associated tax

revenue. Assembly Bill 376 requires reporting to the Legislature after projects are completed. This is good, but there are no provisions for consequences if a project fails to meet expectations. The STAR bonds have been a useful tool and will continue to be a useful tool, creating a positive impact in the State. If the impact brings unique attractions, it will enhance Nevada's tourism product and bring in new visitors and tax revenue.

MICHAEL ALONSO (Caesar's Entertainment):

We are in support of A.B. 376. I have been involved in the STAR bond discussions since 2005 when the original bill was heard and passed in connection to the Cabela's store. I was involved in 2007 when the bill was amended in connection to the Legends project. This bill provides transparency and clarification of the prevailing wage issue to allow the Labor Commissioner to enforce the provision. The bill cannot address changes to projects after bonds have been issued, but can affect projects on a going-forward basis. The changes ensure that future projects would have independent consultants advising the Commission on Tourism and allow fixes that are of concern.

JOHN GRIFFIN (The Capitol Company):

I am in support of A.B. 376. This bill provides positive changes to the STAR bond legislation. I have represented Cabela's, which was the first STAR bonds project in the City of Reno. I represented a number of clients on potential STAR bond projects and have worked with a tenant in the Legends project.

One issue that resurfaces with STAR bonds is showing the preponderance before a project is built. The test is to show that over 50 percent of the revenue will come from out-of-state visitors versus in-state shoppers. This is an unknown and leads to speculation. Is the report valid? A benefit of A.B. 376 is it allows a reporting mechanism. It allows for visitor counts and will decipher where consumers are coming from. Cabela's is a clear example because it is a stand-alone store. It is not in a mall or next to other stores. The preponderance tests projected about 52.7 percent of consumers were out-of-state visitors. In the first three to four years of operation, Cabela's exceeded that number. This is a helpful piece of information for the Commission on Tourism and Washoe County School District. It validates or can invalidate a preponderance test to provide a baseline.

CHAIR LEE:

The bill in section 4, subsection 2 says, "If the governing body of a municipality creates a district before, on or after July 1, 2011, the Department of Taxation shall ... ." This cannot change prior agreements.

MR. ALONSO:

You need to compare that section to section 2, which makes a distinction between those districts created after July 1. Matters in section 4 are retroactive. This addresses the statement of the status of the project and changes in the status. It is an annual report, but it will not go back and invalidate the approval. The district has been created, and Assemblywoman Smith was cognizant of that as bonds have been issued. Section 2 addresses the prohibitions that cannot happen going forward. The STAR bond proceeds cannot be used for legal fees, accounting fees and insurance costs. Section 2, subsection 2, paragraph (b) discusses the relocation. It is intended to deal with the situation where an existing retailer moves into the district, causing the State to lose 75 percent of the sales tax. This was never the intent of STAR bonds. The intent was to attract new businesses that would bring tourists into the area.

CHAIR LEE:

It is a reporting requirement. Can the Legislature change reporting requirements?

MS. CHLARSON:

Section 4 is not amending a contract or issue relating to the bonds. It is requiring certain reporting requirements, and it is legal.

SENATOR HARDY:

Earlier, I wanted to know the expenditures. Reporting is important.

JACK MALLORY (International Union of Painters and Allied Trades District Council 15; Southern Nevada Building and Construction Trades Council):  
We support the bill particularly with transparency and the retroactive transparency on existing agreements. It is important to note that there are stronger and clearer public work provisions.

CHAIR LEE:

Are only two STAR bond projects underway? And they are in northern Nevada?

MR. MALLORY:

I am not aware of any projects in southern Nevada utilizing STAR bonds. The STAR bonds are similar to the redevelopment agencies created in southern Nevada. Zones are created where tax revenue is used to build projects.

STEVE POLIKALAS (Northern Nevada Urban Development Company, LLC; Urban Development and Management Company, Inc.):

Northern Nevada Urban Development Company, LLC, and Urban Development and Management Company, Inc., own many parcels, acres and blocks in downtown Reno. We had a TID created pursuant of this law by ordinance following the 2009 Session. I have worked extensively on the STAR bond legislation since the Seventy-second Session and with the subsequent changes to the TID legislation this bill seeks to amend. We are supportive of A.B. 376. We want to ensure no unintended consequences come from the added language, and Assemblywoman Smith has done a wonderful job to avoid those pitfalls. We want this bill passed without having unforeseen aspects relating to STAR bonds or TIDs in order to avoid negative impacts. Addressing the issue of retroactivity, the Legislature needs a reliable spot in these laws to make them dependable and to allow people to move forward, particularly as it relates to real estate development in this economy. The STAR bonds, TIDs and local improvement districts are valuable economic tools. This is an important time to help provide jobs and improve the economy of Nevada.

PAUL MCKENZIE (Building and Construction Trades Council of Northern Nevada):

We have struggled with local governments and have gone back and forth with the Legislature to make STAR bond districts help the community, the workers and developers.

The Target store moved into the Legends at Sparks Marina shopping district and closed a store right outside of the TID. When the move was made, we argued to the City of Sparks that Target is not a tourist destination. The developer said that every time he goes on vacation, he stops at Target and buys his daughter a new DVD, so it is a tourist destination. A tourist district should be a tourist destination. We strongly opposed additional stores within the TID affected by STAR bonds that would adversely affect businesses outside the TID. The provision in this bill provides a three-mile radius. We support that provision but would be more supportive of the Kansas version of the STAR bond law that prevents businesses within the State to be within the TID. If a business already exists, it does not draw tourists.

We also support the provision making the change in the preponderance test. I have sat in numerous STAR bond meetings. The Meridian Consulting Group has done all the preponderance tests in northern Nevada.

During the last meeting, testimony occurred on two STAR bond districts. It was said the projects have 10,000 tourists per year coming to northern Nevada. Project developers want to add 100,000 square feet of retail in the TID. This is a 3 percent increase. According to the preponderance test, they figure this will increase tourism by 3 percent. The argument is based on tourists coming to northern Nevada for such things as the Safari Club, Hot August Nights and Street Vibrations. They count these people and use the numbers to say the additional retail space will bring in more tourists.

We support bringing people in who do not just want to prove a project should move forward. We want to see better numbers on how much tourism will be created. The checking system created for the old tourism districts was supposed to show what was said to be created and what had or had not been fulfilled. This bill will show that numbers used in the TIDs are not true numbers. Cabela's in Reno and Scheels at Legends at Sparks Marina were generated when the economy was in the upswing and the preponderance tests were done in those times. They most likely projected better tourism numbers on those two stores than what has been received due to the difficult economy.

The other areas in the bill important to us are the prevailing wage provisions. When RED Development, Inc., in the City of Sparks came to the Legislature in 2007 to get the law straightened out to move forward on the Marina project, we supported the legislation and the provisions of prevailing wage were strengthened in that law. When the Cabela's project moved forward, it was astounding the developer did not follow prevailing wage laws. We went to the Labor Commissioner to enforce the prevailing wage requirement. He made the decision that while it was his responsibility under State law to enforce prevailing wage laws, he decided that under STAR bonds, he did not want to do the enforcement. After an approximate \$80,000 investment in lawyers, the Nevada Supreme Court ruled the Labor Commissioner is responsible to enforce those laws. Cabela's was completed about four years ago. Workers still have not been paid for the work they did at the rate they should have been paid. Penalties have not been assessed against the contractors who have failed to pay prevailing wage, and no complaints have been issued for contractors who have failed to pay prevailing wage. As a result of the Supreme Court ruling, the

Labor Commissioner is supposed to move forward, enforcing the laws under order of the Court. Assembly Bill 376 clearly states the role of the Labor Commissioner in enforcing prevailing wage requirements. This will prevent confusion and similar court cases.

Assembly Bill 376 is good legislation concerning STAR bonds. Areas can be strengthened, but we understand commitments have been made to developers such as RED Development, Inc. After the company moved in a Target, it is now using STAR bonds to build a Lowe's Home Center. A Lowe's exists a short distance from the district and most likely will close once the new one opens. There will not be enough business for both stores. The taxpayer-funded store will be the one that stays open and the other will close, causing a reduction in the tax base and a burden on the community by leaving a vacated building.

CHAIR LEE:

Scheels All Sports, Inc., is located at the STAR bonds project, Legends at Sparks Marina. It is a great store. Every time I have people visit from southern Nevada, I bring them from Lake Tahoe to the store. Is a person from Lake Tahoe considered a tourist? Is a person 30 miles away from the store considered a tourist?

MR. MCKENZIE:

Under the original designation of the law, tourists were considered people from out of state. Nevada residents are not considered as tourists.

CHAIR LEE:

My Las Vegas friends are not considered tourists.

ASSEMBLYWOMAN SMITH:

Correct. The Commission on Tourism has interest in changing the definition. A person from Truckee, California, driving 30 miles is considered a tourist, but a person from Elko who drives 300 miles is not considered a tourist. The original law as written is the basis for the preponderance studies.

ALFREDO ALONSO (Nevada Land Company):

Nevada Land is the company that developed the STAR bonds baseball park in downtown Reno. We have worked with Assemblywoman Smith and support A.B. 376. We can live with the reporting requirements, as they improve the law. I have discussed with Assemblywoman Smith an amendment to the bill to also

include municipalities choosing a different percentage. The percent is currently up to 75 percent. The developers of the ball park volunteered 10 percent to go to the school district. The developers could have been eligible for 65 percent, but they were given 33 percent. If a municipality is going to do that, it should not keep the remainder. The remainder should return to the general fund. The municipalities can make up their minds as to how they want to do that, but they should not keep the money if the catalyst is the developer. It also does not make sense with CTX.

CHAIR LEE:

Are you proposing an amendment?

MR. A. ALONSO:

Today, we became serious about an amendment we have discussed. I can draft an amendment from Nevada Land Company or through Assemblywoman Smith.

MR. SCHMIDT:

I commend Assemblywoman Smith for bringing this legislation, and I support it with caveats. Throughout the original process in 2005, I opposed the STAR bonds legislation as drafted. I opposed the application at Cabela's and Legends, and my opposition has been vindicated by this bill and by the fact that both stores are dying operations. They have to go a long way to become economically viable.

I have been in business my entire adult life. I have owned, developed and managed agricultural, commercial and residential properties. I have a degree in economics, I have been active in the area of tourism, I am the owner of the Reindeer Lodge on the Mount Rose Highway, and I have been active in commercial stables and horseback riding, I have the only snowmobile rental operation in Washoe County, and I am the first person to bring the Doobie Brothers to the State in 1971. In 1972, I was the unofficial mayor of the third largest city in Nevada. This was the northern Nevada folk-rock festival at T-Car Speedway. We had 40,000 people in attendance. I know about tourism. I have also been active in retail and wholesale distribution.

The STAR bonds subsidize retail businesses that take away from local businesses, many of which are long-time, family businesses. They do not have subsidies. I have been in business in this State for 40 years. In tourism, I was never subsidized. I did well and continue to do well. The STAR bonds should

only apply to manufacturing and tourist commercial operations not in competition with local competitors. You should not use STAR bonds to subsidize a new ski area to compete with existing ski areas. It does not make economic sense.

The bill had no accountability. It did not make people live up to their estimates. Even if 50 percent of tourism is reached, that means that 50 percent of the retail is taking business away from other retail, many of which are long-established and not subsidized. This is not the proper function of government.

I am familiar with the Legends project and the small stores driven out of business. An example is a fishing store in business about 35 years that had to close. I like the provision that states a location outside of a TID but within three miles of the boundary cannot relocate to the TID in general. But it is also amusing. I thought the TIDs were to draw from out of the State. The change should reflect that no existing business in the State can relocate into a TID and rob the local municipalities of established income.

Assembly Bill 376 is an improvement but has a way to go. The STAR bonds should not be used for retail in any fashion.

ASSEMBLYWOMAN SMITH:

There is no perfection in this type of environment because we are talking about what we can do to rework what exists and see if we are successful. We are laying out new requirements for going forward. I can live with something more onerous on the relocation piece. Chair Lee, in my earlier testimony, I indicated where STAR bonds originated in Kansas, they have eliminated relocation from within the State. I have tried to craft a bill that can pass this body. It is important to know if this type of investment is working. If a change is needed, the only way we will know it is by the reporting provisions. We are on the right track. I also indicated this morning that there is clearly no clawback once we have obligated funds. A commitment to the projects has been made and money cannot be returned. We can ask the existing projects to report their information. This is no harm to them. They will provide information to the State to help this body and the Commission on Tourism with future decisions to determine if this type of project works. Some provisions will apply only to projects going forward, such as how to use the costs and preponderance tests. Reporting will apply to all projects to help us better understand what we are doing.



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I am open to broadening the scope of relocation into a TID. This bill was designed to be moderate in order to get the bill passed and signed by the Governor, as it is important in this economic environment.

CHAIR LEE:

The hearing is closed on A.B. 376. This Senate Committee on Government Affairs is adjourned at 4:17 p.m.

RESPECTFULLY SUBMITTED:

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Cynthia Ross,  
Committee Secretary

APPROVED BY:

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Senator John J. Lee, Chair

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

<b><u>EXHIBITS</u></b>			
<b>Bill</b>	<b>Exhibit</b>	<b>Witness / Agency</b>	<b>Description</b>
	A		Agenda
	B		Attendance Roster
A.B. 360	C	Cadence Matijevich	Photo Exhibit
A.B. 360	D	Cadence Matijevich	Proposed Amendment
A.B. 545	E	Lorne J. Malkiewich	Memorandum
A.B. 545	F	Lorne J. Malkiewich	Population Breaks for Counties and Cities
A.B. 545	G	Lorne J. Malkiewich	Population Classifications to NRS
A.B. 545	H	Ron Dreher	WCPAA Position Paper
A.B. 545	I	Richard Gammick	Amendment
A.B. 545	J	Washoe County Public Defender	Letter
A.B. 545	K	Connie J. Steinheimer	Testimony
A.B. 545	L	Connie J. Steinheimer	Amendment
A.B. 545	M	Gary Schmidt	Buffet Bill from Hell