

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

**Seventy-Seventh Session
March 6, 2013**

The Committee on Government Affairs was called to order by Chairwoman Teresa Benitez-Thompson at 8:05 a.m. on Wednesday, March 6, 2013, in Room 3143 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at nelis.leg.state.nv.us/77th2013. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblywoman Teresa Benitez-Thompson, Chairwoman
Assemblywoman Dina Neal, Vice Chairwoman
Assemblyman Elliot T. Anderson
Assemblywoman Irene Bustamante Adams
Assemblyman Skip Daly
Assemblyman John Ellison
Assemblyman James W. Healey
Assemblyman Pete Livermore
Assemblyman Harvey J. Munford
Assemblywoman Peggy Pierce
Assemblyman Lynn D. Stewart
Assemblywoman Heidi Swank
Assemblywoman Melissa Woodbury

COMMITTEE MEMBERS ABSENT:

Assemblyman James Oscarson, (excused)

GUEST LEGISLATORS PRESENT:

Assemblyman Richard Carrillo, Clark County Assembly District No. 18

Minutes ID: 433



STAFF MEMBERS PRESENT:

Jennifer Ruedy, Committee Policy Analyst
Jim Penrose, Committee Counsel
Jennifer Dalton, Committee Secretary
Cheryl Williams, Committee Assistant

OTHERS PRESENT:

Phillip Gervasi, Private Citizen, Las Vegas
Charlene Frost, representing Look Out Kids About
Danny Thompson, representing Nevada State AFL-CIO
Ron Cuzze, representing Nevada State Law Enforcement Officers' Association
Anthony Bandiero, representing Nevada State Law Enforcement Officers' Association
Robert Conway, representing Ironworkers Local 433
Frank Peterson, Private Citizen, Las Vegas
Gina Greison, Private Citizen, Las Vegas
Brian Daw, representing Clark County School District
Robert Roshak, representing Nevada Sheriffs' and Chiefs' Association
Ronald P. Dreher, representing Peace Officers Research Association of Nevada
A.J. Delap, representing Las Vegas Metropolitan Police Department
Gus Nuñez, P.E., Administrator, State Public Works Division, Department of Administration
John Terry, P.E., Assistant Director Engineering, Chief Engineer, Department of Transportation

Chairwoman Benitez-Thompson:

[Roll was taken. Protocol was explained.] Today we will be hearing Assembly Bill 103. Before we begin, I want to announce that I am appointing a subcommittee on Assembly Bill 169. I am appointing Assemblywoman Neal to chair that committee. I am appointing the following persons to sit on that committee: Assemblyman Stewart, Assemblywoman Bustamante Adams, Assemblywoman Woodbury, and Assemblyman Daly. That will be the committee of five, and they will be meeting here in room 3143 on Friday, March 8, 2013 at 9 a.m., so we welcome anyone who would like to attend and participate.

I will open the hearing on A.B.103.

**Assembly Bill 103: Revises provisions relating to school police officers.
(BDR 23-152)**

Assemblyman Richard Carrillo, Clark County Assembly District No. 18:

As a father who has raised his child in Nevada, and as the grandfather of a child who will be entering the Clark County School District (CCSD) as a student in a few years, I thank you for the opportunity to present Assembly Bill 103. This bill is an effort to ensure the safety of our children while they are in school, on their way to and from school, and in areas where children congregate after school hours.

All of the 165 sworn officers in CCSD are Category I trained officers who are tasked with protecting and serving more than 309,000 students and 352 schools, in addition to other CCSD facilities. Assembly Bill 103 is meant to address the changing needs of our school district. School district police officers are primarily tasked with ensuring the safety and security of the schools and school property, and that will remain their main objective. However, given the fact that Clark County covers areas from Laughlin to Mesquite and all points in between, encompassing approximately 7,910 square miles, it is essential that our officers are able to respond in a timely manner to issues that may affect our children. It is also essential that our officers are able to serve our communities in areas where children congregate after school and that they are able to do continuous community policing, education, and diversion. This is not an issue of expanding jurisdiction. This is an issue of public safety and the safety and welfare of Nevada's children and clarification of *Nevada Revised Statutes*. School police in Clark County work with local, state, county, and federal agencies. The scope of the work is larger than most people realize.

Joining me from the Grant Sawyer State Office Building in Las Vegas to expand on some of what CCSD has done in the past and continues to do now are Phillip Gervasi and Charlene Frost. They will provide further testimony on A.B. 103.

Philip Gervasi, Private Citizen, Las Vegas:

I am a retired sergeant of the Clark County School District (CCSD) police and past president, for 17 continuous years, of the Police Officers' Association of the CCSD. [Continued to read from prepared statement ([Exhibit C](#)).]

Charlene Frost, representing Look Out Kids About

Look Out Kids About, a traffic safety coalition, is a nonprofit organization that has focused on providing safe routes to school, community outreach, and education about pedestrian and bicycle safety. We are also concerned about the general health and welfare of children across all settings. As we prepared

to bring Assembly Bill 103 before you, we were faced with many questions in regard to the bill. I would like to address some of those concerns, although Mr. Gervasi has already done a great job of that.

I wanted to point out, again, that Clark County School District (CCSD) police officers patrol 24 hours a day, seven days a week, covering those 7,910 square miles of Clark County. They have a detective bureau, a training bureau, and a communication bureau that consists of a fingerprint unit, a records unit, and a dispatch center. In 2008, the CCSD Police Department and Las Vegas Metropolitan Police Department (Metro) partnered with local, state, and federal law enforcement agencies to establish and operate the Southern Nevada Counter-Terrorism Center. This is a fully functioning police department with committed and well-trained officers. These officers are known to the children in the school, and they know our kids. As Assemblyman Carrillo stated, the intent is not to change that. We want our police officers in the school, but when our kids are not in school, we need to know the school police are out and about where our kids are as well. When our kids leave school, having more eyes on them can only help in preventing incidents of bullying, substance abuse, graffiti, and so on. This is truly about the safety of our kids. Look Out Kids About fully supports this bill.

Chairwoman Benitez-Thompson:

Are there any questions from the Committee for the bill sponsors or Mr. Gervasi or Ms. Frost?

Assemblywoman Neal:

I have a concern about the change in jurisdiction. In the argument that was presented, it was saying that we care about children in all settings, so I am trying to understand how this would work. Based on the caseload that you have currently in dealing with students, why would you take on more responsibility?

I also have an issue with transference, not providing notice, and not transferring the investigations, which was previously in the bill. I did not know you were equipped to handle those kinds of extensive investigations. I know there is a time delay in school investigations, so help me understand why we need those things in addition to trying to follow children around the city.

Philip Gervasi:

You ask why we would take on more responsibility. We already do most of these things as we patrol from school to school or from bus stop to bus stop. It is not about changing our jurisdiction or anything that we do; it is about changing from Category I, which we have already trained for. Category I is

different from Category II in that Category II is for investigative personnel, like gaming control, parole and probation, and those types of agencies. We are in marked patrol cars. When a person sees us drive by, and the vehicle has the word "police" on the side, they are calling for assistance because we are police. The extra training in Category I involves the training in the use of the patrol vehicle and how to operate safely on the streets. As far as investigations, we handle all those investigations up to the very last note. Then, because of the law in effect now, we hand them over. Metro said years ago that if we had a mutual agreement, we could just handle those crimes. Because, nobody has undertaken that mutual assistance agreement, we are stuck with the Category II classification. Category I is not going to change anything that we do or our jurisdiction. We do travel about the county because we have to get from property to property. We watch out for our kids. When I was a patrol sergeant working swing shift, I was surprised by the number of kids who snuck out of their houses and were riding around in a vehicle past curfew, or they were runaways. We were able to assist them and their parents in at least bringing some order to that situation.

Assemblywoman Neal:

Section 5 of the proposed bill removes NRS 391.275 concerning the jurisdiction of school police officers, so you would have unrestricted jurisdiction if we were to pass this bill. You stated that jurisdiction would not change. What I see frequently in my neighborhood is police cars driving around, checking schools, checking buildings on the weekend. To me, this bill means that if someone in my neighborhood has a problem, then Clark County School District police will be in the neighborhood arresting somebody. I have a problem with that.

Assemblyman Elliot Anderson:

I do not have a problem with most of this bill, but I am focusing on section 5 as well. Giving the school police a bit more authority to respond to the things they see by removing some of the requirements in section 4 of the bill is doable. However, we have been talking about school security a lot, for obvious reasons. Would we not want to keep school police focused on the schools? If we do section 5 and get rid of *Nevada Revised Statutes* 391.275, we may be creating a second Metro Police Department. I am not sure where the line would be between Metro and Clark County School District.

Assemblyman Carrillo:

I would like to refer this question to Mr. Danny Thompson.

Danny Thompson, representing Nevada State AFL-CIO:

There is a story that goes along with this. In the early 1980s, there were no school police in Nevada. I was in the Legislature, and I chaired this Committee.

Dr. Pepper, the superintendent of Clark County School District at that time, told me they were having all these problems in school, that they had security guards at the school, but there were still a number of problems. First, if a security guard engaged in a problem, he was acting as a private citizen or as an employee of the district. Either way, there were a number of liability questions that had the district on the hook from a legal standpoint. It was a turbulent time in America, and there was a lot of racial tension and fighting. Security guards were being beat up because the students knew they were just security guards. Dr. Pepper formed a task force of which I was a member and, at one of the meetings, I suggested making the security guards police officers. In the next legislative session, I shepherded a bill through the Legislature that made them police officers as a result of one culminating event in which a student came to Valley High School with a gun and killed a teacher. The security guard was there, but the teacher was killed in the classroom. We started the school police in the larger counties, and I cannot remember if that included Washoe County at that time. The idea was that they were police officers and acted as police officers.

If you do not remove the jurisdictional limitation, there are complications. For example, if I were a police officer driving from Rancho High School in North Las Vegas to Basic High School in Henderson, I might see a crime in progress as I was driving, but I would be outside of my jurisdiction. I would be driving a police car that is labeled as a police car. I would be carrying a gun and have a badge. People would expect me to stop and do something. If I did, however, I would be putting my personal property on the line and opening myself up to lawsuits because I would be outside of my jurisdiction. At the present time you are talking about raising taxes to hire more police officers, but there are all these cops driving around in cop cars that you are already paying for. I will tell you, the thing that irked me when I served here—and it irks me to this day—is that we have categories of police officers. That is the dumbest thing I have ever heard in my life. If a police officer has a badge and a gun and is driving a cop car, he is a cop. In Nevada, we have all these different categories. All that does is open that agency and specifically that person up to liability when they act. I am sure Mr. Gervasi can relate stories to you from his career as a patrol sergeant of cases when people drove past a crime and bad things happened. That does not make sense because you have school police, park rangers, and university police, many of whom are already Category I. We have bailiffs that are Category I. To me, if it looks like a duck, walks like a duck, and quacks like a duck, it is a duck. In this section of law, it is not, and all you are doing is hanging those people up. That is why, if you pass this bill, you need to remove that jurisdiction. They are a police department. In fact, there was a dispute between the Clark County School District in which I was subpoenaed to an arbitration to testify that it was the intent of the Legislature that they

should be a police department because that is what they are. I know of a lot of cases where things have happened that should not have happened because of this law.

Assemblyman Ellison:

What is the difference between a Category II and a Category I? They still go to Peace Officer Standards and Training (POST) at that point in time, do they not?

Danny Thompson:

They are Peace Officer Standards and Training-certified in a category, but I believe the difference is a very subtle one. I think it may involve traffic investigations. They are all POST-certified. If they are not, the difference between a Category I and a Category II can be handled through six weeks of training or something like that.

Assemblyman Ellison:

I will give an example. If I am going from point A to point B, and I see an officer being shot at, or I see a felony that is going to take place, as a conceal-and-carry-weapon (CCW) permit owner, I have the right to protect myself and those around me. Yet, you are saying that because of this category, the police cannot even do that when going from point A to point B. They should still have the rights of a private person, but if they are on duty, I can see where this could be very confusing. I still think we should have gone a bit further with teachers with CCWs, but I think this is a good way to go. You are not hiring extra police officers; you are only giving them the rights within their jurisdiction, so I do not have a problem with this.

Danny Thompson:

In a situation like that, the person can stop and act, but the reality is that person is out of their jurisdiction. A good lawyer will read this and say that the person was not in his jurisdiction. I am sure Mr. Gervasi could expand on that.

Philip Gervasi:

We did have situations over the years—and I was with the school district for 20 years, from 1992—where there were stops that were made off-campus because of situations that happened around the school. It was contested in court, and the court decided in the school district police's favor in an incident when our officers stopped the vehicle in the vicinity of Mountain Vista and Tropicana, by one of the high schools. It just so happened that the person in that vehicle had assault weapons and shotguns in the trunk of the vehicle. That arrest was facilitated and it was upheld by the court.

As far as the training goes concerning Category I and Category II, there is a slight difference. Category I is more in depth; the hours are longer, so they are given a complete training in everything that they have to do. The emphasis is also on vehicle stops and accident investigation. We do investigate accidents on school property or when a bus is involved. This is necessary that we be trained Category I. As I said before, we have been trained Category I since 1989. There will be no fiscal impact, and you will not be changing much of what happens today as the officers try to protect the citizens and students in and around schools and in their neighborhoods.

If you remember back a few years ago, a flash mob went into a store, destroyed that store, and caused many problems. School police were the ones that solved that case. We gave it to the other jurisdiction because it was rightfully theirs (Metro), but our officers watching TV identified all of the students who were involved in that. We are a full-fledged department, and we are dedicated to the community. Just because you might not be on the sidewalk of the school does not mean that we are not there to protect you.

Assemblyman Elliot Anderson:

I do not have issues with Category I and section 4, specifically. I think section 4 gets at Mr. Thompson's concerns that everyone have the ability to respond. Under existing law, even for category A felonies, which appear to be limited in terms of informing a primary law enforcement jurisdiction, it still says you can respond. Those provisions do not apply to anything other than a category A felony. I do not think existing law stops anyone from doing that. We have had CCSD school police doing traffic stops on U.S. Route 95. I do not understand how that relates to school police. I want to keep the school police on school grounds. In my district, we have an issue around Chaparral High School where we have kids who are sitting on people's lawns and leaving school during the day. I do not want to get the school police too far away from the campus because of those local concerns. Mr. Thompson, do you think it is a possibility to get rid of section 5?

Danny Thompson:

This is not my bill. I just know a little bit about it. To me, it does not make any sense. You have school police, and taxpayers are paying for the gas and the car. They are paying for the gun. The officer is driving down the freeway, somebody comes flying by who is endangering other citizens, and he enforces the law. At a time when we are considering passing a "more cops" initiative that will raise people's taxes to pay for more cops, the whole idea of categories of police officers makes no sense whatsoever. The city marshals are another example. They are exclusive to city property. That is crazy. They are spending the same money for gas, cars, guns, and training. That does not make any

sense when you have these people driving around. I know politically how all this happened because prior to the Metropolitan Police Department coming together, there was a City of Las Vegas Police Department and the Sheriff's Department. This whole idea of category of police officers makes no sense. If you are a police officer and you see a crime, you should be able to enforce the law of the state of Nevada because, at the end of the day, it does not matter if it is school district money—it is all taxpayer dollars. It does not matter who you are. In California, a cop is a cop. I do not care if you are a bus cop; you are a cop. These categories of police officers limit the number of people who can enforce the law. If you look at the different departments you have in southern Nevada, you have the park police, the school police, the city marshals, and all these different police officers that we are paying for. Yet, we restrict them when all you have to do is take them to Category I police officers and let them enforce the law. It does not make any sense to me.

Assemblyman Stewart:

I spent a lot of time on school grounds over my lifetime. I find many times kids plan things on school grounds and then take care of them after school, as far as fights, robbing stores, and things of that nature. We had a teacher that was killed before school on the east side of the valley a year or so ago, so I find myself agreeing almost wholeheartedly with Mr. Thompson. I think you are pretty much right on, Mr. Thompson.

Assemblyman Oscarson:

I concur with some of the comments of my colleague. I think I would much rather see those officers on campus providing the services that they are there to provide rather than on the expressway writing tickets. I know there are times when they have to travel back and forth to those areas, but everything I read about school district police indicates that their responsibility is on campuses and off-campus short areas where they patrol the streets and do those kinds of things. I think that is where they need to maintain their presence, especially in light of some of the things that are happening in schools today. So, I agree with my colleague that it needs to be looked at more closely.

Assemblywoman Bustamante Adams:

Mr. Thompson, would it be okay for me to notify Metro that we solved the "more cops" issue?

Danny Thompson:

That is up to you. The reality is this could be one solution to a problem that would solve several problems. I support the "more cops" initiative as well. There is no question that money is needed. I do not want to get into what we

talked about yesterday, but I think it is connected. This represents another solution that could be added to that.

Assemblyman Livermore:

I am concerned about who is in command. Is it the sheriff who is elected by the people? As long as everything goes fine, there is no blame to be placed, but when something goes wrong, there is blame to place. Who does the public speak toward? My colleagues spoke about the duties and responsibilities of school police. We talk about expanding that. One of the things floating around last session was about school police doing speed traps in conjunction with highway patrol. Is that going to be their responsibility to function and perform with the highway patrol? I am not sure, but it sends me back to asking who is in charge and who is in command?

Philip Gervasi:

Everyone is zeroing in on that task force. I thought I had explained it in my initial statement. When we do the task force, there are only three officers and a sergeant from the school district. All the other agencies put out about 15 officers. What happens is they come to our schools and put out about 23 to 35 officers, including our three officers and a sergeant, and they do school zone enforcement, crosswalk enforcement, and other things in areas of the schools. They do that for us. The only time that we do something with them on, say U.S. 95, is once a month when they request us to assist them and we send three officers and a sergeant. Instead of paying them for their services in the school zones, we are reciprocating so that there is no money out of the school district budget. It is once a month only; not every day. You have to realize, when that unfortunate incident happened when a child was run over by a school bus, we could have been stationed over there, but we were out of our jurisdiction because the school bus was not by a school. We might have prevented that death. Who knows? We are trained Category I, so it is not going to cost anything extra. I hope that explains it.

Assemblyman Livermore:

Thank you very much for your attempt to answer my question, but you failed to answer who is in charge. Is the Sheriff of Clark County in charge? Who is the chief in charge?

Philip Gervasi:

Each department has their own chief or sheriff. When we go as a task force, it is a group thing. One of the participants might be a lieutenant or a sergeant, and he is in charge for those six hours that we do that.

Assemblyman Oscarson:

Let me see if I understand you correctly. Once a month, officers are off-campus writing tickets on U.S. 95. Is that correct?

Philip Gervasi:

No, that is not correct. First, nobody would be taken off-campus. Our schools are our priority. That is what we do. We have a patrol force that goes from school to school during the day. There might be 20 or 30 cars out on the road where our areas are broken up. If we are asked to be part of that task force, we will join it. If we do not have the manpower that day because vacation or sickness lessens the people working that day, we will not do it. It is 6 hours once a month by request. Sometimes we are not asked to be part of it, but we are so thankful when they work our schools because it increases our presence and it makes the public more aware of being safe around schools.

Assemblyman Oscarson:

It would appear to me that the safety of students on school grounds is the responsibility of the jurisdictional folks there; for example, the Nye County Sheriff's Department helps take care of the Nye County schools. Metro helps take care of the Clark County schools, and so on. I appreciate the working together jurisdictional things that you are discussing, but, again, I have a concern. If those school police officers are not assigned to schools, then are they being paid overtime to work with this task force? What is going on that you have the extra budget to have them participating in that activity when we are saying we need more things for our schools from our police department? I am at a loss to understand how that is happening.

The other thing I am interested in is there are no fiscal notes for any of this. Is it going to change if they go to a Category I? Is there anything that is going to change as far as pay grades or additional costs to the school district, which is passed through to the taxpayers, when the schools are looking for additional funding as it is?

How does the school district police department feel about this? I recognize that you are a retired member of that organization, but is there somebody in the audience in Las Vegas or Carson City who could tell us how that entity feels about it?

Chairwoman Benitez-Thompson:

I will let Mr. Gervasi answer the first two questions, and then we do have someone signed in who I believe will be presenting comments that will address Assemblyman Oscarson's third question.

Philip Gervasi:

First, there is no overtime involved with the task force if we are involved in it. There is no overtime allowed; whichever patrol officer is available at that time, volunteers. We are giving up three officers and a sergeant. When they come and work the school district, they bring in 30 officers and maybe 3 sergeants, so we are benefitting.

There is no fiscal impact because we are trained Category I since 1989. In order to be hired by the Clark County School District Police Department, an applicant has to be Category I. We do not have any officers that are Category II. Quite a few of the officers that do sign on and become school police officers are retired from other departments. We have had former police chiefs, commanders, captains, lieutenants, sergeants, and officers from all over the country have come out here and chosen to move over to juvenile enforcement through the school district. Everything goes along with what we do. The school district is a small city. We have all the same crime that is out on the streets. If I happen to be passing by someone on the street that is in serious need of help, I am there to give that help. I took an oath to uphold the *United States Constitution* and all the laws of the State of Nevada. If I was in Washoe County, for example, and something happened and I was off duty, I would still take action. I have been a police officer for 43 years. I retired from New York Police Department and came over here. I would never let somebody suffer because of a jurisdiction issue.

Chairwoman Benitez-Thompson:

We are specifically talking about Clark County and Washoe County school police. What would be the process by which you determine the instances and activities in which you want to interface with traditional law enforcement? Is there a memorandum of understanding (MOU)? Is it discretionary on staffing every day and an internal management process?

Philip Gervasi:

We could do an MOU. The school district has chosen not to do an MOU, and that is all right. We realize that we work for the school district. This is an issue in which we are trying to allow law enforcement to do what is right without being penalized. We are not looking to be highway patrol, Metro, or any other agency. We just want to do what is right for the public. I feel that the officers' hands are tied to a certain extent when something goes down and we have to dial 911. We are there. Other law enforcement agencies respect us as an equal. We are in the Fusion Center. We work with task force. We have done many good things together, and we have done it on school property and around the schools.

Chairwoman Benitez-Thompson:

I am looking at section 4. If I understand correctly, under the status quo, you folks can handle the misdemeanors, gross misdemeanors, and any kind of felony except category A felony. What crimes are included under category A felonies?

Philip Gervasi:

Category A felonies include homicide, sexual assault, kidnapping, and those types of violent crimes. The only reason that it was changed in the beginning many years ago was because we were not what we are today. We have evolved into a full-fledged police department. We do not have forensics, and we are not looking to get forensics. We need them to do the crime scene analysis of these crimes—the homicides, sexual assaults, and kidnapping. When our officers get a call at dispatch, they go out, assess the situation, and get all the information they can. When we call the other police departments to the scene, they are taking our reports and continuing with the investigation. We are taking them out of their jurisdiction to do something that happened on school property.

Chairwoman Benitez-Thompson:

As a follow-up, I think that goes back to my question of if you do not have forensics capability for addressing some of these category A felonies, what type of process is set up to have that working relationship with the other law enforcement agencies. I know there is probably something in the status quo about how different law enforcement groups work right now. I am wondering if there is something established in regulations, internal management policy, collective bargaining, or MOUs? How are those resources managed when they are shared? You can get back to me on that if you have to because that is a bigger question.

Philip Gervasi:

If you look around, Boulder City is a Category I police department, and they turn in all those investigations that require forensic analysis to Henderson or to Metro because they do not have that capability. There are several police departments that are Category I, such as your own Capitol Police, that do not have forensic capabilities. We are not looking to expand and to actually get in to forensics and be "CSI." We are just looking to provide a service to the public without the liability if that comes up.

Chairwoman Benitez-Thompson:

Based on the testimony so far, my understanding is that if something happens, you want to be able to respond, especially if it falls under a category A felony where you are prohibited right now. What about competing priorities? If a school police officer is on the way to respond to a school shooting and he

comes across another kind of category A felony occurring as he is traveling, would there be some type of policy about prioritizing their role with the schools and then making sure they are held harmless for not responding to the other crime they witnessed? How are those competing priorities managed?

Philip Gervasi:

The priority is always the school. We also prioritize the crime. If I have someone that simply littered a school with the contents of a trash can, but I also have a shooting, I will stop for the shooting. If we had a shooting at a school, our priority is the school. We are the first responders that will be there. We get the call immediately. The officer is already on campus. We have people who are there to do what they have to do. We are not looking to be any of the local jurisdictions; we are school police. However, we have been trained Category I, and I think we deserve that category to be in the bill.

Assemblyman Healey:

I have heard many questions from my colleagues that seem to be focused in an area of response. In the bill, it clearly states that a Category II, or the school police, can respond. If I am reading it correctly, if the crime is a Category A felony, you can respond and address the situation, but you must wait for a Category I officer to arrive on scene to take control of that scene, even though you are quite capable of handling it and would be able to free up a local jurisdiction to stay and handle situations elsewhere. In the event that you need forensics, then you would call the forensic team from one of the local law enforcement agencies. Do I understand that correctly?

Philip Gervasi:

You understand that correctly, to a point. We are Category I officers. The school district police department is a Category II department. We are Category I. We are first responders. We have the same exact training as Metro, Henderson, North Las Vegas, or any other police department. We are Category I officers; we are asking that the police department be labeled as a Category I. If you look at *Nevada Revised Statutes* (NRS) 289.460, it defines a Category I peace officer as a peace officer who has unrestricted duties and who is not otherwise listed in Category II. If you go to NRS 289.470, section 9, "school police officers employed by the board of trustees of any county school district," and you insert "except Washoe County and Clark County," you have solved the problem. We now become a Category I. There is very little here that restricts us other than being listed in NRS 289.460 instead of NRS 289.470.

Assemblyman Healey:

As a citizen of the state, if I am in need of help, I am going to expect and want any police officer to stop to help me. As we have heard today, he/she is trained to stop, assist, and take care of my situation. I agree that having categories of officers seems silly. A cop should be a cop. I would also be very anxious to hear what Metro or the other jurisdictions have to say. I think jurisdiction is something that clouds the effort. We are at a time when we need more resources in the community. You are not asking to be out there on the street, but in the event of a major situation where backup is needed—like if we had a major situation on the Las Vegas Strip or in my casino—they could call upon your officers to respond and help handle the situation. If one of those officers were to handle an arrest, it should not be thrown out in court due to a jurisdictional technicality. That just seems crazy to me.

Philip Gervasi:

I said that our dispatch handled 2.4 million calls last year, which resulted in 77,432 calls handled by our officers. We only have 165 officers. As you can see with 77,432 calls, we were on school property handling school business. How much more can 165 officers do? We are not looking to be Metro.

Chairwoman Benitez-Thompson:

Is there testimony in support of the bill? It looks as if there are quite a few people signed in down in Las Vegas, so we will start with them.

Ron Cuzze, representing Nevada State Law Enforcement Officers' Association:

To give an easy explanation, there is a difference between a category-trained officer and a category department. Category I training is a little more extensive than Category II; there are only three or four different areas. The school district police officers are trained Category I, but their department is Category II. We are asking that be changed. I fully agree with Mr. Danny Thompson—and we have discussed this many times—if we do away with these categories of training and categories of departments, we would not have the same problem in the Legislature every two years. What I have seen this morning is complete *deja vu* of what we went through with the university police officers about 22 years ago. It was the exact same thing. The one thing that we had to keep reiterating is that what the university police officers do when they are on duty—which is the same with the school district police—is dictated by department policy. Their chief or superintendent would not allow them to do some of the things that some of the members of the Committee have concerns about. This is primarily about liability. If a school district officer is going from one school to another, they have to put blinders on the way it is right now. That is what we are asking. Do not restrict these people. Every one of them knows the priorities. They know that the schools come first. The one thing that everyone

is missing is that all law enforcement officers in the state of Nevada take an oath. That oath says they are to enforce the laws and to protect the public. It does not mean sometimes; it means all the time. When an officer is going from one place to another in a police car—and this applies to any officer—they need to do something if the situation calls for it. Once immediate action is taken, the primary jurisdiction is called. School district police do whatever they have to do. If there were a murder, they would secure the scene, ensure public safety, and call the larger law enforcement agency. I believe we are trying to overcomplicate this. I would be more than happy to answer any questions.

Chairwoman Benitez-Thompson:

Are there any questions from the Committee? Assemblyman Anderson did you have a question?

Assemblyman Elliot Anderson:

I will work with the sponsor of the bill to try to work through the issues I have with this bill.

Anthony Bandiero, representing Nevada State Law Enforcement Officers' Association:

One thing is that this bill, from our point of view, is a public safety bill. My experience has been with the highway patrol. I have seen plenty of times in which I would be cruising down the highway, and I would see somebody ahead of me going fast or driving crazy. When they saw the school police vehicles, which used to look almost exactly like our vehicles, they would slow down, but when they saw it was not an actual highway patrol person, they would take off again. That school police officer would not act due to the restricted jurisdiction. That is not to say that if somebody was completely reckless or if they were driving drunk that the school police officer would not act. I have seen that too. For the most part, they rather have to have blinders on. I do not think that is right. I also want to say that the highway patrol is in a similar situation. We are a specialized agency. We are focused on traffic, but nobody ever tells the highway patrol that we cannot take care of business when we see something that calls for our action. In other words, when I am on a surface street or in a neighborhood, and I see somebody who needs a citation, I will do that. The school police are also specialized; their focus is on the schools. However, when they are traveling back and forth, they need that jurisdiction in order to make the public and the community safer. I hope you will support this bill.

Chairwoman Benitez-Thompson:

Let us go ahead and take testimony in support here in Carson City.

Robert Conway, representing Ironworkers Local 433:

We are in support of the bill.

Chairwoman Benitez-Thompson:

Is there anyone else in Clark County or Carson City wishing to give testimony in support? [There was no one.] I will move on to testimony in opposition.

Frank Peterson, Private Citizen, Las Vegas:

I am here with my wife, Angela, and we are here on behalf of our daughter, Angela Nicole Peterson. We have been in Nevada since February of 1994. Angela graduated with honors from Durango High School. She completed five and a half years of college at University of Nevada, Las Vegas (UNLV) with two degrees. I would like to put a face to the name. This is a picture of our daughter, Angela. She was a UNLV graduate student who died November 29, 2009 as a result of a DUI incident. That was 1,192 days ago, which translates to three years, three months, and five days. I would like to say congratulations to the lovely Assemblywoman Swank for your seat in the Assembly.

I would like to talk about three things to begin with regarding the Clark County School District police department: responsibility, accountability, and leadership. This deals with the office staff at the headquarters in Henderson. We feel that the Clark County School District Police Department is a sinking ship. Currently, it is in a hemorrhage mode. We had a quote from Chief Ketsaa at one time saying he felt the department should be more transparent. The department itself has no respect for its leadership. It is comprised of an inner circle between the chief, the captains, and lieutenants. The sergeants bully, harass, and intimidate their subordinates while the supervisors harass the civilian employees. They have a motto of do as we say and not as we do. The department is currently overrun. They are stretched thin across the valleys with the high schools, patrols through the city, and the county they are assigned to cover with the tasks and responsibility that they have to protect the schools and the children.

We have the utmost respect and we do not have an issue with the majority of the department and patrol officers. There are only a dozen or so that have become a problem to us and the community. There are those within the department who not only accept, but condone, the act of drinking publicly with minors and letting them leave to kill and then cover it up to cover their own asses. This is the issue we have with the leadership of the department.

Promotions have been made to unqualified, and grossly unqualified personnel and those deserving being passed over repeatedly. That frustration adds to the

loss of morale and respect for the department. The issue that we are talking about is the cover-up of a holiday party that was given by a dispatcher who was in attendance, along with other school district police, employees, and patrol officers for a Thanksgiving holiday party that included beer pong.

Another problem is the corruption that involves the FBI probes that include the Datacast system that was never used, but they have accepted money for it; missing AR-15 rifles. A captain was forced to resign by the chief at that time. There have also been various civil rights violations.

In the issue of accountability, no one accepts the fact that they did something wrong. They rely on advice from legal or union officials who believe that what they did was appropriate, but will not accept the consequences of their actions, again, to cover their own asses and to keep leadership out of trouble.

In the internal affairs department, reports go no further than the shredder or the trash can. They lie to the agencies that set up the interviews based on their own investigation so that their agencies come out looking clean to the department. Their leadership has the understanding that they are "on it" to keep everyone else out of it.

To be a Category I officer, we feel that they should have new leadership with the added responsibility that comes with the accountability. With the new accountability for Category I, they should have to answer to a citizen review or oversight board rather than a school district superintendent or a board that is paid for by tax dollars. Let them answer to the taxpayers themselves. They should be accountable to the community and the citizens whose children they have taken an oath and are paid to protect. With the added responsibility, they should be held to the higher standards that they have taken a sworn oath to and made to account for their actions. The buck has to stop somewhere, and I will quote Harry S Truman for that.

We have had our share of issues with various members of the school district. It goes through the superintendent's office right into the school board.

Chairwoman Benitez-Thompson:

Mr. Peterson, I want to make sure that we are staying on topic. I know you were going to talk about the school district in general, but we need to stay specific to this bill.

Frank Peterson:

We do not have a problem with them becoming Category I officers. They have a badge and a gun. The issue is the leadership that they have now. They

cannot control their own. We feel that adding more responsibility to them will create more problems. Those are the concerns that we would like to express.

Gina Greison, Private Citizen, Las Vegas:

I am a community advocate and the founder of Look Out Kids About, formerly known as the School Zone Safety Task Force. I was the parent at Tomiyasu Elementary School who in 2005 organized that big coalition of organizations to address the school safety issues. At my daughter's small neighborhood school, several kids were walking in crosswalks when they were hit by cars. I had an issue because I contacted the principal and she told me that she could not deal with anything outside the fence of the school. They would direct me to school police, and when I contacted them, I was told that they did not have the jurisdiction and directed me to call Metro. It became a back and forth process.

As a result, I got that coalition together, which is well documented in the media, back in late 2005. When I got everyone in the same room, we asked whose responsibility it was to protect kids on their way to school. That is when it was decided that there would be an effort to give school police the authority to write tickets in school zones. In the legislative record, it is very clear. I hope that everyone who would vote on this bill will go back and look at the record from 2007 to understand the concerns of the legislators back then in expanding the authority of school police. It was crystal clear that they were to patrol and write tickets only on streets adjacent to schools. These are school police.

I have heard in testimony so many times, "We are a full-fledged police department." I agree, except I would add one other word. It is a full-fledged "school" police department. If I had known then that this was going to be the result of granting that additional authority in 2007, I am not sure that I would have supported that. This is about keeping kids safe. School police are supposed to be around schools. I would also recommend that anyone voting on this bill go back and read articles written by Karen Gray with the *Nevada Journal*. The documents expose the fact that school police were out on Boulder Highway writing tickets. When Senate Bill No. 543 of the 74th Session passed in 2007, there was a Channel 8 interview done. It says "CCSD's lieutenant, Ken Young, says the new law will allow law officers to go after violators even if they break the law the next street over." I think his words are, "For years our primary jurisdiction has been the school property. It just made sense for us being able to enforce around the schools." I agreed with that. The problem is they were videotaped out writing tickets on Boulder Highway. He is quoted as saying, "We are going to be looking down Fremont Street where there are no schools. We will not be on Boulder Highway, where there is no active school." Well, the fact was they were caught out on Boulder Highway writing tickets as part of that task force within 15 minutes of a bell time when

they should have been at a school keeping kids safe because they are school police. I requested former Assemblyman Tick Segerblom, who is now Senator Segerblom, to get a Legislative Counsel Bureau opinion on this, which came back saying they had violated the spirit of the law. They did not have the jurisdiction to be out there doing that. I feel that this bill is a result of that. I have been very involved in the coroner's inquest reforms. Those legislators from Clark County know that there have been many issues with our own Metropolitan Police Department. I fear expanding jurisdiction and authority. We already have issues as you heard, such as the parent who lost his daughter due to involvement by school police. There has been so much controversy in many of the police departments. There have been so many investigative team investigations on the school district police that I cannot imagine granting them more authority at this point. Just since 2007 when we S.B. No. 534, to allow the school police to have the authority to write tickets only in school zones on streets adjacent to schools, there have been three different chiefs. Two of them resigned in controversy. I do not believe that now is the time. I agree that we have issues in the community of needing more officers on the street, but there is a difference between a police officer and a school police officer. As a parent—and I know I speak for many parents that were horrified to learn that school police would be anywhere but at the schools keeping kids safe—I am adamantly against this bill. I am very disappointed that we are even here discussing it.

The other concern I have is when you look at the Category II peace officers, it defines them as bailiffs and constables. I do not need to tell you the controversy going on with the local constables here. We are talking about brand inspectors with the State Department of Agriculture, field inspectors with the Department of Agriculture, Nevada Transportation Authority—there have been investigations on them too—state foresters, fire wardens, State Gaming Control Board. Do I have to be worried now about being pulled over by all these people and having them in my neighborhood? If they train as Category I officers, will we go ahead and expand all those jurisdictions too? I believe the right to carry a gun to enforce laws is a very big responsibility. I believe that things are the way they should be now. I would say if there were to be any changes or expansions, there needs to be a lot more done. I have yet to hear from Metro or the school district on this, so I am very eager to see if they support this. For now, that is all I have to say.

Chairwoman Benitez-Thompson:

Are there any questions from Committee members? [There were none.] We will continue with testimony in opposition here in Carson City.

Brian Daw, representing Clark County School District:

The contemplation and implementation of school safety is an essential component not only for the environment of learning, but also for the foundation at every Clark County School District school. School police currently function in setting the tone for respect and interaction between students and adults in school locations in which they are currently allocated and at school events, special events, and athletic events. They also protect school district personnel, pupils, and property. School police have a specific function and duty, which is to support school administrators in providing a safe and respectful learning environment and protecting school property and facilities from damage, including vandalism, loss, and theft. A change in their status, function and responsibilities would have a negative impact on all of the assignments I previously mentioned by drawing them from their primary responsibilities of providing support for school administrators and protecting property and facilities by greatly expanding their duties of investigation. As the law is currently defined, school police may and do respond to school-related incidents, which range up to and including category B felonies. Increasing their range of responsibilities to potentially investigate all levels of crime would draw them away from their primary responsibilities of working in schools, protecting students, and helping to establish those safe and productive learning environments. School police already work with their colleagues in local jurisdictions regarding investigations, and they follow the protocol which has long been established in this area. Assembly Bill 103 specifically expands the duties of school police of Category I officers, but does not set a limitation on the boundaries of their jurisdiction. The time that would be lost for school police to be engaged in investigating and working with assistant district attorneys, for example, would pull them from their primary duties at schools. Having officers absent from schools because of other duties can only produce a negative effect on those schools. For these and other unanticipated consequences of defining school police as Category I officers, the Clark County School District opposes A.B. 103.

Chairwoman Benitez-Thompson:

Are there any questions for Mr. Daw? [There were none.]

Robert Roshak, representing Nevada Sheriffs' and Chiefs' Association:

I represent the 17 sheriffs, 13 chiefs, and other law enforcement executives throughout the state. We oppose this bill. We understand that school police are trained as Category I, but we question whether they have the resources available to them to do the type of investigations Category I officers do. There are concerns from the sheriffs that this legislation would allow school police to go out into their jurisdictions, conduct investigations, and do other things. However, the sheriff is the ultimate law enforcement authority for the county

and could ultimately be held responsible for what someone else is doing within the county. With that, we would definitely oppose Assembly Bill 103.

Assemblyman Ellison:

This was the question we had earlier. Is the sheriff the elected official who has to be accountable to the public? Right now, the way this is written, the school police are in an agency all by themselves. Is that correct?

Robert Roshak:

The way I interpret it, they would be their own agency.

Assemblyman Ellison:

Can they direct their own people to go to Peace Officer Standards and Training (POST) or do they have to get recommendations from the sheriff's department?

Robert Roshak:

Currently, they receive POST. I do not believe they are recommended. School police departments send their officers and they are POST-certified.

Assemblyman Munford:

Are you speaking for Metro police officers? Are you also speaking for Sheriff Gillespie? Are you representing them and speaking on their behalf?

Robert Roshak:

Sheriff Gillespie is a member of the Association. There is a representative from Metro who I believe will be speaking specifically for him. The consensus of the Association is that they do not support. I can only relate it to a legislative committee meeting in which the vote shows that the committee passed it, but there are some who have a different opinion. Representing the number of people I do, there may be different opinions, but I know Metro has concerns over the bill. I am not at liberty to give you their specifics. That is why they have a representative here.

Assemblyman Munford:

Are also North Las Vegas Police, Henderson Police, and Boulder City Police also members of your organization?

Robert Roshak:

Yes.

Assemblyman Munford:

Might they also support what you are saying to some degree?

Robert Roshak:

Yes, sir.

Chairwoman Benitez-Thompson:

Are there any additional questions? [There were none.] Is there any more testimony in opposition? [There was none.] I will take testimony in neutral.

Ron Dreher, representing Peace Officers Research Association of Nevada:

We are neutral on this bill, but there are some things that have been pointed out that I think the Committee needs to know. First, in the late '80s and early '90s, we went away from having one type of peace officer to having three categories of peace officers. Mainly, that is an economic thing because there is cost involved in training, as you have heard already. My druthers would be that we have one category of peace officer for the standard reason that you have all this training available. That is a portion of the bill that we do, obviously, support. Do we want Category I peace officers? Absolutely. Are they already trained as Category I peace officers? Yes. Is there a fiscal note to that? No. Most of the people that have been listed here and most of the agencies that you hear on this bill, park rangers and the rest, are all trained Category I. Our preference would be to make them all Category I. For the purposes of Assembly Bill 103 we would ask that you would at least give them that authority.

Now, doing that does not take away their jurisdiction, boundaries, or anything else like that. I would ask why the section dealing with jurisdiction would be repealed. It is defining a jurisdiction of what they do already. I worked for Reno Police Department; we have our boundaries. Sparks Police Department has their boundaries. The Washoe County School District Police have their boundaries. Every law enforcement agency in the state has jurisdictional boundaries. Why would we remove theirs? You have school police and, as you have heard, their main assignment is the schools. They do an outstanding job. I have heard negative statements about the police officers, but in my opinion, 99 percent of our law enforcement officers are outstanding. They bust their behinds to protect and serve you all. They will continue to do that. I would ask that you look at that case by case when we hear bad things about cops because, for the most part, we do our best given what we are up against in this day. We have to justify our every means. To take it a step further, you heard Mr. Cuzze talk about something that is very crucial: policies. Every law enforcement agency in this state has a policy-setting objective, and they do that. They set the standards defining whether a police officer has the right to stop if he is driving down the street and sees a traffic offense. The fact is that he does. Does he stop? No, because if he does he is in violation of a policy. It is insubordination if he does something against policy. That is something set by the standards. In effect, *Nevada Revised Statutes* (NRS) 391.275 is the policy,

but I am sure if you looked at the Clark County School District policies for their police department, you would find those policies. I know Washoe County School District Police have a series of policies that set the standards of conduct for those officers. Under NRS 288.150, subsection 3, paragraph (a), that is part of the collective bargaining, but that is management's rights. In the state of Nevada, management's rights say that management sets the quality and quantity of the workday. The standard for having their jurisdiction stay in the school district is there. I am not sure why we would do away with jurisdiction boundaries because we all have that. That is why we are neutral.

We have two points to this. We have provisions in place already that have established boundaries and keep those jurisdictions the way they are. There is no reason to change that. The second point is the category of peace officer. Make them Category I; it is only a name change anyway. It does not mean a thing. There is no fiscal note attached.

The last thing I wanted to bring up deals with the task force. Mr. Gervasi talked about the task force. When I worked narcotics and as a Reno police officer, I was assigned to the Drug Enforcement Agency task force. In Washoe County, we had a narcotics unit, and all of us worked together. In that format, I had the jurisdictional boundaries of the whole state. I could move anywhere I wanted and do whatever I wanted. The same is true for the school district police. If they are assigned to a task force assigned to Metro or North Las Vegas or Henderson, they are all working as one, so those boundaries are waived. We also have memoranda of understanding (MOU) in Washoe County where the chief, sheriff, and everybody grants certain exceptions for schools when they have to move off those boundaries. Those are the things that I think the Committee needs to know when you are agreeing or disagreeing with processing this bill. That is why I needed to inform you. I wanted to educate you to the good and not so good of this bill.

Assemblyman Stewart:

You are saying if a school police officer is traveling from one school to another and he observes a crime occurring and attempts to stop that crime, there would be no legal implications against him in that regard. Is that correct?

Ron Dreher:

That is correct. The only thing that would happen to that officer if he sees something going down, he has a policy that says he is not supposed to stop. If he does, he is in violation of the policy; therefore, he faces an internal affairs investigation or discipline. If he sees something major going down, he takes action in that regard. First, he is going to make the stop. Second, he will get the jurisdictional agency involved, and they will come to the scene and take

over the situation. That is what occurred when I worked with Reno Police Department and when I worked traffic. It occurs everywhere. We do not overstep our boundaries because we have other agencies to come and handle a situation, much like a homicide or sexual assault going down on school property, which I have handled. I get called by the University of Nevada police to come over there and handle a homicide investigation because they do not have the wherewithal, the dollars, and the like to investigate those any more than Clark County school police do. It is not their intent to cause Metro to come in there and take over homicides; at least that is what I heard Mr. Gervasi say. The jurisdictional boundaries of Category I is all they are looking for. They are not asking—at least that is what I heard him say—to take over homicides or sexual assaults and the like. If they did, I would tell you that their fiscal note would be outrageous. They do not have the manpower to do that.

Assemblyman Elliot Anderson:

Just to clarify, we do not set internal policies. That is done by the sheriffs and the like, right? We are only talking about a statute here. I am looking at section 5—the things we are looking to repeal—subsection 2 of Nevada Revised Statutes 391.275 says, "In addition to the jurisdiction set forth in subsection 1, a school police officer of a school district has jurisdiction: subparagraph (a) ...in hot pursuit of a person." So, existing law allows, from the legislative end, the ability to respond to someone that is driving recklessly if they are going from one place to the other already. Understand that correctly; we are not talking about altering the internal police procedures that are more the realm of law enforcement experts. We are talking about jurisdiction or not. Is that correct?

Ron Dreher:

You are one hundred percent correct.

A.J. Delap, representing Las Vegas Metropolitan Police Department:

We are neutral with concerns on this measure. Our primary concerns with this are as it relates to a category A felony investigation, which under existing law requires that the Clark County School District Police Department report all those to us and that we take the lead in those investigations. That is codified in the law. It is very important to us. We have the resources to conduct those investigations, and those are capital-level crimes such as murders, sexual assaults, lewdness with a child, kidnapping, and things of that nature. We have those resources to investigate those effectively. We have a great working relationship with Clark County School District Police Department. We currently assist them with significant events in the school, whether it is the beginning of the school year, holidays, or the end of the school year. We assign officers to help augment those situations and whatever else they may need

because it is a high priority to our agency and our sheriff to provide law enforcement and protection to our schools. We are happy to take part in that, but at the same time, we do feel we have a duty and a strong need to control significant crimes. We do not anticipate losing that. I do not see why the school district police would ever want to take those over. Nevertheless, we certainly find some security in that being in the law.

We also have some concerns with the jurisdictional issues and the convolution of that. Currently, it is the perimeters of the schools, school bus stops, and things of that nature they have jurisdiction over. Once those jurisdictional lines become more gray, it becomes difficult to determine who the lead is on that. That is another concern of ours. Those are our two main concerns. I am happy to answer any questions.

Assemblyman Stewart:

I have the same question, Mr. Delap. If a school police officer is traveling from one school to another and sees a crime being committed, in your view it is his responsibility to take action to prevent that crime from happening. Is that correct?

A.J. Delap:

There is a responsibility there, and I think Assemblyman Anderson spoke on it well. I cannot imagine an officer not taking appropriate action if he observed a crime. Whether or not the internal policy to the school district would prevent it would be their determination. As far as the differentiation between Category II and Category I, I still think the spirit of law enforcement and the spirit of the police officer is going to be to take action.

Chairwoman Benitez-Thompson:

Are there any additional questions for Mr. Delap? [There were none]. Is there any other testimony in neutral? [There was none.] I will invite the bill's sponsor up for any closing comments.

Assemblyman Carrillo:

I would like to close by saying that even with all that the school police participate in and do on a regular basis, primarily their duty is to minimize violence, weapons, substance abuse, vandalism, and other hazards on school campuses. This is true for both Washoe County and Clark County School Districts. Ultimately, the biggest job is protecting Nevada's future. Thank you Madam Chairwoman and members of the Committee for giving consideration to this bill.

Assemblywoman Neal:

Assemblyman Carrillo, thank you for bringing us a bill that offered great discussion. It was a good topic.

Assemblyman Elliot Anderson:

Assemblyman Carrillo, I want to say the same as Assemblywoman Neal. I certainly want to offer to work with you to resolve some of my concerns to make this bill work and to keep it moving forward.

Assemblyman Oscarson:

Assemblyman Carrillo, I echo those sentiments and look forward to the continued discussion on this bill.

Chairwoman Benitez-Thompson:

I will close the hearing on Assembly Bill 103. We welcome to the witness table Mr. Gus Nuñez from the State Public Works Division to do a presentation on construction manager at risk (CMAR). We have our first CMAR bill up tomorrow, and there will be a couple more in the coming weeks. I hope the Committee will find this information useful and applicable as we discuss CMAR, which is moderately complicated.

Gus Nuñez, P.E., Administrator, State Public Works Division, Department of Administration

As requested, we have prepared this presentation ([Exhibit D](#)) on the construction manager at risk (CMAR) process. We will cover the requirements of the *Nevada Revised Statutes* (NRS). We will also be covering how we utilize it at Public Works. Our process is geared more toward vertical construction. Later you will hear from the Nevada Department of Transportation (NDOT) on how CMAR works for horizontal-type construction work, which is a little bit different.

Before we get into the details of CMAR, I believe it would be better to quickly go over all the various methods provided in the law for acquiring construction services. We utilize three delivery methods that are provided for in NRS. Those are design-build, design-bid-build, and CMAR. The criteria that we use for determining which delivery method we use for any one project that we do depends on what type of project it is. We use CMAR for large or complex projects. To date, we have done about ten CMAR projects. One of the larger ones for example was the medical education building that we just completed at the University of Nevada, Reno. This system provides for success on bid date, meaning we have the contractor at the table during the design process. He guides the design team and provides a second with respect to cost, so we are usually very successful on bid date to bring everything in within budget. We are

also able to manage risk much better by having the contractor at the table during the design process. One of the examples is not a large project—it was small but a complex project for CMAR—is the recently completed remodeling of the science laboratories and a partial heating, ventilating and air conditioning (HVAC) upgrade of one of the buildings on the Cheyenne campus of College of Southern Nevada. The project is complex because there are other things that were going on in that same building while we were doing the HVAC upgrade and the lab remodel. How this construction is supposed to be managed and phased with students around, becomes quite tedious to be able to anticipate everything that is going to go on during construction. Having the contractor at the table to figure out how we are going to phase that project and execute all of the phases of that construction is extremely helpful during that design process. If we were to hard bid that project, every time you forget a phase or an issue that crops up that would be a change order. In this case, CMAR worked very well for us.

When we use design-build projects, for us it needs to be well-defined and during the design process, we have to have a certain amount of assurance that we are not going to be expecting many changes during the design process. At this point once you select a design-build team, you assign a contract. Every time you change things to that contract, you are looking at change orders. In addition, if there were a lot of unknowns on a project, we would not use that particular method. The only way to manage unknowns on this type of process is with money because in design-build, your contractor is providing a price to design and build the project before the project is actually designed. You may be using dollars that may or may not be needed later on, but you are already under contract for that.

The rest of the projects we do with a traditional design-bid-build delivery method. Most of these projects are different maintenance projects such as HVAC upgrades, roof replacements, et cetera. The traditional design-bid-build is the best method for us to utilize for all of those projects. Again, the goal for the process we go through is to find the most qualified contractor who will give us the best value and to utilize the best method available to us.

The following slides will go quickly and show how the contractor methodology for each of these delivering systems, starting with design-build [[Exhibit D](#)] slide 3]. In the design-build process, we would be contracting with the contractor and the architect as one entity. You will see later on, as we talk about design-bid-build, it is somewhat different from that. In NRS, it is a qualification-based process for the selection of the design-build team. Thirty percent of the salary must be attributed to the cost of the project, so 70 percent would be qualification and 30 percent would be based on cost with

respect of how the selection works. Through the selection process, the design-build teams have to provide us with the cost of designing and building the project before the design is completed, so you have to estimate what it is going to cost to design a facility, which is part of why projects must be well defined. We have done three of those at Public Works so far. Recently, we did the Richard H. Bryan Building here in Carson City through design-build. It is a very straightforward office building, which is easily defined. Of course, you have to do the HVAC system, the electrical system, the exterior skin of the building, the finishing inside the building down to the hardware and the light fixtures. That all has to be defined in order for the project to be properly costed and to have a meeting of the minds as to what it is we expect from a contractor when the project is built. In this particular method, the contractor selects and bids the work to the subcontractor. There is no oversight from the owner of the agency except for the 1 and 5 percent list.

In the design-bid-build delivery method, the owner first enters into a contract with the design team [([Exhibit D](#)) slide 4]. Later on, as you will see here, we will bring in the contractor, but this is the only departure from design-build where you only have one contract with the design-build team and the contractor and the design team. In this particular case, we contract with design team. Later on, we bid the project. Then, we enter into a contract with a builder. At this point, the design documents are prepared. We maintain control over the design at this point with the use in agency. We then advertise and open bids. At this point, we award the contract after it is bid to the lowest responsive and responsible bidder. The prime contractor then contracts with all the subcontractors. We do not oversee the prequalification of subcontractors and how those subs are selected is unknown to us, again, except for the fact that at the time that the bid is submitted, they have to submit the 1 percent and the 5 percent list of the subcontractors per the NRS requirements. We at Public Works have experienced that this type of project using the design-bid-build process, we typically run about 3 percent change orders. We do not expect drawings, plans, and specifications to be perfect. We do expect a certain level of care. The best way to define that level of care is we expect change orders to be below 3 percent. This is covered in our contract documents, and if it does exceed 3 percent, there is a process that we go through in order to address any issues with a design after the project is completed.

With the CMAR, we select the design team and the CMAR at about the same time. These are two separate contracts just like you would do in design-bid-build. The CMAR then participates in the design process, and under the contract, we call for preconstruction services. Let me back up a little bit. In CMAR, we have a two-step contract process. The first contract is for

preconstruction services. Assuming everything works fine, at the end of that process we enter into a contract for the construction services. Then we build the project. That assumes that at the end of the preconstruction services the pricing that comes in—what we call the guaranteed maximum price (GMP)—within budget and the contractor performs well through the design process—then we enter into a construction services contract.

We will start getting into more of the details of the CMAR process as provided in the NRS [([Exhibit D](#)) slide 7). We will be covering the selection of the CMAR, which is very detailed in NRS. The CMAR has to be prequalified.

Chairwoman Benitez-Thompson:

I have a quick question. On the design-build and the design-bid-build, you mentioned that the agency does not have oversight over the subcontractors, but you have to accept a list of the 1 and 5 percent. Could you tell me more about those percentages?

Gus Nuñez:

NRS requires that when a contractor submits a bid, the subcontractors that are going to be doing 5 percent or more of the work on that job must be specified in the bid that is submitted to the public agency. That is by value or dollar amount; 5 percent or more of the total bid, they have to identify who those contractors are. After the bid opening and within two hours after the bid opening, he must submit his 1 percent list. That 1 percent list is any subcontractor that is going to be doing 1 percent or more of the value. As specified in the law, if it falls within that category, then within two hours of the bid opening, they must submit that list of subcontractors. That is with respect to bidding. Also, another step takes place after the award of the bid. How they arrived at that point—how they may have prequalified those subcontractors to bid on that job and how they selected one from the other is where there is no oversight in the design-build or the design-bid-build process. The reason I mention that is because there is oversight in the CMAR process. I wanted to add context for when we get into the CMAR process, so you can see the difference between the various methods.

Assemblywoman Neal:

In the 1 percent and 5 percent lists, is there a description associated with the contractor?

Gus Nuñez:

Yes, they have to list the name of the contractor, the license, and the work they will be doing—if they are doing mechanical, plumbing, electrical, structural, site

work, whatever that may be. It must be cited along with the license, which will tell us that the contractor is properly licensed.

Assemblywoman Bustamante Adams:

Is that information standardized or does each contractor have its own form in the way they collect that information? Is it done electronically or is it still paper?

Gus Nuñez:

The form is standardized. Our bid documents provide a standard form that the contractors fill out indicating the 5 percent and the 1 percent. These are standardized with respect to Public Works. Each public agency has their own forms that they use. I am sure there are probably deviations from one public agency to another, but they are all supposed to meet the requirements of the NRS. They are not submitted electronically. All bids, with respect to design-bid-build, have to be submitted on paper in a sealed envelope. They are opened at the same time in a meeting that is open to the public.

Assemblywoman Bustamante Adams:

Can I have a copy of that form? I know that you have mapped out the three different options, but can you include, especially on the CMAR, the breakdown of what you just described as far as the 5 percent and the 1 percent? Do you have that in a map form?

Gus Nuñez:

Yes, we do, and we can provide that for you.

Chairwoman Benitez-Thompson:

I think Assemblywoman Bustamante Adams is asking for a flowchart within a flowchart. I like that.

Assemblyman Ellison:

The license numbers are on the bid with the subcontractors, but along with that, the bid limits for all the subcontractors and the general contractor are listed. When the contractor comes in and lists the subcontractors he will use for different jobs, he also has to show a copy of insurance listing them as an insured member. Their bonding also has to be certified. Is that correct?

Gus Nuñez:

The subcontractors have to provide copies of their insurance and bonding, but that is not done with the bid. The prime contractor has to submit a 5 percent bid bond and they have to submit proof of insurance with their bid. The subcontractors do not; that occurs after the contract is awarded. That is if they

fall within the requirements of the bonding. If something is small enough, it does not require bonding.

Chairwoman Benitez-Thompson:

Are there any additional questions before we move on? [There were none.]

Gus Nuñez:

The selection process for CMAR is covered in detail in NRS [([Exhibit D](#)) slide 8]. If you go to NRS Chapter 338—from NRS 338.1691 through NRS 338.16935—those areas are related to CMAR. It is quite extensive. I am not going to cover all the points that are on there, but I will try to summarize and generalize the main requirements. The CMAR has to be qualified as a bidder with Public Works if they are doing work for us. These are the requirements of the request for proposal (RFP) that we have to issue. The information that has to be provided by the agency in the RFP and what the contractors must submit with their response to the RFP is covered in detail in NRS 338.1692. Part of what is included in there is a short-listing for interviews. Members of the short-listing panel and the scoring requirements are covered in NRS 338.1693. At our shop, our short-list committee is composed of three members. There are two members from Public Works, and one member from the agency for which we are building the project. Then, after short-listing the applicants is completed—which the law requires between two and five, and we usually shoot for three—we move into what we call the interview. In the law, it is permissible to require the applicant to submit a preliminary proposed amount of compensation for managing the preconstruction and construction services. At Public Works, we always do this step; it is required in the *Nevada Administrative Code* through policies our board has adopted. During the interview process, we select a separate committee. Those who were in the short-listing committee cannot participate in the interview committee. The interview committee is comprised of five members: three from Public Works, two from the using agency. With respect to the cost that being provided for managing preconstruction and construction services, that can be graded up to 20 percent. Currently, we are using 20 percent at Public Works, so 80 percent is qualification-based and 20 percent is based on cost. Part of what is important here is that during the selection process, we receive a competitive price for the preconstruction services and for the construction services, which we call the cost of general conditions. Cost of general conditions is how the contractor will manage the construction services provisions. We go through the full selection process and then we enter into a contract with the CMAR for preconstruction services. What happens here is the CMAR attends the meetings and assists with scheduling and constructability problems and provides an estimate of cost of the work. In our process, we get estimates of the cost of the work both from the design team and from the contractor. We then have regular meetings,

usually on a monthly basis. Both teams come in independently. We discuss their cost estimates. If there are any major discrepancies between cost estimates, those are discussed and any issues are resolved at that point before we move on to the next step. At the same time as this work is going on the CMAR also goes through their subcontractor prequalification process. As the design is being competed or completed, he prepares the various sub-bid documents for the subcontractors. At the end of this phase of the work, the CMAR, after he bids the work to all the trades and all the bids are in, then he submits what we call a guaranteed maximum price (GMP) for the construction services. At that point the preconstruction services are completed, with the submittal of the GMP to be used in the contract for construction services. Assuming that the GMP is within budget and the contractor performed his duties appropriately, we proceed to enter into the next step, which should be a contract for construction services.

Assemblywoman Neal:

Do the 1 percent and the 5 percent apply to the preconstruction services as well, or is that only for construction services?

Gus Nuñez:

The 1 percent and 5 percent apply to preconstruction services also; however, we require three sub-bids from every trade. This is part of our process during preconstruction services, before the CMAR bids out the project to the various subtrades. They submit a list of all the subcontractors that they are going to prequalify that they are going to receive sub-bids from. We require three sub-bids on each trade, so we want to see at least three subcontractors that are going to bid on each trade. I will be covering a little more of that later in the presentation. The process of the 1 percent and the 5 percent in CMAR is not as critical as in the other methods.

Assemblywoman Neal:

Is there certainty that those subcontractors are going to continue through, or are they subject to change after the bidding is submitted?

Gus Nuñez:

I will cover that soon.

I wanted to cover some of the other details in CMAR with respect to the CMAR qualifications of subcontractors, which is covered under NRS 338.16991. It is important to mention that it is their process, but there is an appeal process. If a subcontractor is deemed disqualified by the prime contractor, the subcontractor has a process they can go through to appeal those decisions. We require three sub-bids for trade, so when the CMAR submits their list of

subcontractors that they are going to use—it does not matter whether it is 1 or 5 percent—we want to see the entire list of everyone who is going to bid. Again, we expect to see a minimum of the subcontractors per subtrade on that list. The subcontractor bidding process is covered under NRS 338.16995. What is important here in NRS is that it requires the public agency to be present when the subcontractor bids are open. Typically, when the subcontractor bids are open at the contractor's office, we will have two to three members of our staff present. We immediately receive copies of all the bids for our documents. After all the bids are open, the CMAR goes through a process that we call the scrubbing of the bids. They are making sure that the scope is fully covered on that sub-bid. They look for stipulations or exclusions that are included in that sub-bid. The prime contractor is trying to make sure that the scope is fully covered and he is looking for the best bid. When he starts comparing one price versus the other, he wants to make sure that he is comparing apples to apples. If he had different stipulations or exclusions coming from various subcontractors, those need to be reconciled to make sure he has a full scope and that he is comparing apples to apples. We oversee that process from the time the sub-bids are opened through the scrubbing process. The CMAR then makes his decision to make sure which one is the best bid and which subcontractor he is going to select to do that work. I want to be very specific; the CMAR makes that decision. I am stressing that because it is very important that as the process moves along while we are overseeing, if the contractor is to remain at risk, he needs to make those decisions. He will choose who in the group of subcontractors will be on the contract. It is received by us, and we can ask why he chose one subcontractor over another. If things do not quite look right, we can ask questions. At the end of the day, he makes the final decision because we need to keep him at risk. If we force the contractor into choosing any one subcontractor along the way, that could become problematic later on if that subcontractor does not perform. It is very important for the prime contractor to keep control over making decisions. We need to make our own decisions when he provides the GMP. If we are not satisfied with the way he has chosen the subcontractors or his process, we do not have to enter into the contract; however, in order to keep that contractor at risk, he needs to make that decision. We make our decision at that point of whether we move ahead based on his performance, including this process. I hope that is clear because it is a very important point that we have discussed extensively as this law has been amended in the past. At the end of this process, what it yields is the GMP. The next step is making a decision about the performance of the contractor and the GMP being within budget. Then we are ready to move into the next step, which is construction services.

Chairwoman Benitez-Thompson:

Are there any additional questions at this point?

Assemblyman Daly:

Is the construction manager at risk, theoretically the general contractor, actually required to perform any of the actual construction work?

Gus Nuñez:

No, he is not required to perform any of the work, which is a very important point. Later on, you will hear from the Department of Transportation. He is required to manage the construction of the project. He has to have a superintendent on the job full time as part of the requirements of the general conditions. Part of what we review during the selection process is the composition of his team during preconstruction services, the composition of his team during construction services, and the complexity and size of the job. Is it adequate? Is it too much? Is it not enough? Do they have the right experience? We consider those questions through the selection process.

At this point we have all the cost components of the bid, which are the contractor's fee, his general overhead and profit, the cost of the general conditions, and the cost of managing the project. Those costs are available from the original proposal that came in during the selection process, so we received that through a competitive process. The cost of the work, which is all the sub-bids that came in, were bid competitively. If the prime decided to do some of the work himself, he must bid with all the other subcontractors. Again, all the prices are determined through a competitive process. Now, we have all the components of a bid, including fee, general conditions, and cost of the work, having been done through a competitive process. The whole process and all these costs are open to the agency. At this point, we have what we would call an open book process. We know what the costs are and how the bid was put together. In a design-bid-build process, we do not get to see those details that we do here. We have a process now.

Let us look back as to how this compares to the other methods that we utilize. At Public Works, we have been experiencing less than 1 percent change orders on CMAR versus 3 percent on design-bid-build projects.

To conclude, in our opinion at Public Works, CMAR, for projects that lend themselves to it, is certainly a more superior delivery method than the others for managing risk by having the contractor at the table during the design process. The team building that goes on during the design process avoids many potential confrontations that can happen during the hard bid process. The subcontractor qualification process and bidding process is all overseen and documented by the public agency, so it is more transparent. For example on a hard bid, from the time the prime contractor receives all the sub-bids to the time he submits his bids, what happens in there and how that occurs is not overseen by us on

design-bid-build. In the CMAR method, we oversee the whole process. It also allows us to keep control over the design during the process because we contract with a design team separately from the CMAR. We maintain more control over the design versus design-build where we are actually turning over the design and construction to another team and making sure that they comply with those performance specifications versus prescriptive specifications that we use for the other methods. That concludes the presentation.

Chairwoman Benitez-Thompson:

To be clear, when you said Public Works' focus is on all vertical projects, we are talking about building up. Transportation is going to talk about the horizontal—the roads—so all of this is in regard to things that are building up.

Gus Nuñez:

You will hear now from NDOT with respect to how they arrive at the GMP. It is somewhat different for horizontal work than it is for vertical construction. I wanted to make sure that I specified to you that this is the way that our process complies with the NRS, and it is geared toward the vertical construction-type work, which are buildings.

Chairwoman Benitez-Thompson:

Could you touch on the history of this because we have three different processes and NRS gets really specific into the bidding on CMAR? We would like a historical perspective as to why we have such extensive NRS on bidding for these jobs.

Gus Nuñez:

I am glad you asked that. When I came to Public Works about 12 years ago, the CMAR process was already allowed in NRS Chapter 341, which is the NRS that creates the Public Works Board, and now the Division. Shortly after I came to work here, we started implementing and using CMAR. Shortly after we started using CMAR, I started receiving phone calls from other governmental agencies asking under what provisions we were using CMAR. My answer was always that it was covered under NRS Chapter 341, which is only Public Works, so they needed to check with their own legal advisor to determine whether they could do it under their own provisions. What occurred after that is there was enough interest in that, and the contracting community was also interested in that process. A bill was proposed and passed. What occurred is that the bill the way it was written in NRS Chapter 338 to allow local government to utilize CMAR was patterned somewhat after the way that we did CMAR under NRS Chapter 331 and our process at Public Works, which is covered under both the NRS and NAC. We would have preferred to stay under NRS Chapter 331 so that we only have to worry about one law. Now we have to worry about

NRS Chapter 331 and NRS Chapter 338. Now we look at both NRS chapters to make sure we are compliant. The law was then refined for the first time last session as a result of some issues that came up because of how agencies were utilizing this method. Specifically, we were trying to make it more transparent, especially with the selection of the subcontractors. I think that was the biggest push last session. There may be some refinements to that this session. I have not seen them yet, but I have been in contact with Assemblyman Daly. Prior to the session, he reached out to us and asked if there was anything that we would like to see changed in this format. We put a committee together and gave him some suggestions. That is where we are at today.

Chairwoman Benitez-Thompson:

Thank you. We will go ahead and ask up Mr. John Terry.

John Terry, P.E., Assistant Director of Engineering, Chief Engineer, Nevada Department of Transportation:

My presentation ([Exhibit E](#)) will somewhat follow Mr. Nuñez' presentation, but I will try to emphasize the differences between what I tend to call heavy highway construction or horizontal construction versus vertical construction, so you can see why there are differences when we get to the construction manager at risk (CMAR) portion.

We operate under different *Nevada Revised Statutes* (NRS) [([Exhibit E](#)) slide 2]. We operate under NRS Chapter 408, which grants Nevada Department of Transportation (NDOT) the authority to use design-bid-build and design-build, as well as design-build-finance, which we have not used. We work under NRS Chapter 338 for the authority to use CMAR, but in the case of NDOT, we have a sunset provision, which is June 30, 2013. At that time, if there are no changes, our ability to use CMAR will end.

Similar to Public Works, these are the three building methods that NDOT does [([Exhibit E](#)) slide 3]. They are design-bid-build, design-build, and the CMAR process. Design-bid-build is the typical way highway construction has been done for many years, is still used today, and will continue to be used in the future [([Exhibit E](#)) slide 4]. I would like to point out some significant differences in heavy highway construction from what Public Works has talked about. For highway contracting, the bids are really quantity-based. In other words, you may hear that the successful bidder had a \$10 million bid. It is not really a \$10 million bid; it is a bid of every single line item, of which there could be hundreds, with the quantity and the extended price added up. All of our design-bid-build contracts are based upon quantities that we provide with our plans. They are added up to determine the successful bidder. I would also like to point out another difference from Public Works contracts—our heavy

highway contractors self-perform the vast majority of the work. In fact, specifications on our bids say that they must self-perform at least 50 percent of the work other than very specialized work, which we may exclude from that 50 percent. So, our contractors are performing the vast majority of the work themselves, different from building construction. When we do design-bid-build, contractors bid on final, sealed plans and specifications. All the right-of-ways are cleared, and everything is done in advance. They are ready to just build a job. Then, we do the administration on the construction ourselves.

We have in the last six years done design-build [([Exhibit E](#)) slide 5]. Design-build has become quite prevalent in heavy highway construction, especially very large heavy highway construction projects. Our statute is under NRS Chapter 408 for design-build. By statute, our selections are "best value." They are not low-bid. Price is an element, but there are many other elements within that, and I could get into detail on it, but it is a very extensive process that we go through to hire a design builder. We have used design-build on some of our biggest highway projects, especially in southern Nevada. The design-build team prepares the final design and performs all construction. We use a two-step process for design-build: qualifications—short-list of three to five—and a final proposal [([Exhibit E](#)) slide 6]. The final proposal follows a very extensive evaluation and selection process, which is outlined in our Pioneer Program guidelines, which has extensive detail and is approved by our transportation board. It outlines how we do these innovative deliveries like design-build and CMAR. Many of the graphics you will see later came from the Pioneer Program guidelines. Another element of design-build is that typically stipends are paid to the unsuccessful proposers because of the extensive amount of work that has to go into a design-build proposal, both for advancing the design to fulfill all of the requirements and then we own the ideas they had in their designs. NDOT has executed five design-build contracts. The two biggest are design-build north and south in Las Vegas on Interstate 15.

Moving to CMAR, the contractor is selected early in the design process, similar to the way it was described in Public Works [([Exhibit E](#)) slide 7]. They assist us in developing the final design. We have a process that is documented in our Pioneer Program guidelines. Slide 8 is from those guidelines. It goes through and explains the process that we go through. We begin a solicitation process. We issue a request for proposals. We short-list, rank, and select. What I would like to emphasize here is there are two points where we have to go to our board for approval. That is the selection of the initial CMAR contractor team to be involved in the design and go through that process and, later, when we negotiate the full guaranteed maximum price (GMP). We have to go back to our board again in order to get their approval to move forward. We have a very open process where we select them. They are approved by our board. Then,

they work with our designers through our process and help us improve our design as we go through. We will talk about how we negotiate a GMP contract, and that is approved by our board before we move forward. That is the board approval process.

The selection of CMAR is in accordance with NRS 338.1693 (slide 9). A proposal and a short list are followed by interviews and selection, similar to what Public Works described to you. That process is quite similar. Some of the differences come in how we negotiate the GMP. We get the preconstruction services agreement so we can bring the contractor on board for preconstruction. We pay him for that phase. He goes to our meetings. He helps our designers develop the plans in a way that would be more constructible. Different from Public Works, NDOT then hires an independent cost estimator (ICE). We have our engineer's estimate. We hire a separate ICE, and then we have the contractor. Part of the reason we do this is because not very much of this work is subcontracted out. We have a subcontracting process, which is similar to what Public Works is talking about, but remember our contractors are self-performing the vast majority of the work. We do not have three sub-bids for all of this work. We get the GMP, and slide 10 sort of explains the process. We have them on board. We go through all three or sometimes only two rounds of these estimates by our ICE as well as our contractor to get to a GMP. We have risk mitigation sessions. We have design workshops. We work with them through this process to get to that price. This graphic shows that. Over on the left is partnering, and NDOT uses extensive partnering on all of their projects. We brought partnering into the CMAR process, and it works very well with this process. We have a very involved process that gets us to a GMP.

Chairwoman Benitez-Thompson:

When you say you brought partnering into this, what do you mean by that?

John Terry:

Partnering is a process that started on regular design-bid-build. It has an escalation ladder and resolves issues at the lowest level. It has a systemized approach to try to control conflict within design-bid-build construction contracts. We require a partnering session on each contract. We find it avoids claims and gets things working. It gets inspectors and others to resolve issues at the lowest level. We have brought that process into our design-build process. It includes the designers as well as the contractors in the partnering process. Now, we are using it in the CMAR process. It is a formal process of conflict and issue resolution as you do these contracts.

The negotiated GMP is an open-book review of the contractor's estimate [([Exhibit E](#)) slide 11]. Part of the reason we use an ICE is because NDOT has

very specific unit prices for all of our elements of work. That is how we bake our bread, but contractors do construction cost estimating in a different way than we do it. We bring in an ICE that does a production-based cost estimate, similar to the way a contractor would do it, so we have a better comparison in order to negotiate our GMP. Overhead and profit are at fair market value, and I have to point out that they then submit their final bid submittal like a regular bid at the end of the process. We have the right to not accept that final bid, and after all this work that has gone into coming up with these final documents the project is put that out to bid. We still have that option. Once we come to a final GMP, then we do pay the contractor based on our usual breakouts of our construction bid items just like any normal contracts. The construction manager assumes quantity risk (slide 12). When I said we add items in there, normally if an earth worker or whatever goes over those quantities, we pay the actual quantity. In this, they take on that construction risk because they helped us develop those quantities.

You may have questions on subcontracting. It is very similar to what was described for Public Works, but remember, we are not subcontracting out nearly the percentage of work that they are talking about. We have a process where prequalified subcontractors submit bids, and we are present at the opening of those bids. We see those subcontractors. We do not select the subcontractors. We are present when the bids are open from the subcontractors. Our CMAR contractor then executes those. We have all the checks and balances after that. They have to be licensed contractors and all the other things for contracting for CMAR.

Some of the benefits we have seen from CMAR include the input from the construction manager on design decision regarding time, materials, means and methods [([Exhibit E](#)) slide 13]. Normally we do final design. We do not tell them how to build things. Getting that input early is especially helpful in our line of work in their input in how they are going to phase the job in the traffic control portion of that job. They have a schedule advantage. Slide 14 shows delivery options. We really do see a schedule advantage since we have hired them and they are on board. They are working with us on quantities. If you look at the bottom graphic, it says "CMGC", but should say CMAR. Because we have them on board, as soon as the final design is done, they can start construction. In some cases, if we see early long lead-time items, since they are on board, we can get going. It has a real schedule advantage over design-bid-build because the procurement happens early.

There may be too much information [([Exhibit E](#)) slide 15], but that is information on our various delivery processes from our Pioneer Program guidelines. It shows what I was saying about hiring the CMAR contractor very early, he helps

us through the later phases. That way when we get to the final contract, he has been on board versus the design-bid-build and the design-build where we hire them later in the process.

Since we have had the authority to do CMAR, NDOT has done three CMAR projects [([Exhibit E](#)) slide 16]. The Interstate 580 at Moana Lane project is the one that is near completion. The other two are ongoing. We have others under consideration.

In summary, we use three contracting methods: design-bid-build, design-build, and CMAR. NDOT has submitted a bill draft request to remove the current sunset on CMAR because we see benefits of using this method as we move forward.

Assemblyman Elliot Anderson:

You have the construction manager in the CMAR process. When you have the traditional methods, the design-build or the design-bid-build, who manages those methods? Is that a government employee or would there be a construction manager in those cases as well?

John Terry:

In the case of NDOT, our standard design-bid-build projects are administered by our resident engineers who do construction administration. Our design-build and our CMAR projects are managed by our project management division with a heavy assist from the resident engineer team once they are into construction. We do it ourselves, but sometimes depending on workload, we do use outside consultant contract administration, but it would still be under our direction.

Gus Nuñez:

At Public Works, we do the same thing. Our project managers do the contract administration part of the work during construction on any of those methods.

Assemblyman Elliot Anderson:

To be clear, that is the biggest difference between the processes, right? I know they are completely different processes. Right from the start, you have the CMAR manager, who is someone who is coming in from the outside to advise and to work on the project from the beginning.

Gus Nuñez:

In the CMAR process, the contractor has a function that he served during the design phase. The design team has their function. We, the owner, also have a function. Our function primarily deals with the fact that all our projects go through the Legislature. There is a scope, intent, and a budget. We make sure

that the legislative intent is met through the design and construction process. We make sure that it is within the budget that was approved by the Legislature. We do the contract administration portion to manage the contract in accordance with contract documents. With respect to buildings, we also have one more phase that we do at Public Works as the building official. This is in vertical construction. The plan check and code compliance is a separate section at Public Works, and that section handles the permitting, just like any building department. So, that section does all our code compliance and code inspection part of the development of that project. We do the plan check and the code inspection, which is a separate section at Public Works, for all projects on state lands.

Chairwoman Benitez-Thompson:

Are there any additional questions? [There were none.] Is there any public comment? [There was none.] Before I close the meeting, I will be making a change to our subcommittee appointment. Assemblyman Oscarson will take the place of Assemblywoman Woodbury, who has a conflict. This meeting is adjourned [at 11:03 a.m.].

RESPECTFULLY SUBMITTED:

Jennifer Dalton
Committee Secretary

APPROVED BY:

Assemblywoman Teresa Benitez-Thompson, Chairwoman

DATE: _____

EXHIBITS

Committee Name: Committee on Government Affairs

Date: March 6, 2013

Time of Meeting: 8:05 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 103	C	Philip Gervasi	Testimony
	D	Gus Nuñez/Public Works	Presentation
	E	John Terry	Presentation