

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

**Seventy-Seventh Session  
March 22, 2013**

The Committee on Government Affairs was called to order by Chairwoman Teresa Benitez-Thompson at 8:05 a.m. on Friday, March 22, 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 Teresa Benitez-Thompson, Chairwoman  
Assemblywoman Dina Neal, Vice Chairwoman  
Assemblyman Elliot T. Anderson  
Assemblywoman Irene Bustamante Adams  
Assemblyman Skip Daly  
Assemblyman John Ellison  
Assemblyman James W. Healey  
Assemblyman Pete Livermore  
Assemblyman Harvey J. Munford  
Assemblyman James Oscarson  
Assemblywoman Peggy Pierce  
Assemblyman Lynn D. Stewart  
Assemblywoman Heidi Swank  
Assemblywoman Melissa Woodbury

**COMMITTEE MEMBERS ABSENT:**

None



**GUEST LEGISLATORS PRESENT:**

Assemblyman David P. Bobzien, Washoe County Assembly District  
No. 24

**STAFF MEMBERS PRESENT:**

Jennifer Ruedy, Committee Policy Analyst  
Jim Penrose, Committee Counsel  
Bonnie Hoeffcker, Committee Manager  
Jennifer Dalton, Committee Secretary  
Lori McCleary, Committee Secretary  
Cheryl Williams, Committee Assistant

**OTHERS PRESENT:**

Tom Clark, representing Black Rock City, LLC  
Raymond Allen, Government and Legal Affairs Management, Black Rock  
City, LLC  
Adam Belsky, Legal Counsel for Black Rock City, LLC  
Peter D. Krueger, representing the Nevada Trails Stewards  
Tray L. Abney, representing The Chamber  
Vanessa Spinazola, representing American Civil Liberties Union of Nevada  
P. Michael Murphy, representing Clark County  
Pat Irwin, County Commissioner, Pershing County  
Jim Shirley, District Attorney, Pershing County  
Lorinda Wichman, County Commissioner, Nye County  
Ben Trotter, Sheriff, Churchill County  
Craig Mingay, Deputy District Attorney, Churchill County  
Steve Walker, representing Eureka County  
John J. Slaughter, representing Washoe County  
Brian Kulpin, representing Reno-Tahoe Airport Authority  
Paul McKenzie, representing Building and Construction Trades Council of  
Northern Nevada  
Scott Hiatt, representing Associated General Contractors  
Tim Kretzschmar, representing Associated General Contractors  
Jack Mallory, representing Southern Nevada Building and Construction  
Trades Council  
Linda Shields, Program Manager, Atkins North America; and representing  
the Nevada Chapter of the American Council of Engineering  
Companies  
Bill Winfield, Private Citizen, Reno, Nevada

Doug Browne, Vice President/Construction Acquisitions, Clark & Sullivan  
Construction

Martin Harpster, Director of Pre-Construction, Core Construction

Dan Musgrove, representing the Subcontractors' Legislative Coalition

Joanna Jacob, representing Associated General Contractors; and Nevada  
Contractors Association

Steve Walker, representing Lyon County

David Frommer, Executive Director of Planning and Construction,  
University of Nevada, Las Vegas

Lindsay Anderson, representing Washoe County School District

Yolanda King, representing Clark County

Nechole Garcia, representing the City of Henderson

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

Sean Sever, Communications Director, Department of Transportation

Yolanda Jones, representing the City of Las Vegas

**Chairwoman Benitez-Thompson:**

[Roll was taken. Protocol was explained.] We will be hearing two bills today. We will begin with Assembly Bill 374, and then we will hear Assembly Bill 283. I will open the hearing on A.B. 374, and welcome the bill's sponsor, Assemblyman Bobzien, to the table as well as Mr. Tom Clark.

**Assembly Bill 374: Revises provisions relating to the authority of a board of county commissioners to regulate certain assemblies, events or activities. (BDR 20-520)**

**Tom Clark, representing Black Rock City, LLC:**

I wanted to let you know that Raymond Allen from the Burning Man organization, Black Rock City, is here as well.

**Assemblyman David P. Bobzien, Washoe County Assembly District No. 24:**

Assembly Bill 374 is about a very large special event that comes to Nevada each August. It is an event that is a critical component of our state's economic development strategy. When it comes to tourism, it brings visitors from around the world to our state each August. There is an economic impact that comes with those visitors, as well. We will be hearing more from the proponents about that economic impact and why it is so critical.

The bill addresses a concern about political subdivisions of this state: Pershing County enacting a special events ordinance on an event that is permitted and takes place on federal lands. This bill is not about trying to prevent local governments from enforcing the laws of the state at that event.

This bill is not about the proper reimbursement of local law enforcement or of local services that need to be provided at the event. You will be hearing from the organization about those extensive relationships that are already in place. You will also hear more about concerns, specifically with the language related to regulating events that is found throughout this bill.

I believe this is a classic example of folks reading a bill out of the context of the statutes. Local responsibility for law enforcement is clearly laid out in the Federal Land Policy and Management Act of 1976 wherein the Secretary of the Interior may enter into relationships with local law enforcement to make sure that laws are enforced on federal lands. This is not a part of A. B. 374. This bill is about providing certainty to an event that makes a major economic impact to the state. At the end of the day, this bill is a constituent bill. This bill provides certainty to the participants in the event who live in my district and elsewhere in the state. It is also about certainty to the businesses and the other people who rely on the economic impact in the Truckee Meadows and all across the state—the thousands upon thousands of visitors that come to the state each year for the Burning Man event. I will turn it over to the rest of the panel to explain more about the event and the relationships I talked about, the economic impact, and why this is such an important measure.

**Tom Clark:**

The Burning Man organization puts this event on every year in Black Rock City. I will invite Mr. Raymond Allen to walk you through what this event is all about. That is an important part of this conversation and this debate. Following Mr. Allen, we will have Mr. Adam Belsky come up and go through the bill, section by section, to explain the particular language in Assembly Bill 374.

**Raymond Allen, Government and Legal Affairs Manager, Black Rock City, LLC:**

I am going to assume that nobody on the Committee has been to Burning Man and give a quick introduction of the event, which does affect the bill. I think it is important to understand what the event is all about. If you have been to Burning Man and this information is redundant, please bear with me. I have a short presentation that will talk a little about the history of Burning Man, as well as give demographics of our participants ([Exhibit C](#)). I will also summarize the economic, artistic, and cultural benefits that Burning Man provides to the state. I will touch on the bill and then turn it over to Adam Belsky who is legal counsel for Black Rock City, LLC and can walk you through the particulars of the bill itself.

Burning man began in 1986 in San Francisco [([Exhibit C](#)) slide 5]. An artist named Larry Harvey built an 8-foot man, brought him out to the beach, and set him up. About 20 people gathered around. Larry Harvey decided to set the

man on fire. It was a very quiet, solemn experience. In Harvey's words, afterwards everybody knew it was going to happen again the following year. There was no planning involved. It was just a shared experience. Fast forward to four years later in 1990. The event had already outgrown the small little beach in San Francisco [([Exhibit C](#)), slide 6]. At that point, there were 500 people in attendance. An artist group in San Francisco suggested the Black Rock National Conservation Area in northern Nevada [Black Rock Desert—High Rock Canyon Emigrant Trails National Conservation Area]. This artist group had been using that area for large-scale recreation or artistic events for a number of years. You can see in the picture, there is a game of bocce ball happening in the Black Rock Desert. That picture was taken long before Burning Man had ever occurred in that desert. In many ways, it was the perfect home for Burning Man. It enabled the event to grow, and it helped the event to thrive. As a result, the state of Nevada has benefited as well. I have a graph that shows the growth in population of the event since it first moved to Nevada up to last year [([Exhibit C](#)) slide 7]. You can see it has grown from just 80 people the first year to last year when we had 56,149 people. We are expecting about 60,000 people in 2013.

We have some demographics of the people who come to Burning Man. Forty-six percent of our participants are between the ages of 30 and 49. I want to highlight that because if you have never been to the event, you probably have some misunderstandings about who these people are who come to Burning Man. It is a cross-section of society that comes. The age demographics are critical. In order to come to Burning Man, it takes a lot of time, resources, and community to build the structures where people live and play. College-age kids are not really able to pull it off. It is a grown-up event. There is a wide variety of income levels among our participants. We think it is a cross-section of society. It is not any particular subculture. In the area of education, it is the same thing. Most of our participants have had at least some college; 86% have had some college. It takes some education and ingenuity to build things like giant yachts that drive around in the desert and that sort of thing.

Most of our participants are from the United States, though we get a large percentage of people from overseas. Of the participants from the United States, there are people from all 50 states in the Union. More and more people are coming from states other than Nevada and California. That is a critical piece of the economic piece that I will talk about later because when somebody from Reno goes to Burning Man, they might grab all their camping gear and drive out to the Black Rock Desert. When someone comes in from another state, they typically fly in to the Reno-Tahoe International Airport, stay at one of the casinos for a couple of days while they buy everything that they

need, including tents, food, and water. They will rent a car. They might rent an RV. They might rent or buy bicycles. It is during that time where they really stimulate the economy of northern Nevada. The same goes for their return. They usually stay in Reno for one or two days as they take all their stuff to various charities that have been set up to take donated bikes and things like that. You will see when we get to the economic benefit how this affects the northern Nevada economy, as well as the Reno-Tahoe International Airport.

**Tom Clark:**

I think the airport has submitted a letter to the Committee. They will testify, I believe, that 34 nations were represented at the Burning Man event. Those were just the folks that signed in at the Burning Man kiosk that we have at the airport. That demonstrates the international flavor that we have at this event. I wanted to make that point.

**Chairwoman Benitez-Thompson:**

There is a letter on Nevada Electronic Legislative Information System (NELIS) from the Reno-Tahoe Airport Authority ([Exhibit D](#)).

**Raymond Allen:**

I have also put in some demographics about the politics at Burning Man. All of these demographics come from a census that is done at Burning Man. There is an anthropologist at University of California, Los Angeles who has been studying Burning Man participants for the last ten years. We are grateful to her and her educational efforts to provide us with this information. Interestingly enough, 34 percent of our participants are Democrats, 24 percent are Republican, and 33 percent are nonregistered. I do not want you to think that our participants are apolitical. Eighty-three percent of all eligible voters that come to Burning Man have voted in at least one of the last four elections. We are seeing a truly bipartisan cross-section of America who come to Burning Man. I shared that with you so you can have a better sense of what the event is all about and to dispel any myths or rumors that you may have heard about the kinds of people who go to Burning Man.

Let us move into the economic benefit, which I think is the most interesting part of this presentation [([Exhibit C](#)) slide 9]. The census that I mentioned a second ago also collects data on how much participants spend in northern Nevada while they are visiting Burning Man, before and after their trip to Black Rock City. Last year our results told us that participants were spending \$30 million a year. I was in disbelief because it sounded high. We have a team of volunteers who are calling every single business in northern Nevada that has been affected by the event. We have identified over 1,550 businesses and we are working through the list. We have not finished the list, but we have corroborated the

\$30 million portion, and we think it is actually more than that. When you divide \$30 million by the 56,000 participants, it comes out to about \$535 per person. If you are going to stay in Reno for one or two days, rent a car, perhaps rent an RV, pay for a car wash, and buy groceries, we actually think that \$535 is low. We believe it is much more than the \$30 million, which is a conservative estimate.

**Tom Clark:**

I will reiterate that. It is easy when we have a convention that comes to town to estimate the number of participants and how much they will spend for their average daily room rate, their average spending on food, gaming, and those kinds of things. You can come to a very simple number. That is difficult to achieve with this particular event because we have people who are in northern Nevada for a month getting ready and doing theme camps and preparing for the event. We have people who fly in, pick up a rental car, and drive out to camp. They also buy a lot of stuff on their way out there. I do not want to get into specifics, but the retailers in northern Nevada absolutely love this event. If you think about Thanksgiving, when you go to a particular retail store, they have pumpkins and different things on the sidewalk that people will buy. They are placing canned goods, dry goods, and other things that burners want to buy out on their sidewalks to cater to this event. We have evidence that some of those retailers make twice as much during Burning Man week as they do during Thanksgiving and Christmas combined.

**Raymond Allen:**

In addition to the money that our participants spend, our organization spends a great deal of money in Nevada in order to build the event itself [([Exhibit C](#)) slide 10]. We spend about \$5 million a year in contracts with private companies in northern Nevada that provide us with water trucks and dust abatement. We rent heavy equipment. We buy hardware and lumber. It is all purchased locally. We also pay fees to the various government agencies and tribal nations that are either impacted by the event or provide services to the event [([Exhibit C](#)) slide 11]. These are a combination of fees and governmental contracts. The total that we spent in 2012 was \$3.1 million. Much of that money was turned around and put back into the local economy through purchases of fuel over time, lodging, and all the things that the various agencies need to buy locally in order to produce the event.

In addition to the money that our participants and Black Rock City, LLC spend, we are also engaged in a match charitable-giving campaign in northern Nevada [([Exhibit C](#)) slide 12]. Since 2003, we have donated over a half-million dollars to charities in northern Nevada. The bulk of that has been to Pershing County. We focused the majority of our charitable donations to Pershing County for the

fact that many of the businesses that benefit are in Reno and Washoe County. It is hard for Pershing County to be able to benefit from our participants that drive through due to geographical factors, so that is where we have put the focus of those efforts.

In addition to the economic benefits, Burning Man provides cultural, volunteer, and artistic efforts to northern Nevada [([Exhibit C](#)) slide 14]. Our sister nonprofit organization, the Black Rock Arts Foundation, takes large scale temporary interactive art—the kind of art that has been at Burning Man—and places it in other places around the world. One of the cities that they have been working with is the City of Reno. You may have seen some of the art pieces that have been installed by the river in downtown Reno. We believe these art pieces help stimulate tourism for Reno, so we are doing it in other cities as well. The Black Rock Arts Foundation got a National Endowment for the Arts grant to put an art piece in the city of Fernley last year. The goal is to have people stop, shop, and frequent the shops there in Fernley. We are calling this program Big Art for Small Towns. We want to do that all over northern Nevada. We are currently fundraising and working with various donors to try to do more of this kind of thing.

**Tom Clark:**

I want to touch on what Black Rock Arts Foundation, Big Art in Small Towns is doing, and what we are seeing across our state. I think Assemblyman Bobzien might touch on that as well.

**Assemblyman Bobzien:**

I was in downtown Las Vegas for a First Friday event, which many of you know is a growing event that is of great importance to the community. There was a Burning Man component to the First Friday where they burned a lady walking—I believe that is what it was called. We were seeing some Zappos' involvement and interest in bringing some of the spirit of this public art to the downtown revitalization efforts in Las Vegas.

**Raymond Allen:**

Black Rock Solar is another nonprofit organization related to Burning Man [([Exhibit C](#)) slide 15]. You have probably heard of it. It was created in part based on legislation that was passed by the Nevada Legislature a number of years ago.

I want to thank all of you for working with us to help Black Rock Solar become what it is. Black Rock Solar was created out of the Solar Energy Systems Incentive Program that the Legislature created. That program made it possible to install solar at costs that were way below what the market was. We coupled



that with volunteers from Burning Man, and Black Rock Solar has been able to install more than 2.8 megawatts of solar power throughout the state on government and community buildings. In fact, there has been so much solar that Black Rock Solar has done along State Highway 447 that in 2010 the Governor named it America's Solar Highway. I think it also underscores the spirit of the Burning Man event. Many of the folks who work for Black Rock Solar were people who came to Burning Man and volunteered to build art at the event. It was so much fun doing that for just a week they wanted to figure out how to do it throughout the year in other ways, so they were happy to volunteer for Black Rock Solar doing other gifting initiatives throughout the state.

Another similar outreach group we are working with is Burners without Borders [[Exhibit C](#) slide 16]. They are mostly known for disaster relief, although they do other community services as well. The inception of the organization is a very interesting story. Hurricane Katrina hit the Gulf Coast at the same time that Burning Man 2005 was taking place. In those days there was no cellular phone service in the Black Rock Desert, so many of our participants who had come from the Mississippi Gulf Coast did not know whether their homes still existed and had no way of contacting their family members or even knowing if they were alive. Many of our folks travel around and volunteer at different carnivals and festivals and have the freedom to do that sort of thing. They banded together, took a bunch of heavy equipment that had been used to construct the man and some of the larger structures, took a caravan down to the Gulf Coast, and worked with disaster relief efforts. Our crew is very skilled at building things. They are also very skilled at knocking things down. The hurricane damaged many structures making them unsafe. The Federal Emergency Management Agency would not touch these structures unless there were numerous hearings and paperwork done. Our crew was able to go in there and help all the homeowners clear their land so they could start rebuilding.

**Tom Clark:**

The community of Burning Man came together. We made a couple of phone calls. We got five flatbed semitrucks delivered to Burning Man. We collected \$34,000 in cash and all five of those trucks were filled with dry goods, water, and other stuff that people were probably going to throw away, but they donated it back to the event. All those items were taken to the Salvation Army in Reno because we thought the refugees from Katrina would end up here anyway. We stocked all the food banks and all the cabinets so that those people would have something to eat. They did not show up because of different regulations, but the Salvation Army did benefit from those five truckloads of food for potential refugees.

**Raymond Allen:**

Other efforts of Burners without Borders include collecting unused lumber left over from building the burning man and other theme camps and art at Black Rock City. They donate this lumber to Habitat for Humanity. In 2007, they gave the single largest donation of lumber to Habitat for Humanity in Reno that they had ever received. You may have also heard about how Burners without Borders was on the scene when the Truckee River levee flooded in 2008. Currently, Burners without Borders is doing work in Peru and on the East Coast doing relief work in the wake of Hurricane Sandy.

I want to talk a little bit about the permitting process because that is where this information is going to inform Assembly Bill 374. Now that you have a better understanding of what Burning Man is and what it does, I would like to walk you through the permitting process, how we have come to be on federal land, and what that entails. Burning Man is held on federal land in northern Nevada on the Black Rock Desert National Conservation Area [([Exhibit C](#)), slide 18]. It has been held there every year since 1990—except in 2007 when it was held on a combination of private and federal land within Washoe County. The Black Rock Desert National Conservation Area is federal land within Pershing County. The land is managed by the Bureau of Land Management (BLM). In 2002, the United States Congress designated this land as a national conservation area. They gave BLM the right to issue permits for large-scale recreational events in certain areas of the playa. In effect, Congress has given Burning Man the right to do what it does in the Black Rock Desert. We were involved in that bill in 2002.

I want to walk you through BLM's comprehensive permitting process and how it affects state agencies, as well as our event [([Exhibit C](#)) slide 19). The first step in Burning Man getting a permit is applying for the BLM permit. Then, BLM does a series of scoping meetings. They have public meetings throughout northern Nevada and meet with all concerned agencies, groups, citizens, and neighbors to find out what their concerns are. Some of the groups they meet with include Pershing County, the Pyramid Lake Paiute Tribe, and anybody else who wants to come. The meetings are public and published in the newspaper and posted on BLM's and Burning Man's websites. It is a partnership effort between BLM and Burning Man. In fact, representatives from the Burning Man organization go with BLM to these scoping meetings that happen in Reno, Lovelock, Gerlach, and other places. We hear all the concerns that local governments have regarding the possible impact, concern, and cost of the event. Then, BLM considers all the concerns and designs an environmental impact study. The term "environment" is much broader than we use it normally. Usually, we use "environment" to talk about trees and the earth. The Environmental Impact Assessment that BLM does for our event looks at the

entire northern Nevada area, including economics, social issues, the effect of crime that may or may not occur, arrests, and every other impact of our event. It is a study done by a group of scientists and social scientists and others to try to determine the actual impact of the event and whether the event should happen and what our organization needs to do to mitigate all those effects if they do occur.

The last permit that we did took almost two years to complete. During those two years, the BLM met with every agency in northern Nevada, as well as other groups that had concerns about our event. They had multiple meetings and tried to figure out ways to mitigate every impact or concern that somebody may or may not have about our event. Toward the end of that process, the BLM posted a document—about a hundred pages long—which analyzed every issue that anybody could have with our event, as well as what the scientists and social scientists thought should be done to mitigate those impacts.

Depending on what they learned, there is also the possibility of needing more scoping meetings. In the last permitting process, we did not because BLM was able to mitigate all local concerns without it. Then, what happens toward the end of the two-year process, BLM publishes a final environmental assessment that has recommendations for mitigating all the concerns that local governments might have. At that point, BLM issues the permit to Black Rock City, LLC. The permit has a stipulation that requires Burning Man to address all local concerns as listed in the environmental assessment. I will read a quote from the stipulations, "BRC shall complete formal agreements with all affected parties, e.g. Pershing County Sheriff's Department, Washoe County Sheriff's Department, Nevada Department of Public Safety Investigations Division" et cetera.

This process may seem boring to you, although it is where I spend most of my time in my job. I went through it to show that BLM's comprehensive permit really deals with every single issue that could arise as a result of our event being in northern Nevada. The stipulated requirements of our permit are that we have to work with and pay local counties. We are happy to do that. In fact, we cannot do the event without all the cooperating agencies that are part of the BLM permitting process. They are the ones that help us produce this event and make it safe. It is crucial that we all work together. That will mean more once we get in to A.B. 374, so let us move into that part of the presentation.

**Adam Belsky, Legal Counsel for Black Rock City, LLC:**

I will address the provisions of Assembly Bill 374 and what it does and does not do [([Exhibit C](#)) slide 21]. The bill only addresses the licensing issue. Current state law requires that each county enact an ordinance that applies to outdoor

assemblies of over 1,000 people that take place in the county. It requires that the outdoor assembly obtain a license from the county. The issue is whether that law applies to outdoor assemblies that are held on federal land and have been permitted and authorized by the federal government. Washoe County and Storey County have exempted events that are held on federal land and that are authorized by the federal government in their county ordinances [([Exhibit C](#)) slide 22]. That was Pershing County's practice up until last year.

In 2012, Pershing County decided that it was illegal under the Nevada Statute for Pershing County not to require Burning Man to obtain a license from their county in order to hold the event. The bill addresses this conflict in the interpretation of the statute. It clarifies that where there is a federal permit, no county permit is required. The reason for that is so that you do not have duplicative permitting schemes with the potential for conflict and, that if the county license is required, then the county, in effect, has veto power over the federal government's decision to allow an event to take place on federal land. The bill clarifies. In section 1, it provides that if a federal agency has issued a license or permit for the assembly, then the county cannot impose its own separate permitting scheme. It amends the existing law, *Nevada Revised Statutes* (NRS) 244.354, requiring the county to enact an outdoor assemblies ordinance, and this provides that the ordinance does not apply if there is already a federal license.

Section 3, subsection 2 of the bill addresses NRS 244.3542, which currently requires the person holding the event to obtain a county license. The bill expressly exempts those events that are taking place on federal land and have already obtained a federal permit. Section 4 of NRS 244.3548 makes it unlawful if no county license has been obtained, but the bill exempts those situations where a federal agency has already issued a license or permit for the assembly. As you can see, the bill has nothing to do with law enforcement, the enforcement of criminal laws, or reimbursement for law enforcement services that are provided. It only addresses the permitting issue.

The legal rationale for the bill is the *United States Constitution* Supremacy Clause and the federal preemption doctrine. Those hold that where the federal government has authorized something to happen on federal land and a local government does something that is inconsistent with what the federal government has authorized, the local action is preempted by federal law and it is invalid.

As an example, there is a recent case from the Ninth Circuit Court of Appeals, which was affirmed by the United States Supreme Court that involved Ventura County in California. A lessee of National Park Service land had

obtained a federal permit to conduct oil and gas exploration and had gone through a very comprehensive federal licensing scheme. The county then attempted to require the lessee to obtain a county permit under the county's ordinances. The Ninth Circuit held that the county ordinance was preempted. The court stated, which is very applicable here, that in rejecting a local veto power while simultaneously guarding local concerns under the federal permitting scheme, local interests can be represented, the integrity of the federal leases and drilling permits, which reconciled national energy needs and local environmental interests, can be protected, and the ultimate lessee will be responsible to a single master rather than conflicting authority. That is the legal underpinning for this bill.

I think what you will probably hear from Pershing County later this morning, as they have stated publicly, is that the purpose of this bill is to give Burning Man what they call carte blanche ability to ignore Nevada law. That is simply not true. It is not what the bill does. The bill only addresses the licensing issue. As Mr. Allen explained, the federal permit requires Burning Man to enter into a law enforcement agreement with Pershing County. The federal permit requires Burning Man to pay for the law enforcement services that Pershing County provides. This bill does not address that issue. It only addresses the issue of these overlapping permitting schemes and making it clear what we believe was already implicit and which Washoe County and Storey County have already recognized, which is where there is a federal permit, no state permit is required.

**Tom Clark:**

I would like Mr. Allen to give a brief summary now that you have gotten all the legalese that you need for 9 o'clock in the morning. We can continue about the legislation itself.

**Chairwoman Benitez-Thompson:**

I will go ahead and allow Committee members to ask questions on the presentation. Going back to the presentation, I wanted to focus in on the permitting process [([Exhibit C](#)) slide 19]. I see here that it is a two-year process in order to get the permit. Is that permit then renewed annually, biennially, every five years? After the initial process, what does the ongoing process look like?

**Raymond Allen:**

The last permit that we did was a two-year process. The one we did before that was a one-year process, and the one before that was a five-year process. We have designed this because as the event grows bigger, it becomes more complex, and more government agencies become involved, and the process

takes longer. We used to try to do things on a one-year cycle. Once things became so complicated that it took more than a year, we had to start applying for events before the current year's event. Right now, I am working on permitting issues for 2013, as well as permitting issues for 2014 through 2016 and beyond. The Bureau of Land Management has told us that the next environmental assessment they are going to do is going to have to be a full-blown environmental impact statement, which could take two to five years. We are starting that process now. It goes to the point about Assembly Bill 374 because we go through a two- or a five-year process where local governments are involved 100 percent of the way in the process. To get a permit from the government and then have Pershing County require a second one that could veto all that work and collaboration, which Pershing County had been involved in, is totally unworkable.

**Chairwoman Benitez-Thompson:**

I wanted to get a better idea for how often you go through the permit process. I did not know if it was a one-time permit. What I am hearing is that there are multiple reviews, and within the permitting process that happened at one year, two years, and five years this entire process is gone through, right? There is a scope meeting with local governments. This whole process is the process that you walk through every time, right?

**Raymond Allen:**

That is correct.

**Chairwoman Benitez-Thompson:**

The next question I had is in regards to the cost and fees that you are currently paying [([Exhibit C](#)) slide 11]. Those items listed under the Bureau of Land Management—\$1.1 million, \$700,000, and \$1.8 million—all go to the federal government.

**Raymond Allen:**

Yes, \$1.8 million is the total. The Bureau of Land Management's (BLM) costs are the \$1.1 million and BLM's fees are \$700,000, which go back into management, recreation, and use of the Black Rock Desert National Conservation Area. The other fees listed there come from all the other state and county agencies in Nevada, as well as from the Pyramid Lake Paiute Tribe Reservation.

**Tom Clark:**

It is important to note that there is no commerce at Burning Man. It is not as though Anheuser-Busch or Coca-Cola can come in, set up concessions, and help offset the costs of these particular fees for the event. There is a clear

distinction between what Burning Man is all about and many other activities that take place on public and private land throughout the state. It is a gifting community. If I show up and I did not bring a toothbrush, I can ask the guy next door and hopefully he has a clean one.

**Chairwoman Benitez-Thompson:**

And if not, que sera, sera, right?

**Tom Clark:**

The only commerce that takes place at Burning Man is the sale of coffee and ice. Those proceeds are delivered back into the northern Nevada community. When you look at special events, this one is unique in the fact that it does not allow that type of commerce to occur, which does not allow them to charge a vendor that would offset the costs of those fees.

**Chairwoman Benitez-Thompson:**

Are all the other fees those that end up going out to the county for the different types of costs that are addressed in the permitting fee?

**Raymond Allen:**

Fees are reflected in that number. That number includes Pershing County, Nevada Highway Patrol, Washoe County, the Investigations Division of the Nevada Department of Public Safety and a few others along with the Pyramid Lake Paiute Tribe.

**Chairwoman Benitez-Thompson:**

Are those fees set by the permitting process when you do that environmental assessment?

**Raymond Allen:**

Under the Bureau of Land Management (BLM) permit, most of those are supposed to be done by contract. In fact, I believe all of them are done by contract. The BLM issues the permit and then one of the stipulations is that the party applying for the permit has to contract with all the local entities to take care of additional concerns that BLM does not handle.

**Chairwoman Benitez-Thompson:**

Those are the agreements that you list at the bottom of the other slide.

**Assemblyman Oscarson:**

There are admission fees charged at this event, correct?

**Tom Clark:**

There is a ticket price that has a varying scale. That price gets a person into the event, whether that person will be there for a day or a week. There is a ticket that must be purchased to get into the event.

**Assemblyman Oscarson:**

Those ticket fees are indeed used to offset the impact of this event on Pershing County or wherever it may be held at any given time, correct?

**Tom Clark:**

Mr. Allen may be able to answer that better than I.

**Raymond Allen:**

All the money we get from ticket sales goes to all of our costs, which includes all government fees and costs as well.

**Tom Clark:**

I will reiterate that all of the law enforcement agencies that Mr. Allen described come with fees that are not included on this particular slide. Seven different law enforcement agencies are involved. There is health care, so we have emergency medical services. We have fire suppression and other services that any other municipality would have. Every single one of those services comes with a cost. We also have the cost of building a city. Every year they build a city with street signs, all of the things that you would see in Carson City, Nevada. There are costs to those as well.

**Assemblywoman Neal:**

I have a question and you can help me clear this up. I was reading the BLM special use permit, which was cited in your presentation on slide 19. The general terms on the second page of the application says, "permittee shall comply with all federal, state, and local laws and ordinance." Then, in your presentation, you cited *Nevada Revised Statutes*, Chapter 244 saying it is vague. I do not understand what is vague in the statute. I am also wondering how the bill affects what the Bureau of Land Management intended that second page to mean in terms of the application of the ordinances or county influence. You guys had me up all night reading state land use policy and federal permitting. There is a consent relationship, right? I was reading this bill and I kept wondering if we would be giving back the consent that was given to us. Is that what we are doing?

**Raymond Allen:**

Welcome to my world. The stuff you were reading last night is the stuff I read late at night as well. The vagueness is because the statute does not say



whether it applies on federal land or not. There are two different interpretations among the counties. On one hand, Washoe County and Storey County interpret this language to mean that federal land is not included under the statute. Pershing County has the complete opposite opinion. The vagueness is because the statute is silent on how it applies to federal land [([Exhibit C](#)) slide 21]. That is why we have modeled this bill after the Washoe County festival ordinance [([Exhibit C](#)) slide 22]. Washoe County amended their ordinance to exempt federal land in 1998. We have looked into the legislative history. I have talked to somebody who was involved in those discussions back in 1998. In 1997, Burning Man was held within Washoe County. That was one of the few times that the event was held in Washoe County instead of Pershing County. It was mostly on private land, but some of the event was on federal land. In response, Washoe County went and looked at law preemption, the Supremacy Clause, and state's rights versus federal rights. On their own, without any prompting from the Burning Man organization, they amended their festival ordinance to exempt federal land.

We believe that was the progressive take on what *Nevada Revised Statutes* was trying to do and not trying to do. That is why we are asking the Legislature to amend the statutes so that all the ordinances can be uniform and understood. It is that silence in the statute with respect to federal land where we have gotten into trouble with Pershing County. For many years, we entered into a contract with the county and worked with them to identify all their costs so that we could put together something that worked for everybody—Bureau of Land Management, Pershing County, and Burning Man. It was not until Pershing County interpreted the statute so that it applied to federal land that we got into trouble. That is what we are here to discuss.

**Assemblywoman Neal:**

Understanding the Supremacy Clause, I kept trying to figure out why we were going in the reverse. If you are giving consent to use public lands and there is a harmonious component with beneficial use for the state, why are we saying we want the federal government to do the permitting and not the other way around? I wanted to understand why. I want to hear why Pershing County changed their minds and started acting differently than how they had been.

**Raymond Allen:**

We do not want to leave this only to the federal government. Again, the federal permitting process is comprehensive and includes two-year dialogues with the state. We believe that is the way the state is going to be involved. It is not state's rights versus federal rights. It is how the state and the federal rights can work together. The way we are doing this now, under Pershing County's ordinance, includes federal rights and state rights that are overlapping and

conflicting in different cases. We believe that Assembly Bill 374 will correct that and make it work for everybody.

**Assemblyman Bobzien:**

I appreciate that you spent probably all night reading the Federal Land Policy and Management Act. I hope that you checked out the Black Rock High Rock Canyon Emigrant Trails National Conservation Area legislation from 2002 and all the other pieces that we are talking about. To put this in the Committee on Government Affairs context—having served in this Committee for my first two sessions—the question before you here is in the context of the Dillon's Rule. This is what you deal with all the time. As you know, unless we expressly grant powers to a county—a political subdivision of the state—they do not have those powers. It remains my contention that we have to be very careful as a legislature when it comes to the counties. We have to be very sensitive to local needs. We have to be willing to reevaluate and measure whether there are adverse impacts to local counties being able to provide services to care for their citizens, et cetera. We have to step up and make sure that we work with them. With this bill, I am saying that there is a compelling state issue why this interpretation needs to be resolved. That compelling state interest is economic impact. It is economic impact to the Truckee Meadows and the entire state. I am asking the Committee to consider that in this case we need to clear this up because there is a transcendent state issue at stake.

**Chairwoman Benitez-Thompson:**

Are there any additional questions from Committee members? [There were none.] I will now take testimony in support of Assembly Bill 374. That is support for the bill as drafted.

**Peter D. Krueger, representing the Nevada Trails Stewards:**

Nevada Trails Stewards is an association of volunteers who stage and often put on charitable events on both federal and private land that involves the use of off-highway vehicles and other festival-type events. We, too, support this bill. We believe this bill helps prevent the hodgepodge that occurs in many of our events that are in multiple counties within the state. This clarifies and makes for one set of rules. Many of these events we go through the permit process, not in the scope and scale that Burning Man would to get a permit, to obtain these kinds of okays to do our events. We are very much in favor of Assembly Bill 374 and would ask the Committee's consideration in a positive way.

**Chairwoman Benitez-Thompson:**

You talked about different events that you might support that are across different counties. Could you tell me what some of those are?

**Peter Krueger:**

Many of them can be motorcycle racing. We have a large event that runs from southern Nevada into northern Nevada. We have many off-road vehicle events. Some are weekend charitable events such as a group of off-road enthusiasts that are cognizant and know the rules of where they can operate their vehicles. It is that kind of group or enthusiast that would participate in these kinds of events.

**Tray L. Abney, representing The Chamber:**

We strongly support this bill. Those of you who have been in Reno when these folks come through know the huge economic impact that the Burning Man attendees and organizers have on our community. We talk a lot about creating, sustaining, growing jobs, and growing our economy in this building. This event brings people from all over the United States and the world to northern Nevada. You can go to any grocery store or any retailer in the area and see these folks as they swarm in and out of the community on their way out to the Black Rock Desert. We do not need to do anything to discourage these folks from coming to Nevada. We strongly support this bill and want to support Burning Man so that it can be bigger and better in the years to come.

**Vanessa Spinazola, representing American Civil Liberties Union of Nevada:**

We are in support of Assembly Bill 374 because it prevents discrimination as to certain types of free speech in certain areas of our state, in addition to the legal underpinnings mentioned by counsel from Burning Man. Some events and assemblies are regulated more than others in Nevada in an arbitrary manner. For example, there is a bicycle race outside of Las Vegas held on Lake Mead which is federal property that does not have the same kind of restrictions that have been imposed on Burning Man in the past. The regulations proposed by Pershing County in the past were sometimes so onerous as to actually interfere with free speech at the event. Assembly Bill 374 creates certainty and clarification in the law so that free speech rights are equally protected across our state.

**Chairwoman Benitez-Thompson:**

Are there any questions? [There were none.] Is there any additional testimony in support? Are there people in Las Vegas waiting to speak on this bill? [There were none.] We will take testimony in opposition of the bill. Opposition means you disagree with the bill technically or you disagree with the bill outright. I see one amendment at this time, so we will start with the amendment from Clark County.

**P. Michael Murphy, representing Clark County:**

We are the folks that put the amendment forward ([Exhibit E](#)). Specifically, this amendment addresses what I would consider to be some unintended consequences of the bill as it is written. That is that we have several properties that are technically owned by the federal government and they remain in the control of the federal government should we not elect to continue to use them as parks. Desert Breeze Park would be an example of one of those parks in the south. We do not want to have the unintended consequence of this particular bill affecting our ability to continue to control the events that are in county parks. We spoke with the sponsors of the bill. They understand our amendment and have been supportive of it.

**Chairwoman Benitez-Thompson:**

You will speak with the bill's sponsor about this amendment, but is your intent getting at facilities that you have that are on Bureau of Land Management lands and what happens in those facilities?

**Michael Murphy:**

Specifically, we have parks that are part of what is known as a recreation or public purpose lease between the federal agency and the county. We want to ensure that we still have the ability to control that. The sponsor of the bill understood that when we presented this amendment and agreed that it was appropriate.

**Chairwoman Benitez-Thompson:**

We will make sure those conversations continue.

**Assemblywoman Bustamante Adams:**

You are saying that this is a friendly amendment and the sponsor of the bill supports the amendment. I do not think that is a question for you, Mr. Murphy, but Mr. Clark should put that on the record.

**Tom Clark:**

This is a friendly amendment and we fully support it.

**Pat Irwin, County Commissioner, Pershing County:**

I am one of three commissioners in Pershing County. With me today is Jim Shirley, our district attorney. I wanted to address some of the issues that have been brought before you on this particular bill. I want to make very clear that this is not about the economic development and the economic impact of what Burning Man brings to the community. The presentation you saw is awesome ([Exhibit C](#)). I have been a participant and have been out to Burning Man for 15 years, even prior to being a county commissioner. This is

not something that is unfamiliar to me. This is about making sure that Pershing County and the taxpayer dollars are reimbursed. Our community is very small. Our sheriff's office and our law enforcement, as far as the court system, are greatly impacted. When you bring 60,000 people into a community that was built to support 5,000 people, it creates a large impact. When I look at Burning Man and the cooperative meetings they put together—what Mr. Allen explained to you—it is one of the best programs I have ever seen. The preparedness programs that Burning Man has put together are absolutely awesome. Public safety model is a national model that many people are using in other avenues. My support for Burning Man has always been positive. We want to make sure that the impact to Washoe County, Storey County, and Nye County continue. It is a huge economic support for them. We want to do everything and anything we can.

One of the programs they talked about was bringing art to small towns. I believe the title was Big Art for Small Towns. We were actually very much a part of bringing these works of art out and seeing what we could do to bring them to Pershing County. Because of this conflict, we have been out of those conversations. That art will be moved forward to Fernley. We want to support that as well because it does bring people off the freeway year-round.

Let us go back to the bill itself. We have a relationship with the Bureau of Land Management (BLM), whether it is an event of this magnitude or the small trails. I will talk about motocross because that affects us the most. When we work with Burning Man, the motocross group will come in and work with Burning Man, look at the impact, and get their permits. Then they will come straight to us and explain to us what the impacts are, what the locations are, and how it is going to affect us. We have county-maintained roads. Sometimes motocross will incorporate those roads into their event, so it is very important for us to work together with those people so that we know the impact. As soon as they are done, we may have to go out and improve those roads back to the way they were. That relationship that we have with Burning Man, BLM, and motocross is key as a whole in the importance. We have never turned down this permit. In fact, the permit itself is \$100 in Pershing County.

One of the questions that was asked earlier is why we have changed our minds. In the past, Burning Man was on a contract. It was not part of the events ordinance. What came across to us was that it was mandated in *Nevada Revised Statutes* Chapter 244 that we could not just do a contract on the side. We had to have them as part of the events ordinance. We believe that Washoe County and Storey County have the right to make a choice. It is their choice that they have the infrastructure in place to support any kind of

impact that would happen across BLM property in their counties. It is a huge and different impact to us in Pershing County. The decision was made that federal BLM property is part of that ordinance. That is a choice of the counties. We wanted to make sure that we maintain that relationship that you were talking about with BLM.

The permit can happen in different ways. I think what Burning Man had done and is doing well is predicting where things are going and planning for the future. They do put those cooperative meetings together. We have a huge public hearing. We look at the impact all the way across the board. We have given them the permit to move forward with all their events. We have looked at what the costs are for our sheriff's office to go out there and actually perform their duties in enforcing our state and local laws. The Bureau of Land Management does not have that type of law enforcement. It is our county's responsibility to go out and perform those duties. That reimbursement is what we are looking at. I will turn this over to our district attorney.

**Chairwoman Benitez-Thompson:**

I want to go back to the permitting process that was presented in the overview [([Exhibit C](#)), slide 19]. Tell me where in this process you feel, as a Pershing County commissioner, that you are unable to address your needs, concerns, or costs. Sitting on my end, it seems like a thorough process in which there are many conversations happening. It seems like these agreements are consensual and costs and needs are talked about. Tell me where in this process you feel you are unable to capture the costs to your county.

**Pat Irwin:**

Right now, the process is working well. We have added them back onto the events ordinance. We permitted them when they requested that. We went through and looked at actual costs. One of the things to remember is this is not about making money for Pershing County. This is totally reimbursement. When we are done with the year, if we have charged them \$400,000 for law enforcement and for judicial costs or our costs that are actually incurred, and we have to prove that this happened because of the Burning Man event, and we find those costs are less than the \$400,000, we have to reimburse the difference. In that sense, it is not anything about putting money into our pockets, which has been said in some statements by the press. This is totally about reimbursing the costs. Right now, the system is working well because it allows the Bureau of Land Management to tell us that this event will be happening in our community. It allows us to look through, see if there will be any impact, address what that impact is, and put together a cost reimbursement process.

**Chairwoman Benitez-Thompson:**

I am looking for clarity from you and the district attorney. Within the established process that seems to be working so well, what is going wrong that would beg the question of an ordinance and another process that is separate from this one? That is what I am looking to get at.

**Jim Shirley, District Attorney, Pershing County:**

The process that Pershing County has been involved with in my 13 years has never discussed the costs to the county during the Bureau of Land Management (BLM) permitting process. In fact, in 2006, we went away from BLM setting the costs for what Pershing County law enforcement would be, in which we never had any input, and we went to this contract model. At the time, there was a heated discussion between Burning Man and Pershing County over the preemption issue. Quite frankly, the contract was my fault. Had I read the state law, I would never have allowed the county to enter into the contract that it did. State law was very clear that you have to apply for a license for the outdoor festival, period. We did not have the authority to contract that away. If you read it, the word "shall" is used several times, "shall have an application, shall have a hearing, shall grant or deny the application with or without conditions" and so on. The process never discusses the law enforcement costs for Pershing County, at least to date. What we have discussed, as Commissioner Irwin remarked, are the impacts on Pershing County infrastructure such as roads and that kind of thing. We have been very supportive of Burning Man in their permitting process with BLM. I do not think they could say any different ([Exhibit F](#)), ([Exhibit G](#)), ([Exhibit H](#)), ([Exhibit I](#)).

**Assemblywoman Neal:**

I am glad you brought up the issue of how you were able to enter in to that contract. How many years were you in the contract?

**Jim Shirley:**

There was a contract in 2005 that provided the contract would remain in effect as long as BLM was paying for our law enforcement services. In 2006, they went away from that. Because of the very terms of that contract, it should have ceased, but we continued under the terms of the contract from 2005 until 2011.

**Assemblywoman Neal:**

I was wondering how the statute itself was not brought into the discussion. Now my question is are you saying you created a contract where you did not receive benefit, that you negotiated a contract where you did not get all of your needs met? For six years, you entered into a contractual arrangement where you knew that the needs of the county were underfunded.

**Jim Shirley:**

The contract provided for a \$50,000 donation to Pershing County that could be used for any purpose. At first, it was not \$50,000. It was based upon the population. I think it started out at \$30,000 and grew to \$50,000. Pershing County would get that money, and, to be frank, we have used that to fund our local county pool. There was a \$10,000 agreement that they would give money to charities or entities within Pershing County. There was about \$60,000. When we went away from the contract, all that money disappeared. Then there was a portion that covered law enforcement costs. After a while, there was a portion that covered prosecution costs and administration costs for our clerk, auditor, and recorder/treasurer's offices.

In 2011, an issue was raised, and I looked at the statute. It is not a matter of whether we were getting benefits or not; it was a matter of whether we were complying with the law or not. As Assemblyman Bobzien said, if you direct us to do something, we cannot contract away that direction. We cannot aggregate that responsibility. When we looked at the contract, we realized it was null and void when it was entered into. There is an additional public policy issue that has not been addressed which is that a county cannot aggregate or contract away its legislative and police powers, which is exactly what that contract did. As a result, we went away from the contract. We got a new sheriff in 2010. As he started to analyze the event, he realized that more personnel were needed. We started negotiating for more personnel under the old contract. We started to get away from the contract and remove all discretion. In fact, Burning Man will tell you this involves many First Amendment speech rights. The way that the ordinance was amended was contrary to what the case law was because it allowed too much discretion with county officials to waive or not waive. Burning Man came in, and we waived, but if another organization came in and we did not waive, there would be an enormous problem. As a result, we amended the ordinance and put some definitive guidelines regarding what the county would do in its permit process.

Let me add one thing when talking about this permitting process. I submitted addenda 3, which all of you received [([Exhibit G](#)) page 15]. Addenda 3 is the BLM handbook for regulations permitting these types of events. I believe page 12 states unequivocally that the applicant, prior to having their permit ever approved, has to show that they have applied for all state and local licenses. Not only do they have to comply, as stated earlier, with all state and local laws, they also have to apply for licenses. The BLM is recognizing the need to coordinate management.



**Assemblywoman Neal:**

I heard everything you said, but here is my question. You had been in a contract arrangement for however many years. You are one of the negotiating parties. Burning Man is on the other side. Now, all of a sudden, you realize that you have negotiated terms that are unfair. You have negotiated terms that no longer suit your needs, yet you have been modifying this contract. Then it comes down to the issue of the other negotiating party, Burning Man. Why would they not start to question why the intent changed at this point? Here is the thing, you apparently modified this agreement several times, knowing what your needs were. Then, the conclusion came in. You had a new sheriff who then said that you needed new terms. Why was this not simply a renegotiation of the terms?

**Jim Shirley:**

I think I answered that. Maybe I was not clear enough. The case law is very clear that if a county delegates away its authority to legislate or delegates its police powers, that contract is void at the beginning. Furthermore, when we read the statute, the contract was illegal. State law says that the county shall do certain things. The county is obligated to do that, and if we try to contract that away, that is an illegal contract.

**Chairwoman Benitez-Thompson:**

For clarification, Mr. Shirley, is it not your police officers who are present at Burning Man, then?

**Jim Shirley:**

Our police folks are present at Burning Man.

**Chairwoman Benitez-Thompson:**

How have you given that away? Tell me the difference between being reimbursed for something versus giving away what you believe is your power to do as a county.

**Jim Shirley:**

For the last two years, Burning Man has come and applied for a festival permit. Those permits have been granted, and as part of that permitting process per the statute, they have to pay for the cost for law enforcement. Per the licensing fee, we charge the fee for law enforcement costs. Earlier it was under the contract and before that, it was under whatever little money BLM would give us. I will tell you we did not get anywhere near sufficient money when BLM was running the operation.

**Chairwoman Benitez-Thompson:**

I do not understand how that is aggregating your responsibility with law enforcement. It still sounds more like a reimbursement issue to me than that they have denied their right to police your area.

**Jim Shirley:**

*Nevada Revised Statutes* 244.3542 through NRS 244.3546 states, first, that the entity that is going to hold an event of more than 1,000 people shall, which means it is mandatory, apply to the county for a license. Second, the county shall hold a hearing. Third, the county shall either deny, grant, or grant with conditions a license. The problem with the contract was it took out all three of those steps that were mandatory under state law.

**Assemblywoman Neal:**

You wanted Burning Man to make you whole after you knowingly entered into an illegal contract because you failed to review the statute that should have been the foundation for the contract that you entered into.

**Jim Shirley:**

We have never asked Burning Man to make us whole. We said we would no longer go under that contract in future years. We will go under the statute.

**Assemblywoman Neal:**

How has this issue gotten confused? As a regular person, if you come to me and say, "Oh my God. This contract was illegal. I am sorry. We did not know it, but it is illegal." So, it is null and void from 2005. We gave away things that we should not have given away. How do we get to this mire of confusion where we now have a bill? If you admitted that your contract was illegal and you admitted fault that it was illegal, and that you created one that had no recognizable legal basis, why is Burning Man here with a bill to circumvent your statute?

**Jim Shirley:**

First, we have never complained about what those contracts did or did not do. That is not our issue. Why are they here? When I do my actual presentation, I can explain that. I think the real issue is that we increased law enforcement costs and the number of law enforcement at the event, and they are not in agreement with that. The fact is if you look at ([Exhibit I](#)), which I sent to you, it is the license that was granted in 2012. Look through that, and tell me where the conflict with BLM is that they talked about, where we adopted all the conditions that BLM set almost verbatim except for Pershing County law enforcement, which is within our purview. You are not being told—and I provided this, as well as our Pershing County code—that we already have

a provision in our code that addresses conflicts with BLM ([Exhibit H](#)). It clearly provides that if there is a conflict, the BLM permit, as to those conditions, will supersede whatever the county would do. The county was not out to be in competition with BLM or with Burning Man. We were there to do a job. There is no conflict there because we legislated out that conflict. It is in the materials I provided you ([Exhibit H](#)).

**Chairwoman Benitez-Thompson:**

We can move on to other questions. The point of the hearing is that things are different. There has been some confusion on all sides, including yours. There is some case law that muddies the water, but we can fix that with a good NRS, which is what we are here to contemplate.

**Assemblyman Ellison:**

When you do a permit, you do it year to year. You do not do it in five-, ten-, or twenty-year increments. Do you renew that every year? Is that how you do your contracts on permits?

**Jim Shirley:**

Yes.

**Assemblyman Ellison:**

You looked at the contract and modified the contract according to what you are finding as the event is going. Is that not true?

**Jim Shirley:**

Yes, from 2005 to 2011, we would amend the law enforcement portion of the contract to reflect the circumstances at the time.

**Assemblyman Ellison:**

Based on what I have read, you do not make money on this event. This \$500,000 is the cost that is incurred by the county. Is that not correct?

**Jim Shirley:**

We do not make a dime off the event. There is an administrative fee that I talked about. It is \$5,000 and it covers the cost of doing all the vouchers, payroll, and all the other stuff that the clerk/treasurer and the recorder/auditor do as a result of the Burning Man event. That \$5,000 is just to reimburse what the county incurs as costs.

**Assemblyman Ellison:**

This is a \$26-million event. My biggest fear is whether this law would open Pandora's box for any other events in the future that could be challenged,

modified, or the counties taken out of negotiations on permits. Can you talk about that?

**Jim Shirley:**

If you read the plain language of this bill, it says, "a board of county commissioners shall not regulate or license, or require any type of permit or fee for a festival on BLM ground." It does not matter whether it is a thousand people or more. It does not state one way or the other. It is saying that the county commissioners cannot charge a fee for any event. Despite anything that has been told to you, in plain language that statute says that you shall not impose a fee. Even if you were to say our intent is that you can still have law enforcement out there, we cannot charge a fee for our law enforcement. We cannot charge a fee for the prosecution costs because this bill would prohibit that.

**Assemblyman Ellison:**

Could you talk about section 4, subsection 2, "The provisions of this section do not apply to an assembly . . . ." If there were activities that are going on that are illegal under state law, would this exempt that?

**Jim Shirley:**

I think it would exempt it from the festival permit process as far as those illegal activities. Right now, it would leave open that you have criminal offenses occurring at the event, but restrict your funding or ability to put law enforcement on the ground, under section 1.

**Assemblyman Ellison:**

Madam Chairwoman, I think that is the danger of this bill.

**Chairwoman Benitez-Thompson:**

Thank you, Assemblyman Ellison. Mr. Shirley, are you telling me that through BLM process, BLM issues permits for events that they know are illegal activities or that BLM is allowed to issue permits for illegal activities?

**Jim Shirley:**

What I am saying is that there are illegal activities at these events. In the material that I gave you, I summarized some of those.

**Chairwoman Benitez-Thompson:**

I just wonder if we are getting onto a slippery slope because we have such big, great events in the state and whether it is NASCAR or Electronic Daisy Festival, Burning Man or a country concert, there are going to be things that happen there that could be illegal. I think what might happen at an event is different

from what the event is actually licensed for. At least when there is due diligence in the permitting process through the agreements and talking about the nature of the event with the counties, you guys are allowed through those agreements to determine what the costs are going to be for you to manage those. I want to make sure we are not putting on the record that the legislative intent is to allow for organized illegal activity.

**Jim Shirley:**

The four amendments that we suggest to the bill, if you are going to pass it, are ([Exhibit F](#)): first, that you relieve the sheriff of having to provide individuals out there because we will not have a funding mechanism; second, that you relieve the prosecution of having to prosecute anything; third, that you relieve the county of any liability such as indigent medical at these events; and lastly, that you delay the implementation until October 1, 2013, because we have already licensed this year's event. What is presupposed with these agreements is that the parties can agree. You are saying if we have an agreement with Burning Man—that is assuming that the parties can come to an agreement. If we cannot come to an agreement, what happens?

**Chairwoman Benitez-Thompson:**

I think they move a thousand miles over to Washoe County. I do not know. They move a couple miles over to Washoe County.

**Jim Shirley:**

We are not trying to push the event out of Pershing County. We have no problem with the event. If it was in Washoe County it would be 60,000 people compared to a population of roughly 600,000 people, or 10 citizens for every participant at the event.

**Chairwoman Benitez-Thompson:**

I think we have on the record that it is neither the bill sponsor's intent nor yours for this to move anywhere. The intent is to get some statutes in place that clarify a current disagreement between the event organizers and your county. We have your amendments online. They are on NELIS for the Committee to read and for the bill sponsor to consider ([Exhibit F](#)).

**Assemblyman Elliot Anderson:**

We are not talking about some of the overreaching issues here. We have this statute. I understand that you did not see it before, and now you are seeing it. We are talking federal land here. We do not have the first say when it comes to what happens on federal land, as everyone in this room knows. My intent is not to get into that discussion. When the Bureau of Land Management (BLM) permits something that is like an administrative law, they have spoken about

how something is to be administered and have occupied the field—to borrow a term from the preemption doctrine. Once they do that, how is it that you think that under the *Nevada Revised Statutes* that we have the power to start changing things on the BLM, with a permit make an administrative law ruling that they are allowed to do from a federal statute.

**Jim Shirley:**

Number one, you go back to the handbook, which is addenda 3, where prior to issuance to the BLM permit, they have to get the county license, period [([Exhibit G](#)) page 15]. Last year, the BLM permit was issued in June after our license was issued. It is required that they do so afterward. As far as this preemption issue, that will be settled with the federal court. There are currently motions pending before the federal court to decide whether the preemption issue is a viable issue. The federal court will settle that once and for all. This is not like the Ventura County case. This is totally different. The BLM regulations require that they get a license. The permit requires that they have the license. We do not have veto power. Look at what our code says. We agree with all the conditions that we have plenary jurisdiction over, and that is law enforcement. Also, look at NRS 321.0005, the very first section, I believe, which says that as to these public lands, Nevada wants to have harmonious and coordinated regulation for management of these public lands. What is more coordinated and harmonious than the BLM requiring a license, the county issuing it, and the permit holder getting the exact conditions in our license as the BLM is proposing, except for law enforcement? There is no difference. To say we are preemptive is not a viable issue. There is no conflict. You have to have a conflict to have preemption. There is no conflict because we are adopting the same conditions as BLM except our local law enforcement, which we have exclusive jurisdiction over state crimes. There is no conflict. Preemption requires a conflict.

**Chairwoman Benitez-Thompson:**

I know there is a whole world of public lands, Nevada versus federal. I want to make sure that we do not get too far into the weeds in the Committee on Government Affairs for a subject matter that is more appropriate for Assemblyman Daly's committee. I want to make sure we keep it on the road here a little bit.

**Assemblyman Elliot Anderson:**

That is not exactly accurate. There are three types of preemption. There is conflict preemption, which you just discussed. There is occupying the field. When you are talking about federal lands, they certainly occupy the field of federal lands in terms of the primary enforcer and management of federal lands, which we talk about in Assemblyman Daly's committee and even in the

Committee for Legislative Operations and Elections yesterday. It is not exactly accurate to say it is that simple and that there has to be a conflict. I want to clear up that record for everyone here because not everyone here studied constitutional law.

**Jim Shirley:**

That is not true. The case law is very clear that there has to be a conflict with state law. Even in field preemption, you have to show that there is a conflict. I have read the case law. We have it pending before the federal court. I do not think you are here to decide those issues. It is important because if you pass that bill, you are interfering with the right of every county in the state of Nevada to coordinate the management of the BLM public lands within the confines of their counties. We believe in local rule, and NRS Chapter 321 talks about a harmonious coordinated management. We have a national resource advisory commission that is set up, specifically, to govern coordinated management of BLM grounds. We have a great office in Winnemucca. We have meetings every month with them.

**Chairwoman Benitez-Thompson:**

The topic of conversation is open for Committee discussion, which is what we are doing. The Committee will ultimately, through the great policy questions that they ask on both ends, make that determination for this statute. Are there any additional questions from Committee members?

**Assemblywoman Neal:**

In regard to law enforcement, how much was charged last time from this new share for law enforcement for Burning Man?

**Jim Shirley:**

The budget was \$450,000, I believe. There was reimbursement from that, so it ended up being around \$400,000.

**Assemblywoman Neal:**

What was the difference from the last time Burning Man was here?

**Jim Shirley:**

All totaled, the cost in 2011 was \$250,000. It was a net increase of \$150,000. Of that, \$50,000 was the hired deputies that come from Washoe County. The county was not paying social security or workers compensation on their behalf. When we started adding those costs in, it added to about \$50,000. That was a significant increase in the cost for law enforcement.

**Assemblywoman Neal:**

On the BLM comprehensive permitting process slide, the second point says, "Scoping meetings with local governments to address all local concerns, impacts, and costs" [([Exhibit C](#)), slide 19]. Did this new sheriff come in before or after that process happened?

**Jim Shirley:**

I am not sure when they last had a meeting on those issues, because we have never had to address the actual cost to the county in that scoping process. We have never been asked to do that. We have never been told that was needed. We were told to come in and talk about the environment and the impacts on the infrastructure of Pershing County. We were never asked to address the law enforcement costs.

**Assemblywoman Neal:**

For the record to be clear, you were not aware or were never told by BLM that these issues were a part of the discussion in the BLM process that was presented to us.

**Jim Shirley:**

Correct.

**Chairwoman Benitez-Thompson:**

Was that just for this last contract or was that for all previously entered contracts?

**Jim Shirley:**

For the last thirteen years, we have never been told to submit our costs to the BLM for their permitting process.

**Chairwoman Benitez-Thompson:**

To clarify something I just heard, you have your documented law enforcement costs, and you asked to be reimbursed for those. You did not say be reimbursed, you said a licensing fee of \$400,000 and you received \$400,000.

**Jim Shirley:**

We did receive that money. We have no problem with the way the licensing process worked.

**Chairwoman Benitez-Thompson:**

Are there any outstanding concerns for those costs?



**Jim Shirley:**

There are not from our perspective. We were paid. Whatever we did not spend, we reimbursed to Black Rock City, LLC. We had no qualms with how the licensing procedure worked last year or this year.

**Chairwoman Benitez-Thompson:**

Remind me of the time frame of the occurrence of the event. You have the agreement. At what point did you decide to enact the licensing statute at the local level?

**Jim Shirley:**

At the local level, we had a festival ordinance in 1970.

**Chairwoman Benitez-Thompson:**

No, when did you make the change? This past year, you assessed this license and a fee that had not been assessed before. When did that happen?

**Jim Shirley:**

We started the amendment process at the end of 2011 and finished in February 2012.

**Chairwoman Benitez-Thompson:**

When did you notify Burning Man about the licensing?

**Jim Shirley:**

We had numerous meetings with Burning Man through the process of adopting the ordinance.

**Chairwoman Benitez-Thompson:**

And the \$400,000 price tag?

**Jim Shirley:**

We were in negotiations up until around May 21, 2012. We reached an impasse and went under the festival ordinance. June 12, 2012, was when the license was set.

**Chairwoman Benitez-Thompson:**

You went under the festival ordinance when you realized that you were not getting what you needed out of the contract. That is when you decided to use this ordinance as a tool.

**Jim Shirley:**

We started going away from the contract in 2011 when we started amending the festival ordinance. We made the changes of that festival ordinance not applicable until October 1. When we were having such difficulties on the contract, I sued the county commissioners with a writ of mandate that they not go under a contract any more. By order of the judge, they went away from the contract.

**Chairwoman Benitez-Thompson:**

I want to make sure you know why I am asking these questions. I would be just as arduous if Pershing County brought a bill because Burning Man was trying to change contractual obligations at the last moment and the tables were reversed. It is begging the questions about timing and motivation. It is not because you are a county. It is because whoever would be bringing this, in what seems to be more last moment than anything else, would receive this type of questioning. Whether it was you doing this or them on the other end coming in and saying that they know they signed agreements with the other folks but have decided to change everything and to find any legal tool or avenue possible to change that. I want to make sure you understand why we are asking these questions. They are not about you being a county. We have this happen in other areas in this Committee when people come in and negotiate contracts and there is a question about how you move them, get out of them, and how they change.

**Jim Shirley:**

There is no longer a contract.

**Chairwoman Benitez-Thompson:**

That is where we will stop. Let us move on to other testifiers.

**Lorinda Wichman, County Commissioner, Nye County:**

I am here to speak on behalf of Nye County ([Exhibit J](#)). I have probably changed my testimony six times in the course of the last 45 minutes. We are not in opposition to Burning Man at all. Many of the people in our county have been supporters who attend and enjoy Burning Man. I am speaking in opposition to any action that reduces the teeth in the state law that we have to help us facilitate those relationships with Bureau of Land Management (BLM), the U.S. Forest Service, and the other federal agencies that we play host to. Nye County is over 18,000 square miles. My commissioner's district alone is 17,933 square miles. It is the largest commissioner's district south of Alaska. There are many types of events that take place in my district. We work every day with those other agencies to make sure we are all on the same page. I work personally with BLM to make sure that we are aware of what is going on

so that we can coordinate our emergency service and law enforcement efforts in the areas where they are needed. With that many square miles, there are some parts of Nye County that, if you left the south end and headed for the northwest end, it would take you six hours to reach the other boundary. We absolutely have to have coordinating efforts to make sure we are covering the right areas at the right time.

I am concerned that if this bill was to make changes in the *Nevada Revised Statutes* (NRS), it is a law that is designed for one event, which is something personal. You are considering these changes to law in order to satisfy one situation when you have 17 counties to worry about. Let me give you an example. This is a little bit of a silly story. Recently, we were working on these arrangements using NRS to make our ordinances fit the situation for Nye County. At one of our meetings with BLM and the U.S. Forest Service, which take place every couple of months, it was briefly mentioned that a group of individuals had applied for a permit through the BLM to do a tour through some of our rural areas. It was no big deal. It was not going to be a thousand people, so we were not worried about it. However, once the BLM issued their permit, I got a phone call from a Supreme Court justice who said, "Do you realize that the BLM just permitted a tour through my yard?" Had that come to us under the ordinance as it is currently written, we would have caught the path and understood that it could not go through private property. We could have helped the BLM solve that issue before they started.

To go to an extreme, there was a situation last year in California where there were people hurt and killed in an off-road race. With six hours between our two farthest points in Nye County, had that situation been in Nye County and the current proposal in effect, we would have no guarantees and no way to know what was going on. It is conceivable that emergency services would have been six hours away from that. If you make the changes proposed in Assembly Bill 374 to solve the problems for one event, you are affecting all 17 counties. There are commissioners from Lincoln County, White Pine County, Elko County, and Humboldt County who are in opposition to this bill but who could not be here today. They have contacted us this morning to add their voices to this opposition ([Exhibit K](#)).

**Chairwoman Benitez-Thompson:**

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

**Ben Trotter, Sheriff, Churchill County:**

I want to thank the Committee for their service. You have a heck of a task this session with so many bill draft requests and everybody wanting their piece. I do not think this is a Burning Man issue. That may have been what inspired it,

but to me and to Churchill County, this is not a Burning Man issue. I am deeply troubled by the implications to the State of Nevada should you allow this bill to move forward in the Legislature. I think if this bill passes, there will be long-lasting repercussions.

I see this piece as an orchestrated onslaught from the federal government against local and state government. The bill represents one of many bills that have been penned this session that undermine the authority of local and state government. Specifically, this bill removes the incidence of county commissioners in regard to events and activities occurring on Bureau of Land Management (BLM) managed lands. Bureau of Land Management is a land manager; it is not a landowner. These lands belong to the State of Nevada, and we should have influence regarding what happens on those lands. Furthermore, BLM law enforcement are not recognized peace officers in the state of Nevada, and they should not be in counties. This is the job of the sheriff. The county commissioners and the sheriff are integral constitutional positions in local government, just as the Legislature is established by the *Nevada Constitution*. There is a saying that local government is better government, and I fervently believe this to be true. Local government is accountable and directly accessible to the people. They are vested in the community and established by the *Nevada Constitution*.

Every day, I personally experience this accountability and accessibility in my job as people from the community come in and address their issues with me. My vested interest in our community weighs heavily on all the decisions I make while performing my constitutional and oath-sworn duties. Conversely, BLM agents are not accountable locally; they are accountable to somebody in Washington, DC. They are not accessible to the people, and, therefore, are not trusted by the people in our communities. They are not likely to be vested in the community. Many of them do not live in our community, yet they want to make decisions for a community they are not vested in. I have strong misgivings in their ability and interest in making appropriate decisions for any matter in our counties. That includes organized events and activities.

I urge this legislative body to block this bill and any other bill that strengthens what I believe is federal incursion on our rights and our sacred state and local authorities. I urge you to support the elected bodies of county commissions. What happened in Pershing County is their business. If you pass this bill, it affects all the counties and our constitutional rights and authority. I would urge you to remember that the *United States Constitution* gave states sacred powers. Any power that is not designated to the federal government is the State's power. I believe if you pass this bill, you are giving up on that.

**Chairwoman Benitez-Thompson:**

I want to make sure your comments remain specific to this bill and that we do not fall too far into the world of jurisdiction that might be better suited to a different committee. I appreciate your comments. Are there any questions from the Committee?

**Ben Trotter:**

I have one more comment. I do not believe that bringing the *Constitution* in to this goes beyond the scope of the bill. This bill affects our constitutional authority.

**Craig Mingay, Deputy District Attorney, Churchill County:**

I want to reiterate some things. I do not want to get into a constitutional argument or bash the Bureau of Land Management too much, but I have a fundamental belief that local governments are best suited to weigh the costs and benefits of a particular event. You have heard the preemption argument, the property clause argument, and the problems of the BLM taking into account these local benefits. I think the real problem here is, Burning Man aside, we are looking at other events on BLM lands in rural Nevada that do not have the infrastructure, police power, or medical services to support a large community event. I really think it is very important for the State to allow the local government to continue to have control or to have some say into weighing the costs and benefits of this event and making sure the taxpayers of the local communities are not tripled by a particular event having the sheriff or medical services providing services to these events. I think that is the risk of this bill, which is really trying to solve a problem that will probably be solved in the federal court, making this statewide so that these other counties and county commissioners do not have the ability to get these costs reimbursed. I wanted to make sure you know that is Churchill County's position, and I ask the Committee to take that into consideration with this bill.

**Chairwoman Benitez-Thompson:**

Are there any questions from the Committee? [There were none.] Is there any additional testimony in opposition? I want to make sure we are sensitive to our time frame. We have one more bill on the agenda to hear and then I have a work group as well.

**Steve Walker, representing Eureka County:**

You have received a letter from the Board of County Commissioners ([Exhibit L](#)). They took a vote and are in opposition to the bill. Furthermore, J.J. Goicoechea added that counties are an integral part of activities on federal lands. Counties are responsible for roads, emergency services, and law enforcement. An attempt to circumvent local government and decisions relative to activities

within our counties will be met with greater pushback by the citizens toward the management agencies.

**Chairwoman Benitez-Thompson:**

Are there any questions from the Committee? [There were none.] Are there any additional people wishing to speak in opposition? [There were none.] I will move to testimony in neutral.

**John J. Slaughter, representing Washoe County:**

Washoe County had not intended to testify on this particular bill, but we have been asked many times regarding where we stand. Washoe County is neutral and has no position on this proposed legislation.

**Brian Kulpin, representing Reno-Tahoe Airport Authority:**

Speaking on behalf of our chairman, who is in Washington, D.C., today, while we may be neutral on the bill, we are absolutely positive about and very much in favor of the economic impact of Burning Man ([Exhibit D](#)). To give you a little perspective, \$10 million in economic impact comes through the airport each year through Burning Man. We have embraced the festival over the past 10 years. We have welcome tables and art displays in the airport. We have displays that guide the people that come from 34 different countries asking where to shop for their supplies before they head out to the playa. It has a huge impact on us. There are few events in northern Nevada that bring people from Reykjavik, Iceland; Helsinki, Finland; Auckland, New Zealand; and Johannesburg, South Africa. They sign a book when they arrive at the airport so we know exactly where they are from. We encourage the Committee to recognize the importance and how fragile an event like this can be with the economic impact that it brings. We see 30,000 people go through our airport because of this event—15,000 fly in and 15,000 fly out. They do put the "international" in Reno-Tahoe International Airport. We want you to remember that as you proceed. Please recognize the importance of this event to our airport and our region.

**Chairwoman Benitez-Thompson:**

Are there any other comments in neutral? [There were none.] I will invite the bill sponsor up for some quick closing comments.

**Assemblyman Bobzien:**

I want to reiterate that this bill in no way attempts to preclude local law enforcement, counties, or the public being at the table and involved in the management of federal lands. What we heard about the process for how this permit goes and the requirements for the contracts that flow from that to make sure that the costs for county presence needed at Burning Man and other

large-scale events on federal lands are reimbursed. I think what you have before you is a situation where the interpretation of statute is being done outside the context of the Supremacy Clause, existing federal land law at the federal level, which makes it very clear what the roles and responsibilities of all the jurisdictions are when it comes to federal land. This is about economic impact to the state. This bill, while it may seem to be about only one event, is a model with broad application for how we should move forward with any other events in any other county in Nevada. It is not our attempt to say that counties should not be able to provide services or that counties should turn a blind eye to illegal activities. They have to be at the table. What this is about is providing certainty to an event and to an economic base that is important to Nevada.

**Chairwoman Benitez-Thompson:**

I want to thank everyone who testified today for the spirit in which they came, both the bill sponsor and Pershing County. There is a clear desire to make this work and to look for a way to continue a very productive ongoing relationship.

I will close the hearing on Assembly Bill 374. I will now open the hearing on Assembly Bill 283 and welcome Assemblyman Daly.

**Assembly Bill 283: Makes various changes to provisions governing bidding for public works. (BDR 28-658)**

**Assemblyman Skip Daly, Washoe County Assembly District No. 31:**

Assembly Bill 283 has to do with construction manager at risk (CMAR). My comments include a little bit of history and a little bit of where we are. I hope when people come up to testify, they will say a short piece to keep us on time. During the interim, I met with the Associated General Contractors (AGC) north and AGC south contractors. We had several meetings over CMAR and various directions, concerns, and issues—some that they had, some that I had. I also met with the awarding bodies and asked Mr. Nuñez to put together a small group. We had a couple of meetings to go over some of their concerns with the ideas that were brought forth. I heard many different ideas and ways things could be done. We put most all of that into the bill. We are going to have discussions over the issues and how it all works.

Construction manager at risk was first introduced and put into legislation when Steve Holloway with the AGC proposed it in 2007. There was not a lot of action with CMAR for the next four years or so. There was a small change in 2009. Then it got to be more popular. People were using it more. Then, there were substantial changes in 2011, which came by way of an amendment that I worked on with many of the people that are behind me. Since then, it has gone through many things. Everybody in 2007, 2009, and 2011 has agreed

that if there are issues that are identified, problems that need to be fixed, or concerns that need to be addressed, everyone would come back and continue the evolution of this process to make it better, more fair and, for me, more consistent.

I hope with some of this and the discussions we are going to have we make sure that the way the State Public Works Division does it is the same way they do it in Austin, Nevada—that there is no misinterpretation or understanding of this in a different way than everybody else. We want to clarify that. There are concerns from my point of view over some of the subcontract selection. You will see some stuff in there. People self-performing work as we are trying to move in as we have heard in the bill with the Department of Transportation (NDOT) wanting to have their two-year sunset removed. All these things need to be discussed and brought forward.

I will answer questions that you have regarding the particular sections of the bill. I was not planning on going through it. I know there are several people here who are going to come up in opposition because there are parts that they do not like and others that they do. They have all talked to me. I am planning on having several meetings and discussions to work out the issues. We will get as much consensus as possible. When we get it as far as we think we can—I am not saying one hundred percent agreement on everything but as much consensus as possible—we will bring it back through the Chairwoman and hopefully move the bill forward. I am hoping that frames it for many of the people who want to come up and make comments on the bill. We are going to have many discussions about all of these issues. With that, I will be happy to answer any specific questions you have on any particular proposed change.

**Chairwoman Benitez-Thompson:**

Are there any questions from the Committee? [There were none.] We will go ahead and let support and opposition get their comments on the record so you can start from there as your working base.

**Assemblyman Daly:**

Thank you. I am hoping we can keep you on schedule.

**Chairwoman Benitez-Thompson:**

I will open up the witness table for those with testimony in support either from northern or southern Nevada. [There was no one.] All those in opposition please come forward.



**Paul McKenzie, representing Building and Construction Trades Council of Northern Nevada:**

I would like to thank Assemblyman Daly for bringing this legislation forward. There are areas of construction manager at risk (CMAR) that need some work. We know there is going to be a lot of disagreement about how to fix those. That is going to be best resolved in a subcommittee rather than in this Committee. We would be here longer than we were for Burning Man if we were to put all our issues on the table right now. I will be happy to work with the Assemblyman and those present to help get some legislation that we can get past this Committee.

**Chairwoman Benitez-Thompson:**

Is there anything that you want to have on the record for legislative intent and for future reference?

**Paul McKenzie:**

We spoke about the CMAR legislation extension for Department of Transportation. I put an extensive list of issues that I had on the record at that time. You may refer to those on Assembly Bill 15. Assemblyman Daly is aware of the issues and he has addressed many of them in here.

**Scott Hiatt, representing Associated General Contractors:**

We are opposed to the bill because there are so many moving parts. The bill talks about a lot of changes. We would like to participate in the Committee hearings to go through those changes to make sure we get a bill that is workable for our industry.

**Tim Kretzschmar, representing Associated General Contractors:**

As you can see by the attendees today, the industry has a lot of attention on this bill. While I think the first draft was intended to make the bill better, I believe sending it to working group would allow the industry to come in on the issues with it.

**Chairwoman Benitez-Thompson:**

Let us take testimony from Clark County.

**Jack Mallory, representing Southern Nevada Building and Construction Trades Council:**

We are in support of what Assemblyman Daly is trying to achieve with this bill, understanding that his desire is to send this to a working group. Ultimately, for the legislative record, our biggest concern and the thing that we believe needs to be addressed is having consistent application of the law with all awarding bodies where appropriate. We do recognize that there are differences between

vertical and horizontal construction. Because of that, there may need to be different treatment for this process. We do support the utilization of construction manager at risk. We think that it is a good delivery method, but there are problems that need to be fixed.

**Linda Shields, Program Manager, Atkins North America; and representing the Nevada Chapter of the American Council of Engineering Companies:**

I am here to request some changes to the current draft of Assembly Bill 283. I am a program manager with Atkins North America in our Reno office. I am also speaking on behalf of the Nevada chapter of the American Council of Engineering Companies (ACEC). The ACEC strongly supports the use of construction manager at risk (CMAR) as a project delivery method. My company and many others in ACEC have been participating in CMAR projects as the designer or as the owner's representative. I have personally acted as the contract administrator for three CMAR projects in Nevada during the past three years. On behalf of my colleagues in the engineering and construction industry, we want to encourage expanding the use of CMAR in Nevada. The CMAR process, if implemented properly, allows the project team to enhance the quality of the work, optimize the schedule, and control costs. We agree that legislation regarding CMAR should continue to evolve. We appreciate Assemblyman Daly's intentions and efforts toward improving the process. We would like to request the opportunity to participate in a working group to review the specific sections of A.B. 283 in a collaborative setting with representation from owners, designers, and builders.

The CMAR process demonstrates some of the best teamwork in our business, and I am certain that we, as a group, can offer significant improvements to the current draft of A.B. 283. Pending the meeting with a working group, I would like to mention two specific sections of concern. Section 7 states that the public body "may contract with a construction manager at risk for the design and construction of the public work." This section is not consistent with the principals of the CMAR project delivery method, which has separate design consultant and CMAR contracts. This wording might be a holdover from previous design-build legislation.

Section 9 requires a proposal evaluation panel with a majority of the panel members not employed by the public body constructing the work. This may not be the most problematic provision in this legislation. We consider the public body not having the majority role in the selection of the CMAR a flaw that we should discuss more with the owners, some of whom may be here today to speak. On behalf of the ACEC, thank you for the opportunity to be heard, and we look forward to working on this bill.

**Bill Winfield, Private Citizen, Reno, Nevada:**

I am the owner of a small construction company here in the state of Nevada. I am opposed to the CMAR process throughout. I believe that it has many errors and problems within it. To be specific, I have a disagreement with section 10 where you give away your power. It states that a public body shall not interfere with the CMAR to select the subcontractor. You are giving away your power and putting it in the CMAR's hands. There are problems throughout the bill. For the sake of time, I do not want to go over every one of them. That is just one I am pointing out. I am in favor of what is best for the public, and in my mind, the low bid is the way we should be handling public works projects rather than CMAR.

**Doug Browne, Vice President/Construction Acquisitions, Clark & Sullivan Construction:**

Clark and Sullivan Construction and I support the construction manager at risk (CMAR) process. As you have heard from most people here today, we think it is a great collaborative effort. However, the legislation of CMAR is flawed right now. I applaud Assemblyman Daly in bringing some of these issues to the table; however, as drafted it needs a working group as we have heard. There are some arbitrary numbers in there. There are things that take away the power of the public body to determine selection criteria and what projects can be done through CMAR. It is something that we would like to see worked on more to make the system better than it is right now.

**Martin Harpster, Director of Pre-Construction, Core Construction:**

We are very much opposed to Assembly Bill 283, but we would encourage conversation and discussion related to housekeeping efforts in the original legislation. Basically, it is not broken. It does not need to be fixed. It just needs a little bit of housekeeping.

We have three major oppositions. The first is the requirement for self-performance of work. We believe that is a potential conflict of interest with the spirit and word of the CMAR delivery method. Secondly, we believe the \$5 million threshold is arbitrary and does not benefit the public in any way, shape, or form. Thirdly, we believe that the selection criteria used for CMAR needs to be at the discretion of the public body, not the Legislature.

**Dan Musgrove, representing the Subcontractors' Legislative Coalition:**

I wanted to go on record in sharing my appreciation for Assemblyman Daly. We traded emails late last night. He was very kind to me, and I appreciate that. We came late because our legal counsel was slow in getting remarks to me. Our issues are with section 6, but we are happy to work with Assemblyman Daly.

**Joanna Jacob, representing Associated General Contractors; and Nevada Contractors Association:**

As Assemblyman Daly has said, we have had ongoing discussions with him about the construction manager at risk (CMAR) and I have individual members who are anxious to participate in the working group. We look forward to doing so.

**Steve Walker, representing Lyon County:**

Lyon County's issue is the threshold of \$5 million. They think they could use the process on projects that cost less. They do not want to be excluded.

**David Frommer, Executive Director of Planning and Construction, University of Nevada, Las Vegas:**

I am here representing the University of Nevada, Las Vegas as well as my role as an architect. First, I would like to commend Assemblyman Daly and many of the groups who worked with him in the discussion of this bill. I believe it is an admirable and worthy effort to work on refining the construction manager at risk (CMAR) process and making it more effective. In addition, I believe CMAR is an effective and valuable tool for construction delivery to have available to public bodies. I am supportive of continuing and being a part of the conversation moving forward to further refine and improve the process and the legislation that supports it.

The concerns I would have regarding Assembly Bill 283 include the distinction between horizontal and vertical construction. It is not a major point, but at times, it may be difficult to distinguish among projects that include both and how the work qualifies as either horizontal, vertical, or a blend. I have some concerns about the requirement of self-performance of work by the prime contractor. That may reduce competition to engage trade or specific package work under the construction manager. It may lead to less competition and less engagement by a wide variety of vendors on a project and potentially increase cost. I have some concerns about the threshold of \$5 million. I believe CMAR as a process is not effective based solely on the dollar value of a project, but it is effective based on the type of project and the concerns or particular issues of delivery of that project, which can include projects much smaller than \$5 million based on their needs and complexities. I have concerns about the panel structure in terms of the public body construction, the work not being able to have the majority of the panel members, and requiring two separate panels. I think the public body that is constructing the work should have the majority leadership in the selection of the CMAR that will be responsible for delivering that work. I believe having one panel or two panels should be something the public body can decide based on their interest, potentially engaging between 6 and 14 people in two panels. It may be hard to get people who have that

experience and expertise related to the project. You may lose continuity by having two separate panels. With regard to selecting subcontractors at the contract negotiations, with the nature of CMAR having a preconstruction and a construction phase, when you enter into the preconstruction contract with CMAR, you do not necessarily know the full extent or details of the scope of work. You are working with the CMAR to help you in the planning of that process. The naming and commitment to those subcontractors at the negotiation phase, prior preconstruction services would be premature and inconsistent with the CMAR process. Certainly, I am happy to participate in any further discussions or working groups.

**Lindsay Anderson, representing Washoe County School District:**

We are here in opposition but look forward to working with the bill sponsor. Our primary concern is the threshold of \$5 million. We hope we can work with Assemblyman Daly on that. I am also going to say I am also here for Clark County School District, because they could not be here.

**Yolanda King, representing Clark County:**

I would like to place on the record that Clark County is definitely in support of the construction manager at risk process, but we have a few concerns about how the bill is written. Much of the information that I would like to put on the record has already been stated, but I will specifically state some of the major concerns that we have.

In section 2, there are a couple of definitions in terms of what is fixed work. What exactly does that mean? In addition as part of section 2, it appears there is contradiction between whether the airports are included or excluded as part of this process. In section 6, we are concerned about the 50 percent work for self-performance. Obviously, if you have the general contractor who is required to perform 50 percent of the work, that would eliminate some competition in our opinion. It would eliminate any new companies starting up or small, minority-owned businesses that would not be able to participate in this process.

Section 7 has to do with the projects exceeding \$5 million. Again, we have the same concern that it would limit competition, as well as not allowing those smaller jobs to be performed by those smaller companies or small, minority-owned companies. Regarding the definition in section 7 related to construction manager at risk (CMAR) in design, typically the CMARs do not cover design, so we are somewhat confused about including design as part of the CMAR process.

Lastly, section 9 is dealing with having the two committees in the process to select the CMAR. Specifically, we are concerned about not having the

governments involved or the local government involved in the process. It seems we are adding to the bureaucracy of the process. Those are our major concerns. We are absolutely willing to participate in the work group to try to get through some of the concerns.

**Nehole Garcia, representing the City of Henderson:**

The city has some of the same concerns as some of the other people who testified in opposition. Primarily, we are concerned that this bill may limit the city's ability to use the CMAR process. Briefly, the areas where we have the most concern are the \$5 million threshold and the provision that requires contractors to perform 50 percent of the labor on a large project. Finally, the selection committee would limit the number of city employees that would be able to participate. We thank Assemblyman Daly for his willingness to hear our concerns, and we want to participate in a working group.

**Chairwoman Benitez-Thompson:**

Is there any additional testimony in opposition? [There was none.] I will now take testimony in neutral.

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

I would like to thank Assemblyman Daly for engaging us in prior conversation in going over some of the refinements that we want to look at. We appreciate his reaching out to us ahead of time. We have some areas of concern and some areas we believe some clarification is needed. I believe that you have a copy of my testimony ([Exhibit M](#)). We feel that some clarification of the vertical and horizontal construction, especially for vertical construction, needs to be addressed. Much of the work we do has components of both and we definitely would not want to have to split that. It would not take much tweaking of the current wording to take care of that issue.

We also had a question regarding the 15 percent, whether general conditions would be counted to the 15 percent of just the rest of the cost of the work that would be included in the 15 percent. We also have a concern with the actual requirement of the 15 percent. We currently do not have that as a requirement of the work we do. We have not seen a problem with that. As a matter of fact, one of our goals is to get competitive pricing for all the work that is going to be done. If we have a requirement for 15 percent, that would take away for those items being able to get a competitive price rather than a negotiated price, which is what would happen at that point. I think it takes away from the concept of construction manager at risk (CMAR). We hire the CMAR at the beginning of the process. He is at the table during the design along with us and the design team. We are looking for someone who wants to act as our agent.

Once he starts self-performing part of the work, the position is compromised during the construction process.

Lastly, with respect to the majority of the committee not being members of our agency, we have a concern with that. I outlined the reasons for our concerns in the letter. The concept basically boils down to if we are going to be held responsible for the outcome of that project and the outcome of the performance of that contractor, we have to have the authority to have the final word as to who that person is going to be. We have all the participants inside our agency, but public works needs to have the majority on that committee at all times. Responsibility and authority need to go hand in hand.

**Sean Sever, Communications Director, Department of Transportation:**

We are neutral on Assembly Bill 283. We have Assembly Bill 15 to remove or extend the sunset date. I would be interested in participating in a working group.

**Yolanda Jones, representing the City of Las Vegas:**

I would like to thank Assemblyman Daly for allowing us to attend his meetings and allowing us to participate in the process. We concur with some of the comments by Mr. Nuñez. We want to emphasize that in section 7 we object to the minimum of \$5 million. The city encounters many small projects that benefit from having a construction manager at risk on board due to the technical and schedule restraints of some of these projects. This has been very successful for us. This is a project delivery method that we do not want to put on the shelf due to the limitation of the dollar threshold. In addition, in section 9, we feel the city is responsible to have city representatives participate in the evaluation, proposals and interviews.

We strongly feel this responsibility cannot be turned over to an entirely independent evaluation team. The funding is entrusted to the public agency by the taxpayer. The city has a fiduciary responsibility to oversee the projects from commencement of the project to completion. Our public works department has very expert employees, from the director of public works to the city engineer, that are able to participate in this process and have done an excellent job. Under section 10, we are also concerned regarding the 3 percent list as it relates to the subcontractors. There could be a direct conflict of interest as a 3 percent list can be money deleted through the purchase of materials, thereby lowering the contract value of the subcontractor below 3 percent. We are looking forward to participating in the working group, and we appreciate the opportunity to testify this morning.

**Chairwoman Benitez-Thompson:**

Is there any additional testimony in neutral? [There was none.] I will invite the bill sponsor back up for closing statements.

**Assemblyman Daly:**

I think you heard, with all these different public agencies and some of the contractors, there is no consistency to the process. Everybody has their own interpretations. That is part of the problem. There were several things that you may not understand unless you are a construction geek. That is bad news, but the good news is I understood all of what they said. Most of the bill is being misread. Some of it was misunderstood. I will only take exception to one comment which was made, I think, to throw mud unnecessarily. That was the comment that it will hurt in any way minorities or small business from participating in CMAR. That is simply untrue. I will take the issue up with the person who said it. The part about the competition is heard every single time. People say CMAR will create more competition or less competition depending on whether you win a job or not. We need to make this consistent.

Let me make some comments on why we have to have some of the changes. Prior to any bidding laws in the state of Nevada, you had corruption and various things. They started to figure out before we added any bidding laws that the mayor's nephew was getting all the jobs. People said that was not fair and we needed a competitive bidding process. It was a low bidder process. Then, we had the general contractor winning the job and leveraging all his subcontractors on the job for the purpose of enriching himself. He would not give money back to the public body. That was unfair, so we needed to have anti-bid shopping rules so that subcontractors get treated fairly and general contractors cannot enrich themselves off the public dollars unjustly. We have this hard bid design-bid-build process that still works pretty well. However, people will low-ball contracts and have a bunch of change orders. It is adversarial between the public body and the contractor. There are issues over that, so we started to develop a design-build process, which was more of a team building.

Now we have CMAR, which also says that we want to get the best value. The lowest bid is not always the same one. Washoe County School District got sued by a contractor. They did not bid because they deemed them not responsible. It was a pretty high threshold to get to because that contractor did not complete his jobs on time. They used substandard materials. They were the low bidders, so they kept giving them jobs and kept having jobs that were not done properly or on time. They had finally had enough, and got sued over it. So, we went to design-build and CMAR to try to have a team-building process. That is part of what has happened and why we have some of these things about the subcontracting. They select the contractor, and it is pretty



much a subjective process. We have to have some safeguards in there so we do not go back to choosing the contractor that someone likes. We have to have some criteria there. I think there are some good people here who testified and want to fix the process. There are people here building under CMAR that think it is a good delivery method. I have read strike lines through every single provision, it seems.

We have to find a way to do this. Part of the process has shifted to the team-building process to pick the general contractor. Picking the subcontractors is just hard bid. Pick the low guy. That does not build teams for the general contractor who has people he knows can deliver and are not going to make change orders because of history. He knows who can give the best value. That is not allowed under the way different bodies are doing the CMAR process currently, which is why we are bringing this bill forward and have to have some of this stuff. I do not mean to confuse the Committee. I will explain as much as you want to know about the process. I ask a lot of questions, but I can tell you that 80 percent of what is in the bill are issues that I heard from other people such as contractors and awarding bodies regarding things they would like to see corrected. Not everybody agrees on how to do that, but that is what we will be talking about.

**Chairwoman Benitez-Thompson:**

I will close the hearing on A.B. 283. Are there any public comments? [There were none.] This meeting is adjourned [at 10:54 a.m.].

RESPECTFULLY SUBMITTED:

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Jennifer Dalton  
Committee Secretary

APPROVED BY:

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Assemblywoman Teresa Benitez-Thompson, Chairwoman

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

**EXHIBITS**

**Committee Name:** Committee on Government Affairs

**Date:** March 22, 2013

**Time of Meeting:** 8:05 a.m.

<b>Bill</b>	<b>Exhibit</b>	<b>Witness / Agency</b>	<b>Description</b>
	A		Agenda
	B		Attendance Roster
A.B. 374	C	Raymond Allen/ Black Rock City, LLC	Burning Man Presentation
A.B. 374	D	Brian Kulpin/ Reno-Tahoe Airport International Authority	Letter
A.B. 374	E	P. Michael Murphy/Clark County	Amendment
A.B. 374	F	Jim Shirley/Pershing County	Letter/Amendments
A.B. 374	G	Jim Shirley/Pershing County	Letter with addenda 1 – 6
A.B. 374	H	Jim Shirley/Pershing County	Pershing County Code Chapter 5.16
A.B. 374	I	Jim Shirley/Pershing County	Pershing County Commissioners Permit
A.B. 374	J	Lorinda Wichman/Nye County	Letter
A.B. 374	K	Lorinda Wichman/Lincoln County	Letter
A.B. 374	L	Steve Walker/Eureka County	Letter
A.B. 283	M	Gus Nuñez/Public Works	CMAR Position Paper