

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

**Seventy-Seventh Session  
March 8, 2013**

The Committee on Government Affairs Subcommittee was called to order by Chairwoman Dina Neal at 9:03 a.m. on Friday, March 8, 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](http://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](mailto:publications@lcb.state.nv.us); telephone: 775-684-6835).

**COMMITTEE MEMBERS PRESENT:**

Assemblywoman Dina Neal, Chairwoman  
Assemblywoman Irene Bustamante Adams  
Assemblyman Skip Daly  
Assemblyman James Oscarson  
Assemblyman Lynn D. Stewart

**COMMITTEE MEMBERS ABSENT:**

None

**GUEST LEGISLATORS PRESENT:**

None

**STAFF MEMBERS PRESENT:**

Jennifer Ruedy, Committee Policy Analyst  
Bonnie Hoffecker, Committee Manager  
Lori McCleary, Committee Secretary  
Cheryl Williams, Committee Assistant



**OTHERS PRESENT:**

Yolanda King, representing Clark County

Gustavo Nuñez, P.E., Administrator, State Public Works Board,  
Department of Administration

Ted Olivas, representing City of Las Vegas

Dan Musgrove, representing City of North Las Vegas and Amerigroup  
Nevada

Richard J. Nelson, P.E., F.A.S.C.E., Assistant Director, Operations,  
Department of Transportation

Michael Cathcart, representing City of Henderson

Kathy Ogle, Public Works Construction Project Manager, City of  
Henderson, and Co-Chair, Commission to Study Governmental  
Purchasing

Cadence Matijevich, representing City of Reno

Andrea Sullivan, Co-Chair, Commission to Study Governmental  
Purchasing

Constance J. Brooks, Ph.D., representing Nevada System of Higher  
Education

Vic Redding, Vice Chancellor, Finance and Administration, Nevada  
System of Higher Education

David Goodheart, representing Nevada Hospital Association and Anthem  
Blue Cross & Blue Shield/Denver

Robert Ostrovsky, representing Cox Communications

Kimberlee Tarter, Deputy Administrator, Purchasing Division, Department  
of Administration

Yolanda C. Jones, Purchasing and Contracts Manager, City of Las Vegas

E. Lee Thompson, Chief Deputy District Attorney, Office of the District  
Attorney, Clark County

Priscilla Maloney, representing American Federation of State, County and  
Municipal Employees, Local 4041

James R. Wells, Executive Officer, Public Employees' Benefits Program

Regan Comis, representing State Contractors' Board

**Chairwoman Neal:**

[Meeting called to order. Rules and protocol were explained.]

I would like to open the hearing on Assembly Bill 169. I would like to focus on section 16 of the bill until approximately 10:00 a.m., at which time we will focus on the next sections. I would like to invite Mr. Nuñez to the table, along with anyone else who has issues, concerns, or has filed an amendment to section 16.

**Assembly Bill 169: Revises provisions relating to contracts with a governmental entity. (BDR 23-793)**

**Yolanda King, representing Clark County:**

I think the real issue I have with section 16 is the gathering of the data at the submittal of the bids. What I would suggest is we gather the information at the award of the bid. Clark County currently has the information that is being gathered, specifically for construction manager at risk (CMAR) and design-build projects. When those types of bids are awarded, we collect the data for the contractors as well as the subcontractors. Administratively, it would be better to collect the information once we know whom the bid has been awarded to, as opposed to having that data collected upon submittal of all the bids.

**Chairwoman Neal:**

Does your process follow *Nevada Revised Statutes* (NRS) Chapter 338?

**Yolanda King:**

Yes, it does.

**Chairwoman Neal:**

One solution I thought about, which Mr. Nunez and I have not really fleshed out yet, was in the NRS Chapter 338 process, when the contractors do the submittal of the 1 percent and the 5 percent, whether or not race, ethnicity, and gender could then be added to that submittal form.

**Yolanda King:**

My thought is, and the contractors can probably correct me, they are not familiar with the individuals they are going to put on the jobs. They would definitely know once it is awarded, and we can collect data throughout, as the actual contract is ongoing. I do not necessarily think that when you submit a bid, the contractors or the subcontractors would know the individuals who would be working on site. If that is incorrect, someone can correct me on that.

**Assemblywoman Bustamante Adams:**

Are we talking about the applicants or the subcontractors on that form?

**Chairwoman Neal:**

In this case, it is the subcontractors. We will deal with applicants separately.

**Yolanda King:**

Are you asking for this information to be submitted by the subcontractors or the general contractor at the time the bids are submitted?

**Chairwoman Neal:**

That is an option and it is my understanding. Perhaps Mr. Nuñez can break this down. We had a presentation on public works. I think there may be an issue in terms of how you see it being done.

**Gustavo Nuñez, P.E., Administrator, State Public Works Board, Department of Administration:**

If I understand what she just said, when a bid is submitted, the prime contractor submitting that bid has to include what is called the 5 percent list. Any contractor who is doing, in a dollar amount, 5 percent or more of that work or of the total bid needs to be submitting the name of the firm, what work they are going to do, and the license number that applies to that work. Within two hours after the bid opening is concluded, they have to submit the 1 percent list with the same information. I think what you are saying is that in addition to the name of the firm, the description of the work, and the license number that applies to that work, we need one more line added to include whether that firm is minority-owned or women-owned, et cetera; in other words, the race and gender of the ownership of that firm, not of every employee in that firm.

**Chairwoman Neal:**

Correct.

**Yolanda King:**

When you look at section 16, subsection 1, paragraph (a), subparagraph (4), it states, "The number of employees of the person at the time the person submitted the bid." You are asking for the race, ethnicity, age, and gender. I took that as they were asking for the information pertaining to the employees.

**Chairwoman Neal:**

We are, but for digestion purposes, I separated it out because there was the question of what is the burden and how far do we want to go. How do we fix the issues of sub-tier contracting that we may be able to get first versus the applicant?

Another solution that was offered is certified payroll, which deals with employees. I will let Assemblyman Daly explain that one, because that is the solution he has offered.

**Assemblyman Daly:**

Interrupt me if I say something that is in conflict with what you are thinking, Madam Chairwoman. The way I am seeing it is we want to collect this information. There are a couple of different collection points and ideas that have been put out there. If we want to collect the information on the bidders,

whether they are successful or not, it seems to me it would be easy enough to add fields to the questionnaire so they can check the boxes. That is collecting the information on the prime bidder. You can do that with everyone when they turn it in. If they do not bid, they do not have to do it. If they do bid, they have to check the boxes.

I understand the 5 percent list is turned in at bid time. From what I understand on the second level, there is information that the sponsor of the bill wants to collect on the subcontractors. That is one collection point and we can do that. You have the 5 percent list and you have 1 percent list that is turned in two hours after the bid opening is concluded. However, that is not everyone on the job either, so collecting that information from the contractors at the 5 percent list is still check boxes. Collecting that at the 1 percent list will be check boxes, although a little more difficult. You could collect that data when they take their public works number to the Office of the Labor Commissioner. Every contractor, all the way down to the smallest contractor who only did \$2,000 worth of work, is supposed to be reporting to the Office of the Labor Commissioner and added to that job for that public works project. The information could be collected there and, again, that would be a notification by the prime contractor of the subcontractor to give that information at that time.

The third thing is the information on who actually worked on the job as far as the employees go. The contractors are one way, with a couple of different collection points. The employee collection is really on the certified payroll report, which is the only place you are really getting that. I think the certified payroll reports are easy enough to be modified to require the information, if known. It is not legal to ask a person's race, or things like that, so it would be voluntary on an application they fill out with the employer for statistical purposes only. That is added in and then passed on to be put on the certified payroll report. I have seen it on the Nevada Department of Transportation (NDOT) paperwork from the volunteer program that has been in place for a while. It is not required, but most people are doing it.

The real question to everyone here, and to the sponsor, is, okay, we got it. It is on the form. Now what do we do with it? A job like the Molecular Science Building at the University of Nevada, Reno (UNR) has 10,000 pieces of paper with a lot of information, but it is not compiled anywhere. How can we get that into a format that may be useful? We are looking for ideas.

**Gustavo Nuñez:**

I can tell you how we would go about it in Public Works in order not to impact our staffing. On bid date, we can certainly collect the information based on the

ownership of the prime, and those are due at 5 percent or 1 percent, with respect to the ownership. That should be fairly simple and we can modify the forms pretty simply to gather that information.

**Assemblyman Daly:**

There would really be no cost to that, correct? You would modify the form by adding some check boxes.

**Gustavo Nuñez:**

Yes. The next step, ideally, would be after the contract is awarded, add the additional information on the certified payroll form for each person who works on that job who would need to be reported. Again, we are talking about contracts over \$100,000. There is no certified payroll on contracts under \$100,000, so if that is information we need to gather, we are going to have to make some other provisions for that part of the work. For contracts over \$100,000, you have to do the certified payroll. Including that information should not be too much of a burden, as you said, using check boxes. You would need to ask that of the contractors, as they are the ones who fill out the information.

Instead of compiling that information on a weekly basis, I think we at the State Public Works Division would place that burden on the contractor. They would need to compile it and submit it on a monthly basis or at the end of the job, whichever way this law is written. We would then take that information, go online through the website we are going to create, and then fill in the blanks from the information we received using the form we are going to create. If that is what we are going to do, and that is what we need to do in order to get where we want to go, then we would have to make some slight modifications to the way the bill is currently written.

**Chairwoman Neal:**

Just for clarification, originally when you had vetted section 16 and we had all of these burdens on how we were going to gather the information, you stated you would be willing to create a website to dump the information without analysis. How does this new solution affect that process that you were thinking about?

**Gustavo Nuñez:**

That process remains the same. If we are going to gather ownership at bid date, we will set up the form to gather that information first, so that information could be entered. We would also add to that form the other information that we need to collect on all the employees, like gender, ethnicity, et cetera, that would have to be included per this current law. We would design the form

based on whatever is agreed to here and collect it the same way the current bill is drafted, and then provide that to the Legislative Counsel Bureau (LCB).

One of the first comments I made here earlier was looking at it as a public works agency that does public works jobs and also has to report it as a public works agency into that same format. We are not only going to collect the information, but we are a public works agency doing public works contracts, so we also have to report it.

**Chairwoman Neal:**

If we could pause there for a second, Ms. King, there are two issues on the table: how to collect the information in regard to subcontractors and how to collect information in regard to employees. How does that affect the county?

**Yolanda King:**

If we amend based on what Mr. Nuñez is suggesting, at the time of the bid, if it is simply just to checkmark the ownership of the prime and the subcontractor, that is easy to do. It is a matter of changing the bid forms. What I was suggesting when I originally came up was at the award of the bid, if you want to track that information employee by employee, we could do that. Clark County actually has a software system whereby the contractors submit their certified payroll to the county. As part of that certified payroll, there is a pilot program we have in place for projects that are CMAR or design-bid-build, where we are asking for this information already. Our county commissioners wanted the same information and they wanted to be able to track that. We had put together a subcommittee to talk about how we could do that. We currently have a pilot program that just went into effect this past January, which tracks that information for those projects. It can be collected through the software program that we currently have and we can modify that software program to collect certain data.

**Chairwoman Neal:**

Is the report you gave me a reflection of that pilot program or something else?

**Yolanda King:**

It is something different. The pilot program started in January and the intent was to provide a report to our commissioners on a quarterly basis. That first quarterly report will come out sometime in April. There were two reports we gave you; the first being the Regional Business Development Advisory Committee report that is required biannually per statute. The other report was the actual statistics that Clark County keeps track of for all of our contracts. Some of it is more of a manual process, but it is based on the ownership of the businesses as opposed to employee-by-employee basis. I believe the

Regional Business Development Advisory Committee report is that way as well. It is based on the ownership of the business.

**Assemblyman Stewart:**

I have had a ton of concerns from contractors that this would be a huge burden on them. I have had a ton of concerns from various local counties and municipalities that this would be a huge burden on them. This pilot program that you have, will the cities within Clark County be able to utilize this? Is this pilot program proven already? Would you have to hire additional people? I know you have already had to make cutbacks. Is this going to be a burden on Las Vegas, North Las Vegas, or other entities that deal with these contracts?

**Yolanda King:**

I can only speak for Clark County. The concern we were having was the fact that it appeared you were wanting this information at the time of the bid on an employee-by-employee basis. That definitely would have been a burden if we were to have to collect that data prior to or at the submittal of the bid. The other cities can correct me, but I do believe the other cities in the south are using LCPtracker, a labor compliance software. It is my understanding the contractors are submitting that information through this application. The difference is before we actually had the software, the certified payroll information was actually being submitted on hard copy. At any given time, and I am assuming this also applies to the cities, we would receive stacks and stacks of certified payroll. The software that we are using now eliminates the submittal of the hard copies and it submits everything electronically. I believe the other cities are using it. The pilot program I spoke of only includes Clark County and does not include the cities within Clark County.

To answer the question of whether I anticipate having to hire additional employees to keep track of this, as long as we are being asked to keep track of the employee-by-employee information of whomever the contract is awarded to, then no, it would not require additional hiring of employees. If you are asking us to do it at the time of the bid, yes, it would be an administrative nightmare to try to manage.

**Assemblyman Stewart:**

Can you verify whether the other cities within Clark County and Washoe County can handle this?

**Yolanda King:**

I can get the information for you in terms of who is using that actual software to submit certified payroll and if they are also able to manage the reporting once the bid is awarded, as opposed to at the time of the bid.



**Assemblyman Stewart:**

What if a company has a change of personnel during the building of a project? If an employee quits or moves and another employee comes in, is it a problem to constantly update that?

**Yolanda King:**

Are you asking about the certified payroll?

**Assemblyman Stewart:**

Yes, or whatever system you are going to use to solve this problem.

**Yolanda King:**

I do not believe so because with the certified payroll, they are reporting on all of their employees. If you have a change of employees or if you add employees, that is all reported through the certified payroll.

**Chairwoman Neal:**

While we are on this question, I would like things to be asked and answered at the same time. I know Mr. Olivas signed in for the City of Las Vegas and if you are in the room, can you verify if you are currently participating in LCPtracker software?

**Ted Olivas, representing City of Las Vegas:**

I am not sure, but I will find out.

**Assemblyman Daly:**

I want to clarify one thing for the record and for the sponsor of the bill regarding the information on who bids. The \$100,000 does not matter. There is a process that you have to bid all the way down to zero. The Nevada Department of Transportation has a slightly different threshold, but you can get the information on the bidders for every job. The \$100,000 threshold only applies to the certified payroll boards and payment of prevailing wage. What percent of the jobs, and you can give us a guess, are under the \$100,000?

**Gustavo Nuñez:**

Between the Public Works Division and the Buildings and Grounds Section, we do quite a bit under \$100,000, especially on the deferred maintenance. I cannot give you a percentage and will have to get back to you on that. For example, a lot of our Americans with Disabilities Act (ADA) work, where we are taking care of a barrier or doing some demolition on concrete work, are under \$100,000. Some large roof replacements are over \$100,000, but a lot of the roofs that we replace are only \$50,000 or \$60,000. On deferred maintenance projects, we do quite a bit under \$100,000. Collecting the

information regarding ownership should not be a problem. Collecting the information on every employee, that is one more thing that the prime contractor or the subcontractors are going to have to do that they are no longer doing because they are not doing the weekly certified payroll.

**Assemblyman Daly:**

I saw what Clark County has and it is good. They can collect a lot of information and they have come a long way. You really have to build this, though, to the lowest common denominator. There are a lot of very small agencies, such as Sun Valley General Improvement District, that are public bodies and have to publicly bid and do public works occasionally. There is no way they are set up to do this stuff. A lot of people do use LCPtracker. I know NDOT does. I do not know if people will like this comment or not, but it has been my experience that the only thing that is accurate on LCPtracker is the employee's name. Much of the rest of it is not really as useful or as truthful as we are led to believe, but I will take that up at a different time. The good news is the names are accurate.

**Chairwoman Neal:**

Is there an issue with the accuracy and veracity of the pilot program?

**Yolanda King:**

Not to my knowledge. It is like any other computer program you have; it is only as good as the information input by the users. I do not know of any allegations pertaining to the accuracy of the information.

**Chairwoman Neal:**

For the record, who does the inputting of the information?

**Yolanda King:**

From my understanding, it is the information that comes from the contractors who give the information on the certified payroll. Otherwise, the entities would not know that information. It is not any different, from my understanding, from when the contractors would submit hard copies of the certified payroll, which included all that information. The information that was once hard copy, is now electronically submitted. It comes from the contractors because they are the ones who know who is on that job, what kind of job they did, what they were paid, the days they worked, et cetera. The contractors are submitting that information to the entities.

**Chairwoman Neal:**

When you get the first report in April from the pilot program, what is going to be the method or process to verify that the information you receive is accurate?

Are you keeping the hard copies and then going back to verify if they wrote down something they did not input?

**Yolanda King:**

I can only speak for Clark County, but we have two people within our purchasing area and that is their job; to verify the prevailing wage side of this. It is not a matter of collecting their certified payroll and then just having it sit somewhere and not validating it. Our role and goal are to validate and verify that what we are receiving via the certified payroll is that those contractors are paying those employees according to prevailing wage. For instance, if a contractor reports they had Employee A working as a plumber on this day, we are validating that the contractor paid that employee whatever the prevailing wage is for a plumber. It definitely makes it a lot easier having it electronically submitted. As you can imagine, having to go through page by page of a hard copy is much more difficult. It definitely has improved.

**Chairwoman Neal:**

To Mr. Olivas or Mr. Musgrove, did you hear the question? We want to know if the City of North Las Vegas and the City of Las Vegas are inputting information into LCPtracker.

**Ted Olivas:**

We do use LCPtracker. It is a mechanism that allows the general contractor and the subcontractors that are required to submit certified payrolls to do that directly. We have access to the system for review so we do not get all the paper. It is much like the Nevada Electronic Legislative Information System (NELIS) for us.

**Dan Musgrove, representing City of North Las Vegas and Amerigroup Nevada:**

I ditto everything Mr. Olivas said.

**Assemblyman Stewart:**

In your opinions, Mr. Olivas and Mr. Musgrove, is this going to solve this problem, or do we still have a huge burden on your staff? Is this going to require more people to be hired to fulfill the requirements of this bill and the possible amendment?

**Ted Olivas:**

As it is currently written, it will take additional resources. However, I do have some testimony with some suggestions that you might consider.

**Richard J. Nelson, P.E., F.A.S.C.E., Assistant Director of Operations, Nevada Department of Transportation:**

At the risk of plowing some ground over again, I would like to inform the committee that about a year ago, the Nevada Department of Transportation implemented an electronic bidding process. To that end, all of the bids submitted to NDOT are done electronically through a bid-locker system. All the forms and all the data that has to be submitted as part of the bid, have to go through our electronic bidding system. We are a little concerned about data collection at bid time. We have had a couple of situations where we have had to go back and modify this electronic bidding system slightly to include some additional information. There would be a cost associated with that. We are gathering the data now in order to determine what kind of a fiscal impact that might have.

To that end, we were wondering if there might be some opportunities to collect this data through a prequalification process. The NDOT does prequalify all of our prime contractors and it would be fairly straightforward, at that point, to collect this data with respect to the ownership of the company and so on.

**Chairwoman Neal:**

I have two questions. First, are you having an issue in terms of accuracy and veracity of what is input into your electronic system? Secondly, how similar is your system to the Clark County LCPtracker pilot program?

**Richard Nelson:**

With respect to LCPtracker, I believe it is the same system. We have used LCPtracker for quite some time now. To answer your first question, as Assemblyman Daly indicated, we rely on the accuracy of the contractor in inputting that information to the system. It is our responsibility, once we get the information, to do spot audits to compare who was actually on the job on a particular day against what was input to the system on that particular day. I am afraid I might have to concur with Assemblyman Daly. There can be issues with respect to accuracy. It is in the hands of the contractor to input that data.

**Chairwoman Neal:**

Here is my point. If there is going to be an issue with accuracy, or it appears that there probably was an issue with accuracy with the written form, I cannot fix what you did not want to say. Have there been complaints that it is a burden to input this information?

**Richard Nelson:**

I believe that the LCPtracker program has been a big improvement over the written sheets. There are some checks and balances that are put in with respect to the prevailing wage rates. That was one of the issues we had with the hard copy. Every piece of data had to be checked on the hard copy. With LCPtracker, because you front-load the wage rates and those kinds of activities, I do not believe you see the situations where they leave off the trades or they have the wrong wage rates.

**Chairwoman Neal:**

Here is the only reason why we dealt with section 16 first. We wanted to get to the nit and grit of the burden, whether or not it was real or imagined. We wanted to determine how we could fix it or how we could alleviate it. If you have a current electronic system ending the issue of paper pushing, I want to know if that electronic system has significantly reduced the burden that is being associated with the contractors. If there are issues concerning the accuracy and the veracity, I do not believe there is a solution for that because if it existed with the paper, then that is the contractor choosing to do what they want. I am not trying to make someone do something other than what they are already doing. If it comes to the point where contractors are inputting something that they know is not true, that is a whole other issue that, to me, the agency itself has a responsibility to deal with, not this legislation.

**Assemblyman Daly:**

I apologize for bogging this issue down with the mention of LCPtracker. You are right. If they are using LCPtracker, it is not an increased burden, it is another check box, and that information is largely correct.

I do want to make one comment in regard to Mr. Nelson's comment about a potential increased cost to the Department of Transportation. If you still take paper bids, there is no cost. The Department of Transportation, on their own and for their convenience and the convenience of everyone else, developed the software to do the electronic bidding. If you were going to add something to something you already wanted to do, and if it was something you needed, and you could add it on without a cost or within your budget, I think it is unfair now to say it would be an increased cost if we asked you to do it.

The other thing about LCPtracker is it is not free. It is not an existing software that each agency has developed themselves. This is a vendor's software who may perhaps charge 1 percent of the contract. It can be expensive and not everyone uses it. It also has other issues, but not for your purposes. If people are using it, it is easy and it decreases the burden, but not everyone is using it. There is a cost associated with it, which is not insignificant in my view.

**Chairwoman Neal:**

In the contract award, is this money that is a part of the contract award that is then recycled to pay that 1 percent, or is that money coming out of the contractor's own pocket?

**Richard Nelson:**

The cost of our use of the LCPtracker software is borne by the department. I do not believe we pass that cost on to the contractors. With respect to the electronic bidding, that is a program that we have already implemented. We are currently taking bids electronically. There certainly could be a work-around with respect to how contractors submit bids. It could be they have to turn in a piece of paper with this information on it. The beauty of the electronic bidding is the fact that the contractor does not actually have to be present in the building to submit a paper bid. I am sure there is a work-around that we could make. I believe it would be fair to say if we did add additional information into the electronic bidding system that we already have in place, there would be some additional cost. Would it be onerous? I do not know exactly what orders of magnitude we are talking about right now.

**Assemblyman Oscarson:**

Regarding the 1 percent fee and the other costs we talked about, are those administrative costs absorbed by your entity?

**Richard Nelson:**

Yes sir, that is correct.

**Chairwoman Neal:**

Is there anyone else who would like to clarify whether or not they participate in LCPtracker?

**Michael Cathcart, representing City of Henderson:**

I am sorry I did not get up here sooner; I was waiting for the answer from the City of Henderson. We are currently not using LCPtracker. I do have Kathy Ogle available in the south to speak on this, but she is not signed in to testify, or we could put in writing why we are not using that system and what we are doing as an alternative.

**Chairwoman Neal:**

I would like to hear from her so we can get that question asked and answered now about why you do not use LCPtracker.

**Kathy Ogle, Public Works Construction Project Manager, City of Henderson, and Co-Chair, Commission to Study Governmental Purchasing:**

The City of Henderson is not using LCPtracker because of the cost involved. I am the only person for the City of Henderson who handles all the certified payrolls, verifications, and investigations, or anything else involved with that. It is not cost effective for the city to use LCPtracker. I do everything manually.

**Assemblyman Stewart:**

Approximately how many contracts are issued by you each year and how many challenges have you had in awarding those contracts?

**Kathy Ogle:**

I am sorry, I cannot give you exact numbers at this time. However, because of the economy, we do not issue that many large public works projects at this time. I probably handle 15 to 20 public works contracts annually, and we do prevailing wage. We do a lot more smaller projects under the \$100,000 threshold.

Regarding the challenges, in terms of claims for investigations and determinations, I probably have, on average, five to six per year.

**Assemblywoman Bustamante Adams:**

I do not know if the information we asked for regarding the group that you are associated with has already been submitted or not.

**Kathy Ogle:**

Yes, for the Commission to Study Governmental Purchasing, I did submit that to the secretary on Monday afternoon.

**Chairwoman Neal:**

Are there any further questions for Ms. Ogle? [There were none.]

**Cadence Matijevich, representing City of Reno:**

The City of Reno does use LCPtracker. I admit I am not an expert on that system, but I would like to clarify that we could utilize LCPtracker to satisfy section 16, subsection 2. However, I do not believe the independent third-party software or the vendor would allow us to capture and submit the information you are requesting in section 16, subsection 1, which specifies how we shall submit the information to the division through the application on the Internet. I believe those two items are independent.

With respect to section 16, subsection 2, no, we do not anticipate that creating significant additional work for us. However, the information that is requested in

section 16, subsection 1 is not currently compiled by us for all bidders. We do compile it for those whom the contract is awarded to.

If we bid a project and there are ten bidders on that project, we now have nine additional entities for which we would be required to collect and submit that information. Based on the volume of public works bids that we let each year, that could result in some additional work for our staff. If you read section 16, subsection 3, paragraph (a), "Create an application on its Internet website for a public body to enter or cause to be entered . . . ." Today, we cannot quantify what that volume of work would be. We do not know what that portal looks like.

To Assemblyman Stewart's earlier question, we do anticipate that there would be some impact on our staff resources to comply with subsections 1 and 3 of section 16.

**Chairwoman Neal:**

Are there any questions for Ms. Matijevich from the Committee? [There were none.]

**Andrea Sullivan, Co-Chair, Commission to Study Governmental Purchasing:**

Along with Ms. Ogle, I am a co-chair of the Commission to Study Governmental Purchasing. I just wanted to say that the Washoe County School District does not utilize LCPtracker. Obviously, as Ms. Ogle just said, the City of Henderson does not use it. The City of Sparks does not use it and many of the northern Nevada agencies do not use it, particularly in the rural areas, because of the cost of LCPtracker. I know the Washoe County School District has said that it does not verify payroll, and the system allows mistakes to be made, which is a secondary reason for not using it. The primary reason is the cost associated with it.

**Assemblyman Stewart:**

Then there is a problem with carrying out the reporting. You would have to use a system that you cannot afford. What is the alternative?

**Andrea Sullivan:**

That is correct. As for the Commission, I believe Ms. Ogle spoke to them earlier this week; we had representatives from 19 agencies responding to this. Each of them felt the data collection of this would be extremely onerous, both on our agencies and on the contractors submitting the information. It would certainly cost us more money because we do not have LCPtracker, and many agencies do not. This particular software is a vendor software; it could be subject to bidding requirements and it has not been deemed a sole source that



everyone must use. Theoretically, agencies could use other software that may or may not contain that information. The overwhelming consensus of the Commission would be that it would be very onerous for the agencies to collect, maintain, gather, and input this data.

**Assemblyman Stewart:**

This question is for the City of Reno. Do you think there is a problem between the contractor and the City of Reno communicating because their systems are not complementary?

**Cadence Matijevich:**

No, Assemblyman Stewart. What I was hoping to convey, and I apologize if I did not do it correctly, is once we have awarded a bid, LCPtracker works very well. We believe the information that is required to be collected under section 16, subsection 2, we could collect without additional significant burden. Where our concern with section 16 lies is in subsection 1 and subsection 3. My guess is this third-party vendor might be willing to make some changes to their software, for a cost, so that it could accommodate the information, but we do not currently have a standardized software system that would allow us to collect the information that is required in subsections 1 and 3. That is where we believe we should establish internal processes, procedures, and practices to ensure we are accurately collecting all the information as required in subsection 1, and then submitting it as required under subsection 3 to the State Purchasing Division through the application on its website.

**Chairwoman Neal:**

When you talk about section 16, subsection 1, there are five criteria listed there. Which ones do you not currently collect?

**Cadence Matijevich:**

I do not believe that we collect the race, ethnicity, age, and gender of the person, I do not believe that we collect the number of employees of the person, and I am not certain about subparagraph (5).

If I may, I do not know if now is the time, but we do have an additional concern with this section. Forgive me, but I am going to get deep in the weeds here. Mr. Nuñez and I were talking earlier and we are concerned about the practical application of the statutory definition of "person." If you look at the statutory definition of "person" in NRS 0.039, it states, "Except as otherwise expressly provided in a particular statute or required by the context, 'person' means a natural person, any form of business or social organization and other nongovernmental legal entity including, but not limited to, a corporation, partnership, association, trust or unincorporated organization." I believe your

intent here is to get to the owner or the principal of the prime contractor. However, if we use the statutory definition of "person," if this is a publicly held corporation, are we collecting this information for every single shareholder? Madam Chairwoman, I do not believe that is your intent, but I think the way the language currently reads, we could potentially be challenged and be required to obtain that information. There may need to be some wordsmithing or, perhaps for purposes of this section, a different definition than the statutory definition for "person."

**Chairwoman Neal:**

That was not too deep in the weeds. I think it is an interesting point. What has happened so far, just to retrace what has been said, is I think we have some middle ground for section 16. We know there are some sections that we can clean up. What has been beneficial is the municipalities, the counties, and NDOT coming to the table and letting us know that LCPtracker exists for certified payroll input, that there is already an electronic system in place that is alleviating the burden and concerns that have been consistently stated, and that we can figure out a plan on how to incorporate language for section 16 that revolves around what is already being done.

If any of the municipalities are not collecting the information from section 16, subsection 1, paragraph (a), subparagraph (3), that is a particular point I know is necessary. If your issue is subparagraph (4), I thought certified payroll answered that question, but if it does not, talk to me about the burden associated with it.

**Cadence Matijevich:**

It is very difficult to quantify the burden. I will use some round numbers for ease of trying to describe this. If we let ten bids under NRS Chapter 338 that would qualify under this section, currently we only have to supply this information for the entity that is awarded the bid. We do it once and we do it through LCPtracker already. With this subparagraph (4), the other entities that are submitting the bid are going to give us this information. To your point, yes, perhaps it is just a check box, but for those nine additional entities who bid, if it takes us a half hour for every one of those to be input into the new website the Purchasing Division is going to create, it may be another 40 to 80 hours of work a year for an employee. It is very difficult to quantify. It would depend upon the number of bids you are letting. It would depend upon the number of people who respond to the bid. I can say definitively, this is work that we do not have to do today that we would have to do under this requirement.

Perhaps we will find that there is a software solution that will make this not significantly burdensome at all. However, as we look at it today, with our

current practices, the electronic means that are available to us, it will change things. It will require additional work of us, and that is where our concern lies. I am not saying it is insurmountable and that there are no ways to get there, but definitely, yes, it places additional burden on us for information we have to submit to the Purchasing Division.

**Chairwoman Neal:**

I have a homework assignment for the municipalities and the counties who are using LCPtracker. What appears to have occurred is we have a consensus, to a degree, in terms of having an existing electronic system. First, how do we deal with the issue of the factors in section 16, subsection 1? I only want to deal with the factors in subsection 1. The second issue is the Internet option that Mr. Nuñez offered. He offered that because he was trying to reduce the fiscal note in terms of public works. I am not sure if LCPtracker was available in 2011. He was trying to have a dumping ground for data—no analysis, but a place to put the information. I appreciate that. There is still a connection and a need to take a municipality's data and combine it with the state's data.

If you could get together over the weekend and come together with amended language for section 16 that deals with the criteria in subsection 1 and the Internet option that Mr. Nuñez referred to, I would appreciate it. I still want you to use the existing LCPtracker. I do not want to get into the accuracy and veracity issue because that is an issue that, to me, the agency has the responsibility to figure out. If you are not using LCPtracker, this homework assignment does not apply to you.

**Cadence Matijevich:**

I think I understand our homework assignment, and we will get right on it.

**Yolanda King:**

When we talk about section 16, subsection 1, the way I understood it from our previous conversation, the real issue is that you are asking us to submit this information when the bids are submitted. You are also asking, when the bids are submitted, that it is on an employee-by-employee basis. I do not think that is your intent. In the earlier conversation, we had talked about submitting the information based on the ownership of the business at the time of the bid, rather than an employee-by-employee basis.

**Chairwoman Neal:**

Let me clarify that. We are still there and that is my mistake. I did hear that there was an issue submitting the bid at the beginning. Come back with a solution that deals with that. There are two questions on the table: the ownership information and the employee information. My understanding,

when I listen to the testimony, LCPtracker is the equivalent of collecting the certified payroll, which deals with the employees. Is that or is that not correct?

**Yolanda King:**

That is correct, but it is at the award of the bid.

**Chairwoman Neal:**

If it is at the award of the bid, and the only time we can get information regarding employees is at the award of the bid, fine. However, if you can get information for the ownership at the submittal of the bid, then that is what I also want. There would be two collection points for information. I understand you cannot get employee information at the beginning of the bid. However, under the current NRS Chapter 338 process, we are already collecting information on who is bidding, which is the owner or the subcontractor who plans on participating in the project. It seems there would be a possibility to gather that information at that time, which was my initial suggestion regarding the 1 percent and 5 percent lists, which is a part of the NRS Chapter 338 process. When the 5 percent comes in at the beginning and then two hours later the 1 percent comes in, those could be the same two entities. If they are the same entities, do not bog yourselves down with the fact that they are the same people. If they are different entities, then I do want to capture the information.

Does that clear that up? How can we get the ownership information at the submittal of the bid? This is the homework assignment I am asking you to think deeply about. Come back with a solution to that part of the collection piece. If LCPtracker works at the time of the award of the bid for gathering employee information and that is the best fiscal way to keep it, then great. However, there has to be a connection to what you do to what the state needs to know.

**Ted Olivas:**

I think I know where you are going with this. I was hoping I could say it in Ted's world. We receive bids and it says we are going to gather information from the person. The person, in my mind, is the person who signs the bid form. You want to know the cost, the race, ethnicity, age, gender, et cetera. I guess we can ask for that. We can put that on the bid form. For the person who is signing that bid form, that is the high level of how many employees they have. I may have 5 employees today, but next week I may have 50, depending on whether I get the contract or not. I think we can offer that on the bid form.

Regarding section 16, subsection 1, paragraph (b), we can also say in the contract that they must meet all these reporting requirements. We are going to compile and maintain the information from the person, or the prime contractor,

who is awarded the contract. We can somehow get this to the Public Works Board. At the time of the bid, you are asking for all this information, so we would do a bid summary that says I received bids from all of these people, here is the age of the person, the ethnicity, the gender, the number of employees, and the length of time they have been in business.

**Chairwoman Neal:**

If possible, you would submit that information from section 16, subsection 1, paragraph (a), subparagraph (3). Subparagraphs 4 and 5 are negotiable, right?

**Ted Olivas:**

We could do that.

**Chairwoman Neal:**

I am asking for it to be submitted on the 5 percent list and the 1 percent list. I do not know if you have seen the form from Public Works. If you are using NRS Chapter 338 and you have a different form, I need to know. Are you using a different form other than the Public Works form?

**Ted Olivas:**

For the 1 percent and 5 percent lists, it is probably the same form. However, at the time of bid opening, that is going to be much more difficult. If we are just talking at the contractor level, it is one thing, but when we get into the lower-tier contractors who are on those lists, then you just multiply it by 10 or 15 or 20.

**Chairwoman Neal:**

In regard to the number of employees?

**Ted Olivas:**

To the number of subcontractors.

**Chairwoman Neal:**

I thought there was already a list of the names. I thought it was the names, the license, and the scope of work already being submitted on the list. Now you have gender and ethnicity. How is that an issue?

**Yolanda King:**

Could I try to clarify what I think it means? On the 1 percent or 5 percent list, the way I foresee it, you would have ABC Subcontracting, which is the actual business. My thought is to get away from the person, get away from the employees; we are just talking about the business ABC Subcontracting. Then you have whatever the cost is, and then collect the race, ethnicity,

or gender of the owner of that business. This is what we would collect for you. Is that correct?

**Chairwoman Neal:**

Yes.

**Ted Olivas:**

I do not believe we are allowed to ask for the cost for the subcontractors, which is why the Legislature put into statute a percentage.

**Chairwoman Neal:**

If it is percentage, then I think it is a nuance issue that still captures the dollar amount. Perhaps not in dollars, but in percentages. If it still gets to the end point, that there is a percentage that can be examined, that is fine.

**Ted Olivas:**

I just wanted to make you aware of that.

**Andrea Sullivan:**

At the time of bid submission, if you have ever been where a bid is being turned in for a Chapter 338 bid, you have all the contractors sitting out in the parking lot up until 30 seconds before that bid is due. What they are trying to do is figure out their 5 percent list. They literally do not know what their 5 percent list is going to look like until a minute before that bid is due. It would then be impossible for them, at the time they submit that 5 percent list, to have all that information for the subcontractor at the time of the bid. They may have had 20 employees a month ago, but they lost work and they have 5 employees now. The same exists for the 1 percent lists as well. I think if we need to supply that information, we would need more time than just when those lists are due.

**Chairwoman Neal:**

Maybe, because we now put this in there, someone will be more prepared with their 5 percent list and will not do it in the parking lot. They can also consider that these are taxpayer dollars and they would love to have them, so they are going to prepare and have their 5 percent list ready at the beginning of the bid. I would hope that the love of preparation would carry over, and the love of tax dollars being in their pocket would encourage them to do it right.

**Assemblyman Oscarson:**

To me, it is a little vague and I have heard it mentioned over and over again here. Section 16, subsection 1, paragraph (a), says "Gather and maintain, for every person who submits a bid . . ." and then it goes to subparagraph (3),

"The race, ethnicity, age and gender of the person." I want to make sure, if we are collecting data and we need that data, that it is accurately reflected that it is not a worker bee or someone else who is signing that contract. It has to be reflective of the overall makeup of the company, the person who owns the company, or whoever it is who is doing that. That data, however it is going to be used, must be accurately reflected in the statistics that we are putting together.

**Gustavo Nuñez:**

Just so we are clear, I was going to try to summarize what we are going to attempt to do and hopefully others here at the table can comment. I see under section 16, subsection 1, paragraph (a), subparagraph (3) is the race, ethnicity, age, and gender of the person. For subcontractors on the 5 percent and 1 percent lists, this information would be provided at the time of the bid. We are talking about the entity submitting the bid reporting that information with the bid. For the subcontractors on the 5 percent and 1 percent lists, we can make it a check box on the form and we can amend the bid proposal for another check mark for the prime contractor. I really do not think that should be a problem, even at the end, depending upon who that subcontractor is going to be. When they get a phone call saying, on the 5 percent list we have this subcontractor, here is the license number, and there will be a box to check for race, ethnicity, age, and gender on the form, that should be able to be done quickly. We just need to add the employees and the subcontractors on the 5 percent and 1 percent lists for subparagraph (3).

I think we should delete subparagraph (4) at that point and add it in the section when the bid is awarded, so it can be reported as they report the weekly certified payroll. This would only be for the contractor who was awarded the bid, not for everyone who submitted the bid. Is that where we are going?

**Chairwoman Neal:**

Yes, and I am glad you clarified that. Assemblywoman Bustamante Adams felt there was confusion in terms. I need to cut section 16 off in about five minutes. As for the homework, you have to have Mr. Nuñez in your conversation to help him frame it for you. I think Mr. Nuñez understands what I am seeking. I do not want you to confuse the submittal of the bid and the award of the bid with what works. Mr. Nuñez created section 16 and I am relying on his expertise and commonsense approach to get you all to a middle ground and consensus of how we can make this work.

**Assemblyman Daly:**

I think we know what you want. There are several paths to get to the same place. There are several collection points and there are reasons why some

should be different than others. We need to find the path that meets the need of collecting the data and is not burdensome on the contractors who are doing this work or the public agencies. Collecting the information may be easy, but we have to get it to a central point where we can compile it. Someone else can do the analysis, but we have to get it to one point.

There is an issue with the person who is awarded the contract. I do not think the sponsor of the bill really cares. Granite Construction Company, or any number of large, national contractors, is not owned by one person. The person who signed the contract is an officer or a vice president for a regional branch of a multinational company. We do not really care what his gender is; it does not matter. I guess the sponsor needs to figure out if she needs that information for a corporation or some mid-level employee who is signing the piece of paper.

There are three different things here. You have bidders, you have the people who are actually awarded the contract, and you have the subcontractors. They are right, Madam Chairwoman, it is a last minute thing for both the 5 percent and 1 percent lists. They do not always have the information you are requesting. I have seen bids come in with names scratched out and other names written in next to it. They change that quickly. There is a sophisticated, chaotic process for the contractors in selecting and when subcontractors give their final number. It happens at the last minute and that is why they call it the "War Room."

We can collect the information on the subcontractor because public bodies take 30 to 60 days to award the contract. They review the contract for several weeks. We could say we need the information on your listed subcontractors, your 5 percent, and your 1 percent, 24 hours later as part of your review process. That is plenty of time for the contractor to get the information on the name, gender, et cetera, but the sponsor really needs to figure out if she wants that information on a corporation.

As far as the employee data, which is almost a separate part, we need to figure out what it is you really want and what is important. It has to be on the certified payroll reports. Then the question is, how do you get that information into one central location over at a website somewhere? If you have LCPtracker, great. If you do hard copy, great. The information needs to be on the certified payroll reports. I do not know if LCPtracker is searchable like that or not. The hard copy is not. That is what we have to try to figure out.

Mr. Nuñez, I think you said that Public Works would require the contractor give you an end report of everyone who was on the job, including race, ethnicity, age, and gender information. Perhaps that is the way you do it—at the end.



Maybe, instead of tying it to retention, which causes everyone angst, you tie it to continuing to be a prequalified contractor. If they do not turn it in, they get on the list that is not prequalified. We want to hear from the contracting side of that. How hard is that? I do not know if that is the answer. I do not want to speak for them and say it is simple for them to do it. It could end up on the cost of the contract eventually.

Those are the processes. We need to make it easy on the public bodies and easy on the contractors. Get the sponsor's information, or she is not going to be happy, and then I am not going to be happy.

**Richard Nelson:**

I misspoke earlier when I said LCPtracker was paid for by the Department of Transportation. That is a cost that is transferred over to the contractor. For example, on a \$10 million NDOT job, it would cost the contractor \$1,000 to use LCPtracker to submit their payroll data to us. It is a graduated scale, I think up to \$5,000 on a \$50 million job. Thank you for letting me clarify the record.

**Chairwoman Neal:**

Now that we have come to a consensus on section 16, I am going to close that portion. I appreciate all the input we received on section 16. We are going to open ourselves up to the rest of the bill. I am going to call people up to the table regarding sections 3 and 4 who have an amendment associated with sections 3 or 4 of the bill, which deals with independent contractors and definition of public body. In addition, we will hear from anyone in Las Vegas who has an issue related to sections 3 or 4.

**Constance J. Brooks, Ph.D., representing Nevada System of Higher Education:**

With me today is our Vice Chancellor of Finance, Mr. Vic Redding. First, we would like to thank you for being open to the discussion of providing an amendment. We do stand as a unique state agency with our Board of Regents. In particular, our Cultural Diversity Committee of the Board of Regents is dedicated to enacting policies that are aligned with the goals of Assembly Bill 169.

Our amendment ([Exhibit C](#)) is on the Nevada Electronic Legislative Information System (NELIS), along with our actual board policy ([Exhibit D](#)) that was just adopted on March 1.

We will start off with section 4, subsection 4, lines 15 and 16, ". . . including the Nevada System of Higher Education." In addition to the language provided in the bill, we are suggesting a new section be added, specific to Nevada System of Higher Education (NSHE) that would read as follows:

"The Nevada System of Higher Education should adopt policies and procedures."

[Dr. Brooks continued to read from ([Exhibit C](#)).]

**Chairwoman Neal:**

For the record, can you clarify the reason why you are asking to be treated separately? My understanding is because NSHE was already moving in a direction of diversity in looking at contracts. This would allow us to do what we are doing, but it complements where you are going.

**Constance Brooks:**

That is absolutely correct. Our Vice Chancellor of Finance, Vic Redding, has been working intimately with our Diversity Committee and is here to speak more to those policies that we are enacting, especially the revised version of this policy, as of March 1, 2013.

**Vic Redding, Vice Chancellor, Finance and Administration, Nevada System of Higher Education:**

With the Chairwoman's permission, I would like to spend one or two minutes telling you how the board got from there to here and what we have been up to. Over the course of the past year, the Cultural Diversity Committee of the Board of Regents has tasked my office, and the business officers of all of our institutions, to look at what impediments are out there for expanding our supply chain to include more local vendors and more disadvantaged vendors. Over the course of the last year, working with our current suppliers with a supply chain consultant, we identified what appeared to be two large impediments: Finding out about the solicitations and once they found out about the solicitations, navigating our progress, which can be kind of scary for a vendor that has not worked with the system before.

We have brought back to the board policy recommendations, as Dr. Brooks mentioned, that were approved last week and they address how we will reach out to local and disadvantaged suppliers to get the bids out there. Once the supplier is interested in a bid, we have designated outreach coordinators at each of the three purchasing centers statewide. That type of outreach applies to all of our formal solicitations; that is, solicitations over \$50,000. The third part of this, which is very important to the board, is an annual reporting mechanism on expenditures to local and disadvantaged vendors to make sure what we are doing actually moves the needle.

Everything I have told you applies to the direct suppliers with us. The board has actually implemented a step for what we call tier two, which would be

subcontractors of direct suppliers and contracts over \$1 million. Those contracts also require those contractors to report their subcontractors, both local and disadvantaged, to us on an annual basis. That report, as well, will go to the Board of Regents.

**Chairwoman Neal:**

Are there any questions from the Committee? [There were none.] I appreciate the information Dr. Brooks. I have to say this: Over the interim, Dr. Brooks graduated and received her Ph.D. after she worked very long and hard on her dissertation.

I am going to ask the people in Las Vegas for their comments. I believe it is on a different section, but we are going to lose videoconferencing at 11 a.m. We will move into sections 5, 6, and 7.

**David Goodheart, representing Nevada Hospital Association and Anthem Blue Cross & Blue Shield/Denver:**

We have submitted an amendment ([Exhibit E](#)), which I would like to go over. The amendment is to section 7, subsection 2, "Do not apply to any contract:" adding paragraph (c), "Entered into by the Division of Health Care Financing and Policy." We believe these contracts, under Medicaid, meet federal requirements and are already tightly controlled. The second addition, paragraph (d), "Entered into by entities regulated under Title 57." These are insurance companies and are also fully regulated under Title 57 of NRS, which is under the jurisdiction of the Nevada Division of Insurance. We believe opening up these contracts and making them public by providing provider relationships will increase costs. When you get to one contract, it is going to go to the highest contract eventually during renegotiation for both of these. We are also concerned about the administrative costs. I would be happy to take any questions.

**Chairwoman Neal:**

Are there any questions on section 7 from the Committee? [There were none.] I read the amendment and I think it makes sense.

**Dan Musgrove, representing City of North Las Vegas and Amerigroup Nevada:**

Amerigroup Nevada, along with United HealthCare Services Inc., are Medicaid providers for the State of Nevada. What Mr. Goodheart said is exactly our concern; that those provider relationships would then become public. We would be a contractor of the state and all of those provider relationships we have with hospitals and doctors would be our subcontractors. That is all proprietary information that, if made public, would cause a massive renegotiation that could absolutely drive up the cost of health care for the State of Nevada. The state has a responsibility to provide us a rate that is actuarially sound. If we cannot

take care of our relationships with our providers at a rate that we have previously negotiated, then obviously that is going to drive up costs.

**Chairwoman Neal:**

I appreciate that. Ms. Tarter sent me an article on materiality in negotiations and when a contract is subject to change. She took me through Contracts 101, so I understand when we get into the issue of renegotiating, if it is a substantial change, it opens up everything else. I am mindful of that, so I appreciate your comments.

**Robert Ostrovsky, representing Cox Communications:**

We support the amendment proposed by the Nevada Hospital Association. In the same section, as I testified before, video service under franchising agreements is regulated under NRS Chapter 711. I have submitted an amendment ([Exhibit F](#)) to section 7, subsection 2, paragraph (b) that adds, "or as otherwise provided for in NRS 711." I think this is a technical change. It is our intent to comply. I will submit that amendment to the secretary here in Las Vegas.

**Chairwoman Neal:**

Thank you. I know we did discuss that and I did not ignore it. I wanted to get to the subcommittee, get it all out, and then go about the business of amending the bill.

**Ted Olivas:**

When we discussed this bill, Madam Chairwoman, I promised I would go back and try to consolidate some of the concerns. I worked with Andrea Sullivan, who is the co-chair of the Commission to Study Governmental Purchasing, and Kimberlee Tarter with the Purchasing Division. This does not follow your desire to go section by section, but we have submitted a summary ([Exhibit G](#)). It does not have our name on it and I apologize, but it is on NELIS. If I could very quickly go through the portions in red, it might be helpful.

**Chairwoman Neal:**

For the record, who participated in the creation of the summary?

**Ted Olivas:**

Myself, Andrea Sullivan, and Kimberlee Tarter.

**Chairwoman Neal:**

Thank you. Will you explain the summary to the Committee?

**Ted Olivas:**

As I testified earlier, section 1 references NRS Chapter 281. We think these changes should be put into NRS Chapter 332, which is local government purchasing, NRS Chapter 333, which is state purchasing, and NRS Chapter 338, which is public works, as required, because the different sections go to different places.

Going on to section 4, because a public body is defined in NRS Chapters 332, 333 and 338, we think if we restructured the bill to go to those, then you would not need this definition.

Section 5 is a clarification. I think Mr. Nuñez mentioned that the division is the State Public Works Board in one section, but the division in another section is the Purchasing Division.

Section 6 is also a clarification. We are talking about contracts to provide services where you have a contractor that is the only source capable of providing the service. We recommend adding service, making it "Sole source service contract."

Section 7 is a structural recommendation.

In section 8, while we can gather this information on the code of conduct through our bidding process, and it is pretty straightforward to do so, we believe that should be made available to the public body or its authorized representative who awarded that contract, not necessarily to the legislative auditor or the Division of Internal Audits of the Department of Administration.

Regarding section 9, Mr. Ostrovsky and Mr. Musgrove and others have talked about this section. We are not sure of the intent. There are different types of contracts that fall into this requirement, including third-party administrator contracts, contracts with the Nevada Bureau of Services to the Blind and Visually Impaired and others mentioned in the summary. We are really unsure what the intent of that section is. We have the same kind of comments as it relates to section 10, so we did not want to be redundant.

Section 11 is cleanup based on the clarification of sole source service contracts.

Regarding section 12, there are many contracts that we do with independent contractors, other than sole source service contracts. We believe the local government and that jurisdiction should make the determination as to the length of time for that contract. Each contract is unique, so to limit that to four years would hamper the process. I think you recently heard from the Northern Nevada Regional Transportation Commission. They have contracts

that would fit into this category and they are much longer than four years because in those contracts, you need continuity in service. We mention that there are a number of reasons why you may not want to have a four-year term limit. If what we are trying to do is make sure that we turn these contracts quicker and create the opportunities for the community, we suggest you put contracts less than \$50,000, so we make sure we are turning those contracts.

Sections 13 and 14 are cleanup, including some of the reporting of those contracts over \$50,000. You could have a \$500 service contract with some of the small service providers, so this does not help the small business community; it actually hurts them, because we are now adding more requirements.

I believe that covers the summary. I apologize if we had to do this in total, but I would be happy to answer any questions or turn it over to Ms. Sullivan, as appropriate.

**Chairwoman Neal:**

One of the most important elements was competitiveness, having the ability to have people compete, and then having safeguards so we do not run into issues of people abusing the process. I will probably need Ms. Tarter to come to the table. When we talk about going beyond the four-year limit, my understanding is certain existing contracts already have a four-year term. The question of how the two-year framework adjusts what you do from the four-year framework was asked before. Your answer was it is essentially the same, except it reduces the time. Could you explain the four-year rule?

**Kimberlee Tarter, Deputy Administrator, Division of Purchasing, Department of Administration:**

Yes, you are right. Currently, the State's policy is four years for a contract. Because that is in policy, that time period can be deviated from subject to a two-thirds vote from the State Board of Examiners. That deviation is something that is taken very seriously. Before an agency can request any deviation to go beyond that four-year period, typically within their procurement document, they ask the questions and they seek and develop the justification to support why going beyond four years is in the State's best interest.

**Chairwoman Neal:**

What are the purposes for why the Purchasing Division created the policy of four years?

**Kimberlee Tarter:**

We created that policy for a number of reasons. Some of our larger contracts cannot be accomplished within a four-year period. An example of that would be the Nevada Department of Motor Vehicles for the digitized driver licenses that everyone currently has. When we did that solicitation, we had to look at a couple of different factors. One of the factors was the amount of time it was going to take to implement, test, and accept that system statewide. The implementation of that system alone was over 18 months. We ran up to almost two years in getting it developed, implemented, tested, accepted, and then rolled out. From there, we had to move into the production phase of the contract. In developing that solicitation, we asked the question, beyond that implementation, when the system goes live, what will the cost be to the State if we have a production period of two years, four years, six years, and eight years? We honestly could not even do a four-year contract because of the amount of implementation. It was very difficult to try to come up with a two-year production period. The State could not afford the cost of the licenses at that time. In doing the analysis, we were able to present that entering into, essentially, a nine-and-a-half-year contract was in the State's best interest. It brought the cost of those licenses down to something the department could afford. Because that cost is passed on to the consumer, it was very important that we were able to keep the cost down for those consumers, as well. Those are types of projects where we do not typically have control of the program.

Another example is the unemployment system. We are doing what is called the unemployment insurance (UI) modification. That is a \$30 million project that, while we actually did a four-year contract for it, we did it recognizing that because it is unemployment and it is a federally regulated program, the federal government can have changes that they push down to the state at any time. The programmers then have to go back to reprogram what they are doing. That creates another time delay, so we knew we may need to extend the contract to accommodate for changes created at the federal level. If we had to limit that purely to four years, as it is currently written, without the ability to extend it, we would be in a position where we might have to actually do a new solicitation, remove that contractor, and implement a new contractor, which would cost the State millions of dollars in those types of situations.

**Chairwoman Neal:**

Does the Committee have any questions on sections 11 and 12? [There were none.] For section 12, this was really the ability to create flexibility, recognizing the other jurisdictions. I know the county has five-year terms for their contracts. I have not been able to figure out a solution for that. I know Ms. King had mentioned to me that they had gone through the process of trying to look at contracts to see whether or not they were working well. They had

reduced the term to five years. For them, that works. I am looking at the red language on your amendment. Were you involved in the input of section 12?

**Yolanda King:**

No, I was not.

**Chairwoman Neal:**

Does this work for you? Does it allow you to keep your five-year contracts?

**Yolanda King:**

Obviously, I would like to keep our five-year contracts because our board did just go through the process of looking at the contracts. We did have a resolution that stated no more than seven years, which was for the total contract, which included renewals. Our board wanted to be able to come back on a regular basis, more than every seven years, to take a look at those contracts and determine if we could perhaps get better pricing or to see if there were other vendors who could offer better pricing. We did go through that process and because we just recently approved our resolution for the five years, I would guess that our board would still like to stay with the five years as opposed to going to down to four years.

**Chairwoman Neal:**

The threshold in this summary ([Exhibit G](#)) is an amount less than \$50,000. What do you do with the smaller contracts that are under \$50,000? Is it still five years or is it just five years across the board?

**Yolanda King:**

It is five years across the board. It is not just a blanket approval that any contract that comes before our board is five years; it depends on the type of service or goods that are offered. We will negotiate the contracts as long as it does not exceed five years. It can vary depending upon the good or service.

**Chairwoman Neal:**

Do you have any changes to section 12?

**Yolanda King:**

Yes, I would like to offer that we increase the number of years to greater than four years.

**Chairwoman Neal:**

Can we create some kind of caveat for the counties?

**Yolanda King:**



That works for me.

**Chairwoman Neal:**

When I put on the record the contracts, they were State contracts. The reason the two-year provision was put in there is because of the Nevada Department of Taxation contract, which they wanted to renew without anyone else's input, which was a problem. We needed a safeguard mechanism to deal with the agencies who would select the contractor and say, well I think everything is going great so we are going to stick with it, regardless of the cost to the State and to the taxpayers. That is the issue. If we feel that the points in the summary presented by Mr. Olivas achieves that goal, I am great with it, because that is the issue we need to fix. For future reference, we need to make sure that never happens again.

**Yolanda King:**

I will work with Mr. Olivas, Ms. Tarter, and whomever the other people or groups are to figure out an amendment and come up with a solution for you.

**Chairwoman Neal:**

I guess I was surprised to still see the language in section 11, subsection 1. I think what has not been clear for me is when a sole source comes into existence, I thought it was an exception to the four-year rule. Is it? No. Then here is something else, clear this myth up for me, too: does sole source apply to professional services?

**Kimberlee Tarter:**

From the State's perspective, looking at the sole sources that the State has approved over the past fiscal year, most of those that we have approved were for six months to one year. A few of them were for two years. In all honesty, I did not see your requirement that a sole source be limited to two years as any kind of an issue at the State level.

To your question about whether there are different types of sole sources, yes and no. A sole source is a sole source. We distinguish, by regulation and within our office, between a single or sole source—only one company or one person can provide the service or the product—versus a professional service. Professional services tend to be services that are not adapted to competitive solicitation. That does not mean they do not always go through a competitive solicitation process. For purposes of the State, accounting services are considered a professional service not adapted to competitive solicitation. Theoretically, an agency, if they needed to contract with an accounting firm or accountant, they could contract directly. The State Gaming Control Board

enters into numerous accounting contracts and they do it through the request for qualifications process. They actually do it through a competitive solicitation.

**Assemblyman Oscarson:**

My only input into this is, sole source or not, I would like to see the term consistent for everyone; not a separate term for the counties, a separate term for the cities, a separate term for the State. I would like to see some consistency in that message. I think that is what we are looking for when we are looking at fixing this, that there be consistency throughout the statutes.

**Kimberlee Tarter:**

That is understood and would be helpful because in looking at NRS Chapter 332 and NRS Chapter 333, a definition does not exist for sole source. This proposed legislation would then create a definition that would, if it were codified into NRS Chapters 332 and 333, then provide that definition and consistency.

**Assemblyman Oscarson:**

I appreciate that, but my concern is the consistency of the term of time; four years, two years. That is what I am talking about. I think the time limit has to be consistent for everyone.

**Yolanda King:**

In terms of the time limits, one of the concerns that Clark County has is when you are limiting the term to two years, and you have a sole source, say specifically for IT services, some of those IT providers will not give you a two-year contract. They are generally proprietary to their software. They will give you much better pricing if the contract is over a period of time because they are the only ones who provide that software package. Two years would definitely increase the cost of the contract if that provider gave us a contract for two years. There is the concern that we could not get a contract with that provider because they will not go for two years. That is specifically for IT projects. In Clark County, on our air quality side or a multispecies area, we have professional services that specialize in a particular study; they are the sole source. Sometimes those studies can go longer than a two-year period. Our concern is with the two-year time limit, but most specifically with our IT projects.

**Assemblyman Oscarson:**

I am not married to the two-year time limit. If you want to say up to four years, I am okay with that. I just want to make sure it is the same across the board; the county, city, and state have the same regulations. I think it is important that there is consistent language. I appreciate your clarification.

**Assemblyman Daly:**

When I look at some of this, and this is by no means my area, there are different types of contracts that have different necessities and different lengths. Is there a way to get at some of the concerns the bill is trying to resolve, some of the abuses and various things? As I was listening to your discussion on IT vendors, it is a big deal to change Microsoft over to something else. A lot of the software is not compatible, it is proprietary, and there is a lot of work that goes into it. When you are making a deal with the vendor at first, you want to make that contract as long as possible because they will give you the best price and you will have continuity. Of course, you will have some renewals here and there, but those types of contracts need to be longer. I know in medical services, when we negotiate those agreements, we try to do it once and make it forever. We do not want to raise the prices again. How do we get to some of the things where we need to renegotiate again and the others when we do not? It seems to me, there are things that public bodies would want longer-term contracts on.

**Andrea Sullivan:**

I concur with exactly what you were saying. Particularly in the four-year contracts where we were offering language that is below the \$50,000 threshold. It is typically the larger dollar contracts where we want to enter into long-term contracts that can go on for two, four, sometimes eight years, for the reasons you mentioned. We are not opposed to looking at these terms for those contracts that fall under the \$50,000 limit.

Another thing I wanted to say is one of our member agencies to the Commission to Study Governmental Purchasing has just been involved in an operational audit. One of their criticisms was their contracts were not long enough. The recommendation was to enter into more long-term contracts because of the belief of achieving better savings and efficiencies without having to resolicit as often.

**Assemblyman Daly:**

I appreciate that and I think I understand some of those reasons, but I am not sure it can be done with a dollar threshold. That is why some of these longer-term contracts or sole source contracts are much bigger than the \$50,000 and it refers to some of those hidden fees that the bill speaks to. Is there a way to delineate that way? I do not know if there is, but I do not believe it is a dollar threshold issue.

**Chairwoman Neal:**

I am glad Assemblyman Daly brought that up. I understand what you are trying to achieve in section 12. However, the problem is not with contracts under \$50,000. The problem is with the larger contracts.

In your summary ([Exhibit G](#)), you indicate you are not sure of the intent of section 9, regarding disclosing hidden fees charged by an independent contractor for services to a person not a party to the contract. There were contracts where this issue occurred and which we might want to discuss; for example, the unemployment contract. If there was a six-year contract for \$30 million, what is our situation then? This bill would not speak to that. Yes, the Purchasing Division would have their controls, but there was a point in time when the Purchasing Division was not able to control the situation. Whether or not that situation happened 25 times or 4 times, it was significant enough because of the impact on who was affected and how many people were affected. We do not want that to occur. What safeguards can we have for those contracts, because that is what is really needed?

**Kimberlee Tarter:**

I do not have a good answer. I know exactly the issues, but I do not know how we get it down to one neck to choke.

**Chairwoman Neal:**

Last night I spent a lot of time on your website. I remember you telling us in 2011 about having the sole source contracts on the website, so I wanted to take a look and get some education on purchasing. I do respect your opinion and I thought if I knew a little more about the kind of business you do at the Purchasing Division, I could offer input.

I am still wondering what was so wrong with the way section 12 was originally written under Senator Horsford. It was a catchall, and I know there was an issue of renegotiation, but why can we not still deal with the renegotiation, but not have a threshold? There are only so many circumstances that come up when you have to renegotiate. We know what that scope is. Why can we not just get with the scope?

**Kimberlee Tarter:**

You are right. On the Department of Taxation's lockbox contract, it was not because it was a sole source. They did a procurement, it was just a really long time ago because they kept extending it. They had reasons why they kept extending it. That is really the crux for that issue. It probably was a good idea to have that contract for four to six years, but at some point, you have to realize the market has changed. There may be other companies out there.

You might be paying more for this contract because now there is more competition in the market. The only way you can make that determination is to go out and do a procurement at some point. That point, that date, is the moving target. That is what needs to be done.

**Chairwoman Neal:**

I do not know if the Purchasing Division has to follow trends in regard to certain market areas. I do not think there are so many lanes of contracts that we are not clear on what that market trend could be or if it is subject to drop. There should be some kind of ability to measure a trend to see if it looks like more people are getting into the game. Technology has either increased or the ability to participate has been lowered, so now you have more vendors in the area. When that occurs, should we not be thinking to ourselves, as an agency, we might need to rethink this contract because there are some good people who could get these opportunities? Although we love X Company, Y Company and Z Company need to be a part of this. Is that impossible?

**Kimberlee Tarter:**

It is not impossible. The one thing that is important when you start talking about the Purchasing Division and our role is that we are not the subject matter expert. We are the procurement expert. Yes, the agencies should be aware of the trends, particularly for the large dollar, very political contracts that they manage. They need to ask themselves about the rate they are currently being contracted at and is it reasonable to be considering putting this out to bid. If it is a situation where there is a lot of installation and implementation, if the trending was down and they were at a higher rate, maybe they would like to look at renegotiating before they get to the expiration date of the contract. We could see if we could have that discussion versus waiting until the end.

The agencies do need to take responsibility for that. The Office of the State Treasurer is an agency that is very well in-tune with that. They have contracts for that purpose. They have Moody's Analytics with the Office of the State Controller. They have financial contracts that do provide that support and analysis to them.

**Chairwoman Neal:**

I want to give you a homework assignment. In section 12, I agree with Assemblyman Oscarson about coming to some kind of agreement on terms. Figure out if it is a policy for the Purchasing Division and the counties to have a two-year or four-year contract. Regardless of the term limits, we want consistency. For section 12, we need to deal with the larger contracts. To me, it is a natural extension to think about the trend in a larger contract. Does it take additional manpower to want to look at trends for a contract of

\$30 million? I believe the reason why the bill came into existence is because there were significant abuses, and they were significant enough to give pause for tax dollars. Your homework is to rethink section 12. I like the lower threshold, but you really need to deal with the larger contracts and there needs to be a safeguard.

**Chairwoman Neal:**

I think there are people in Las Vegas who would like to testify. Is there a specific section you would like to discuss?

**Yolanda C. Jones, Purchasing and Contracts Manager, City of Las Vegas:**

I do not have a specific section. Most of my comments have been provided by Mr. Olivas. I have also been working with the Commission to Study Governmental Purchasing.

**Chairwoman Neal:**

Could you let me know who else is in the room with you and if they are wanting to speak on certain sections of the bill? We have now gone through sections 3 through 12.

**E. Lee Thompson, Chief Deputy District Attorney, Office of the District Attorney, Clark County:**

I signed in as a speaker merely to supplement things that Ms. King was bringing up on behalf of the county. I do not have anything to add at this time. We will be cooperating and working with people on these potential amendments.

**Chairwoman Neal:**

Are you the last person in Las Vegas wanting to testify, or is there someone else who has an issue with the bill?

**Lee Thompson:**

There is no one else here in Las Vegas who has signed in to speak.

**Priscilla Maloney, representing American Federation of State, County and Municipal Employees, Local 4041:**

We have a very simple, tight, short amendment ([Exhibit H](#)) and I will give you the reasons for that in a moment. I would like to address at least a couple of the points that have come up in discussion on these amendments. We have no concerns because section 16 is really not in our rule. We are always in favor of good public policy. We love the point of section 16, but we heard all the comments this morning and understand that those people are working those issues out.

I would like to go back to a foundational principle. In the March 25, 2011 Minutes of the Senate Committee on Finance Subcommittee on Statewide Contracting, page 3, Senator Horsford said, "Sections 8, 9 and 10 relate to the issues of ethics and transparency in contracting." I know we have had a lot of discussion about the logistics of this bill. However, we cannot lose sight that this bill, Senate Bill No. 359 of the 75th Session, came into being because of the perception that there were gaps in the oversight. I heard all the testimony from State Purchasing and I know they do good, hard work in trying to oversee the contracts the State and other local governments undertake. As Ms. Tarter just said, they are the experts on procurement, not on the substance of those contracts.

Briefly, I would like to give two examples that have just come up in the last five weeks. One was during the Public Employees' Benefits Program (PEBP) presentation of their budget. We had a number of retirees who were present to speak in public comment on one particular contractual provider of insurance services for the retiree health care program.

**Chairwoman Neal:**

For the record, what Committee meeting was that?

**Priscilla Maloney:**

I believe it was a joint subcommittee meeting with the Senate Committee on Finance and the Assembly Committee on Ways and Means on Friday, February 8, 2013. I would be happy to give you the link of that meeting in NELIS.

During public comment about this one contractual provider, Assemblywoman Flores specifically asked Director James Wells about the performance indicators and wanted to know how well the contractors were doing with the provided services. Mr. Wells referenced an audit, but we do not know if it was a Legislative audit or an Executive Branch audit. Again, the comments were so strong, with our seniors waiting five hours on hold to get their questions answered from this one insurance contractor, that they had to reopen the testimony and bring Mr. Wells back to the table.

Without belaboring the point, there are situations where contracts in this state are not getting enough oversight or transparency and no ethical standards about how the substance of the contract is being performed.

I want to give you one more example. We recently received, from the Division of State Lands pursuant to a FOIA request, a contract provider that is currently the recipient of a 20-year lease for \$1 for an office in Las Vegas.

Again, the intention is not to call out this contractor. This particular contractor is currently contracting with the Department of Health and Human Services (DHHS) as a service provider because the State has more work than it can do on its own with its limited resources. We do not know how the other community partners feel about this. Again, we are not here because we are against public/private partnerships. When they come to the table and ask the Legislature for a contract for their community partner work, we suspect they are not getting the benefit of a \$1-a-year lease.

These are the simple facts and that is why we are not going any further in our amendment in section 8, other than saying that we would like to add the State Controller to the list at lines 42 and 43. The audits will then be available through the Legislative auditor referenced and the Executive Branch Division of Internal Audits of the Department of Administration. We have briefly spoken to the State Controller about this situation and I do not want to misrepresent her constitutional provisions, but our assessment is that she is a member of the Executive Branch Audit Division under NRS Chapter 353A. All six constitutional officers are members, including the Governor, the Lieutenant Governor, the Attorney General, the Secretary of State, the State Treasurer, and the State Controller. However, she has her own independent audit power, which is our assessment of this under NRS 227.160. I can at least represent that we reached out to her about this bill, and she agreed that it would be a good idea to have her name on that list.

That is our position on this and I would be happy to take any questions of the Committee.

**Assemblyman Stewart:**

It seems as if the questions we have are all dealing with state agencies. Do we have any problems with local government agencies?

**Priscilla Maloney:**

In Senate Bill No. 359 of the 76th Session and the current bill in front of you, Assembly Bill 169, the first 15 sections fall under NRS Chapter 281, which are public employees. Sections 16 through 21, which are all under the reporting requirements we have heard about today, are under NRS Chapter 338, which is Public Works. The focus and position of the American Federation of State, County and Municipal Employees (AFSCME) is concern about sections 1 through 15. However, we would have been okay with the bill as written, other than that one change, but we have heard testimony from other public agencies and local governments today. To Assemblyman Oscarson's point, in the rurals, the definition of a sole source contractor is going to be huge. If someone, through whatever mechanism, can convince whatever body that



will cut that contract that they are truly a sole source provider, you have a tough situation. If they say they are the only one who can provide that service, the rural areas are going to be in a tough spot. Earlier, I heard that there are amendments proposed, but I have not seen them.

The American Federation of State, County and Municipal Employees does not want to get into other people's business. Mr. Goodheart has an amendment regarding section 7, but we have not seen it yet. I would hate to see that amendment say "excludes DHHS contracts." Chairwoman Neal referenced six years and \$30 million; those contracts are going to come from DHHS.

**Assemblyman Stewart:**

Have we had any problems with local government contracts up to this point?

**Priscilla Maloney:**

Yes, but that is not our bailiwick. However, if a local government tries to amend NRS Chapter 281, which affects a state contract, then we are very much concerned.

**James R. Wells, Executive Officer, Public Employees' Benefits Program:**

My first concerns are actually with sections 9 and 10, as they relate to the disclosure of fees paid by third parties. Specifically, similar to Medicaid, we enter into contracts with networks to provide medical providers. Those may then be considered subcontractors under these sections. They would have different amounts, depending upon the service they provide. We also offer voluntary services, such as home and auto insurance, as a benefit to our participants on a voluntary basis. Those premiums that are paid by that third party, and depending upon where you live, the size of your house, the car you drive, et cetera, we have concerns with how we would implement those two sections for those types of contracts.

**Chairwoman Neal:**

We have Floor Session at 11:30 a.m., so we are going to have to adjourn and reconvene after the adjournment of floor. So far, this has been really good for me. We will recess and then reconvene after Floor Session.

[Meeting recessed at 11:26 a.m.]

**Chairwoman Neal:**

[Meeting called to order at 12:11 p.m.]

I would like to call Mr. Wells back to the table. For everyone else, if there are sections you still need to put on the record, definitely come to the table.

**James Wells:**

I would like to continue with sections 9 and 10 and the concern with reporting individual amounts as they relate to insurance premiums for our voluntary products, such as homeowner's and auto insurance. That premium amount is different and cannot be disclosed up front because it is predicated on the circumstances and risks that the insurance carrier determines as you apply for insurance. The second part of that goes to the provider contracts and the ability to report exactly how much a doctor's visit is going to cost up front. Again, we do not really know that, as it depends on the various procedures or tests that may be done. With the Chairwoman's indulgence, I will submit some language as a proposed amendment ([Exhibit I](#)). I did not want to add an amendment to section 7 and exclude all of our subcontractors from all of these sections, because I do not believe that is necessarily appropriate. I think we just have to deal with the reporting in sections 9 and 10.

In section 10, with the subcontractors, we have contractors who use subcontractors, but the amounts vary based on usage and, in some cases, based on performance. One of our contractors has a subcontractor who receives a percentage of the money that they collect for overpayments. If we make an overpayment of \$100, they collect that \$100 for us and charge us a percentage of the \$100. It is predicated on the amount of activity and their performance. I will put some information in the proposed amendment relating to that in section 10 as well.

The only other thing I would like to put on the record is regarding section 12. We, in general, do use four-year terms for our contracts. We also have a couple of contracts that go beyond that four-year term. The best example is our enrollment in the eligibility system, which has about a \$500,000 up-front, explicit implementation charge, as well as about another \$500,000 in capital costs that the company amortizes over the term of the contract. Our contract for that was for six years. To give you an idea, when we were asked by Governor Gibbons to renegotiate certain contracts and come up with savings, this particular vendor basically said because they amortized our capital costs, they cut our rate by 12 percent. Our rate for the extension period was 12 percent less than it had been during the period where they were amortizing their capital startup costs.

One of the recommendations I thought about would be to add something similar to section 11, subsection 2 that allows a contract to go beyond the four years for purposes of amortizing capital costs and recovering that cost by the vendor.

With that, Madam Chairwoman, I would be happy to answer any questions.

**Assemblyman Oscarson:**

When it comes to contracts regarding managed care and those types of things, certainly there are contracts that managed care companies do with specific physicians and hospitals. Are those the kinds of things you are talking about having exempted? Obviously, one hospital may have a different contractual rate than another with a different entity.

The other thing I am concerned about is the longevity of contracts. I appreciate the amortization and those kinds of things, but as technology continues to get better and things start to happen, sometimes those prices decrease as opposed to increase. I think we had a good example in some of our backup documentation. One of the courts actually held, at some point in time, that there was a need to sometimes rebid those contracts and go through the process again. I understand the amortization and the less up-front costs amortized over the period of the contract. I think, especially in technology areas, it is important that we are fiduciarily responsible when it comes to spending the taxpayer's money.

**James Wells:**

You are correct in the first question you asked. Those are proprietary contractual arrangements between our network and the individual doctors' offices, hospitals, clinics, and laboratories that we are looking to have exempted from the disclosure.

**Assemblyman Oscarson:**

Are you going to request language be put in there for proprietary contractual obligations to be exempted?

**James Wells:**

That is correct. We will submit a proposed amendment ([Exhibit I](#)) for those two sections to basically not require that information be reported publicly.

As to your second question about going out to bid, it is one of the things we look at. We do not have the startup costs to actually implement our own software system; we lease it. We are cognizant of not only changes in technology becoming less expensive, but also changes in technology improving the service that we are provided. You can probably get a better service five years down the road than you can get today. We try to weigh that with the upfront amortization costs, because the company is going to amortize that same cost over whatever term of contract that is. We also try to weigh the disruption to our participants, because that is a very big implementation for us. We have 70,000 lives that get disrupted when we make changes similar to that.

**Chairwoman Neal:**

Are there additional questions from Committee members? [There were none.]

**Regan Comis, representing the State Contractors' Board:**

We have submitted an amendment ([Exhibit J](#)) regarding our concern with section 4, subsection 4, regarding the inclusion of boards. The State Contractors' Board is a NRS Title 54 board, which is not funded through the General Fund. All of our funding comes through our licensees. If we understand the intent of the bill, it is to make sure contracts made with the State's dollars are done accordingly and properly. We feel that since our funds do not come from the General Fund, we should not be included in this.

**Assemblyman Oscarson:**

Having been a president of a state licensing board whose revenues were completely from the licensees, I understand that. We had discussed at some point in time exempting boards and commissions from this particular legislation. I do not know where that went, but maybe we can speak with the sponsor of the bill and talk about that.

**Chairwoman Neal:**

I know we talked about that. Can you speak to the amendment and the suggested language? I know when I met with Mr. Lee, he was talking about boards with a non-General Fund implication.

**Regan Comis:**

I apologize, but I do not have that in front of me. I do know our intention is to have an amendment that any Title 54 board that does not receive General Fund dollars should be exempt.

**Assemblywoman Bustamante Adams:**

I can understand that portion, but it is still public money. Do you do annual reporting to the entities that you collect the fees from? Is there anything you do to have that transparency of how you are using your dollars?

**Regan Comis:**

I may need to get back to you on this, but my understanding is we do give reports to the Legislative Commission on an annual basis as to our accounting.

**Assemblyman Oscarson:**

Having been through this process many times, there is a biennial audit that is either done externally or internally by the state auditors. It is completely transparent. That information is available to us through the auditing division on all boards and commissions.

**Chairwoman Neal:**

Is there anyone else wanting to testify regarding this bill? [There was no one.] We are going to close this subcommittee hearing. I appreciate all the testimony we received today and look forward to amending and altering this bill to reflect some of the issues we have heard. Is there any public comment? [There was none.] This meeting is adjourned [at 12:23 p.m.].

RESPECTFULLY SUBMITTED:

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Lori McCleary  
Committee Secretary

APPROVED BY:

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Assemblywoman Dina Neal, Chairwoman

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

**EXHIBITS**

**Committee Name: Subcommittee on Government Affairs**

**Date: March 8, 2013**

**Time of Meeting: 9:03 a.m.**

| <b>Bill</b> | <b>Exhibit</b> | <b>Witness / Agency</b>  | <b>Description</b>               |
|-------------|----------------|--|----------------------------------|
|             | A              |  | Agenda                           |
|             | B              |  | Attendance Roster                |
| A.B. 169    | C              | Constance Brooks, Nevada System of Higher Education                              | Proposed amendment               |
| A.B. 169    | D              | Constance Brooks, Nevada System of Higher Education                              | Supply Chain Diversity Policy    |
| A.B. 169    | E              | David Goodheart, Nevada Hospital Association and Anthem Blue Cross & Blue Shield | Proposed amendment               |
| A.B. 169    | F              | Robert Ostrovsky, Cox Communications   | Proposed amendment               |
| A.B. 169    | G              | Ted Olivas, Kim Tarter, Andrea Sullivan  | Summary                          |
| A.B. 169    | H              | Priscilla Maloney, AFSCME  | Proposed amendment               |
| A.B. 169    | I              | James Wells, PEBS  | Testimony and proposed amendment |
| A.B. 169    | J              | Regan Comis & Keith Lee, Board of Medical Examiners and Nevada Contractors Board | Proposed amendment               |