

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

**Seventy-sixth Session
April 4, 2011**

The Senate Committee on Government Affairs was called to order by Chair John J. Lee at 8:37 a.m. on Monday, April 4, 2011, in Room 2135 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412E, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator 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:

Senator Greg Brower, Washoe County Senatorial District No. 3
Senator Moises (Mo) Denis, Clark County Senatorial District No. 2
Senator Mike McGinness, Central Nevada Senatorial District

STAFF MEMBERS PRESENT:

Michael Stewart, Policy Analyst
Heidi Chlarson, Counsel
Martha Barnes, Committee Secretary

OTHERS PRESENT:

Maureen Cole, Administrator, Rehabilitation Division, Department of
Employment, Training and Rehabilitation
Randy Weaver
Ron Tiberti
Jason King, P.E., State Engineer, Division of Water Resources, Department of
Conservation and Natural Resources

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Vahid Behmaram, Water Rights Manager, Department of Water Resources,
Washoe County
Andy Belanger, Manager, Management Services Division, Southern Nevada
Water Authority
Steve K. Walker, Truckee Meadows Water Authority
Heidi Gansert, Chief of Staff, Office of the Governor
John Wagner, Independent American Party
Janine Hansen, President, Nevada Eagle Forum
Bruce Arkell, Nevada Senior Advocates
Keith Munro, First Assistant Attorney General and Legislative Liaison, Office of
the Attorney General
Rusty McAllister, President, Professional Fire Fighters of Nevada
Wes Henderson, Deputy Director, Nevada Association of Counties
Kevin Carey, Second Vice President, Nevada Association of Code Enforcement
Barry Smith, Executive Director, Nevada Press Association, Inc.
Dave Dawley, Carson City Assessor

CHAIR LEE:

I will open the hearing with Senate Bill (S.B.) 358 brought forth by
Senator Moises Denis and Senator Greg Brower.

SENATE BILL 358: Makes various changes concerning the operation of certain
vending stands. (BDR 22-665)

SENATOR MOISES (Mo) DENIS (Clark County Senatorial District No. 2):
Senate Bill 358 is basically a cleanup from an unintended consequence of
S.B. No. 245 of the 75th Session dealing with the blind vendors in respect to
the Regional Transportation Commission (RTC). We have some changes to the
language in order to allow the bill to work as intended.

CHAIR LEE:

What are you trying to do with the bill?

SENATOR DENIS:

The language fixes an exemption that was included in the language last Session.
We have a representative from the Department of Employment, Training and
Rehabilitation that is the agency administering the Bureau of Services to the
Blind and Visually Impaired.

CHAIR LEE:

We have a bill that says the vending machines at the RTC will be managed by the Bureau of Services to the Blind and Visually Impaired.

SENATOR GREG BROWER (Washoe County Senatorial District No. 3):

The bill cleans up language from S.B. No. 245 of the 75th Session. A provision buried in section 31 had the unfortunate effect of removing the RTC from government venues where the blind vendor program has a preference in contracting. Senate Bill 358 just restores that preference.

As indicated, the State actually lost money in the last biennium due to some unavailability of federal matching grant monies because of the change in the law from last Session. The idea is to restore the language prior to the passing of S.B. No. 245 of the 75th Session which will result in a net gain to the State and return the blind vendor preference to State contracting in certain venues.

MAUREEN COLE (Administrator, Rehabilitation Division, Department of Employment, Training and Rehabilitation):

The Department is in favor of S.B. 358. As Senator Denis mentioned, we administer the Business Enterprises of Nevada. Currently in Nevada, 18 blind vendors support themselves and their families by operating 29 vending sites throughout the State. The program is entirely self-supporting and does not receive any State or federal funding. The Committee should also know that federal Vocational Rehabilitation Grants require a State match at a 1-to-4 ratio. In other words, for every State \$1 contributed to the program, the federal government provides approximately \$4. The program expenditures are recognized by the federal government as a source of State match. The Governor's proposed budget expects to use about \$2,968,000 in program expenditures in the upcoming biennium as part of the State's match. Program growth to include more locations and blind vendors enhances the potential for State match to draw additional federal Vocational Rehabilitation funds to the State program.

Since 2005, the State has not claimed over \$15 million of federal Vocational Rehabilitation funds because the Nevada was unable to provide the State match to collect the funds. Each dollar that can serve a state match brings in four vocational rehabilitation dollars to assist Nevadans with disabilities to become employed, to obtain greater self-sufficiency and to contribute to the economic well-being of the State.

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CHAIR LEE:

This is a good bill, and I thank you gentlemen for bringing it forward. The Chair will accept a motion.

SENATOR MANENDO MOVED TO DO PASS S.B. 358.

SENATOR SCHNEIDER SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY

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CHAIR LEE:

I will close the hearing on S.B. 358 and open the hearing on Senate Bill 362.

SENATE BILL 362: Revises provisions concerning groundwater basins. (BDR 48-926)

SENATOR MICHAEL A. SCHNEIDER (Clark County Senatorial District No. 11):

This bill has to do with fee application for the State Engineer; what it does is true up water rights. A bill in the Assembly proposed by Assemblyman Pete Goicoechea is similar but not quite the same as this bill. Some gentlemen in Las Vegas will walk us through the bill and provide testimony as to its intent.

RANDY WEAVER:

I have been a citizen of Nevada for 31 years and a New York Life Agent for 26 years. I have no personal involvement in water issues and do not own a lot of water rights. This issue is necessary for the State. The drought situation came to my attention two years ago in the Colorado Rocky Mountains in the midportion of the United States. Obviously, Lake Mead has dropped 140 feet, pushing the Southern Nevada Water Authority and General Manager Pat Mulroy into many positions that most people would not want to share with her. I have seen problems in Nebraska caused by the drought, and it seems important for us to address the situation with water laws in Nevada. One of the issues has come to the forefront due to the economic and water conditions in the State. People who want to maintain their water rights must run the water out of the ground and basically waste water in Nevada. I have heard complaints from different water authorities about landowners having to use their water due to the use-it-or-prove-it law. We have spent two years trying to come up with a

solution and have met with the State Engineer, Jason King. Mr. King points out there are some good ideas that go against the two fundamental tenets of our State water law. That is the use-it-or-lose-it concept and the beneficial use—the measure and limit of the right to the use of the water.

The bill is missing some options, but we hope to change the verbiage. I have met with John Entsminger from the Las Vegas Valley Water District, Jason King, Renaldo Tiberti, former State Engineer Mike Turnipseed, Roger Patterson and the Bureau of Reclamation.

Landowners have water rights and would like to keep their rights but also do not want to waste water. We have proposed a solution that if you own a water right in the State, you would have an option to pay a fee in order to not use the water in that year. That does go against the fundamentals of the law, but we have determined we need to put a limit on the extension for five to ten years. The fee would be collected for five years, and it would increase from the fifth year to the tenth year. It would allow people to work through the economic and drought conditions we are experiencing.

Senate Bill 362 outlines using the fees for management of the critical basins or the basins overallocated for many, many years under State law. Unfortunately, law has not given any options to allow the State Engineer to bring those basins back into focus. The purpose of this bill is to provide the State Engineer with options and also give the water right holder a way to not utilize the water or be penalized in order to keep a viable water right.

We have also seen a revision on Assemblyman Pete Goicoechea's Assembly bill. The language looks good on paper, but we do not know what will happen when it is put into practice. We also do not know if there is a solution included for problems in the water basins. The Assembly bill only addresses those basins in critical management areas. We would like to see the bill include the whole State. It does not make sense to have a water bill that allows another basin to become a critical management area.

From my experience, you cannot wait ten years to solve a water problem. Lake Mead dropped to its lowest levels over an eight-year period. We are looking at support for S.B. 362, and we may look into combining the two bills because of their similarities.

Because of the proposal from State Engineer Jason King, nothing is being accomplished to manage these basins, and they have become overallocated. We want to provide the State Engineer a tool to help overallocated basins and ensure no new basins become overallocated. This could happen again in the Las Vegas Valley if there is another severe drought in the Rocky Mountains. We were under a federal guideline last year with Lake Mead. Last April we would have had to pull water into Lake Mead if the water level had dropped another six inches. We just missed by a few days. It is obvious the critical water situation in southern Nevada could affect some valleys in northern Nevada. So, we would like to see verbiage to allow water users some options.

We pulled some plans from Nebraska over the past ten years. Kansas sued Nebraska and Colorado. A federal magistrate ruled in favor of Kansas but also ordered a plan for the future. The plan did go against some of the water laws in Nebraska. The bottom line is the rivers dried up in 2003, the lakes dried up and less than eight years later under the Nebraska plan for the future, the lakes and rivers have filled up again. To think that the rivers would dry up in a state that sits on the largest aquifer in the northern hemisphere is very scary. To live in the desert and see us waste water, we should be saving every bit of water we can. I also understand Mr. King's position of not getting away from our fundamental water law. I support that issue but know we also need a plan for the future.

Part of S.B. 362 is to plan for the future—not just for the overallocated basins, to make sure no future basins become overallocated.

RON TIBERTI:

From a practical standpoint, those of us who have purchased vacant tracts of land that came with water rights have a way to preserve those water rights for future use while awaiting a beneficial use for the property. We are concerned about these rights during this slow economic time and are looking for a way to allow us to retain these water rights by paying a small fee not to use them at this critical time. This law provides us a way to delay putting the water to beneficial use while keeping our water rights intact. We see two options, putting the water to beneficial use or paying a small fee to retain those water rights for a period of time.

MR. WEAVER:

I would like to point out that the fee would be separate from the general budget, controlled by the State Engineer and used solely for the retirement of water rights. In other words, the State Engineer would have the option to buy water rights from individuals.

CHAIR LEE:

We do not have copies of your amendments to review, so could we get a copy? The way I read the bill, it is \$100 to use this new provision, but it does not indicate the time frames. How does the pumping system work? If you have property with a well, what are you required to do to protect your water rights?

MR. TIBERTI:

Say you and a neighbor of yours purchase five acres of land in Las Vegas. With those five acres comes four acre-feet of water, which is part and parcel to the purchase of that land. You do not have a current use for those water rights, but you are holding it for a more viable economic time. If you do not pump that water for a period of five years, the State Engineer could come and confiscate those water rights. So, you and your partner develop a scheme to plant palm trees on your five acres to utilize the water in your well to maintain your water rights. It does not make sense down here in Las Vegas.

CHAIR LEE:

Is the water metered? How will somebody know whether you just flooded the ground and then turned the water off?

MR. WEAVER:

Yes, the well has a meter on it for the State Engineer or his agents to check on an annual basis.

SENATOR SETTELMAYER:

I appreciate the concept of the bill as I am a water right holder. Just for disclosure, when this comes to a vote, I will not be voting on the bill because I would be materially affected. I have a colleague who had a similar situation where he had to obtain sprinkler pipe, disk the field, plant it and turn on the pump just to retain his water rights. He spent a couple of thousand dollars just to preserve his water rights. The bill indicates a \$100 fee which may not be appropriate; if you are going to buy and retire water rights, how many decades will it take to buy one water right at \$100? How was the fee determined? Will

this also apply to the government? Since the counties seem to be the largest holders of water not utilized, do they have to worry about their water being forfeited? Will this law finally apply to the counties?

MR. WEAVER:

I am not in the water business. One utility company has it set up where it has the right to take the water rights back, so it wants to know how this law would affect the company. Also, the utility companies have rights, such as in Las Vegas where you can place your water rights with the utility company. That would only preserve water rights by skirting State laws. If we can show money going into a fund, and people can retire those water rights, it would help keep the basins in check. I am unsure about the \$100 fee and had initially proposed \$10, but agree it may be too low. If you see enough water right holders paying \$10 an acre-foot, the \$100 may only be for one section of ground, but I am unsure. We proposed \$10 an acre-foot, so if you had 50 acre-feet, you would pay \$500 a year to retain your water rights. It would keep you from wasting your water by trying to do what is required by the law.

JASON KING, P.E. (State Engineer, Division of Water Resources, Department of Conservation and Natural Resources):

I do want to let you know I have met with Mr. Weaver and Mr. Tiberti and have had a number of conference calls. Their motivation for this bill is genuine, and I appreciate what they are trying to accomplish. They are focusing on not using the water in order not to lose it. They are trying to bring a basin back into balance by using fees to retire water rights. Having said that, our Office cannot support this bill.

What we like about the bill is that it provides a process to reduce the amount of water rights in an overappropriated basin, which is a good thing. However, it allows water right holders in those critical management areas to pay a fee in order not to use their certificated groundwater rights. Just by paying the fee, an extension is approved and they do not have to use their water in order to keep it in good standing.

This complete departure is in direct contradiction to two fundamental tenets of our water law, use it or lose it and putting the water to beneficial use. Beneficial use will be the basic measure and the limit of the right to the use of the water. Although there is some good in this bill, there is simply not enough to overcome changing how we fundamentally manage groundwater in Nevada.

One of the questions asked is relative to the fee. The bill talks about a \$100 fee. Right now, if a water right holder has a certificated groundwater right and is not able to use the water for five consecutive years, it is subject to forfeiture. However, that water right holder has the ability to file for an extension of time for one year for \$100.

Page 3 of the bill in section 1, subsection 1 says, "Except as otherwise provided in section 2 of this act, for" Section 2, subsection 1 then requires our office to "adopt, by regulation, a sliding scale for the amount of the fee." You may have a critical management area within a basin and you may have a water right holder who has a certificated groundwater right that he or she is unable to use. Under this scenario, there would be a sliding scale fee.

The reason for a sliding scale is the senior water right holder in the basin should not pay the same amount of money for not using his water as a junior water right holder. A senior water right holder will tell us to just do our job and ask, "Why am I paying any of these fees?" If you had 1,000 acre-feet, a senior water right holder might pay \$10 an acre-foot or \$10,000 a year and a junior water right holder might pay \$50 or more. Take that money, put it in a pot and then use that money to retire water rights in that critical management area. Of course, I like the idea of bringing a basin back into balance, but to pay to not use your water is against Nevada's water laws and those of the Western States.

CHAIR LEE:

How many well owners do you think this might affect in Clark County?

MR. KING:

The way the bill is written, first the State Engineer's Office would have to designate a basin as a critical management area. The Las Vegas Valley artesian basin is a designated basin; we would have to designate that basin as a critical management area. If we do that in terms of certificated groundwater right holders, there may be 1,000 holders, but that does not mean they are not already using their water. Southern Nevada Water Authority, the district and other municipalities also have certificated water rights and are putting them to beneficial use year after year. How many actual water right holders might this impact? I do not have that information.

CHAIR LEE:

Per acre-foot, does the water right holder have to utilize the full amount of water each year? How do you justify it when someone forfeits water rights?

MR. KING:

That is an excellent question. There is a slight disconnect in our water law. The way the law is written, it provides for a forfeiture of all or a portion of water rights. It has been argued that if a person has ten acre-feet and uses four acre-feet, the other six acre-feet could be forfeited.

However, in *Town of Eureka v. State Engineer*, 108 Nev. 163, 826 P.2d 948 (1992), if a person used the majority of the water rights, it cures the forfeiture. That has been argued on the other side of this issue. We have gone after partial forfeitures, but it is problematic because of the *Eureka* case.

CHAIR LEE:

Can you answer Senator Settelmeyer's question about the municipalities?

MR. KING:

Yes, Senator Settelmeyer. It could certainly affect anyone who has a certificated groundwater right. It would affect everyone.

SENATOR SETTELMAYER:

With a county, it would not have to use it or lose it?

MR. KING:

No, that is not correct. Municipalities do get additional time to put their water to beneficial use. I believe a bill is proposed to add additional time to put the water to beneficial use.

VAHID BEHMARAM (Water Rights Manager, Department of Water Resources, Washoe County):

We oppose the bill as proposed, but we could support it if it was amended. We favor the provision for generation of fees to retire water rights in the critical hydrobasins. We disagree with the method proposed to generate those fees. The proposed bill seems to want to sacrifice the State Engineer's ability to forfeit for this process of generating fees to retire water rights. We feel the State Engineer needs both tools. The State Engineer should retain his ability to

forfeit and at the same time utilize a method that can generate funds to retire water rights. They could both work toward the same end.

In response to Senator Settelmeyer's question, I represent Washoe County and have filed applications to prevent forfeiture of water rights. The County can lose water rights through forfeiture.

SENATOR SETTELMAYER:

The best thing about this bill is the concept of not requiring people to waste water in order to keep their water rights. The process of forfeiture is lengthy. How many forfeitures were processed last year?

MR. KING:

I do not have those numbers with me today, but I will get that information for you. I sign about four or five letters forfeiting water rights about once a month. The amounts can be anywhere from 1 acre-foot up to 100 acre-feet. The process is in basins primarily where the State Engineer's Office conducts inventories to see who is using the water. We are incumbent by the law to send a notice to water right holders who have four years of nonuse. The letter tells them that with four years of not using their water, after one more year, they will forfeit their water rights. The letter usually triggers a response of putting the water to beneficial use or the filing for an extension of time. We have not had a great deal of luck when we get appeals on those forfeitures; water right holders go to district court and, in many cases through equity, get their water rights back.

ANDY BELANGER (Manager, Management Services Division, Southern Nevada Water Authority):

We are neutral on S.B. 362. We understand the concerns that precipitated the introduction of the bill as well as the concerns of the State Engineer in opposing the bill. To provide a little insight from a southern Nevada prospective, we realized about 15 years ago that problems with overappropriation in the Las Vegas Basin were causing significant problems for well owners. As a result, the 1997 Legislature created the Las Vegas Valley Groundwater Management Program. What the program does is allow the local water users in that basin to find solutions to the problems of overdrafting and how to connect to a municipal water system.

The Legislature saw fit to provide a revenue stream to that committee. At the time, it was a \$10 voluntary fee. It was increased to \$30 in 1999. That fee paid for all of the things that S.B. 362 is trying to accomplish. Fewer acre-feet of groundwater are being pumped in the Las Vegas Valley now than in 1997 because it allowed people who wanted to get off their wells to connect to the municipal system.

As S.B. 362 is processed, there are opportunities to find ways to create local efforts to manage basins. People should have tools to determine whether the relinquishment of water rights is the way to proceed, or if there is a way to deal with forfeiture that is consistent with the principles of Nevada water law. We are willing to work with the parties to find a solution to this bill to ensure it is done in a way that respects the tradition and legal foundations of Nevada's water law and addresses the compelling concerns mentioned by Mr. Weaver and Mr. Tiberti in their testimony.

STEVE K. WALKER (Truckee Meadows Water Authority):

Truckee Meadows Water Authority is also neutral on the bill but has some concerns. There are two bills addressing critical management areas in Nevada, basically defined as areas where the pumped groundwater exceeds the perennial yield. That language is proposed but not in law. You have critical management areas where you are already pumping over the perennial yield. Under S.B. 362, you will have permits that will forestall pumping until that water can be put to beneficial use to build houses or grow garlic in a basin that is already overpumped. It seems to be inconsistent.

There was discussion by the bill sponsor that this should apply in other areas besides where you have overpumping of the perennial yield. I suspect that is in areas where you have permits exceeding the perennial yield but pumping that does not. I suggest there are more of those basins than critical management area basins. I recommend combining components—of which are basically under the general management plan required in a critical management area—Assembly Bill 419, the bill being sponsored by Assemblyman Pete Goicoechea, with S.B. 362. You would get away from a specific allocation of fees based on groundwater priorities because it speaks of favoritism.

[Assembly Bill 419](#): Revises the provisions relating to groundwater basins.
(BDR 48-299)

CHAIR LEE:

I am not sure I understood what you said. Could you please repeat it?

MR. WALKER:

In a basin that is a critical management area, you are already overpumping the water; that is why it is being managed. If you have a permit in that basin, you may want to forfeit the permit and not pump that water. It would not be beneficial to hold water for ten years before pumping it—if it is being pumped from a critical management area—because you are already overpumping.

CHAIR LEE:

You are saying it is a growth control. If they do not use the water right, they lose the water and that stops the growth, which in turn stops the overpumping of the groundwater in a critical area.

MR. WALKER:

I did not mention growth at all. What I talked about was pumping and reaching perennial yield. Where you are pumping water to the level to recharge that year, it is being completely pumped and overpumped. That is when growth would stop based on water resources, not on any economical issue. If you need to manage water resources, that is how the law says you have to manage it.

CHAIR LEE:

I appreciate the information as I am still learning about these issues.

MR. WEAVER:

One of my goals when I began this process was to provide the State Engineer with some options rather than taking someone's water rights away under State law. It would also give the certificated water right holder an option to sell that water right to the State. Currently, that is not an option and there is no money to buy them anyway.

For the boundaries we worked in Nebraska, water right users have several options. They can shut down their wells, and they are paid for it; they can sell their water rights back to the state as forced by the federal magistrate, and the dollars come from the natural resource district with a tax on the water users. A tax is not a good thing, but an optional fee helps the State Engineer purchase water rights and gives a certificated water right holder an option to use it or lose it under state law, pay the fee or sell it in an attempt to bring the basins

back in alignment. The noncritical basins would be allowed to stay in a good position. I would like to see it for the whole State, not just for the overallocated basins. In that way, we would not have any future basins become critical and have to be managed. It also provides funding for the State Engineer which allows more options.

MR. TIBERTI:

We do not have a problem merging the two bills as long as the new bill contains a provision where you can purchase a time frame to keep your water rights secure.

CHAIR LEE:

I want to make sure we control the price of water shares. I can see where you can become a willing buyer.

MR. KING:

Are you referring to people selling water rights back to the State?

CHAIR LEE:

Yes.

MR. KING:

We would be very opposed to that idea. We cannot get involved in marketing water. We have to maintain a distance. Otherwise, it would be a train wreck.

SENATOR SCHNEIDER:

Mr. Weaver was just about 15 miles away from where I grew up in western Nebraska. On my dad's farm, we pumped water to irrigate like crazy out of that Ogallala Aquifer, and we thought there was no end to it. Mr. Weaver indicated to this Committee that the aquifer went down and the lakes dried up, the rivers and creeks dried up, and this is basically the largest aquifer in the world. People in Nebraska pumped and pumped until Kansas finally had to sue Nebraska for water. That was the Republican River which ran through my hometown of McCook, Nebraska. Utah has already threatened Nevada, wanting to sue us because of what the Las Vegas Valley Water District plans to do around Ely. We must pay attention to this issue.

It is arid in western Nebraska—but not nearly as arid as in Nevada. It lives off the front range of the Rocky Mountains and the Ogallala Aquifer. We have to

remain conscious of what we are doing. I would be willing to work with Mr. Weaver, Mr. Tiberti and Assemblyman Goicoechea to put something together that makes sense and protects the water for generations to come. One of the people who testified this morning indicated we already have basins that are overused. Shame on us for letting that happen. Smith Valley and some of those areas will run out of water if they keep up the same pace. This is something I feel very strongly about for future generations.

MR. KING:

I want to thank those who proposed this bill and what they are trying to do through this process of providing us with another tool. We need as many tools as we can get. As you heard from other speakers, Senate Bill 362 has some overlap with A.B. 419, and there is potential to find common ground.

CHAIR LEE:

I will close the hearing on S.B. 362 and open the hearing on Senate Bill 325.

SENATE BILL 325: Creates the Office of Inspector General in the Department of Administration. (BDR 18-1062)

SENATOR GREG BROWER (Washoe County Senatorial District No. 3):

I am here today with ex-Assemblywoman Heidi Gansert who is the Governor's Chief of Staff. We present S.B. 325, which would effectively create the first State Inspector General. This legislation follows Governor Brian Sandoval's announcement in his State of the State Address that he is committed to aggressively rooting out waste, fraud and abuse wherever it exists in our State government. The bill would create an Office of the Inspector General charged with auditing and investigating any and all offices and activities within the Executive Branch.

We all agree it is critical, especially in this difficult fiscal climate, that this Governor and any future Governor have all of the tools necessary to adequately audit and, when appropriate, investigate the operations of the Executive Branch with the goal of ensuring that Nevada taxpayers get their money's worth from State government in terms of efficiency, honesty and integrity. As you are all aware, our State government does have audit and investigative capabilities. However, the system is somewhat disjointed and not quite state of the art in terms of effectiveness and efficiency. This bill would create one central office, the Office of Inspector General (OIG), headed by the Inspector General (IG) who

would have the power and authority to initiate and conduct audits and investigations throughout the Executive Branch.

This is different from the current array of auditing and investigating bodies that we have now. In the Executive Branch, we have the Division of Internal Audits. This Executive Branch office does good work. We are all familiar with its work, but it is confined to audits only and it is not authorized or equipped to investigate allegations of fraud.

We also have the Legislative Counsel Bureau (LCB) Audit Division, and we all know LCB Audit does good work, but it also has no investigative authority.

The State Attorney General's Office (AG) clearly has investigative powers and is focused on criminal activity. Like any prosecutorial office, it has certain thresholds in terms of dollars lost which must be met in order for a case to be pursued. In other words, the AG's Office cannot pursue every case.

Finally, we have the Commission on Ethics which plays an important role, but its jurisdiction is narrow in scope and does not include classic government waste, fraud and abuse investigations.

Senate Bill 325 would not eliminate or in any way diminish the powers and authority of any of these other entities. Rather, the State OIG would complement the efforts of these other offices, working closely with the Office of the Attorney General on matters that might suggest criminal prosecution. Unlike the OIGs in other states, the OIG contemplated by this bill would not have any prosecutorial powers. The power to convene the grand jury and charge persons and entities with crimes would remain solely with the AG and the local district attorneys.

In summary, this bill would create a new independent office which would have the full array of audit and investigative powers to review the Executive Branch.

The concept of an Inspector General is actually an old European military tradition dating back to the seventeenth century. The idea was that the king could not trust his army field commanders to tell him accurately whether the troops were adequately equipped, trained and disciplined. Of course, no general would ever admit that they were not. The idea was to create an independent office and put another general, who was not commanding troops, to inspect the

overall troop readiness and report directly to the king. This concept was first adopted in the United States by General George Washington, who hired a Prussian military officer by the name of Major General Baron von Steuben, a name that is familiar to us from our high school history classes. General von Steuben served as the first Inspector General of the Continental Army.

The U.S. Congress decided its oversight powers were not sufficient to adequately oversee the operations of the Executive Branch, and it adopted the Inspector General Act of 1978. In so doing, it created IGs in the 13 cabinet-level departments. Over the years, the Inspector General Act has been expanded in the federal government to cover virtually every cabinet department and federal agency. Each agency has its own IG who is tasked with conducting all internal audits and investigations of the agency or department in which he or she is embedded.

Today, there are 70 federal OIGs, and 10 states have adopted the OIG model, performing similar functions aimed at increasing government efficiency. This is not a new concept in state government. The basic concept is that only a completely independent official—who is not beholden to any cabinet officer for his or her job or performance review—can adequately audit or investigate cabinet and subcabinet departments in state government.

For example, if the Governor were to pick up the phone and ask either the Director of the Department of Employment, Training and Rehabilitation or the Director of the Department of Motor Vehicles how things are going, the answer would be just great. But in the absence of an independent and efficient OIG, there is really no way for the Governor or the people of the State to know whether the operations of a particular government agency are going well, whether they are efficient and as efficient as they can be, and whether they are not involved in any sort of corrupt activity. An effective OIG would fill that void.

Finally, I have served as a federal agency IG, served as a senior management official in a federal agency and served as the United States Attorney, using OIG assets to facilitate investigations. Based upon these very different perspectives, having an independent IG is the only way to effectively combat waste, fraud and abuse within government. The fact is that OIGs, whether at the state or federal level, routinely return more money to the taxpayers than they cost. This is accomplished through recommended improvements, operations and controls,

which end up saving the government money, and through recovery of fines, penalties and forfeitures, which add to the government coffers.

Indiana created its OIG in 2005; by the end of 2008, the Indiana OIG reported total operating expenses for the fiscal year of 2005 through 2008 of \$4.6 million. They also reported over \$10 million in recommended savings and recoveries, more than paying for itself over that time period. The goal is to make government more transparent, more honest and more efficient. The passage of S.B. 325 and the creation of a strong independent OIG within our State government is a significant step toward that goal.

HEIDI GANSERT (Chief of Staff, Office of the Governor):

The Office of Inspector General would reside under the Department of Administration and within that, the budget. There is an internal audit position that could be transferred over; we want to begin with the Inspector General and one program analyst. The budget would be small, and the bill would require a budget amendment. Senator Brower discussed that this would help with transparency, good government and looking into fraud, waste and abuse.

Internal auditors can conduct audits, but they cannot investigate. When you look at LCB auditors, they are under the Legislative Commission and have limited parameters. It is important for us to reach further than they can go. The LCB auditors report back to the Legislative Commission. The only teeth they have is that the administration can withhold money from different agencies if they do not follow the recommendations of the Legislative auditors. In looking at the Commission on Ethics, it reviews ethics for public and mostly elected officials. The AG has a high threshold and is looking for criminal activity. This IG would be much more nimble and could look for waste, fraud and abuse aggressively when the Governor believes it needs to be addressed.

When the AG has an investigation, the information is confidential, so it may not ever reach the Governor. This IG is important as we are looking to make government better in Nevada. The office would be directly under the Governor, so he would have the authority to promote or cause investigations which would be critical as we move forward. I would appreciate your support on this bill.

CHAIR LEE:

This seems like we are growing government. In the accounting world, there are peer reviews where accountants look at other accountants' work. Another accountant will review your work to make sure you are doing things correctly. Why do we have to have a position to oversee these agencies? Why not create a peer review process where the directors review each other's agency? It does not make sense to have this one person who then becomes the next J. Edgar Hoover of the State.

SENATOR BROWER:

The idea is that only a truly independent person—who does not work for anyone or report to the director of an agency—can effectively, independently and openly investigate an audit without any constraints whatsoever. That is the model that Congress adopted at the federal level some 30 years ago. It works pretty well.

Your typical cabinet secretary does not like that an OIG exists and that he or she has to deal with it, but it is the only way that Congress and the taxpayers can be sure that the operations of a government department or agency really are free from inefficiencies, waste, fraud and abuse. The concern is always there that the IG may get a little carried away, but in the absence of an effective OIG, there is no adequate oversight.

MS. GANSERT:

Our audit divisions are really focusing on accounting methods, administrative controls and financial management. This will go into investigating fraud, waste and abuse so they can go further than just looking at the books. They can look to see if there are patterns and check response times. Say there was Medicaid fraud and we know there is an issue, the AG would investigate for criminal activity, but it would be a long process, whereas an Inspector General could get in immediately and address the issue to ensure it is managed. They both have different thresholds; it is that investigation piece that we do not have in the audit division.

CHAIR LEE:

Could we give you a person with that authority in the LCB Audit Division without setting up a new office?

MS. GANSERT:

This person would probably be in the Audit Division right now but without the investigation part. Historically, some of the OIG offices in the different states have reaped great benefits. It has really made a difference. One of the examples was the Central Artery/Tunnel Project—Big Dig—in Boston. The resulting settlement for the state was about \$458 million because of contract rigging and oversight problems. The upside of this bill is great versus the cost to Nevada. This gives the Governor more authority, and the IG can look beyond the books and financial management.

SENATOR BROWER:

The OIG concept success with the federal government and states that have adopted it is with a central office in the form of a person, the OIG. Everybody in that department or anyone who does business with that department knows that is the office to file the complaint if there is an indicia of fraud, inefficiency or waste. Inherent in any OIG operation is a user-friendly hotline system where anonymous phone calls or e-mails can be submitted on a tip line. Appearances do matter. The idea is to benefit the State by having a known central office as the place to go if you suspect waste, fraud or abuse. Those complaints would actually be recorded and worked.

CHAIR LEE:

You see this as a staff of one—one man, one woman, no staff?

MS. GANSERT:

We are looking for the IG and a program analyst, so one additional person helps the IG and would work closely with internal audits, the AG's Office and other audit divisions. We already have some funding for the IG position.

CHAIR LEE:

This person—who must be good at investigations with an understanding of law enforcement, fraud and waste—might be an accountant.

SENATOR HARDY:

Returning to earlier discussions in this Committee, we heard we lost \$15 million in matching funds. Has anyone been looking at waste, fraud, abuse and loss? Through unintended consequences, we sometimes lose money from the federal side. Has that been addressed?

SENATOR BROWER:

I do not think the issue brought up in the previous bill presentation is being looked into. It is fair to say that our State has not maximized its take in terms of grant money and other monies that could come our way through more efficient operations of grant writing and such. We would be naïve to think there is not a fair amount of fraud going on in this State with regard to Medicaid eligibility or other programs. Other states have aggressively looked into these issues, and the results have been significant. Part of the idea would be to eventually create a robust auditing and investigative function to bring money to the State and prevent money from leaving the State coffers. That track record of the OIG at the federal and state levels is what we hope to accomplish with this bill.

SENATOR HARDY:

Your concept of having an accessible clearing house, a phone number or e-mail address, could be more broad than the waste, fraud and abuse. If a person sees something that would save the State money, acquire money for the State or allow the State to use money more effectively and efficiently, is that where you are going? Seeing your answer to that, I concur.

I question section 4, subsection 2. As I understand it, the IG reports to the Governor, but then line 30 talks about "without limitation." Line 32 says "termination of employment or referral to the Commission on Ethics or the Attorney General when appropriate." When is it appropriate that the IG then tells the Governor and the Commission on Ethics and Attorney General? Has that been worked out in other states? What are you looking at in the ability for the IG to tell somebody else?

SENATOR BROWER:

On the audit side, it is pretty simple. The IG would make recommendations to the Governor or the agency head, who may be the target of the audit, about how the operation could be improved. On the investigative side, in the federal context, when the OIG suspects wrongdoing, even criminal wrongdoing, a referral is made to the U.S. Attorney's Office. In this context, it would be a referral to the AG's Office. The AG, just like every U.S. Attorney, cannot take every case, even with evidence of criminal wrongdoing. If the case is accepted, the OIG would work closely with the AG in continuing the investigation and then prosecuting the case. If for whatever reason the case cannot be accepted, the AG would decline prosecution, freeing up the OIG to pursue an

administrative investigation. Rather than an indictment and criminal charges, the case could result in termination of employment or some lesser sanction.

SENATOR HARDY:

As I read the language, the IG could report to the Governor, section 4, subsection 2, line 29, "and"—add after "including," followed by "without limitation" on line 30—the Commission on Ethics or the Attorney General as on page 2, lines 32 and 33. The IG would be a watchdog not just for the agency but for any Governor who may be a little reticent to report his own agency.

SENATOR BROWER:

Exactly. You used the term watchdog, and that is a common term used in this context. That is exactly what the IG would be when performing his duties. He would be a watchdog over the Executive Branch. Let me reemphasize, the OIG would not in any way detract from the functions of the Attorney General, the Commission on Ethics or any other existing office conducting audits or investigations. This simply adds to the mix and puts all of the Executive Branch audit and investigative functions under one roof. The OIG cannot function effectively without working closely with the State Attorney General's Office. That would be contemplated if this bill were to become law.

SENATOR SCHNEIDER:

Nevada has the fewest State employees per capita compared to most other states, and that is our State agencies. We are a small State. There is waste in every organization. The MGM Mirage has a lot of waste, but it is not cost-effective to follow some of it. How cost effective is this proposal? Are we setting up another agency, spending a lot of money and chasing pennies? Waste, fraud and abuse sound like a good idea, but we do not have a project like there was in Boston. We do not have those big projects here because we are pretty small. I recall when Mike O'Callaghan was Governor, he would call department chiefs at 3 a.m. when something came to mind. If you got a call at 3 a.m., waste, fraud and abuse came right to the forefront. When the chiefs got the call at 3 a.m., they shaped up.

MS. GANSERT:

Expenditures would be minimal because we have an audit position for the Inspector General and we only need a program analyst. We do not have investigative ability. When the AG's Office investigates, it is looking for criminal

activity and has to prove beyond a reasonable doubt there is a problem in order to file charges. This language would allow us to handle issues more quickly.

Another example would be Medicaid. There is probably fraud in the Medicaid program, not just waste, fraud. We do not have a way to address it as quickly as we would like. The OIG is another tool for the State to save incredible amounts of money. We know of excesses, and the Legislature has been working with the Governor on that issue. This bill is really about fraud and abuse and having an investigative tool to respond immediately once an issue is identified. As Senator Hardy mentioned, section 4, subsection 3 talks about receiving, reviewing and investigating any complaint submitted to the Inspector General concerning any fraud, waste, abuse or corruption. We will have a way for people to get the information to us in order to respond appropriately.

SENATOR SCHNEIDER:
Would this also be over the local governments?

MS. GANSERT:
No. This is just about our State government.

SENATOR BROWER:
There are some states in which local jurisdictions like counties do have their own IGs, but this bill does not contemplate that. This is only at the State level. Senator Schneider asked a good question. I am here sponsoring a proposed piece of Legislation that emanates from the Governor's plan to root out waste, fraud and abuse. I am also here as a Senator and am mindful of the separation of powers and that we are an independent branch. We do have our own LCB audit operation. How would the State taxpayers benefit from an Executive Branch IG? I have come to the conclusion this solves a missing link.

There is a loop that is not quite closed with respect to our State's ability to audit and investigate ourselves adequately. Senator Schneider, if we were proposing a 25-person office with a fiscal note in the millions, that would be hard to swallow. That is not the proposal. This bill proposes creating the office, letting it get up and running and—if the track record of any other OIG is any indication—paying for itself and growing in accordance with the Legislature's approval of its growth given a track record of effectively bringing money into the State coffers.

CHAIR LEE:

Committee, there is a fiscal effect on the State of \$432,826; if we pass the bill, we will have to refer it to Senate Committee on Finance. The bill will be exempt, so it will not fall under the April 15 deadline.

SENATOR SETTELMAYER:

Can you provide us with data from the other states if they had a failure? Maybe the office did not provide a better gain than the cost of operating the office. I look at this as what we encountered last Session with the individual who provided pay raises across the board in the Agency for Nuclear Projects. Such an entity, as proposed in S.B. 325, may be able to root out this problem before it becomes a black eye. Could you comment on that?

SENATOR BROWER:

There have been other examples in our State government in the past few years where an effective OIG could have saved the State money by exposing things that could have led to more serious consequences for those involved.

With respect to other states not succeeding, we will look into it, but I am not aware of one at this time. For the most part, any OIG worth its salt is doing its job, adequately funded and staffed, and bringing enough money in to justify its existence in terms of cost savings, actual fines and forfeitures.

JOHN WAGNER (Independent American Party):

Our party does not really like increasing employees, but we feel this increase of two employees would be cost-effective. We support the bill.

JANINE HANSEN (President, Nevada Eagle Forum):

The way to get something done is to have someone in charge. When we expect somebody else to do it or some committee to function, it usually does not work as well as having an individual whose responsibility is to look at this. We all have concerns about any increase to the budget, but we also have great concern about fraud, waste and abuse. There is a lot of talk that we should be doing something about this, but unless somebody is in charge, nothing is going to happen. We support the bill and the Governor in his effort.

We do not know how it will all play out in the end, but the experience in other states and the federal government would show us that it has worked. Therefore, we would anticipate it would work in Nevada. All of us are a little

more careful about how we do things when we know someone is watching. That is a good healthy way to notify government that someone is watching.

Sometimes, people come to me and say this happened and that happened in government, but now I could say you can contact the Inspector General and talk to him about your concerns. I would not have any idea about where to refer this kind of complaint. This will provide a place for people to take their concerns. Oftentimes, these people are actually government employees or people who have dealt with government. That central location might help in organizing and reviewing. I appreciated the previous testimony which answered questions I had about the bill. We do support the bill.

BRUCE ARKELL (Nevada Senior Advocates):

We have been proposing this kind of a function for some time. We were looking at it to be housed within the Department of Health and Human Services, but it certainly works at a higher level or at least a broader level. Our work with many providers in the Medicaid program brought this to our attention. We are finding that the agency administering the program also performs the audit and brings the action on fraud, waste or abuse. People do not have an appeal process.

I have examples where providers were told they had a problem. After trying to fix the problem, they get into negotiations with the Department. They are negotiating with the Attorney General's Office and the division administrator who says we can pull your contract if you do not like what we do. There is no appeal process for these providers. By in large, they will settle.

Our system says we will let you do a corrective plan of action, but if that does not work, we jump to fraud. There is no middle ground. The Inspector General will allow people to work these things out. You will see more and more of this with the Medicaid program. Nationally, Medicaid is going to come out with contract auditors who will only get paid when they find problems. The State will do the same thing, and there needs to be some oversight in place. There are problems in those programs. There are problems with providers. Right now, there is no place for anybody to go with a complaint or a concern that this went too far or did not go far enough.

If people are guilty of fraud, they go to jail, and they should. Most of what we are finding are things like waste or people misunderstanding regulations. They

may have also needed training, but there is no way for that to occur. I think this will happen with the Inspector General functions.

KEITH MUNRO (First Assistant Attorney General and Legislative Liaison, Office of the Attorney General):

This is a well-intended bill to eliminate any fraud, waste or abuse. We commend the Governor for that, but our primary concerns are really with the drafting. We think it was drafted in a way the sponsors did not intend. Section 4, subsection 3 talks about the IG investigating fraud, waste, abuse or corruption—that is what the Attorney General's Office does, and we are doing a pretty good job. I did exchange e-mails with Chief of Staff Heidi Gansert and want to work with her on the language in the bill.

I am not aware of any threshold dollar amount for criminal cases, but I will check on it. In regard to the Medicaid program, we have both civil and criminal enforcement authority. When you start talking about law enforcement, usually this body and most legislative bodies have created requirements for necessary training, qualifications and certifications; I get a little nervous when you start talking about someone with law enforcement capabilities. If you look at section 3, subsection 2, "The Inspector General is in the unclassified service of the State and serves at the pleasure of the Governor." This position has no qualifications and no certifications. That is a lot of authority to have no criteria for serving in the IG position. That may just be drafting in general.

Section 5 talks about requiring employees and individuals to cooperate. When you have civil and criminal aspects together, mixing them and compelling people to provide evidence and testimony is inherently dangerous. Normally, we have drawn boundaries and divisions of labor of civil investigations and criminal investigations. That language is a little troublesome for me and most who are involved in law enforcement. When you have an employee who is compelled to cooperate, he may be providing evidence against himself, and that is not allowed. I do not believe that was the intent of Senator Brower. We will work with Senator Brower and Ms. Gansert to make the language more effective in the operation.

CHAIR LEE:

The description of the Inspector General is based upon experiences, and you think fraud and corruption should be removed from the language.

MR. MUNRO:

I would like to hear more because when you have unclassified people with no qualifications investigating those things and conducting criminal investigations, that is troublesome. The drafting needs some clean-up.

SENATOR MANENDO:

Do you envision people from the public contacting the Inspector General to investigate suspected waste, fraud or abuse? At that point, they would call the AG's Office and say look what I found. What criteria would the callers have and when would they call your office? Would you have to look into the issue too? Is that what you are envisioning?

MR. MUNRO:

I am not sure what is intended here, but I would envision if somebody had evidence that a crime had occurred, the person would come to the AG's Office and fill out a criminal complaint. The person would have to say what was happening and provide evidence to support the claim. A trained investigator would be assigned to determine if a crime had occurred.

SENATOR MANENDO:

Is that what happens now?

MR. MUNRO:

Yes.

CHAIR LEE:

We heard that the Governor never gets those responses; is that true?

MR. MUNRO:

By law, while someone is being criminally investigated, the investigation is confidential. If someone was investigating you, Senator Lee, you would not want that information to be circulated. At the end of the investigation period, a Nevada Supreme Court case—*Donrey of Nevada, Inc. v. Bradshaw*, 106 Nev. 630, 798 P.2d 144 (1990)—says that when those criminal investigations are closed, they are presumptively public record unless there is a compelling reason for something within the investigations to be confidential.

SENATOR HARDY:

If we create a watchdog position that ends up as effective as proposed, if a member of the public calls to complain about an incident, I do not see anything in the language that would allow the IG to pick up the phone and talk with the appropriate county or other agency that may be a pertinent part of the State. I would be more comfortable with language allowing the IG to warn somebody that it may not be the State agency but some other agency in the State. Is that language already in statute somewhere or allowed?

MR. MUNRO:

It would not be disallowed. If you are aware of something going on in an agency, nothing should prevent a member of the public, government or legislative staff from calling an agency director to say, "Hey, I hear something is going on in the XYZ Division."

SENATOR SCHNEIDER:

As I recall from another Committee, Charles Duarte, Administrator over Medicaid Services, has an investigation on Medicaid underway with 25 people working on fraud. Are you aware of that, Senator Brower? If he has increased from 4 people to 25 people to work on Medicaid fraud, how will your one person accomplish what he is doing with his 25 people when that is all they do?

SENATOR BROWER:

I am aware of the activity within Mr. Duarte's agency, but I cannot tell you I am aware of the details or how they are coordinating with the AG's Office or with the Governor's Office. I do not know.

CHAIR LEE:

I will close the hearing on S.B. 325 and open the hearing on Senate Bill 296.

SENATE BILL 296: Creates the Pooled Fiscal Emergency Fund to assist in providing financial stability for certain counties. (BDR 31-1078)

SENATOR MIKE MCGINNESS (Central Nevada Senatorial District):

This bill came about as an idea from a constituent, so it is an idea in progress. Basically it creates the Pooled Fiscal Emergency Fund and the County Fiscal Emergency Board. Section 2 contains the definition of both the "Board" and the "Fund." Section 3 shows the creation of the trust fund administered by the State Treasurer who may invest the money and assess reasonable charges

against the fund for administrative purposes. Section 4 creates the board and provides details of how the board is constituted and when the members should meet. Section 5 provides information about how a county may apply to the board for funding if it is available.

I have had some people indicate concerns with the bill, and I can understand that since it is a new idea. This would only be permissive, and the 15 counties involved may choose to participate. There is neither a mandate nor assessments. I was looking at the economy and county budgets with the idea to give counties a "credit union." If this is established, the counties may be able to help themselves out of some serious situations.

RUSTY MCALLISTER (President, Professional Fire Fighters of Nevada):

I signed in as neutral on this bill because I had some questions similar to what Senator McGinness indicated. Provisions are already allowed in statute for any local governmental entity, counties, cities or otherwise to set up revenue stabilization funds to stabilize the operations of their governments in the event of a fiscal emergency, but there are pretty stringent requirements about how it is done. The local governments or entities must determine how much they are going to place in the fund at the first of the year and there is a limit on how much of their budget can be placed into the fund. Once they commit to placing money in the fund, they must follow through. They do not have the ability to say they will appropriate money for the fund and then not do it. This bill does not establish a limitation on how much money, a time frame when they must state what will be put into the fund or a mandate that they will place money in the fund. The bill does not give a definition of fiscal emergency. In my limited access to local governments, what one agency determines to be a fiscal emergency may not be the same in another agency. I do not know if we have ever come up with a clear definition of a fiscal emergency. These would be my concerns as a way to stick money away when there may be priorities within the local governments that they choose not to address at the time.

CHAIR LEE:

You said I do not want local governments putting money in this fund that affects negotiations with employees or things they should be doing by the money being in the fund. They could tell you they could not complete projects.

MR. MCALLISTER:

Yes, that is correct. Bills have been introduced since the early 1990s regarding amounts of revenue they can tuck away. I am not saying they should not have revenue stabilization funds, but local entities have tried to change the law because the rules for revenue stabilization funds are stringent in how you take money back out of the fund. They were trying to make it easier to get money back out of the fund when things were better; if they had already dealt with their employee groups, they could pull the money out of the fund with less stringent standards. The bill was defeated last Session. There is a reason it is difficult to put money in the fund and get it back out again. It is to discourage local governmental entities from taking the money out of the fund. Nothing precludes them from putting money aside already.

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

We appreciate the sponsor's efforts to establish a mechanism for counties to deal with budget shortfalls. However, we do have some concerns with the bill. Currently, the counties do not have any money to invest in such a fund. Secondly, the fund is being created in the State General Fund; therefore, it would be subject to being swept, such as the Indigent Accident Fund that the counties established 20 years ago as a safety net for the medically indigent. Third, we also have a concern with the term fiscal emergency. We want to ensure if a county did participate in this fund and applied to receive a loan or grant from the fund that the application and determination does not trigger oversight by the Department of Taxation under *Nevada Revised Statute* (NRS) 354.685.

CHAIR LEE:

In this scenario, if Storey County needed additional funds, this would be a pool where they could quickly grab money. Have you ever seen an instance where counties have needed to help each other, maybe with shared boundaries. We have the money but you do not. How can we solve this problem with this road at our county line? Have you seen anything like that?

MR. HENDERSON:

Counties have interlocal agreements now to help share the burden of providing a service. As to the examples you provided, I am not aware of a county providing money to another county.

CHAIR LEE:

In this scenario, we would see one county indebted to another county. If the first county took this money out, it would be charged interest. I will close the hearing on S.B. 296 and open the hearing on Senate Bill 398.

SENATE BILL 398: Authorizes certain persons to request that personal information contained in certain public records be kept confidential.
(BDR 20-1149)

CHAIR LEE:

This bill came to me out of Clark County and will be presented by Kevin Carey in Las Vegas. He asked to have a bill to discuss something he thought was important to his organization.

KEVIN CAREY (Second Vice President, Nevada Association of Code Enforcement): Nevada Association of Code Enforcement (NACE) is a professional organization of code enforcement officers throughout Nevada. We have members in five counties who cover five municipalities in our State. Our goal is to offer training, education and networking among our different agencies throughout the State. As public employees, code enforcement officers serve the public every day. Most of the time, that interaction with the public is professionally courteous; however, it can occasionally be confrontational. We as code enforcement officers are tasked with enforcing codes dealing with everything from building codes to overgrown weeds in yards. Sometimes, citizens do feel we infringe on their private property rights. When this interaction turns confrontational, we are trained to simply walk away and let cooler heads prevail. It solves the problem 99 percent of the time. There is that 1 percent that can bring harm to code enforcement officers or their families.

In anticipation for the hearing, NACE asked our members to e-mail accounts of interactions with the public in which they either felt threatened or had citizens track them to their homes. I did provide those e-mails ([Exhibit C](#)) to the Committee and would like to briefly highlight some of those stories. The first e-mail, [Exhibit C](#), page 2, is from Officer Tom Martens, a nine-year veteran with the City of North Las Vegas code enforcement. In the second paragraph, he cites one situation when he was on a property and the owner asked him how he would like it if he dug up all of his information and showed up at his house to visit him. The officer asked him why he would do that, and the owner stated so the officer would know how it felt. The officer asked how he thought he might

get his home address; the citizen responded, the same way he did, by using county records. Thankfully, nothing came from this threat, but it does highlight how easy it is to obtain an officer's home address.

The next e-mail, [Exhibit C](#), page 3, is from Paul Easton, a code enforcement officer with Clark County. Mr. Easton has a current case open against a citizen. That citizen made a threat of visiting him at home and actually showed up at his house. The gentleman's vehicle was viewed by the officer on his street. During the next interaction with the citizen, Mr. Easton asked him if he had found his home address. The citizen acknowledged he did, so the information was forwarded to the District Attorney for investigation and the case is ongoing.

I did include other e-mails from officers and would ask you to review their stories. In hearing information on an extreme case, [Exhibit C](#), page 7, please excuse the language in this story as it is a little harsh. This is a story about Cynthia Volpe, who was an environmental health inspector in Bakersfield, California. Government employees should be treated like street whores, screamed Robert Lezelle Courtney as he beat 38-year-old Cynthia Volpe to a pulp. Courtney, a 47-year-old millionaire and low-rent landlord, was enraged because Environmental Health Inspector Volpe had just declared one of his units in Bakersfield uninhabitable.

As Volpe turned to get into her car, Courtney grabbed her hair, twisted her neck, slammed her against the car, and yanked her to the ground. "You ruin people's lives," Courtney screamed at her as she lay flat on her back trying to ward off his kicks and punches, "and I'm going to ruin yours." Volpe absorbed his blows for five minutes. Finally, knowing she could not win against his 230 pounds, she faked unconsciousness. Courtney left her on the payment, her nose broken, her eyes swollen shut and her face a bloody pulp.

Two months later, Volpe took Courtney to court, charging him with assault with a deadly weapon and assault with great bodily injury. She was suing for \$3 million. Courtney pleaded innocent. The court set him free on bail of \$7,500. A spirited defense by Courtney's lawyer charging that Volpe, not Courtney, had started the fight deadlocked the jury. They would have to return to court the next day to resume deliberations. Before court resumed, however, Courtney's guilt or innocence would be a moot point.

At dawn the next morning, a sheriff's dispatcher received a desperate 911 call from Cynthia Volpe. She said a man was inside her house shooting a gun and to please hurry.

Before deputies arrived, Courtney had fatally shot Cynthia's husband, Kenneth Volpe, and her mother, Betty Reed. As Cynthia herself tried to crawl under the bed to hide, Courtney shot her four times at point-blank range, killing her. Cynthia's children, Keith, 14, and Andrea, 9, had barricaded themselves in their bedrooms. Courtney either bypassed them by accident or was in a hurry to escape.

This account shows an extreme case of stalking that happened to a code enforcement officer in California. Our membership understands that in today's world of Google searches, this bill will not stop the overzealous stalker. However, we do feel it will slow them down. Senate Bill 398 would add a layer of protection for code enforcement officers by allowing them to change their property records to anonymous status. Nevada law allows this for members of law enforcement, justices, judges, their spouses and their children. We are simply asking for the same protection.

MR. MCALLISTER:

We would support this bill, but I question section 1, subsection 2, paragraph (a), subparagraph (2), "Any county officer or employee whose primary duties include the enforcement of a fire code or regulations" That does not include a city employee. Subparagraph (4) talks about any city officer or employee and then talks about safety codes but does not talk about fire safety codes. I do not know if that includes fire prevention officers from a city government or if there are only protections here for a county officer.

CHAIR LEE:

We will have you get with the sponsor to answer those questions.

MR. MCALLISTER:

I have been asked by many of the members I represent why firefighters have not been included with peace officers. While the public considers firefighters to be the first line in the homeland security defenses, why are we not included in the bill to have our records kept private?

We work for 24, 48, 72 hours at a time. If a criminal knows you are a firefighter who may be gone for at least 24 hours at a time, he knows your house will either be empty or have your wife and children there while you are gone for an extended period of time. It would not be hard to go to the assessor's office, find out where people live and know when they are gone for 24 to 48 hours at a time. It is not hard to watch the pattern of when you will be at work or when you are home and show up at your house. I would ask to have firefighters included in the bill.

BARRY SMITH (Executive Director, Nevada Press Association, Inc.):

I certainly sympathize with the harassment, danger and so on, but I am in opposition of this bill. It is simply an expansion of an exception of the open records law. Exceptions in the law create a class for government employees to keep their records secret from the public they represent. I understand the reason behind it, but now we want to expand just a few categories to a broad range of people in these definitions who would like to keep their records private. Perhaps the firefighters and others would like to be included.

DAVE DAWLEY (Carson City Assessor):

As the Assessor, I am neutral on this bill. We are concerned that the proposed language does not reference any kind of court order. Relative to public safety, it is a concern these employees are required to go before a judge and obtain court orders to keep this information off the roll. There is no mention of that requirement in the bill, so we question how it would be processed. Would someone need to come in to request it or how will that work? As a taxpayer, I oppose this bill because government needs to be transparent. What are you doing by taking this information off the roll? Are you creating the potential for corruption? We have some great assessors in this State right now, but what about the future? What if I try to get a building permit and am denied, but I tell the building inspector I will work with him a little on the assessment in order to get the permit.

The other issue is the fact that when you talk about county records, you only reference the assessor's office. What about the recorder's office? All of the recorder's information is open and public record. You would only have to go to the office and provide a person's name to obtain this information.

Another concern is with the available Websites. One in particular is called <<http://www.spokeo.com>> where you can find addresses, marital status,

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income and hobbies. I can guarantee that the assessors' offices do not maintain this information. I do not care about people's hobbies. I do not have that information on my rolls. This bill will not provide what the proponents think.

CHAIR LEE:

Ms. Chlarson, you had a response for Mr. Smith.

HEIDI CHLARSON (COUNSEL):

Nevada Revised Statute 250.160 sets limited exception to the confidentiality of this information. That section states that the county assessor may provide confidential information to a variety of people, including a reporter, an editorial employee of a newspaper, law enforcement, another governmental agency or the courts.

CHAIR LEE:

I will close the hearing on S.B. 398 and bring the bill back during a work session. The meeting of the Senate Committee on Government Affairs is adjourned at 10:31 a.m.

RESPECTFULLY SUBMITTED:

Martha Barnes,
Committee Secretary

APPROVED BY:

Senator John J. Lee, Chair

DATE: _____

<u>EXHIBITS</u>			
Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
S.B. 398	C	Nevada Code Enforcement Officers	E-mail testimonies