

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

**Seventy-Seventh Session
April 3, 2013**

The Committee on Government Affairs was called to order by Vice Chairwoman Dina Neal at 8:07 a.m. on Wednesday, April 3, 2013, in Room 3143 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4406 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at nelis.leg.state.nv.us/77th2013. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblywoman 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:

Assemblywoman Teresa Benitez-Thompson, Chairwoman (excused)



GUEST LEGISLATORS PRESENT:

Assemblyman Richard Carrillo, Clark County Assembly District No. 18

Assemblywoman Marilyn Kirkpatrick, Clark County Assembly District
No. 1

STAFF MEMBERS PRESENT:

Jennifer Ruedy, Committee Policy Analyst

Jim Penrose, Committee Counsel

Bonnie Hoeffcker, Committee Manager

Maysha Watson, Committee Secretary

Cheryl Williams, Committee Assistant

OTHERS PRESENT:

Michael E. Langton, Attorney, Laborers' Local 169

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

Jack Mallory, representing Southern Nevada Building and Construction
Trades Council; Private Citizen, Las Vegas, Nevada

Greg Smith, Administrator, Purchasing Division, Department of
Administration

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

Keith Lee, representing Nevada Board of Contractors

John Madole, representing Associated General Contractors,
Nevada Chapter

Lance Semenکو, President, Q&D Construction

Rod Cooper, Vice President, Granite Construction

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

Dean Schultz, Executive Vice President and Chief Operating Officer,
Reno-Tahoe Airport Authority

Richard Nelson, Assistant Director of Operations, Department of
Transportation

Joanna Jacob, representing Associated General Contractors,
Las Vegas Chapter

Wes Henderson, representing Nevada League of Cities and Municipalities

Jeffrey Fontaine, representing Nevada Association of Counties

Richard Perkins, representing City of Henderson

Barbara A. Geach, Neighborhood Relations Manager, Neighborhood
Services Department, City of Henderson

Terry K. Graves, representing Nevada Trucking Association;
and Henderson Chamber of Commerce
Jay Parmer, representing Builders Association of Northern Nevada
Mike Cathcart, representing City of Henderson
Richard A. Derrick, representing City of Henderson
Ted J. Olivas, representing City of Las Vegas
Dan Musgrove, representing City of North Las Vegas
Yolanda T. King, representing Clark County
Lisa A. Gianoli, representing Washoe County
Scott Carter, Vice President, Redevelopment Association of Nevada
Mary C. Walker, representing Carson City, A Consolidated Municipality;
and Douglas County
Michelle Romero, Redevelopment Manager, City of Henderson
Lisa Sich, Principal Redevelopment Administrator, City of Henderson
Javier Trujillo, representing City of Henderson
Nicole Rourke, representing Clark County School District
Cadence Matijevich, representing City of Reno

Vice Chairwoman Neal:

[Roll was taken and protocol reiterated.] We will be hearing four bills today. The first one will be Assembly Bill 285 from Assemblyman Daly, and the second will be Assembly Bill 263. We are going to take certain bills out of order. Assembly Bill 418 will be heard before Assembly Bill 417.

We will open up the hearing for Assembly Bill 285.

**Assembly Bill 285: Makes various changes relating to certain writs.
(BDR 27-278)**

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

I am probably going to break my own record for opposition on this bill, but that is okay. I understand there is a real problem that we are trying to fix. I will say that if this was under our normal rules and was not my bill, I would not be in support of the bill as written. However, I do want to give you some history on the issues Assembly Bill 285 deals with, including as many specifics as I can so you can understand what the problem is and how we are trying to fix it.

What I hope to do with the bill in the end is make it narrower. The term "taxpayer" is too broad. We are looking for some representational standing potential to remedy this. I know that a lot of people have already said they are going to testify against A.B. 285, and that is perfectly fine. I am not going to get offended. I understand.

There are really two issues. If there is a provision in the law and there is no other speedy remedy available to you, you can file under *Nevada Revised Statutes* (NRS) Chapter 34 a writ of mandamus to tell the government agency to do a certain thing. Alternatively, you can file a writ of prohibition to tell the agency to stop doing something they are not authorized under the law to do.

I initially thought this bill was going to go to the Committee on Judiciary. I thought it was going to be in NRS Chapter 34, but when we did some research over the interim on this, we found out that most of the people who are using the writ process are inmates. We are not trying to muck that system up. We started asking ourselves how we can get to the areas on which we were focusing. I concentrated on areas where I knew there were issues I had experienced personally in my regular day job. Most of my examples will come from that.

People can throw rocks if they want to, saying that this bill is self-serving, but it is not. These are real issues, and I will give an example based on some testimony we heard yesterday with Assemblywoman Bustamante Adams' Assembly Bill 294 regarding what you would do in a situation where somebody was not following the statute you put into place or else completely misinterpreted it.

One issue is with the timeliness of the court taking action once you file a petition. The other issue is regarding who has standing in order to bring the cases. I have an attorney here, Mike Langton, who has worked on several of these cases and can give you better legal terms. He will come up if you have questions for him as we go along.

I know some of the other testifiers will have some stories to confirm, saying that these are the issues and that the bill, as written, is not going to work, with which I agree. However, we have to find a solution.

Several years ago, Carson City was going to build a project. I believe Assemblyman Livermore was on the Board of Supervisors at the time. They were going to use a process called construction managerization, which is not the construction delivery method under the law. Under the law, we have Construction Manager at Risk (CMAR) and design-builds. The Board hired a construction manager. They parceled out various pieces of the job, which were part of a bigger public work, and did not contract directly with the construction manager, instead contracting directly with the city. I went in and told them that there is a definition for a specialty contractor in NRS 338.010. There is a provision for circumstances on when you can contract as a public

agency directly with the specialty contractor. For example, if you are doing a roofing job, you do not have to get a general contractor to have a roofing contractor as a subcontractor. You can go directly to the roofing contractor. You can do that for specialty work as long as it is not part of a larger public work.

When I lined all of this out for the Board of Supervisors, they asked their city attorney if I was correct or if they could continue with what they were doing. The city attorney analyzed it and decided that they were within the law. It did not matter what the interpretations were or what the intent of this body was. Now, we did not pursue a lawsuit on that because the project did not go forward for other reasons. However, when you are in a situation like that, the only remedy you have left is to sue. They had not even bid yet. They had not gone forward yet. We have had many cases where folks have gone forward, and then the issue becomes figuring out who was damaged and who has standing as it says in NRS Chapter 34. That is where we got to the taxpayers' standing, under which we argued. We put in the names of the citizens of that county, and the determination of the court was that they did not have standing. There was nobody in the course of that who had any ability to get enforcement of the law via the city except the city council, even if it was contravention. There was no remedy.

The other situation we had was in Sparks. The City of Sparks bid a contract. One of the contractors had used the wrong name, and NRS Chapter 624 clearly states that you have to bid the contract under your name as it appears on your license. Not doing so is a violation for which you can be sanctioned under NRS 624.300. We notified the City of Sparks and said this person did not put in a responsive bid. They needed to reject his bid and go to the second bidder. The City of Sparks said they did not want to do that, and they rejected all the bids, which they are allowed to do under NRS Chapter 338 for the public interest. They can reject all the bids. However, the law says in NRS Chapter 338 that only the person responsible to award the job can reject all the bids. Their purchasing manager only has authority under ordinance to reject or award contracts up to \$25,000. This was a multimillion-dollar project. Therefore, when the purchasing agent rejected the bids, he was technically not allowed to do it. We sued the city, but we did not get any action from the court for 29 judicial days, which equates to something like 43 actual days.

In the meantime, we put in a writ of mandamus that said they needed to award to the second contractor. The alternative writ of prohibition would have told them to stop going forward with the rebid process, which they continued to do. By the time we got any response from the court, they said the project had already been rebid. They had already awarded it to another contractor, and

it was moot. We did not get any action or relief from the court at all, which we appealed and then came back to do the mediation. The City of Sparks agreed. They said that in the future they will do it the way we said they should have done it in the first place. However, that does not really remedy the problem.

There are several other issues, which are under NRS Chapter 701B. If you are getting an energy rebate, the law says that you need to bid that. If the rebate is going to be a project on a public body, such as a school or a courthouse, it is deemed to be a public work even if the total project is going to be paid for by the rebate dollars. Public agencies get a higher rebate. We had people coming and saying they were good with the Public Utilities Commission (PUC), had already turned their applications in with NV Energy, and could build this project for the cost of the rebate. Public agencies were taking a position that said they did not have to bid the project, that it was not costing them any money, et cetera. However, the law says the project was deemed to be a public work and was subject to the provisions of NRS Chapter 338, not just the prevailing wage but the bidding statute, as well. They had to bid it.

The Building and Construction Trades Council put in the declaratory order asking who had the authority. Did they have to bid it or not? The PUC said they checked the applications from NV Energy. NV Energy checked the application from the person who was going to get the rebate, but nobody said they were responsible to find out if they actually bid in accordance with NRS 701B.265.

Building Trades asked for just a declaratory decision, but who is supposed to make sure this happens before we get the rebate? Is the rebate valid if all the procedures were not followed? The case was argued on standing, and the courts said they were not damaged. They did not have any standing. The school district was not going to argue over it. The PUC was not going to argue over it. NV Energy was not going to argue over it. Certainly, the contractor doing the work, who was getting a no-bid contract, was not going to argue over it. The people who could argue would not. The people who feel that they have been damaged or hurt did not have standing, according to the court.

Those are the two issues of timeliness and standing. When it comes to who uses writs most, I do not want to have prisoners make mischief and slow down jobs. I am going to go to the statutes where I know there are some issues. Start out narrow and then let people argue later if they think they should be included with this type of standing. The taxpayer standing may be too broad. It sounded like a good idea, but when I saw it in print I noticed there might be some problems. We want to try to figure out the representation part, and there

are some cases to which Mr. Langton might be able to speak. We have some law in there that would do that. There are some things that we have to meet to do that, and I think we can move forward there.

I mentioned the bill Assemblywoman Bustamante Adams had yesterday on small business incentives and emerging small businesses. She set up thresholds of what the definition of a small business is. The bill gave people direction. If a small business feels they have been aggrieved and if they have the money, maybe they would have standing to go say they are not going to do a report. However, the organization behind it—Tom Akers and his organization—banded together because they have a collective interest. He would not have standing because he is not damaged. That is what we are trying to get to with A.B. 285; figuring out who can get the law enforced.

We sit here as a body of legislators, and we agonize over every little word. We look over the ands and the ors, and none of it makes any difference if some city attorney is sitting somewhere saying he interpreted it completely differently. This is the way it is. I have told this body that folks can go forward this way as citizens and even as an organization, but we do not have standing to make sure the public policy this Legislature has passed can be enforced. That is what I am trying to fix.

Anyone can come up and say he does not like the bill as written. I do not think any of them can deny that those issues and things have happened. They may have been on the other side. They may have been the one who was part of a public agency that did not follow the rules. We want to make sure that the laws that are passed by the Legislature have an avenue so that people can actually get the benefit of those laws. They are public policy for public benefit. That is what I want to see happen and be enforced.

I have not talked to the court on this. We have two cases that are on appeal, so I am tiptoeing around those. I did not use those cases in my examples, and I am not going to. I am happy to answer any questions. That is why some of this stuff is brought to a head here. I am looking for the answer. I have been reading the cases, and I have asked some smart people to help me. I am hoping the people listening to this testimony who are in opposition to the bill as written are ready to try to help me look for a solution.

Vice Chairwoman Neal:

Can Mr. Langton come up to the table? Mr. Langton, based on what Assemblyman Daly said, could you explain the standing issue and how this writ of mandamus became the appropriate tool? Can you flesh that out for us before we open up for questions?

Michael E. Langton, Attorney, Laborers' Local 169:

Yes. We have a provision in the law that allows people to file petitions for writs of mandamus or writs of prohibition. In this particular case, and in this particular bill, the objective we are trying to clarify is in regard to who has standing to bring a petition such as either of those.

I represent approximately 15 unions, half of them public employees, half of them private, and we lobby as a group for laws to be enacted in this body and the Senate, as well. In this particular situation we are talking about today, it is the prevailing wage law. It is the bidding laws. The problem that I have experienced as an attorney is that we see what we believe to be nonfrivolous violations of the law.

To give you an example without citing the exact case, there were some bidding procedures that we felt did not comply with NRS Chapter 338 in various aspects. The second bidder was a contractor who also felt strongly about it, but they would not come forward because they did not want to lose in the next round of bids. They went to the Building and Construction Trades Council and asked if they would do something because if the bidder filed a protest, he would become the bad person. Those were not necessarily his words, but that was clear. It was a prevailing wage law, which affected everybody, not just union members. If you think that we are up here saying this is strictly for union people, you would be incorrect. This is for the nonunion contractors who also get the bid. They have to pay prevailing wage, and that is the law that we have requested to be enacted.

There is clearly a violation. I do not want to get technical on the violations because that case is currently on appeal, but Building Trades stepped forward and said NRS 30.040 states, in part:

Any person interested under a deed, written contract or other writings constituting a contract, or whose rights, status or other legal relations are affected by a statute, municipal ordinance, contract or franchise, may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract or franchise and obtain a declaration of rights, status or other legal relations thereunder.

We file, in some cases, a petition for declaratory order asking the court to tell us whether or not this statute was violated. In conjunction with that, I typically file a petition for writ of mandamus. I allege that we do have standing as taxpayers to have the law enforced, which we have lobbied for, and to make sure that it complies with the legislative mandate; that when they use public

funds, which is what is at issue here, the public interest is complied with to the hilt.

In one case that I had, the lawyer on the other side actually referred to this as a ticky-tack application of the law. I could not believe it. You either comply with the law or you do not, but to say you are not going to follow it because it is a ticky-tack application is something I find to be offensive. In that particular case, because of the judicial delay that Assemblyman Daly talked about, by the time we got the actual hearing, which was set for three weeks later, we were over 60 days down the road. By then, the contractor had begun the performance of the work because of his own time constraints, and we could not stop it because the court said we would have to put up a bond to do so. The unions do not have the ability to put up a \$1 million bond on a \$10 million project.

We lose on a number of grounds. The first is that they say it is moot; therefore, we are not even going to go through the merits of whether or not the law has been violated. I find that to be offensive, and that is what we are trying to get. Second, if you file a petition, that job has to be put on hold for a certain period of time until you can have the hearing. We are trying to expedite this.

Now, the writ petition, the law that the writs talk about is supposed to come up when you have no other avenue to sue. It is supposed to be expedited, and it is supposed to get a certain amount of priority. There are obviously criminal cases that take priority. The process is really frustrating because you have a law that says you have to do A, B, and C when you know that A, B, and/or C have not been followed. You cannot do anything about it because of the process of filing the motion to dismiss the response in the hearing.

I hope I have answered your question, but that is the frustration that I face as a lawyer in trying to represent and advise my clients. I have total sympathy with the courts as to the burden that they have. However, if we are going to have a law that says this is the way things are, is there ever going to be a remedy? Are we just going to continue to say we have a law but are never going to enforce it? If it is not going to be the unions or other agencies that step forward, who will? I know the word here is "taxpayer," and none of us want frivolous cases. I refuse as a lawyer to file a frivolous case. I think we as citizens, taxpayers, union representatives, and contractors need a remedy. We need a solution.

Vice Chairwoman Neal:

I am not sure you addressed the standing questions. I will let Assemblyman Anderson ask his question and then I will follow up.

Assemblyman Elliot Anderson:

This does blow the standing gates wide open, and the bill as written would allow anyone in the state of Nevada to get in a litigation. Did you brief all the third-party standing issues? Did you perhaps make the claim that the party was averse or was worried about retaliation? Did you try those arguments and do the generalized grievances first before coming here?

Mike Langton:

I assume you are talking about in the court cases.

Assemblyman Elliot Anderson:

Yes.

Mike Langton:

I never argued retaliation might occur to one of the other contractors. I did not feel that was my right. I had a private conversation with the contractor. I always brief the issue about representational standing; that the union had lobbied for this law and that it was a public money law. For example, if we were Lyon County, we would always make sure that a Lyon County worker—in Assemblyman Daly's union, in this example—was also a named plaintiff because he would be directly benefited in the event that the law was followed and the award was proper. In other words, we believed that, in the cases I talked about, the entity that was awarded the bid did not comply with the law; therefore, under statute, they should not have gotten the bid. The second or the third entity should have.

Assemblyman Daly:

From what I have seen in regard to how the standing issue is determined, the courts are not looking to any particular law in Nevada, at least not that I am aware of. Mr. Langton might be able to clarify that. Courts are looking at case law and some other things. We have an example of case law from West Virginia regarding representational standing. We are trying to figure out if we are going to have representational standing, what it is, and what criteria we have to meet in order to obtain it.

As far as the drafting of the bill and the research on who is using the writs, we did not want to open it up too wide. That is why we ended up with these few statutes. We want to say how we are going to be able to do this. These statutes are the ones that I knew about and with which I had experience. It is not just about building, construction, public works. I have dealt with the Housing Division, the Office of the Labor Commission and a dozen other agencies and entities over the years. They have rules. They are interpreting them. They are getting opinions from their legal counsel. I look at their

interpretation and I wonder how a normal person can read the law that way. When is it that a taxpayer can bring up his issue? Does he have standing? That is always the argument. How long does it take the court to take action? We want people to be aware of the stories.

We have another issue, as well. For instance, University of Nevada, Reno is currently contemplating building graduate student housing and remodeling Mackay Stadium, and they are not going to do those two construction projects under NRS Chapter 338 as a public work. They are going to do it under NRS Chapter 333, which is state purchasing. The way they are contemplating doing it is going out to a developer. They are going to ask him to finance the job. They are going to partner with the contractor, and they are going to pay back their loan by running the dorm, collecting rent, and running the concession at the football stadium. I am saying you cannot do that work under NRS Chapter 333. It is not a purchasing contract. However, they say that it is. They are going to go to NRS Chapter 333.162, which says "or any other accepted method of purchasing that complies with the provisions of this chapter." They are saying if it is not prohibited under the law, then they can do it. They are going to do it, and we are wrong.

If that is true, then what is right? We have to wait until they actually do it before we can ever go to court, and then we have to deal with the court delay. The university is building a project, and the court will say they are not going to stop it. It is a problem.

Vice Chairwoman Neal:

Before you follow up, Assemblyman Anderson, there are two issues that I need Mr. Langton to flesh out. The technical problem in this bill is with the term "taxpayer." It is broad, and when standing is invoked there is a personal stake in the outcome or controversy. I heard what you said about a representative standing, which means that you are leaning more toward a class, but the other part of standing is to deal with the proper party who should be requesting adjudication. When you open this up to any taxpayer, you find yourself not dealing with the issue of whether or not it is justiciable. You find yourself with a lot of parties who may not be the proper party to adjudicate the issue and who do not have a personal stake.

In section 2 where you have this broad range of proposals, quotations, or awarding, we have a sink full of issues about who has a personal stake. "Any person who is a taxpayer" is throughout all of the sections, but standing is very specific. If you can identify who would be the proper party, or if you can bring in class action language to deal with a class who brought a suit as a taxpayer for a specific issue, I might go along with you on this.

Assemblyman Daly:

I understand, and I was saying that we need to narrow it. The taxpayer part is too broad. I was not trying to have it apply to every statute in the book because I am aware of problems in certain areas. Somebody else can come in and say that they need to have something because these people or this agency is not doing it, and you can put it in their statute. I did not want to have it just in the broader statute of NRS Chapter 34 because then, like I said, we do not want to have inmates causing mischief. I do not know that there is an easy way to sort that out, but we need a bill to make people like us aware that we are passing laws that cannot be enforced. They are being blatantly violated. Currently, if I tell an agency they are violating the law, they will say that is not the way they interpret it. If I do not like it, I can sue them. Do we want citizens of this state to be able to have a remedy under the law for these things or not? If that is the policy that we want to have, if we want the laws that we pass to be enforceable, how are we going to fashion that? That is the question.

Assemblyman Elliot Anderson:

When you are working on this bill I think having some sort of injury is really important, not just for the courts but for anyone who is concerned with the chapter. The way this is written, anyone could come in, make a test case, and sue. You may get a ruling that you do not like. This could really open the chapters up to games from all sides where people could try to get rulings from courts that they think will be favorable to them. This makes me nervous for anyone who is concerned about the chapter.

Assemblyman Daly:

I agree. I recognize all of that in trying to bring the issue forward, and that is why I said in my opening statement that if there are people who have some ideas, help me. I would love to hear from the court. Maybe they are not aware of the issue that is going on with some of their lower jurisdictions. They are getting a lot of stuff on appeal because those folks are not handling it fairly. Cases are not put on appeal over frivolous things. These are real cases that are adding to their workload. I agree with you that we need to find the right path. I can see the opportunities a mile away, and you can, too.

Assemblyman Livermore:

Who is going to defend the writ, and who is going to absorb the court cost? Will this, in a sense, eliminate public bidding? You do not really know what the final cost will be because if you go out to bid and somebody believes that it was wrong, you might go to court. That cost is going to impact the project. Whether or not the project goes forth, I am not sure that is fair to the class of citizens who want a project built. I am just sensitive to that, and I do not know where you can really define the cost of the project with this hanging out there.

Assemblyman Daly:

What is the price of justice and fairness? We have these laws. We expect people to follow them. How many laws are we going to say cost too much to enforce, and therefore, we are just not going to follow it? What is the price of fairness and justice in having these laws? That is the risk a public agency takes when they go out there. They stay on the straight and narrow. It is not really an issue of the cost of a lawsuit. It is a false question. I am not willing to give up my freedoms and the laws that this Legislature has passed because they might cost money to the agency that violated the law. I think that is a wrongheaded question.

Mike Langton:

Litigation is not cheap. Whenever a client of mine decides to bring a lawsuit, I always remind him about the fact that the courts can award attorneys' fees and costs against him. Having said that, the writ process is supposed to be expedited in such a way that it does not hold up the projects. It may hold them up for a short period of time. The contract was awarded, and the building trades I was representing said they did not think that was right. We worked with the entity to fix the problem, and after six days it became obvious that we could not work it out. We filed the petition for a writ of mandamus, and the judge ruled against us, saying that we waited too long. We waited six days, and he called it laches. As a result of that, I think we have only filed four or five of these cases since 1996 and always with celerity because of the laches argument that was used against us. Now, if there is a provision in the statute that awards attorneys' fees and costs to the prevailing party, perhaps that is the solution we are all looking for. The average taxpayer is not going to put up \$10,000 in cost to bring a lawsuit like this.

To answer one of the questions I was asked earlier, I did not have anything to do with the drafting of this bill. I did talk to Assemblyman Daly about the need for it. I was quite surprised that certain chapters were added because the problems I have dealt with have been in NRS Chapter 332, NRS Chapter 333, and NRS Chapter 338. As Assemblyman Daly asked, what is the cost of having things followed according to the law?

Assemblyman Livermore:

Thank you for that response, but there are always two sides to an issue. There are always two arguments to be made. I am not suggesting that someone is violating the law. I could probably fill this table with six attorneys, and they would have six different opinions on whatever the debated issue is. You know that yourself. I just see this as a Pandora's box. I believe you are going to find many differences of opinion, which are going to bring project costs, court costs, and all kinds of additional unforeseen costs.

Assemblyman Stewart:

I appreciate the dilemma here with trying to narrow "taxpayer" to a more limited term. Has this issue come up in other states? Is there any solution that they have come up with?

Assemblyman Daly:

I am not familiar with what other states may or may not have done. The only one that I read recently was the case that we referred to from West Virginia. They had the exact same language. They went through with the representational standing, and there is some framework there to be used. We just need to figure out how we are going to do it here in Nevada. Again, the real question is whether or not we want to have an avenue for people who are interested, who lobby for the laws, and who want to make sure that the rules are followed. Do they have an avenue? No. Currently, they do not.

Mike Langton:

With my client in the West Virginia case, it came down to the representational standing that the Supreme Court of Appeals in West Virginia upheld. That was when the Building Trades Council sued to enforce prevailing wage law, which is exactly what we are talking about. The court went through an analysis of whether or not a member of the association would be affected by it, and in that particular case, they found they did. They proceeded with a two- or three-pronged test. Quite frankly, when Assemblyman Daly and I were talking about the need for this law, we thought the draft would come in as a representational status, where a person would be directly affected.

Assemblywoman Pierce:

I am inclined to think that the people who pay the bills ought to have a voice. I am not a lawyer, so I turned to our lawyer and asked if this bill is really such a radical idea. I would ask him to repeat what he said to me.

Jim Penrose, Committee Counsel:

I will stress at the outset that I have no stake in this bill or any other bill. I am, of course, nonpartisan and have to be. However, I have personally litigated these issues involving the validity of contracts, and there is a distinction to be made between the standing rules that prevail in the federal courts and the standing rules that prevail in state court. In federal court, it is correct that a taxpayer ordinarily has no standing to challenge the expenditure of public funds. There are cases going back to the Vietnam War era, where taxpayers tried to enjoin the continuation of the war in Vietnam, arguing that it was an illegal expenditure of public money.

In Nevada, by contrast, there is a long line of cases opposing the validity of so-called taxpayer standing. I do not have the brief, but I can tell you I have litigated that issue successfully in the past against arguments that my client lacked standing. I will tell you just as a matter of information that it is not a particularly radical idea that taxpayers should have standing to challenge the unlawful expenditure of public money in a public contract.

Vice Chairwoman Neal:

When it is in regard to not just the expenditure of funds but the violation of any requirement, how does the law treat that category when a taxpayer brings a suit?

Jim Penrose:

Unless there is some particular statutory provision that limits standing to particular categories of people, the argument is that because the contract in question has been entered into in violation of these statutory provisions, the contract is illegal. For that reason, it represents an illegal expenditure of public money, and that is what gives the basis for taxpayer standing. Now, that is not to say that if you are the plaintiff, you are not going to have a fight over the standing issue. That is why you do try, out of an abundance of caution as an attorney, to find somebody with a personal stake in the contract. However, the argument is that because the contract violates or allegedly violates the statutory predicate that has to exist before the contract can be entered into, it gives the basis for the lawsuit.

Vice Chairwoman Neal:

Are there any other questions from the Committee to the sponsor of the bill? Seeing none, we will open it up for testimony in support.

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

Mr. Langton is our attorney, as well. In a recent case, we requested a declaratory order from the courts in Washoe County, asking them to look into who is responsible for enforcing a provision of the law. We did not ask for a writ or anything else. That case was filed by the Trades Council and several ratepayers in Washoe County. In that specific case, the court said that they were not going to look at the law because we did not have standing to ask for them to clarify that law. That is the most recent of a long line of cases that I am aware of. The standing issue became the prevalent issue in the case, leading to long delays in the court case being completed. We had to go to the Supreme Court of Nevada to get the standing before being able to get the question of whether or not the law was followed addressed. By that time, the issue was moot because the project had been started or completed.

The idea that this Legislature would pass laws and not believe that there was a way to make sure those laws were followed amazes me. I have sat at the tables in this building for years, arguing that we need to write an enforcement mechanism into those laws. Short of rewriting all of those laws and putting that enforcement mechanism in them, we have to give the taxpayers of this state a way to make sure that the laws are followed. We have to take the easy way out away from a court that does not want to interpret the law. We have to take away the court's option of saying we do not have standing to ask them to look at the law, and therefore, they are going to just dismiss the case.

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

I will not belabor the point or extend the conversation beyond what has already been stated by the sponsor, Mr. Langton, and Mr. McKenzie. I will say that we support the bill for the reasons stated by them.

Vice Chairwoman Neal:

We will shift into opposition.

Greg Smith, Administrator, Purchasing Division, Department of Administration:

I will speak to the issues that we have as they relate to NRS Chapter 333. I certainly appreciate Assemblyman Daly's acknowledgement that there are flaws with the bill as written. I will state some of the obvious ones. However, I struggle to see how NRS Chapter 333 got wrapped into this whole bill. I understood his comment about University of Nevada, Reno potentially trying to utilize NRS Chapter 333 in some construction-related activities; he did not see how they could do that. I will assure you, however, that at the Purchasing Division, NRS Chapter 333 has never been used for any construction-related activities. The State Public Works Division uses NRS Chapter 338 and various other mechanisms, but NRS Chapter 333 has never been used in construction-related activities. A couple of times this session, I have seen where NRS Chapter 333 has somehow gotten wrapped into some of the construction-related issues that are going on. My primary concern with this bill is it has the realistic potential to bring state contracting to an absolute screeching halt. I think you need to be concerned with that because on our best day it does not move at light speed for a lot of good reasons, such as the protection of the public funds.

Assembly Bill 285 grants "any taxpayer" in the state the right to petition the court for a writ of prohibition or a writ of mandamus by alleging a "violation of any requirement concerning bids, proposals, quotations or the awarding of a contract" as provided in NRS Chapter 333. [Continued to read from prepared text ([Exhibit C](#)).]

I used to sit on the Carson City Board of Supervisors, and there is always a group of very interested, well-meaning citizens who sit in the front row, take lots of notes, and have different views of what they would like to see. In my current office, I get calls every week about awards of contracts; people who do not see things our way. They are not necessarily involved in the contracts, but they want to do something. The ability to halt the contracting process is of great concern to us.

Exhaustion of current administrative remedies is not required under this bill. [Continued to read from prepared text ([Exhibit C](#)).]

Gustavo "Gus" Nuñez, Administrator, P.E., Public Works Division, Department of Administration:

Likewise, my comments will be related to the competitive bidding process, NRS Chapter 338 and, to some extent, NRS Chapter 341, which created the Public Works Board. We are here today in opposition of A.B. 285. First of all, with respect to litigation, as the bill is currently written anyone can seek a writ of mandamus to stop the award of a construction contract and arguably stop a contract that is already in progress by filing a lawsuit at any time for any reason whatsoever. [Continued to read from prepared text ([Exhibit D](#)).] To put this in context, with some of the larger projects that we do, if a writ was filed and stopped during the construction process, we would be looking at general conditions in the area of \$7,000 to \$10,000 per day.

The potential risk to the schedule and cost increases to the overall project budget cannot be overstated. [Continued to read from prepared text ([Exhibit D](#)).]

Vice Chairwoman Neal:

Section 2, subsection 1 of this bill states:

Any person who is a taxpayer in this State may petition a court of competent jurisdiction for a writ of mandamus or prohibition to compel the performance of an act or to arrest any proceeding for a violation of any requirement concerning bids, proposals, quotations or the awarding of a contract as provided in this chapter.

When do you consider a contract to have occurred? This is the equivalent of an offer. When you have a quote, it is the equivalent of putting out a statement of what you want. Until there is an offer and an acceptance of that offer, then there is not a contract. The way I read the language is that it offers a restriction at the time of bid or quotation, which to me does not invoke a right to anyone until it is accepted. That is the problem I see in section 2; that I do

not have a right until a contract exists. If I am getting standing at the time of bid, proposal, or quotation, from where does that right derive itself?

Greg Smith:

From the perspective of NRS Chapter 333, at the time that an evaluation committee, the chief of purchasing, or the chief of a using agency reviews the proposal, scores it, and makes what we call an intent to award, we tell Company A we intend to award a contract based on their proposal. We enter into negotiations. We send our contract form. The company takes a look at it and makes some changes. We then make some changes. We are negotiating. That sometimes can take as little as a day. It sometimes can take several months. Once we both decide that everything in the contracts is to our approval, we put our signatures on it at the staff level and then get the Attorney General's signature. We then issue what is called a notification of award. That is the time that, under current statutes, any aggrieved party who has standing has ten days to file an appeal. Please keep in mind, however, with the Board of Examiners contracting process, no contract of the state is legal and binding until it is approved by the State Board of Examiners. We run that appeal process before a contract is bought for final approval at the Board of Examiners level, and then that expires. If the Board of Examiners chooses to give their approval, we then have a legal and binding contract under NRS Chapter 333.

Gus Nuñez:

In accordance with NRS Chapter 338, once the contract documents are completed we are required to advertise, stating the size and scope of the project as well as when and where the bid opening will be. There are certain things that are required for a bid to be submitted. The contractor, obviously, has to state his name and license number. In most cases, he has to provide a bid bond. He has to acknowledge all addenda that may have been issued during the bidding process. There are various things to check when you open a bid, such as the 5 percent list and the 1 percent list.

If at any point along that line, for whatever reasons, one of the bidders does not follow all of the requirements of the contract documents under NRS Chapter 338, another contractor may file a protest with respect to award of that contract. What the law presently requires is that right after the bid opening, we look at the bid results and make sure that they comply with all the provisions of the law. We must then post our recommendation to award. That is in NRS Chapter 338. There is a recommendation to award letter to which most people adhere. That starts the timing for when a protest must be filed. If a protest is filed, we may require that it be accompanied by a bond. Usually, in the law it is five days for the protest. We have to then consult with the Office of the Attorney General on any of these protests. The determination is

made and an opinion is rendered, and then we move from there depending on what the outcome is. That is the process currently in the law.

Vice Chairwoman Neal:

They have requirements for the bidding, and if they do not do the requirements, there is a penalty. Is that correct?

Gus Nuñez:

There is a process. There are certain things that we do to make sure that we have the best bid. For instance, the contractor does not acknowledge all of the addenda. We will render that particular bid nonresponsive. If that happens to be the low bidder, we will move on to the second bidder. Once we file our recommendation to award, that puts everyone on notice that they have five days to file a protest based on that recommendation.

Vice Chairwoman Neal:

I am wondering how standing is invoked under NRS Chapter 338 but not NRS Chapter 333, where because of the bidding process and the ability of another party to protest that bid there is a nexus to a taxpayer in that particular context before the contract is awarded. I am trying to understand the thought pattern of where nexus could be created to give a person standing within that process. For me, until you have a contract, you have no rights. Until there is an offer and acceptance of the offer, we do not need to have a conversation. That is why I am getting into the details with you. I am trying to understand what could have possibly been the reasoning. I appreciate your responses.

Keith Lee, representing Nevada Board of Contractors:

I have filed the opposition of the Board of Contractors on Nevada Electronic Legislative Information System (NELIS) last night ([Exhibit E](#)). We are particularly opposed to section 7 of the bill, which speaks directly to amending NRS Chapter 624. It would purport to give the same right to any taxpayer in the state of Nevada to file a writ of mandamus, mandating the Board of Contractors to do something, or a writ of prohibition, stopping them from doing something they already have in process. In our view, this essentially gives anybody a right to file one form of writ or another to stop an ongoing investigation or prosecution. That is subsection 2 of section 7. Subsection 1 of section 7 gives anyone a right to force us to open an investigation based upon an alleged violation or a nonviolation, continue that investigation, file a complaint, take action, and then to effectively interfere with NRS Chapter 233B subsequent to any action, as we read the statute. NRS Chapter 233B is the administrative appeals act in which a noninterested party to the matter between a licensed contractor and the Board of Contractors could be part of the appeal process or any final decision of disciplinary action against the contractor.

We oppose that section. I have expressed to Assemblyman Daly our opposition to that, and I think he understands. We will be pleased to participate in any further discussion with Assemblyman Daly on that issue.

John Madole, representing Nevada Chapter of Associated General Contractors:

To be brief, we have also expressed some concern to Assemblyman Daly. We are concerned with what this bill would do to NRS Chapter 338, NRS Chapter 341, and NRS Chapter 408. We are particularly concerned with the law of unintended consequences, which was addressed earlier. I think we will attempt to fix the problem, and my feeling is that in two years we will be back here pleading with you to put this back where it was. We are opposed to A.B. 285.

Lance Semenko, President, Q&D Construction:

We have also talked with Assemblyman Daly about this bill, and we are in complete opposition because of the way it is worded. The self-policing that we do as a construction industry is much better than what is written in this as far as a taxpayer being able to protest a project. It could be an angry former employee. It could be a lot of different things that would not be fair to anybody in our industry.

Rod Cooper, Vice President, Granite Construction:

I will just follow on the heels of the two gentlemen I am sitting with right now. We are against A.B. 285. I think this bill creates an opportunity for malice with disgruntled parties. For the record, we are a union contractor. I am still struggling with where the group in support is coming from, but as Mr. Semenko said just a moment ago, the disgruntled parties could be the unions, former employees, unsuccessful subcontractors, or vendors. It could even be a contractor's neighbor who is trained in how to file a protest, particularly when there is no cost in terms of a bond. This will increase administration costs for the various bidding agencies in order to deal with the potential flood of protests. The industry does police itself. I tell my estimators the bid day is not over until the job is awarded. At least, that is what I used to tell them. With this bill, bid day will not be over until we have collected the retention because something could be filed at any moment along the way.

If this is about prequalification, then it needs to be dealt with in a different manner. I am strongly for a bond being put in place. As of Monday, we were finally awarded an asphalt paving job that we had bid on December 4, which had gone through four months of protest procedures. It has taken four months to get to award day, and during those four months we could have been putting our mix designs and schedules together. We have lost four months in the process. I think A.B. 285 is a very broad bill, and it needs to be changed.

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

The other people who have testified in opposition of this bill have made very good points. Mr. Smith's statements about NRS Chapter 333 also apply to NRS Chapter 332, which is section 1 of the bill. Mr. Nuñez's comments about NRS Chapter 338 also apply to the county. We join on that. This is not a good bill. The County opposes it. We would call your attention to the fact that back in 2003 the Legislature was approached by the industry about frivolous bid protests by stakeholders and by other bidders. That is why the Legislature passed NRS 338.142, which sets the bid protest process, requiring you to file it within five days after the intent of award has been issued and post a bond of 25 percent of the bid cost or \$250,000, whichever is less. That was a good policy adopted by this Legislature. It has worked well, and I think everybody in both the public entities and in the Legislature agree that there was a good purpose for it.

As you have already been told, there is also a protest limiting legislation in NRS 332.068 and NRS 333.370. They are there for a purpose. The work of government needs to proceed. Now, that does not mean that people run roughshod over other people's rights; as one of the earlier testifiers said, there needs to be some skin in the game. People need to really be serious about it because this is serious. It costs time. It costs money. The delays can be horrendous, even under the current process as you have just heard from one of the contractors. It is expensive to the entity, and it is expensive to the contractor who may have legitimately been given the contract and now has to spend a lot of money in litigation.

A huge concern that we have here is this mandatory stay. A mandatory stay puts only us attorneys to work earning money. We adamantly oppose that notion. We also believe the suggested use of petitions of writ of mandamus and prohibition are inappropriate in this setting. There is no sound reason to use those. The process that is before the courts and is used in bid protests is the injunctive process. That works, and it is faster. The representation that a writ of mandamus or a writ of prohibition is a guaranteed expedited process in front of the courts is not true. I know there is one instance in my office where we had an expedited writ. Our reply was filed over a year ago. We still do not have an answer on it. We still do not have any action from the court.

I would also point out that writs of prohibition or mandamus are deemed extraordinary remedies when there are no other remedies available. As I said, injunctive remedy is available, and it has a reasonable process. In the injunctive process, a party seeking an injunction or state of performance must show first that it has a reasonable probability of success on the merits and that the

defendant's conduct, if allowed to continue, will result in the irreparable harm for which compensatory damages is an inadequate remedy. The court also considers the public interest and the relative hardship of the parties. In this manner, instead of just anybody being able to file any frivolous thing under the way this bill is drawn, everything stops. As Mr. Smith said, everything comes to a screeching halt. This requires the person, if they are going to court, to prove that they are probably going to win; that there is no public interest or other public policy issues that need to be taken into account before staying an action. I think that is very important. If anything moves forward on this bill, although we recommend it does not, I strongly suggest that the writs of mandamus and prohibition are not the method.

The ability to manipulate the writ process and opinion of mandatory stay, frankly, would invite abuse. Public policy is not served by allowing this protection to frivolous challenges. We also object to allowing the right to overturn a contract for any violation of any requirement in the bid or the contract. That allows an incredible amount of nitpicking.

It is going to be a real struggle if this body deals with taxpayers to give them rights in these things. Keep in mind that every bid protestor is a taxpayer. You have chosen to limit their abilities to have access to protesting. This would open those gates wide. I would also point out that a taxpayer could be somebody who stops in West Wendover for a hamburger. I do not think that really has a lot of relevance to somebody who has some skin in the game on a contract awarded by the City of Henderson or the City of Reno. As I said earlier, neither delay nor expense nor litigation serve the public interest.

Dean Schultz, Executive Vice President and Chief Operating Officer, Reno-Tahoe Airport Authority:

Like many of the others before me, I am here today to testify in opposition to the proposed language in this bill. We believe this language could be used as a tool to interfere with the operations of the airport and significantly delay critically important projects for reasons not necessarily associated with the actual work. I think that has been pointed out on several occasions, and so I will not continue there. However, one other interesting aspect I do not think has been brought up yet is that in northern Nevada we have a short construction season. For the Airport Authority in particular, we have some unpredictability in terms of the federal grant funding processes and availability of that money for our capital improvement project. We are concerned that this bill could put our funding at risk if there are significant delays in getting projects started, and there are also the costs that occur if we cannot get projects done during a construction season. We pay more for winter shutdowns, having to delay projects for several months.

Richard Nelson, Assistant Director of Operations, Department of Transportation:

The Department of Transportation (NDOT) operates under NRS Chapter 408 and NRS Chapter 338. We are opposed to A.B. 285 as written. We have many concerns with the bill, but our concerns are absolutely consistent with previous testimony. There is no need to belabor that. We would more than welcome the opportunity to participate in discussions with the sponsors or anyone else who wants to continue working on this bill.

Joanna Jacob, representing Las Vegas Chapter of Associated General Contractors:

I feel that our concerns have been addressed by the previous speakers. I did want to echo the comments of Mr. Cooper from Associated General Contractors (AGC); we think it is a good idea to have a bond in place if we were to put this into effect. It is good public policy. It discourages frivolous claims, and because time is money on construction projects, we also were concerned with the ability to stop a project once it has begun construction.

Wes Henderson, representing Nevada League of Cities and Municipalities:

In the interest of brevity, we would just like to put our opposition to the bill as written on the record.

Jeffrey Fontaine, representing Nevada Association of Counties:

We are opposed to the bill as written, specifically as it relates to NRS Chapter 338 in section 4. We would like to just put our opposition on record. We are also happy to work with the sponsor to try to address these concerns.

Vice Chairwoman Neal:

Thank you for your testimony. We will shift to neutral. I see none. We will call the sponsor back up.

Assemblyman Daly:

My bills do not usually solicit much neutral testimony. You either love them or hate them. I think we went through a lot of stuff today. I will try to be diplomatic, but I did not hear any solutions. I only vaguely heard anyone even recognize that there might be a problem. I did not hear any recognition that there is a problem. Back to the Committee, do we want to have these laws enforced? Who has a standing? What are the avenues? There are a lot of other complications. I heard injunctions come up. If the wait to the contract is actually awarded, this would allow a process for somebody say something way before the work starts. We are looking for ways to narrow this and have this not be burdensome.

I will go back to Assemblyman Livermore's question. What is it that you are willing to give up because it might cost too much? These are policies that we put in place and expect to be followed. Where is the remedy if they are not?

I take a little bit of offense to the testimony of the Clark County Chief Deputy District Attorney. Nowhere in this law does it say that you can bring a frivolous lawsuit. It says that people can bring a lawsuit. They bring lawsuits with their attorneys and their various costs, and if an attorney signs that, *Nevada Rules of Civil Procedure* (NRCP) 11 says that a judge can sanction you for it. To say that I want and am soliciting frivolous lawsuits is wrong, and I will call him out on the record for it.

Vice Chairwoman Neal:

I will make sure that you and Mr. Thomson connect. We look forward to hearing what the solutions are for this bill.

Assemblyman Daly:

We at least got the ball rolling, and I am open to any suggestions from anyone.

Vice Chairwoman Neal:

We will now close the hearing for A.B. 285, and we will open for Assembly Bill 363.

Assembly Bill 363: Makes various changes relating to abatement of public nuisances and conditions by local governments. (BDR 20-663)

Assemblyman Richard Carrillo, Clark County District No. 18:

Thank you, Vice Chairwoman and Committee members, for allowing me to present Assembly Bill 363, which would give local governments the authorization to add abandoned, unregistered, and inoperable or junk vehicles to the list of debris and rubbish which constitutes a public nuisance for the purpose of complying with an ordinance adopted by a board of county commissioners. Such ordinance may authorize the county to request a tow company to tow such a vehicle. Before I get into questions, I wanted to let the Committee members know that there is an amendment that has been brought forth ([Exhibit F](#)).

Vice Chairwoman Neal:

Is the amendment pretty much the new bill?

Assemblyman Carrillo:

No. It does not necessarily gut it and put this new language in there.

Vice Chairwoman Neal:

Go through the bill as written, and then insert the new sections where they may apply.

Assemblyman Carrillo:

Basically, it is adding to the bill an amendment regarding the removal of junk vehicles from public view. We have a lot of people in our district who have vehicles they are restoring, and oftentimes they might have cars torn apart. The vehicles need to be registered, insured, and emission-tested if it so requires. Obviously, that is an issue, and this bill addresses that.

Vice Chairwoman Neal:

That is in section 2, correct? Let us go through the bill as written, and then when you get to sections 2 and 3, you can add in what the new language is. This will reduce confusion since you gave us a really thick amendment.

Assemblyman Carrillo:

In section 2, subsection 1, paragraph (b), we added the language "and abandoned, unregistered, inoperable or junk vehicles." The amendment strikes "unregistered" from the language and inserts "or junk vehicles which are not located out of ordinary public view by means of inside storage, suitable fencing, opaque covering, trees, shrubbery or otherwise." That is the first part of the change to the language that was brought forth as an amendment.

Section 2, subsection 3 also strikes "unregistered" and adds "or junk vehicles which are not located out of ordinary public view by means of inside storage, suitable fencing, opaque covering, trees, shrubbery or otherwise." That basically means keeping them out of sight. Nothing changes in subsection 3 except to reiterate the amendment to subsection 1 regarding unregistered vehicles. The reason I want to emphasize "unregistered" is because a lot of times these vehicles are in the process of being restored. It is really unfeasible for people to actually get this done, but they have these vehicles on their property that are oftentimes unsightly. If people are taking measures to keep them out of sight, then that is the justification of the amendment.

On page 5, section 3, subsection 1, paragraph (b), our new language strikes "unregistered" and adds "which are not located out of ordinary public view by means of inside storage, suitable fencing, opaque covering, trees, shrubbery or otherwise or junk appliances which are not subject to the provisions of Chapter 459 of NRS." On page 6, section 3, subsection 3, once again it repeats the same changes to the language.

Vice Chairwoman Neal:

What is the purpose behind the bill? What are we trying to solve? I think I understand, but let us go back to square one.

Assemblyman Carrillo:

We want to fix nuisances from abandoned, inoperable, or junk vehicles.

Vice Chairwoman Neal:

Your amendment goes through and strikes "unregistered" throughout the entire bill.

Assemblyman Carrillo:

It also covers keeping them out of sight in storage or a garage. That is the premise we are looking at.

Vice Chairwoman Neal:

Your bill then provides an exception for inoperable vehicles that are out of sight, covered by a shrub or something else that keeps it from the view of someone driving by.

Assemblyman Carrillo:

Yes.

Vice Chairwoman Neal:

Explain section 5 because this puts requirements on the owner of the property to be responsible for certain things in a certain time frame.

Assemblyman Carrillo:

Actually, I do not think there was a change to that section.

Vice Chairwoman Neal:

Can you explain to the Committee what that section is supposed to do?

Assemblyman Carrillo:

I am going to refer this question to Mr. Perkins.

Richard Perkins, representing City of Henderson:

Subsection 5 of section 4 states:

For a vehicle towed pursuant to subsection 2, if every registered owner rebuts the presumption in subsection 3 pursuant to paragraph (b) of subsection 4, the owner of the real property from

which the vehicle was towed is responsible for the cost of removal and storage of the vehicle.

Essentially, if you have a vehicle that is being towed, somebody is responsible for the cost of towing and storage of that vehicle. The initial effort would be to find out who the previous owner was, registered or otherwise, and that person would be responsible for those costs. In connecting that with section 5, subsection 1, paragraph (c), if the previous owner rebuts that presumption, then the costs are borne by the owner of the property from which the car was towed. In essence, if you owned a car and gave it away because it was a junk car but somebody else who had it on their property came back to you to cover the cost of the towing and storage, you could say you do not own that car anymore. The person that was storing it on their property is then responsible for those costs. You are no longer liable for that. That is what those two sections do.

We already have the authority for local governments to remove various nuisances and eyesores from private property. Those tend to be trash that builds up or stacks of weeds and tree cuttings. Those things can be removed because they are hazardous to the public health or are a basic nuisance in the neighborhood. Those authorities already exist. This bill now extends that to inoperable, junk cars, so that when they build up in somebody's yard, they can be removed, as well. What the amendment does is allow somebody to then shield that vehicle from public view. If it is not an eyesore, then they are not necessarily subject to that tow. That, in a nutshell, is what the bill is intended to do.

Assemblywoman Woodbury:

The towing companies are required to comply if requested to remove a nuisance. How do they get paid for their services up front? Would the County pay them so that they get paid in a timely manner, and the owner would then reimburse them later?

Richard Perkins:

No. They never get paid up front. The vehicle ends up becoming collateral, if you will, for the payment at some point in time. There are a lot of times that towing companies do not get paid for that effort. They will try to find somebody who will pay for the towing cost and the storage cost. If they are unable to do that, then they end up selling the vehicle at lien sale and making what money they can in that effort.

Assemblywoman Woodbury:

I am just worried about the burden on them and how difficult that would be in having to comply and then having to get the recovery somehow.

Richard Perkins:

When I was running the police department in Henderson, we had contracts with towing companies, and that was part of the agreement. There are some tows on which they are going to make a lot of money and some tows on which they are not. It is a mix in their business plan and in their business model.

Assemblywoman Swank:

In my neighborhood in Las Vegas, we worked really hard to try to cut down the number of public nuisances. I have to be honest, when I started reading this bill I was confused because I think we have been doing this for a while. I know several houses where we have had a couple of similar problems with vehicles, and they have been taken care of. I am not sure what this fixes because it seems it was not a problem before.

I know that we have had issues with opaque coverings and with people using blankets and such. I am wondering about changing the wording to some type of commercially produced car cover. It just seems that we have had a particular issue with this idea of opaque coverings.

Richard Perkins:

The authority through the statute to tow vehicles as nuisances on private property has never existed. We have towed them from properties when an owner requested that to happen, and we have towed them from the street. I know that some of these practices have occurred in the past. This bill was prompted when it was brought to our attention that this particular statutory authority did not exist. As it relates to the opaque coverings and shielding from view, I do not think anybody here is going to disagree with you that people can actually create an even worse eyesore depending on the materials they use. I cannot speak for Assemblyman Carrillo, but I think the goal here is to make sure that we are taking care of eyesores.

Assemblyman Carrillo:

In regard to coverings, there are many different variations of doing that. Some people will buy a car cover for that specific vehicle. Obviously, it depends on where they are at in the repair or restoration of said vehicle, but in keeping that out of sight of the public, this requires the vehicle owner to make that effort. Obviously, if the cover is really bright or florescent in color, that might not be considered opaque. If it was in a homeowners association, for instance, they might have an issue with a bright color. If the covering is

maybe camouflaged and not unsightly, then that might be okay. Putting "opaque" in the language provides some vagueness to it.

To reiterate, this is language that was taken from other states. The language that we have here for the amendment was strictly for the purpose of trying to find a happy medium so nobody would be put in the same situation. This language has been used in other states.

Assemblywoman Swank:

I think the issue is not so much with the color as it is with the material; for example, using a blanket to cover the vehicle when it is sitting in your driveway as opposed to putting a cover over it that is made for covering a car. Those stretch. They can stretch over car parts, such as if your bumper is sitting on the hood for the night or something. It just seems that people using a blanket is a problem we have really struggled with in our neighborhood.

Assemblyman Livermore:

I am going to throw in a little reflection on how this works in a local government setting. A local government adopts the ordinances that are given in statute, and then they employ code enforcement officers. Code enforcement officers could come in different arrangements based on various urban planning scenarios and things that you are trying to accomplish. However, a code enforcement officer does not drive around and give fines himself. Generally, he works as the result of a complaint filed by a citizen. When that complaint is filed, depending upon the severity of the complaint, the officer starts the process of resolving the abatement or the cause of this problem. Typically, they may take a couple of days or weeks. However, when the code enforcement officer finally comes to a conclusion, he will cite the resident, and the resident will have to appear in court. That is typically how it works.

Now, I do not see anything in here that tells me who would authorize the tow truck company to eventually be contracted. There are some links missing in here. That is what I am trying to say by explaining what the normal process has been with local government code enforcements. We have had exceptions with vehicles stored in a backyard where it cannot be seen. Does there need to be a declaration that they are a public nuisance? Where does that come in with this bill? Who makes those calls?

Richard Perkins:

All this bill does is provide the authority for a local government to create an ordinance to support doing this work. As you point out the process, you are exactly right. Initially, you generally have a complaint that goes to code enforcement. The code enforcement officer goes knocking on the door and

talks with the homeowner to try to get that area cleaned up. Sometimes it is a vacant lot and the property owner cannot be reached, but code enforcement will generally try to reach out to the property owner to resolve that concern. It is only when that concern cannot be resolved that a local government would then take these actions. The statute currently allows the local government to remove other sorts of nuisance items without the property owner's permission. If the local government does not want to enact this ordinance, they do not have to. It does not put a burden on the local government. It does not direct them to do anything. It just gives them this additional tool for code enforcement purposes.

Assemblyman Livermore:

Not missing any of these things is part of a citation. A code enforcement officer could cite the property owner, and the court could order that even if they do not adopt this ordinance.

Richard Perkins:

You are absolutely correct. You just get some homeowners or property owners who refuse to comply. That is when this tool comes into effect. The citation is issued, and the court gives them direction. They just do not do it. It gives them an additional tool to get that done.

Assemblyman Ellison:

Thank you for bringing this bill forward. Yesterday I had a similar bill with abandoned motor homes. This is a great bill for giving the counties the tool to get in there and operate. I restore classic automobiles. I would not want to do it in my front yard. Some folks have seven or eight cars, and they will tell you they are under construction. Well, how many years will they be under construction? I think this is a tool the counties can adopt or opt out of if they want to. This is a start, and I appreciate it.

Assemblywoman Pierce:

If someone covers something with a tarp, would that work? If I am in my house and I have an ugly car in the driveway, that does not mean it is abandoned. Are you going to check to make sure? I suppose I have a less-than-benevolent view of tow truck operators. I am worried some poor schmuck will have his car removed when he did not want it to be. He would not be able to afford to get it towed away or something, and so the city will tow it away. Now he suddenly has this massive bill that just keeps growing. Eventually, the city will try to collect the money but not get it. A collection agency then gets involved. I think there has to be some end to it. If you take somebody's car off of their property, there has to be an end to it. There cannot just be these massive, never-ending tow truck storage fees. That is a big concern of mine. I have

voted for bills like this, and I am all for giving cities the tools they need. On the other hand, many of us do not live in homeowners' associations for exactly this reason. Maybe we want to keep an ugly car in our driveway.

Assemblyman Stewart:

I appreciate my colleague's concern for the citizens of these cities and counties who might be in violation of this. In my experience in dealing with these situations, the cities and counties bend over backward to notify people, to work with them, and to try to get this mess cleaned up without an undue burden on the individual who owns it. I think this bill is moving in the right direction, giving permission to those local entities. I think they will continue to do work with these individuals who are creating these public nuisances. I am in support of this.

Assemblywoman Swank:

I have worked a lot with the city code enforcement in Las Vegas, and they have been wonderful about reaching out to people and really trying to work with them on any issues. You do not want to be towing away someone's car when it is just inoperable. These are about problems that are much more severe than that. I have to say that, in my experience, you really work with people before you get to this point.

Assemblyman Carrillo:

I have also worked with the county on a lot of my constituent issues. Some of them have cars that are in their backyards and side yards, and a lot of them are out of view. I have a vehicle right now that is in my side yard on my car trailer. It is in the process of being restored, and it is a classic vehicle. Yes, it is an inoperable vehicle, but I paid a lot of money to get that vehicle so I could restore it the way I wanted to. Out of sight, out of mind seems to be the premise for a lot of things. However, there are other parts of my district where I see multiple inoperable vehicles. In case there is an issue with code enforcement, I am not going to go out there and tell them they need to take care of this. That is not my position. On the other hand, it is my position to represent my constituents.

Primarily, I feel that they as constituents have a responsibility to take care of unsightly, inoperable, or junk vehicles. Some of them might get a car that they are going to part out. They might be selling the motor, and eventually it will get to the point where they have nothing but the hull of the vehicle on their property. They might have a title for the vehicle, and they might call somebody up and ask to tow the vehicle away. In the same aspect, I believe it is their responsibility to make sure the vehicle is covered up. If they cannot do that, then code enforcement would play their part in this scenario. I just wanted to

reiterate that. This bill would affect me as a vehicle restorer myself even though I only have two vehicles that I am restoring.

[Vice Chairwoman Neal left the room. Assemblywoman Bustamante Adams assumed the Chair.]

Acting Chairwoman Bustamante Adams:

We are going to take our last question from Assemblyman Oscarson, and then we are going to transition into the support position.

Assemblyman Oscarson:

Unfortunately, some of the vehicles I drive look like they are being restored. I probably fit into this category a little bit. Have some of the local government entities come to you and asked you to do this? Is it a problem for them? Have they indicated to you that this is an issue? Is why you are bringing this forward?

Assemblyman Carrillo:

To me, this gives them another tool in their toolbox. That is something I feel that the different municipalities need. I am not saying that I spoke to anybody in the north, but this is a concern of theirs. That is why this bill is being brought forth.

Acting Chairwoman Bustamante Adams:

Thank you so much for your presentation, Assemblyman Carrillo. We are going to go ahead and transition to support. Is there anybody in support in Las Vegas?

**Barbara A. Geach, Neighborhood Relations Manager, City of Henderson
Neighborhood Services Department:**

We are speaking in support of A.B. 363. I will say that in regard to section 3, we already have in our ordinances, under code enforcement, provisions that address abandoned, unregistered, inoperable or junk vehicles. This would really have very little impact on us. The reason why we support this verbiage is it is a good tool. It does work for us at the City of Henderson. I cannot speak on behalf of other counties and cities as to whether or not they have this verbiage in their ordinances, but it does work. If this is a tool that is statute and helps other agencies, then we are all for it.

As far as sections 4 and 5, they really focus more on the towing company and talk about the process and remedies for the towing company. In our opinion, that is just good business practice because it delineates the due process and helps with the actions that are going to be taken so people understand how

vehicles will be removed from their properties. In our opinion, it helps eliminate and negates the potential for illegal tows and liability on behalf of the towing company.

[Vice Chairwoman Neal reassumed the Chair.]

Vice Chairwoman Neal:

Thank you for your testimony. We will move back up to Carson City for support.

Jack Mallory, Private Citizen, Las Vegas, Nevada:

Several years ago, I lived in a residence that I currently own in Assemblywoman Pierce's district and found myself in an unfortunate situation where I bought a couple of vehicles with the intent of using one for parts to restore the other. One of my neighbors did not appreciate my taste for fine yard art and made a complaint to the City of Las Vegas. The City came out, did an inspection, and gave me a warning. I attempted to sell the vehicles and was not successful in doing so within 30 days, at which point I received a citation from the City of Las Vegas. My resolution to that situation was to lower the price on one of the vehicles and take a loss on it, and it subsequently sold. I then contacted a wrecking yard to dispose of the other vehicle. The way that I dealt with that situation was I simply signed over the title when they came and recovered the vehicle, and I believe that this has a lot to do with property values. This happened prior to the downturn in the housing market, and there were folks who were interested in trying to sell their property. They saw my yard art as being an eyesore. I completely understand this bill. I think that this is something that does have an impact on property values, whether it is in a homeowners' association or not. Because of that, I think this is a good idea and ask you to support.

Terry K. Graves, representing Nevada Trucking Association:

We would just like to express our support for the bill. We appreciate that it provides some clarification for the tow operator's role in abating these nuisances. We have also discussed with the bill sponsor perhaps adding boats to this bill. Boats are a major problem for tow operators, and we are not too sure if we can find good language to fit in yet. However, we will continue to work with the sponsor.

Vice Chairwoman Neal:

Are there any questions? Seeing none, we will move into opposition for A.B. 363. I see no testimony in opposition. We will move to neutral.

Jay Parmer, representing Builders Association of Northern Nevada:

We agree that abandoned automobiles are becoming an increasing problem, particularly in regard to dumping on vacant land. With that said, section 4, subsection 5 ultimately states that the real property owner is responsible for the cost of removing the vehicle if no other recourse is found. What we would be interested in is simply providing recourse to the property owner, potentially through code enforcement. I will give you an example. There is a developer of land in Reno. They routinely get abandoned vehicles dumped on their property, and in a recent dumping case, the property owner went through the car. The vehicle identification number was not readable. The tag was gone, but in going through the car, they actually found the vehicle registration, which listed the car owner. They took that to the police department and asked for them to arrange for removal of the vehicle and for the owner of that vehicle to be charged for the cost of removing it. That did not happen.

As a matter of policy, if this Legislature decides to move this bill forward, we would be looking for the assistance of law enforcement and code enforcement, working with the property owner to assess the cost of removal of that abandoned vehicle to the ultimate owner when there is clear evidence of who owns that vehicle. We also want to make sure that the cost of that does not fall to the property owner, who in this circumstance is merely a victim of illegal dumping.

Vice Chairwoman Neal:

Are there any questions? [There were none.] Is there any other testimony in neutral? [There was none.] We will call the sponsor back to the table to do his closing remarks on the bill.

Assemblyman Carrillo:

Thank you for hearing A.B. 363. Again, the whole purpose of this is to try to prevent the excessive amount of abandoned junk vehicles that might be unsightly and to ensure that we give the municipalities the tools to mitigate this. Thank you very much for the opportunity to bring forth this bill.

Vice Chairwoman Neal:

We will close the hearing on A.B. 363 and open for Assembly Bill 418.

Assembly Bill 418: Revises provisions relating to the distribution of proceeds from certain taxes ad valorem. (BDR 31-1087)

Michael Cathcart, representing City of Henderson:

Earlier in the morning, we were talking about a bill on writs, which Assemblyman Daly thought should perhaps have gone to the

Judiciary Committee today. With Assembly Bill 418, we are going to be talking about a tax issue. It is going to be a very varied morning for the Committee.

In presenting the bill, we are going to talk a little bit about what distribution formulas are. Since we are not in the Taxation Committee, we thought maybe we should do a really quick review of why we have distribution formulas and then talk about a specific revenue source. This bill will permanently change the distribution method for a 5-cent property tax that is being levied in Clark County for capital infrastructure improvements. We will talk about the distribution of that revenue source from 1991 through 2002, and we will also talk about how we distributed that revenue from 2003 through 2012, which was done through an interlocal agreement. We will then talk about the current year's distribution, which was outside of the interlocal agreement.

Regarding distribution formulas and why we have those, in municipal government we do not collect taxes. Taxes are collected by either the state or the county. In regard to sales taxes and governmental services tax you pay on vehicles, those are collected by the state and then shared back to counties and cities through a distribution formula. Property taxes are collected by the county and given back to cities through a distribution formula. When revenues are collected either by the state or the county, there has to be a method for those revenues to be given back to the other entities within the county or the state, such as cities or special districts.

Some distributions are done by population. Some are done by assessed value. Some are done by a combination of the two. That is why there are lots of different distribution methods within *Nevada Revised Statutes* (NRS). They vary quite a bit. The one we are talking about today is the proposal in A.B. 418, which is relatively simple as far as a distribution method. I hope it will make sense to you. We are here to answer any questions about distribution methods.

If you remember earlier in the session, we had Assembly Bill 68, which was a consolidated tax bill. There was a lot of information about that bill floating around the building. Similarly, we were talking about a distribution method at that time, as well. We were talking about revenue that was being collected by the states and shared back to the 17 counties; all of the cities and special districts.

To get down to more specifics about this revenue source, this is an optional property tax that was put in place by the Legislature in 1990. It was optional for the 17 counties to put this into place. Clark County did put this property tax of 5 cents per \$100 of assessed value in place in 1991, and it was designated

to be used for capital infrastructure improvements, such as transportation and buildings. It had to be a capital use.

The distribution method that was put into NRS at that time was the 1990/91 Supplemental City and County Relief Tax (SCCRT) proportional share within the county. Supplemental City and County Relief Tax is a sales tax, but we hardcoded that number into NRS for the 1991 proportional share. We think there are some real policy issues with having that number hardcoded into statute, even in using the sales tax to distribute a property tax.

Communities have drastically changed since 1991. Henderson is a completely different city than it was 22 years ago. We have had tremendous population growth since then. We do not think it is sound tax policy to have revenue distribution anchored in NRS for a particular year. A good distribution method should be more dynamic. It should change with the community as it grows, as population shifts, and as assessed value shifts. It should be more dynamic to move that revenue around to the different entities.

Also, the SCCRT, which is a sales tax, went on to become part of the Consolidated Tax Distribution in 1997. Even if we wanted to update the current formula and use this year's data, it is not necessarily reported by the Department of Taxation at the municipal level anymore. It flows to the consolidated tax formula, which is the first distribution to the county. The SCCRT is now reported at the county level, while it was reported at the municipal level in 1991.

Now I would like to turn things over to Mr. Derrick. He is going to talk about how after we identified that this was a problem with the 1991 figure in NRS, the local governments in Clark County in 2003 put together an interlocal agreement to share this revenue source.

Richard Derrick, representing City of Henderson:

To remedy the situation that was caused by the 1990/91 SCCRT distribution method, the local entities in Clark County entered into an interlocal agreement in 2003 to distribute this revenue source by the proportional share of assessed valuation within the county, which made more sense since it is a property tax rate. [Continued to read from [Exhibit G](#).] Clearly, there is a desire for us to work at a local level to find compromise, but the challenge we have is that once an agreement expires, we revert back to old, bad language that is codified in NRS. It needs to be addressed.

This revenue source was meant to provide capital improvement funds to local governments. [Continued to read from [Exhibit G](#).] With those comments,

I will turn things back over to Mr. Cathcart to walk through the actual bill and the amendment.

Mike Cathcart:

Looking at A.B. 418 you will see the changes really begin on page 3, line 11. You will see that for every fiscal year beginning on or after July 2013, 40 percent of this revenue will be distributed between the county and the cities and towns within that county on a proportioned share of projected assessed value. That number is reported to us by the Department of Taxation every year. We will be receiving those figures from the State, and the distribution would then be based on those figures.

You will also see that since this revenue source has been put into place, 60 percent of it has been diverted to the State Highway Fund. We are dealing with a much smaller revenue stream than we were ten years ago. There is also an amendment on Nevada Electronic Legislative Information System (NELIS) that we have proposed ([Exhibit H](#)). It was our original intention for A.B. 418 to apply solely to Clark County, so there is an amendment on NELIS that just changes the population threshold from counties whose population is more than 100,000 to counties whose population is above 700,000. This piece of legislation would only apply to Clark County.

We have had ongoing discussions with Clark County on this. Since this past summer, we talked about renewing an interlocal agreement. We have been in contact with them throughout the session. They have expressed some concerns that within the bill there is not a countywide service rate. I believe that they will be coming up to the table after we complete our presentation to talk about the possible need for a countywide rate distribution to be included in this. That is something we would be happy to discuss with them in the coming days. We can do that here in Carson City, or we can have the finance directors do that down south, as well. We just want to come up with the best solution for everyone.

Assemblyman Daly:

I know we just spent an interim working on the consolidated tax and all of that, which then went to Taxation Committee. This did not get brought up because it was just a subdistribution. It was not tier 1 or tier 2. Clark County had a ten-year interlocal agreement with the other counties and cities. The agreement expired. You are saying this is the 40 percent distribution that it was before. Is there a subformula somewhere? Is that in the bill? Is that in a different statute regarding the 40 cents to be distributed and the 60 cents to go to the Highway Fund? That was the 60/40 breakdown before. Where does it say what the distribution is for the 40 percent between the agencies?

How come you could not get another interlocal agreement? Someone else is going to say you get \$700 less, and that means someone else gets \$700 more.

Mike Cathcart:

The first piece, the 40 versus the 60, 100 percent of this revenue used to go to local government, and then over a period, I think it was six years, 20 percent was taken and put into the State Highway Fund every two years for that six years. So there is not really a formula in statute for that. It is just the total collections within the county, 60 percent of those total collections will go to the State Highway Fund. The 40 percent is currently being distributed by the 1990/91 SCCRT share. That is in current NRS. That is the distribution formula that is in place. We are asking for it to be changed to the proportional share of assessed valuation, which is how we did our interlocal agreement for the ten years. We did discuss with Clark County about doing another interlocal agreement. There did not seem to be an appetite there to do an interlocal agreement, but for the long term, to go ahead and get this fixed in NRS. You know, we do not want to be sitting here in 2020 or 2030 and reverting back to a 1991 number in NRS. The changes we are asking for, as Mr. Derrick said, would make the formula more dynamic and it would change year to year because it would be using current year proportional share of assessed valuation.

Also, to the consolidated tax piece, that was the sales tax, governmental services tax, those six taxes that are a part of consolidated tax, this is a property tax. It really was not brought up during that interim discussion.

Assemblyman Daly:

When you go into negotiations, you cannot know whether or not the other side will change their minds on the deal. The people from northern Nevada said they are fine with the \$700 limit, and I understand the assessed value and all of that. However, what if somebody does not like that anymore? If this bill does not pass, how will things be assessed? Will it remain at the existing value? What is the formula that exists if this bill does not pass?

Mike Cathcart:

If this does not pass, it reverts to the 1990/91 SCCRT proportional share. In 1991, they took the SCCRT, which is a sales tax on goods within the county, and looked at the proportional share for the county and the entities, and they distributed this property tax based on that proportional share. However, they hardcoded that into NRS at the time. Henderson's proportional share of SCCRT in 1991 was less than 3 percent, whereas if this bill passes, our proportional share of assessed valuation would be well over 10 percent within the county currently.

Assemblyman Daly:

What you are saying is that when they put that in, it was the existing assessed value portion from 1991, and unless we do something like what is outlined in this bill, there is no opportunity to recognize that your population and the assessed value by building homes has all shifted. That was part of the discussion we had on consolidated tax regarding what we are going to use when distributing the excess. I think I understand the reasoning there, and I am sure we will hear from the other side on advantage versus disadvantage. However, it should be based on a formula that adjusts.

Mike Cathcart:

The assessed value was not taken into account in 1991. We were distributing a property tax based on proportional share of sales tax collections. It was an odd distribution to begin with. We are asking that it be based on assessed value because that has a better nexus to a property tax. Our residents within the city of Henderson pay this property tax. We think we should get our proportional share of the county's total because our residents are paying that property tax.

Assemblywoman Bustamante Adams:

This reminds me of a miniature consolidated tax, which is extremely complex. This is around 5 cents. That really concerns me because when we do something like that there are winners and losers. This change would make Henderson, for lack of a better word, a winner. What are the losers going to say? Also, who is going to lose? I know that you say it is about fairness, but there are other players in the market.

Mike Cathcart:

There is one big difference between the discussions we had during consolidated tax and the discussions we are having here today. During consolidated tax, at times, that committee was asked to remedy situations that went all the way back to the 1981 tax shift or the 1997 creation of the consolidated tax itself. Regarding the winners and losers in this particular change in distribution, this current fiscal year would have been the first time they had ever collected the additional amount of revenue. We had an interlocal agreement in place that was sharing the revenue the way we are asking NRS to read through A.B. 418. We are only months into the interlocal agreement going away. They have not even realized this additional revenue yet. We have not lost all of our revenue yet. This is the first year that this is happening. We are not asking for a remedy for something that happened 15 or 20 years ago. We are asking for a remedy for something that happened months ago.

Assemblyman Elliot Anderson:

I was looking at your amendment and wanted to ask a technical question. I think you already touched on it, but you did not mean to apply this to everyone. However, it looks like you would create a space where the statute would not apply to anyone with a population above 100,000 and below 700,000.

Mike Cathcart:

We are amending section 1, subsection 2, paragraph (b). However, in paragraph (a) it addresses the counties whose population is less than 100,000.

Assemblyman Elliot Anderson:

I am concerned how you recognized folks under 100,000 are covered, but your amendment to (b) changes it to "700,000 or more." There is now a space there that is going to cut out a good portion of the state.

Mike Cathcart:

Yes, we may need to update subsection 2, paragraph (a) to say "less than 700,000." Thank you.

Assemblyman Stewart:

All this is doing is creating fairness throughout the county and bringing things up to a modern state, not reverting back to over 20 years ago, so that Henderson is getting a fair share of the proceeds that are coming in. Is that correct?

Richard Derrick:

Yes, and I think it is an important point to really focus on. About 13 years ago, we came together as a group—the county, Las Vegas, Henderson, and the cities—to put in place that interlocal agreement. Many times the effort is to go back and work this out on your own. I will tell you there are a couple of challenges with that. Subsequent to the interlocal agreement being passed, the Legislature made changes in 2008, which Mr. Cathcart already talked about. The state saw that a portion of the share went to the state fund. We had interlocal agreement in place that really did not address that. When you change statute and have an aged interlocal agreement in place, the agreement does not change along with the statute. The interlocal agreement is not as dynamic as it should be. Ten years later, we have different players at the county and in Las Vegas, but the reality is that we all agreed to a distribution that made more sense.

If property tax levied from citizens goes back to where it was generated from, I cannot blame them for letting it expire. Not all parties have a desire to renew the agreement because there is an advantage to going back to the 1990/91 assessment. I would consider letting it expire, as well, because the burden is now put on the localities to go forward to the Legislature to have it changed in statute. That is where we are today. We are simply asking to codify what we had already agreed to over ten years ago. We are not asking for anything new. We are asking for that to be in statute. Over time, elsewhere in the Valley may grow faster than the City of Henderson, and we would be a smaller percentage of that. We realize that, but revenues should be proportionately shared. Development is going to happen inconsistently throughout the county, and by doing this we allow the formula to adjust to that development.

Assemblyman Stewart:

I am often accused by my grandchildren and my colleagues of living in the past. I want to go on record in support of moving into the present and the future on this bill.

Assemblyman Livermore:

This bill talks about distribution ad valorem tax, and we all know about the discussion on distribution of consolidated taxes. Are there any other taxes you have to bring before us? Do you have any more that you are going to be seeking, or is this a final quest?

Richard Derrick:

As we go through and look at tax policy and try to create policy that is better for the state for the future, I think we come across areas and issues within statute that are aged and need to be adjusted. That is really just part of that process. Locally, we try to reach a resolution, but sometimes it makes more sense to codify it for our future generations. This is somewhat different than consolidated tax. It is actually a lot simpler than consolidated tax, believe me. Those of you that served on A.B. 68 know that. It was very challenging for us to reach a compromise there. This is simply allocating resources back to those communities that generate the dollars. We are not doing this for the sake of doing it but because there truly is a nexus necessary.

Assemblyman Livermore:

I understand all the counties and cities are financially strapped right now. You give to one; you take from another. Are there others that are going to be forthcoming here?

Richard Derrick:

If we look at the distribution we are talking about in the statute and compare it to the interlocal agreement, most of the jurisdictions will be whole. There was a time in the interlocal agreement when a percentage would go to the Regional Transportation Commission (RTC). That is not part of this bill because a lot of those funds now go to the state transportation fund. In many respects, jurisdictions will be getting more money than under the interlocal agreement because the RTC will no longer be receiving any portion of that money. I think that is an important point to bring up. There are not a lot of losers from the interlocal agreement, but there are some losers from the interlocal agreement lapsing.

Assemblyman Elliot Anderson:

I just wanted to clear something up. You talked about the State Highway Fund. I realize that the language is in there, but when you look at subsection 7 of NRS 408.235, if I recall, it goes to use for the county from which the money was received. I just want to make that clear for the record.

Assemblywoman Bustamante Adams:

I am concerned. I am trying to pick up on the words you used. You "tried" to reach a resolution. "Tried" means that it did not happen. There is obviously an indication that there are some losers. You then said "most of the jurisdictions" would be made whole. That is also concerning. You said "there are not a lot of losers." There are still losers in this space, and for me that is a red flag. I know that this is not Taxation, but it concerns me.

Mike Cathcart:

You are absolutely correct. There are winners and losers. I think we are pursuing this legislation because we were losers. In 2012, we received \$1.1 million. We put together our budget for fiscal year 2013, and we will only receive \$300,000. It is very difficult on us to plan any sort of capital infrastructure improvements when one year we are getting \$1.1 million in a revenue source pledged to capital and the next year we are only getting \$300,000. To be honest, that money is now flowing through Clark County's books. Like I said, they are going to come to the table and maybe there will be some discussions on a countywide rate that we can work through. We are happy to do that. However, they have also not received all of those revenues. They received an amount at the end of 2012, but then their projection went up at a cost to us.

Vice Chairwoman Neal:

I know what the statute said, but you were in an agreement where you were not getting your share or the shares were different. Why enter into an interlocal

agreement where you are not receiving what you desire? I think I know the answer to that. Would you have gone about the business of changing or seeking to codify this in statute if there were not additional revenues that you could collect? Would you still be pushing for your interlocal agreement? It seems as if you want it codified because now you see the additional revenue coming through and would like to have it.

Mike Cathcart:

What we want is stability. We entered into the interlocal agreement for that stability. We did not lose money by entering into the interlocal agreement. The interlocal agreement shared the dollars by proportional share of assessed valuation, which we think is an equitable way to share property tax because the property tax is generated by the homeowners in the City of Henderson. The interlocal agreement expired in 2012. We were receiving \$1.1 million in this revenue source. We would like to codify this to again receive \$1.1 million in revenue. We are not pursuing additional revenue. We just want the stability that we had for the ten years. We are not looking for an extra revenue. We are looking for the revenue that we had that had been part of the City of Henderson budget.

Assemblywoman Bustamante Adams:

If this does not pass, does that mean you lose the \$1.1 million?

Mike Cathcart:

We would lose between \$700,000 and \$800,000 of that. We would still get around \$300,000 in revenue.

Vice Chairwoman Neal:

We will open up for testimony in support of A.B. 418.

Ted J. Olivas, representing City of Las Vegas:

You have heard from Mr. Cathcart and Mr. Derrick. They are the finance experts. I am glad that you asked all of those technical questions before I came to the table. We are in support of A.B. 418, Henderson's amendment, and the changing of the distribution methodology. It is going to have a minor fiscal impact on the City of Las Vegas, but this is old tax policy that we think needs to be updated. It was mentioned that the previous methodology was based on sales tax. We knew that was a problem, so we entered into an interlocal agreement so that the funds were distributed more appropriately. The finance directors got together and said we should put that in the law—get rid of the 1990/91 assessment, and put this into the statute. I believe that is where we are at today. This was a process on which we had a number of discussions

during the interim with the City of Henderson and other finance directors down south. We are supportive of this bill and the Henderson amendment.

Vice Chairwoman Neal:

On one side, I see the cities supporting each other and helping each other become as whole as possible. On the other side, I see Nevada Association of Counties (NACO) and Nevada League of Cities and Municipalities come into Taxation asking to be made whole because the State took from them. I see the trend, and I keep saying to myself that if the cities are going to help each other out, then help the State. Maybe keep some of what they have because we really do not have anything to give you.

Ted Olivas:

One of the biggest tax bills that we had this session was the bill on consolidated tax, and we worked together to find a solution; the same people who came up with a solution to this statute. We are just saying it is old tax policy that should be codified. It makes sense based on where we are at today, and that is the simple change that is being proposed here.

Assemblywoman Bustamante Adams:

I hear what you are saying, but who are the losers in this? The cities of Las Vegas and North Las Vegas are at the table. What about Mesquite? I am trying to figure this out because you know that this is a win-or-lose game. Who will be losing?

Ted Olivas:

All I can tell you is that Las Vegas is a loser. I have not seen the total financial model to determine who is where. Potentially, Henderson has that. I just know that the impact for us is between \$100,000 and \$200,000.

Assemblywoman Bustamante Adams:

How much are you losing? For Henderson, if you have that financial breakdown, I would like to see it because I have not seen anything.

Ted Olivas:

I believe it is between \$100,000 and \$200,000.

Assemblywoman Bustamante Adams:

Okay. I do not know if you are the loser.

Dan Musgrove, representing City of North Las Vegas:

We are a winner of about \$400,000, and we are in support.

Vice Chairwoman Neal:

I might have to come back to you. Maybe Henderson can come back to the table because when we were talking, they mentioned that you would be held harmless. What does that mean? What was the potential that could have occurred?

Dan Musgrove:

I think what they testified to earlier was that it has not gone into effect yet. Maybe Mr. Cathcart can clear that up. Because the memorandum of understanding (MOU) is going away, then we will be a \$400,000 loser. However, with this bill putting the MOU back into effect by placing it in statute, there will not be a negative impact. We will get what we got the previous year.

Mike Cathcart:

Mr. Musgrove is absolutely correct. It is consistency and stability year to year. To me, the winners and losers argument is not really there yet because the winners of the interlocal agreement expiration have not received that full revenue yet. The impact has not been felt, at this time.

Vice Chairwoman Neal:

I know that consolidated tax is not a part of this conversation. However, based on the formula that we passed out, how much additional revenue are you going to receive from consolidated tax? What I am doing in my head right now is I am adding the \$400,000 that you may get from this bill and the amount you expect to receive in the future from consolidated tax and trying to figure out what the dollar amount is that will be given to North Las Vegas.

Dan Musgrove:

Let me try to back up so that we can understand exactly what will happen. We are sitting down right now and working on our budget. If this bill does not go into effect, then we will have to work on budgeting around a \$400,000 revenue loss because we received the allocation under the MOU based on that agreed-upon formula from ten years ago. With that lapsing, there has been a change. We will have to figure out a way to deal with \$400,000 less in revenue from that bucket.

Now, I am going to try to be very cryptic because there is a side of me that just wants to get into the arguments about consolidated tax. I am sitting here as a good citizen, as a good player in the southern Nevada community, and saying that what is fair is fair. We had an agreement. We could not reach the agreement, and now we are coming to the State to try to fix it. The projection on consolidated tax is that we are going to get an additional \$2 to \$3 million.

That is the specific answer to your question. That is new revenue that we did not have last year.

Vice Chairwoman Neal:

Potentially, we could say that you may or may not receive \$2,400,000 or \$3,400,000 in the future. Is that correct?

Dan Musgrove:

That is correct.

Jennifer Ruedy, Committee Policy Analyst:

I just wanted to put out there that I checked with the Fiscal Analysis Division, and there are fiscal notes that have been requested for both of the bills, A.B. 418 and A.B. 417. Those are not up on the website yet because they are not actually due back to the Fiscal Analysis Division until 5 p.m. tomorrow. They advised me that sometime after 5 p.m. tomorrow, any fiscal notes that were requested and received would be up.

Assemblyman Oscarson:

It would seem to me that, in my discussions with several people involved in this, if Clark County could demonstrate where the additional funds that they are receiving are going, it would benefit all those entities that are within Clark County. I think that is where the question is. Is the money being used to benefit the entire county of which Henderson, Las Vegas, and North Las Vegas are a part? I would like to hear that information, as well.

Vice Chairwoman Neal:

Is there a specific entity who may want to address Assemblyman Oscarson?

Yolanda T. King, representing Clark County:

I will answer, but I am in opposition. I was just waiting for you to change to opposition.

Vice Chairwoman Neal:

Okay. We will shift right into opposition.

Yolanda King:

I will try to address many of the questions that have come up today from the Committee members. Before I get to Assemblyman Oscarson's question, I want to lay out some of the concerns and issues that Clark County has. When we take a look at the winners and the losers in the game, there are a couple of different analyses. In terms of the impact to Clark County, we are comparing things to what is in effect today regarding distribution. What is in effect today

has reverted back to what is in NRS. The interlocal agreement expired in 2012, and the distribution for this fiscal year has reverted back to what is in statute. When I am doing a comparison and trying to determine what that fiscal impact is, I based it on what the distribution is today. I do not base it on what the distribution was when there was an interlocal agreement in place versus what this language changes to. I believe the cities are looking at the impact to them based upon what the interlocal agreement was when it was in place. I am looking at the fiscal impact in terms of what it is today. Using that methodology, Clark County would be the loser and all of the cities would gain in this change to the bill. I just wanted to put that on the record.

The county decided not to join in or renew the interlocal agreement. When preparing our fiscal year 2013 budget, there was a projection that we would increase our dollars when it came to the distribution of this tax. Therefore, we included in our 2013 budget those dollars and what we were going to spend. I understand the City of Henderson when they say that not all of the money has been collected. The distribution just recently changed in July of 2012, and because we have not received all the money or they have not lost all the money, there are no winners or losers in the game. However, the fact is that Clark County has included it in their projection and in their budget and accounted for the expenditure of those increased dollars to the county.

In terms of the capital money and how it is being spent, let us look at the interlocal agreement. When the interlocal agreement was in place, there was a clause in there that tried to address the county's concerns in that we were unique from the cities in providing countywide services as well as municipal services to our towns. There are two things that are being provided. When you compare that to the cities, they are only providing municipal services. Taking that into consideration, when the interlocal agreement was in place there was 25 percent of the revenues received that was taken off the top and dedicated to the County to provide for those capital needs for services that were being provided countywide. The interlocal agreement did address our concerns in that they took 25 percent off the top and gave that to the county. The county distributed that based upon the interlocal agreement, which was assessed value.

Our concern with the bill as written is that it does not take into account the capital needs for countywide services being provided. As we were building our budget and recognized that we were going to receive additional revenue as a result of the interlocal agreement expiring, our thoughts went to the countywide infrastructure or capital needs that we use this money for. When I speak of countywide services, one would be the Clark County Detention Center. That services all the citizens regardless of if you are in

unincorporated Clark County or if you are in a city. It is a service to the Clark County community. The University Medical Center of Southern Nevada is another example of a service that is provided to all of Clark County. The funding that is gained by the county as a result of the interlocal agreement expiring has been dedicated to the Clark County Detention Center. We are taking those increased dollars, and we are using them on facilities or on services being provided throughout all of Clark County, not just special projects. It is being dedicated to a countywide facility.

Assemblyman Daly:

This reminds me of the consolidated tax interim study. Is this property tax or sales tax?

Yolanda King:

It is an assessment of property tax, but the allocation based on the statute is an allocation that was based on sales tax.

Assemblyman Daly:

It is a property tax. It is collected county by county and is not going to affect a different county. That is the 100,000 population threshold. It is a Clark County issue. Other counties may have a different formula they are fine with, such as the 1990/91 formula. We do not need to mix this with other counties.

Yolanda King:

Correct. That is why the City of Henderson has the amendment to change the population threshold to 700,000 or above.

Assemblyman Daly:

Exactly. I am just trying to understand. The interlocal agreement that you had was a split between the entities—Henderson, North Las Vegas, Las Vegas, Clark County—based on assessed value. The 60 percent that got pulled for the Highway Fund was a different law. You did not have any choice, but you kept the other 40 percent in that assessed value allocation for a period of years. Now that is just going to expire. If I heard you correctly, you are concerned that included in that interlocal agreement but not included in the bill was a split based on assessed value, but there was 25 percent off the top that went to the county for other things. You have that money committed. Plus, you have done your budget anticipating the expiration of the agreement and receiving more money, and you may have that money committed.

Yolanda King:

Correct.

Assemblyman Daly:

When I look at it, I do not know that it is fair to go back to the 1990/91 formula based on the property value and what it was back then. You are basing it on the amount of tax you got the year before 1990. Many things have changed for those municipalities down there, including Clark County. What was your share before? That carried forward in perpetuity. That is why you did the interlocal agreement, to allow that growth and that fairness, and before it gets out of hand people are trying to say there are winners and losers so that money shifts back. They want to put something in statute that does that. Is the real problem for Clark County the 25 percent off the top? Is there a bigger problem?

Yolanda King:

That is the main concern. It does boil down to fairness and that we are not being provided funding for countywide facility or capital needs. That is a concern. In fairness to the City of Henderson, we did discuss our concerns with them, and we are both willing to go back. They understand our issues with providing funding for countywide services, especially since that was what was in the interlocal agreement initially. We are willing to work together to try to figure out how to address the concerns that Clark County has with those countywide capital needs.

Assemblyman Daly:

If you are willing to maintain the interlocal agreement the way it is now with the assessed value split, with part of that going to the countywide needs, are they? If they are willing and so are you, how come you do not just get them an interlocal agreement? I am not sure where the breakdown comes. If you are willing, are they willing?

Yolanda King:

We are willing to work on language. Obviously, they would like to change how the distribution is from a tax policy standpoint. We are willing to work on language for an amendment to the bill so that it addresses our concerns.

Assemblyman Stewart:

Would you accept an amendment to keep the 25 percent in or to put the interlocal agreement in statute? Would that satisfy Clark County?

Yolanda King:

Yes. We actually talked about having something where a certain percentage, 25 percent or so, would be pulled off the top of the revenues as it was in the interlocal. We would then have a distribution based on assessed value once the 25 percent was taken off the top. However, there are other local governments,

the cities, that should agree with that, as well. We would need to have confirmation that they are in agreement with having that language added.

Assemblywoman Swank:

A lot of my district is in unincorporated Clark County. I am wondering if you can speak to how this bill would impact those areas and their services.

Yolanda King:

The main concern that we have is that it does not take into account the unincorporated, as well as the town, services. If the thought is to take a portion off to address the countywide services, then that would satisfy our concern. That is the main reason why I am in opposition. We need to make sure that we address not only municipal services or capital needs but countywide capital needs, as well.

Assemblywoman Bustamante Adams:

Who has a copy of the interlocal agreement?

Yolanda King:

I do. I can forward that to you.

Assemblywoman Bustamante Adams:

Yes, I would like a copy of that and the financials. We need to see the numbers.

Assemblyman Elliot Anderson:

I wanted to emphasize the financials, as well. I was trying to find a fiscal note.

Yolanda King:

I believe the Committee Policy Analyst stated that the due date for response to the Legislative Counsel Bureau (LCB) is tomorrow. Unfortunately, we have this timing issue where a lot of the LCB notes are due after the committee hearings. It is coming.

Jennifer Ruedy, Committee Policy Analyst:

Yes. That is exactly correct for both A.B. 418 and A.B. 417. I checked with the Fiscal Analysis Division, and they are awaiting fiscal notes. Those are due by 5 p.m. tomorrow, April 4. Unfortunately, the bills were heard before those came in, which does happen sometimes. However, the requested fiscal notes should be up on the website by shortly after 5 p.m. tomorrow.

Vice Chairwoman Neal:

Thank you for your testimony, Ms. King. We got a clear definition of whether or not the county had an appetite. We appreciate that. We will shift into neutral. Is there anybody here in neutral for A.B. 418?

Lisa A. Gianoli, representing Washoe County:

We are here in neutral. We were initially opposed to the bill, but with the amendment that Henderson brought forward taking us out of the bill, we are neutral on the bill.

Vice Chairwoman Neal:

Thank you. Seeing no further questions, we will close the hearing on A.B. 418 and open up for Assembly Bill 417.

**Assembly Bill 417: Makes various changes relating to redevelopment.
(BDR 22-234)**

Assemblywoman Marilyn Kirkpatrick, Clark County Assembly District No. 1:

I come before you today with a redevelopment bill. Every session I bring the redevelopment bill, and every session the redevelopment bill dies before it ever gets to the Governor's Office. I always try to resurrect it. It dies again. I can smell defeat. I have taken a different approach this session, and I want to start with one piece that is very important to redevelopment.

Redevelopment was put in place for local governments to address blight within their areas. Over the years, we have had some agencies consider everything to be blight. We redefined "blight" many times. It had been redefined since it was put in statute not so long ago.

I am a big supporter of redevelopment. I think a lot of great things can come out of redevelopment. You could look at things that were done in other cities. However, in our state, we are a little slower to get things done, and we tend to blend redevelopment and economic development. Redevelopment brings economic development because it invites new businesses, which generate more dollars. On the other hand, economic development brings redevelopment because it restores blight in neighborhoods.

We have some good projects in southern Nevada that have done well. For those of you who are new to the Committee on Government Affairs, I have amazing reports. Available on the Legislature's website are reports on how we require redevelopment agencies across the state to show what they are doing with their dollars. My concern has always been economic development and redevelopment intertwining so much that the dollars are spent to help a new

business come to town. With economic development, we talk about abatements all the time. What is it going to take to bring someone here? We have this pot of dollars within redevelopment that is supposed to help clean up neighborhoods and bring new life to older areas. In my mind, we have spent fewer years cleaning up the blight and more years bringing in new companies, which have not necessarily made the same investment.

Across the state, we have many redevelopment agencies. We have them within each county, I believe. Clark County closed theirs down temporarily back in 2009. There are cities like Elko where it is hard to differentiate between a redevelopment area and new development. I am pretty passionate about cleaning up old neighborhoods and bringing new life into them. I, for one, live in an old neighborhood and love it. It is just as great today as it was 25 years ago. I live in North Las Vegas. I moved out there when it was dirt and no one else wanted to be out there. Now everybody wants to be farther up. Sometimes they forget about the folks that invested first, and I do not think that you should ever do that. We have some great redevelopment areas. The John S. Park Historic District in Las Vegas is absolutely fabulous. We have Charleston Heights, which is great. In Henderson, we have the new area by the Titanium Metals Corporation (TIMET). That truly is redevelopment because they brought new life into those areas.

However, there are some areas that I agree to disagree are not so much redevelopment. At least for Clark County, I think we would rather have a real idea of what redevelopment is. Knowing that I was in a losing battle every session for five consecutive sessions, I picked a different path I want to travel down this time. One of the things that I have always thought would work within our state is Utah's plan. Utah defines what economic development is and what redevelopment is. They have a reporting mechanism to make sure that those dollars are being spent well, and they have a revolving loan.

Before I go through the bill, I would like to give a little bit of history. We have some great examples of this already. I know that there are some folks today who want to make amendments or add things to the bill, and I do not begrudge them. That is great, but for years we have been trying to do this. I am going to give you an example that most people do not think about. In downtown Las Vegas today, we have Fremont Street Experience. It has been a long time coming, but they have done a really good job with redeveloping that area, which has brought economic development. Tony Hsieh from Zappos has invested a lot while receiving redevelopment funds. I think that is great, but here is what people do not hear. He has a revolving loan for businesses, and he is a partner in some of those businesses coming into the downtown area and investing in it. It is interesting to me that folks think that this is such a bad idea, since he is

doing a great job down there. Why is it suddenly a bad idea when the Legislature wants to make everybody do it? Other states around the country have been doing it for a very long time and have been successful.

What irks me about redevelopment is when we freeze the dollars, we freeze services. We freeze the rates for services. The rates do not grow unless there are new businesses that come. They grow by a very small amount, but not at the same rate as a new area. I am always mindful of the services that are hurt when we put redevelopment spaces in. I think that is the one thing local governments would support me on. We have done a very good job of making sure that schools are held harmless, that there is an ability for us to keep moving forward, and that anything that is a better override is not encompassed within those dollars.

What I brought today is one piece of my many bills that I could not pass over the sessions. I am hoping to start with this. I know that there is some opposition, and I think opposition is healthy. There is no perfect bill in this building, and I think opposition helps you understand a different side of things. Opposition helps fix the bill to where it is more amenable. I do not claim to be the expert on anything. I am always open to opposition. It helps folks understand the issue, and it helps them actually make things work.

I wanted to give a little bit of history so that people know I understand that I have to start small and work my way up. However, I think revolving loan accounts should be mandatory. If you have the dollars to set aside for redevelopment, then you should have money to open this account to help some businesses come into that area you are trying to clean up. Also, as far as time frames, the one thing that I tried to do this time was give local governments a little bit of authority on how they would do this. Apparently, they are asking it to be spelled out a little bit more. I am okay with giving them some specifics, but I was trying to be a little more open to the needs of the state. Every single county and city has a different thought regarding what will make their redevelopment work. What works in Nye County definitely does not work in Clark County. What works in Reno would never work in the City of Elko. I recognize that. I think cities need to be unique, but when it comes to redevelopment, we have got to set some ground rules.

Assembly Bill 417 requires the legislative body of a community to create a revolving loan account to be administered by a redevelopment agency to make loans at or below market rates to help expand or improve their small business in the redevelopment area ([Exhibit I](#)). That is consistent with what I said. Other states do it. I know that some are not opposed to it.

Section 2 of the bill defines "small business." This is really important because throughout the statute we have different definitions of "small business." In fact, in one portion of the statute, a small business is 150 people. I do not know where that number ever came from, but per the redevelopment statute, 25 is what is considered a small business. Think about a restaurant. If you have a restaurant with two waitresses, a couple of dishwashers, and a couple of chefs, you could easily get to 15 employees. However, I did not want to limit the businesses who have up to 25 employees.

Section 3 of the bill requires excess funds in the revolving loan account at the end of each fiscal year to be carried forward and for principal and interest payments to be credited to the account. This also allows for the agency to accept gifts, grants, and donations for the account. In the 2009 Session, the Department of Business and Industry had the ability to go in and create nonprofit organizations to establish revolving loan accounts. Knowing this is a local issue, I wanted it to stay local, but we have had some great success with revolving loans on the statewide level. In 2009 we had some American Recovery and Reinvestment Act (ARRA) dollars. Business and Industry with the help of the Office of Energy created a revolving loan. We are now moving through the next phase with folks who were able to come in, get a little bit of seed money to get started, pay it back a little bit easier and move forward. We do have many successes just on the state level, and I would refer back to the Utah example. It is a standard within how they do things.

Section 4 of the bill authorizes the redevelopment agency to make loans at or below market rates to new or existing small businesses in the redevelopment area. It is important that we continue to help existing businesses grow. You can have a business that does not grow in sales for five years because the market has changed in the real world. If we do not help them grow, they will not have the ability to be on the forefront. I did include a three-year limit. I know there are folks who would like to keep it at five years. In my opinion, in three years you know whether or not a business is going to make it. In five years, it is typically too late. Unless someone can tell me different, I think that if a business is not doing well after three years, they are probably not going to stick around. Who can take a loss for that long?

Section 5 sets the minimum requirements for loan applications, requires the loan contract to include repayment terms, and requires the redevelopment agency to adopt regulations setting out the application deadlines, eligibility criteria, maximum amount of loans, and interest rates for loans. Like I said, I was trying to be broad and let the agencies have a little bit of discretion, but I am happy to rein it in and discuss the discretion.

Section 6 of the bill requires the redevelopment agency to report to the Legislative Commission or the Legislature by November 30 each year for the next five years with information on the amount of each loan, the terms of each loan, and a description of the small businesses that received loans from the account. That is consistent with what we ask of ourselves within our revolving loans in the energy sector. I like to be consistent with statute so that we have a policy direction.

Assemblyman Livermore:

Thank you for putting this forward. Can you describe a small business of 25 employees? Is that per location, or could you have three or four coffee shops that may have 10 employees in each location? How is that number totaled?

Assemblywoman Kirkpatrick:

I did not think about multiple locations because, in the business world, I could never imagine opening three places at once. I just assumed that it would be one specific place. As they grow, they could come in for a second loan.

Assemblyman Livermore:

I see. If one location has ten employees, that is one loan. If the next location has 15, that is another loan.

Assemblywoman Kirkpatrick:

Correct.

Assemblyman Livermore:

I appreciate that. What kind of collateral do you recommend be attached to a revolving loan account? I am sure you are considering collateral for this.

Assemblywoman Kirkpatrick:

I will admit I am no banker by any means. That is why I wanted to put it back to the local governments because they do have people who specifically deal within those realms. They do it all day long because they bond out different issues. They would have people who understand the specifics.

Assemblyman Livermore:

I appreciate that because I believe that any type of loan justifies a collateral signature or some way to recoup the money.

Assemblywoman Kirkpatrick:

I do not disagree whatsoever. That is why three years is better for me.

Assemblyman Daly:

I am not against the bill. I think you are right when you talk about the definition between redevelopment and economic development. The only way I have ever been able to tell the difference is by looking at the funding source. They both tend to do the same thing. I understand the redevelopment agencies and the tax increment, and I know that we have more and more pass-throughs. You have redevelopment that promotes the funding source through the tax increment and subsidies that way. You have economic development that basically promotes the funding source through an abatement, which is a different process and a different statute. I do not think that this is bad or will not work, but you should take a look at *Nevada Revised Statutes* (NRS) 279.500 to make sure we have consistency on that part, as well.

Assemblywoman Kirkpatrick:

For several sessions, I have tried to make that a little more consistent. I have always lost proudly, but this is a new direction. What you will always hear is there are fewer redevelopment dollars coming in. Well, this helps us have a steady revenue source.

Assemblyman Daly:

I understand we do not have any money for this revolving loan due to lower revenues and lower tax increments. However, if they do not have any money, what do they do? I am not saying that should be a barrier. Perhaps there is a way we could ease agencies into creating a revolving loan account.

Assemblywoman Kirkpatrick:

You and I always agree on that. Nowhere in the bill did I say agencies had to put money in the account immediately. However, this bill is requiring them to create a revolving loan account to be administered by the redevelopment agency. That has to be part of the process. I am not so giving on that.

Assemblyman Ellison:

As you are looking at these small businesses, what is the maximum amount of dollars they can borrow? Is there a set deal? I looked through the bill, and I did not see what the maximum amount was. What about the infrastructure? I know they are going to be in a redevelopment area. Most of them are blighted areas. How are you going to address that? The businesses and the infrastructure are two different things.

Assemblywoman Kirkpatrick:

Those are very good questions. You can come into a redevelopment area now and get tax increment financing for your infrastructure. These are all together. I know that there is a proposal to get tourism improvement district dollars.

You can get economic development dollars within that. You can get greenfield project dollars within that. There are currently a lot of options to help get folks who come into the redevelopment area started. You do not have to give away the farm to get them here, and at some point we need to have a steady revenue source to replenish those redevelopment dollars. By setting up a revolving loan process, this allows redevelopment agencies a couple of different options. For example, say I want to open up a small business and do not need the infrastructure because it is already there, but I cannot come up with the requirements for an economic development abatement. I cannot provide the ten employees, and I cannot provide the capital investment of \$150 million. However, I happen to know of an empty storefront where I would like to open a dress shop. I could serve coffee in the store, and it would work. I would not need all those other things. I might only need a small amount to get me going. This is a second option.

Redevelopment agencies, economic development agencies, and regional economic development agencies know what they need to bring in businesses. They know what the criteria should be. What happens is there is a public comment process, a workshop, and then there is a vote by the elected officials. I believe it is public and transparent. I am happy to write it for them, but I was trying to be flexible.

Assemblyman Stewart:

I have observed and shared your frustration over the past few sessions on this topic. I think you have done a great job in trying to promote redevelopment while trying to make safeguards that would prevent abuse.

Assemblywoman Swank:

I wanted to return to section 2 regarding 25 people per location. I do not know how I feel about this, but I thought I would throw this out there. At any given Starbucks, for example, there are 25 or fewer employees. I was not sure how something like that would fall into this.

Assemblywoman Kirkpatrick:

I talked to Vice Chairwoman Neal about this because she has some avenues to help some of the smaller businesses come in. I looked at different states to see what numbers they used. I would say not more than 25. It is going to depend on what kind of business you bring. I am not as worried about the more corporate businesses. I am thinking about little coffee shops and neighborhood grocery stores. We went back and forth on the number of employees, but 25 is a pretty consistent definition in other places. I went with that, but I am a little flexible. Maybe local governments could structure the revolving loan like we did based on how many employees it brings. If you have fewer than ten

employees, then you do this. I really see this as helping retail become part of redevelopment. The larger, more corporate places have to have a certain amount of rooftops in order to bring in their business. The smaller guys, your neighborhood coffee shop, could probably generate a lot more local business without having to meet that site criteria to get a loan from the bank.

Assemblywoman Bustamante Adams:

In section 2, I think what I read regarding small businesses is that your vision is the local market. Is that correct? Are you thinking Nevadans?

Assemblywoman Kirkpatrick:

I wanted to be a bit broad. I will use downtown as an example. There are some folks who came from out of state and brought their business, but now Nevada is their home. They have fewer than 25 employees. I do not know how you could specify Nevada small business because that might leave some folks out who could become Nevada businesses.

Assemblywoman Bustamante Adams:

I agree in some sense, but sometimes it is good to start with a pilot and then expand. My personal focus would be Nevada-based businesses and helping those entities to either expand or go into redevelopment areas. In section 2, I think there are more parameters that need to be put in place. I know that our intent is not to help large chains, and there are some definitions in another bill that is out there. I think that could be helpful in this section. Even if we want to keep it broad so that it is not just Nevada-based businesses, I think that putting those parameters in section 2 so that we could avoid disaster would be helpful. I would be happy to submit that as an example.

Assemblywoman Kirkpatrick:

In section 4, it does allow for existing business. If you are talking about the language that you have in another bill, just say it. I am happy to look at it. For as much as I get beat up on saying I am anti-redevelopment, there comes a point when we have to let the business market do itself. However, I am happy to look at the language that you have in your other bill.

Assemblywoman Bustamante Adams:

My other question is regarding blighted areas; that most are. However, that is not necessarily spelled out. Is there a definition for blighted area?

Assemblywoman Kirkpatrick:

Within NRS Chapter 279, there is a definition for blighted area.

Assemblyman Oscarson:

It makes me wish sometimes we could rezone some rural areas to take advantage of this. In concert with my colleague, I was wondering if maybe there could be a preference for Nevada-based businesses, just like in some loan processes. If you are based here or have certain characteristics, you are allowed to have a preference. That is just a thought.

Assemblywoman Kirkpatrick:

Thank you. I believe that is something that we could require local governments to include within their ordinance. Most local officials want to do that anyway. We can make it a component of that.

Assemblyman Livermore:

As I sit here and listen to the discussion of the bill being debated, I do not want it eliminating banks. I do not want this loan to take away from the banks that are probably going to underwrite the majority of the redevelopment cost. How do we limit how much a person can get, and how much should a redevelopment revolving fund commit to the project? Five percent? Ten percent? Do you have any numbers that you have chosen yet?

Assemblywoman Kirkpatrick:

I do not. Banks have a pretty set amount that they can loan you. First of all, there is not a lot of money that is going to go into it the first couple of years, and we have a report and will be monitoring specifically. Currently, we can give them the kitchen sink. This was just a different opportunity to at least make them pay some of it back. I am happy to look at that, and maybe local government can bring some expertise. Maybe in Carson City it is \$5,000 to get up and running in 30 days, but maybe in Clark County it is \$10,000. Some of it will vary depending on what your business model is, and I do think that you have to be able to do that. However, I am happy to look at the current revolving loan that we have in Assembly Bill No. 522 of the 75th Session relating to energy, and the housing one to see what kind of criteria we put forward.

Assemblyman Livermore:

I have been through this process a couple of times. The public wish to see records of what you are loaning people. You understand that an applicant will probably have to reveal their last three years' tax returns and a lot of things included with that. Local governments or redevelopment agencies are going to have to develop some criteria to make sure that the public is comfortable with loaning their money.

Assemblywoman Kirkpatrick:

I do put that information in there, but I keep going back to the fact that we already let them get all of that information without any transparency. This does require transparency. Section 6 of the bill requires them to put in some information, and honestly, I am happy to narrow it down for local governments. However, if they come to the table and say they do not support that, I am not sticking my neck out because I have done that before and watched my bill die slowly. Either I give them some flexibility or I tighten it up a little bit, but I think if we do not start getting in the revolving loan business and redevelopment, many redevelopment areas are getting ready to expire. If this body does not re-up them, then what? We will have no dollars.

I do not mean to be snippety. However, I am trying to help local government, and after all these years, they have beaten me down to where I am giving them some flexibility. It is interesting that I have more local governments telling me they do not want it, but I bet the redevelopment agencies want it.

Assemblyman Livermore:

I applaud you for your efforts. I am just trying to voice a couple of concerns. When you hold an open public meeting, the public is going to demand certain things from the local government. I applaud your commitment to this, and I applaud any opportunity for local governments to operate, whether it be to cure the blight or to enhance economic growth. I think it is a wonderful tool.

Assemblywoman Kirkpatrick:

I am good at admitting defeat. I am tired of being labeled as an anti-redevelopment person. Yesterday I had a group in my office who reminded me that I am labeled as an anti-redevelopment person. I would just like a little bit of transparency. This was within the ability to let some of these agencies have their own flexibility and to show that I am truly not anti-redevelopment. However, somebody has to start paying some of this back.

Vice Chairwoman Neal:

I know in section 5, subsection 3, you are trying to give flexibility for the redevelopment agencies to adopt regulations. Is there any consideration as to what the market rate should be, like if it was 2 percent less than the market rate for the loans or in terms of giving them a maximum cap for the amount of the loan in subsection 4? Also, are you trying to have some uniformity throughout the agencies regarding the application process and what the application would look like so there is not a different application in Henderson versus Las Vegas? Those were the things I noticed there might be an appetite for.

Assemblywoman Kirkpatrick:

I am happy to go back and look at section 5 as a whole, and I would like to hear what local government says. I do not know how to make the application exact because different local government entities are going to have different requirements based on the dollars that they have available. For example, if Elko only had \$1 to put in their revolving loan and Las Vegas had \$5 million, there would be different requirements. I think that the applications should require some basic information, but I do not know if they could be uniform.

Assemblyman Munford:

If one of my constituents came to me and said they wanted to start a small business, they could go to the local entity and complete the criteria to become eligible. Does that mean this gives them an opportunity to start a business?

Assemblywoman Kirkpatrick:

That is correct. It gives them an opportunity to start a business within a redevelopment area.

Assemblyman Munford:

I know my district is a redevelopment area.

Assemblywoman Kirkpatrick:

This would give them the ability to get a leg up.

Assemblyman Munford:

That is what I am saying. This is a step. They can have an opportunity.

Assemblywoman Kirkpatrick:

Correct.

Assemblyman Munford:

Really? Why do people not do it all the time?

Assemblywoman Kirkpatrick:

They would still have to work through this criteria.

Assemblyman Munford:

It sounds great.

Assemblywoman Kirkpatrick:

It is an opportunity.

Vice Chairwoman Neal:

We will shift to testimony in support.

Scott Carter, Vice President, Redevelopment Association of Nevada:

The Redevelopment Association of Nevada comprises public and private sector members involved in redevelopment issues throughout the state. Our members are City of Boulder City, Carson City, City of Elko, City of Ely, City of Henderson, City of Las Vegas, City of Mesquite, City of North Las Vegas, City of Reno, City of Sparks, and our associate member RAFI Architecture. The Redevelopment Association of Nevada supports A.B. 417. We appreciate the flexibility that has been written into this bill.

We would like to express a few enhancements for your consideration. "Small business" in Elko does not have the same definition as "small business" in Reno. We would like to consider the U.S. Small Business Administration guidelines for defining "small business" and also setting term limits as a potential template. As agencies report to the Legislative Counsel Bureau (LCB), we think it would be meaningful to report a status of the loan either current or delinquent. Because of the downturn in the economy, not every redevelopment agency has the financial capacity to fund this program. If I have outstanding bonds, I have obligations to those bondholders, and by requiring me to put money into this program, I can see that potentially compromising the commitment that I have already made. Providing the agency with the authority to create this program would be very successful as opposed to requiring an agency to create the program. We see this program as a valuable redevelopment tool. We hope you will consider allowing the program to operate to the sunset date of a redevelopment area. The Redevelopment Association of Nevada offers to you its collective knowledge and experience in promoting the success of this bill.

Vice Chairwoman Neal:

Based on your testimony, you are offering some amendments. They are not actual insight.

Scott Carter:

We are expressing enhancements that we would suggest, yes.

Vice Chairwoman Neal:

We know you like the bill, but you are offering some changes. Based on our rules, I have to reclassify you. I will put you in opposition, although we know you support. You have more than three enhancements. This is for the record so we understand there were changes suggested to the original language of the bill.

Scott Carter:

As long as it does not change our desire to promote the success of this bill.

Vice Chairwoman Neal:

We will make sure that desire is expressed in the record. Thank you.

Assemblywoman Bustamante Adams:

All those entities that you listed as members, you are speaking on behalf of all of them. I take it that they support the bill with your enhancements, correct?

Scott Carter:

Yes.

Assemblywoman Bustamante Adams:

How do you become a member of the Redevelopment Association of Nevada?

Scott Carter:

There is an application. We evaluate it as a board. There is an application fee.

Assemblywoman Bustamante Adams:

Could I have the list of the members of the Redevelopment Association? I want to make sure I understand who is included.

Scott Carter:

I will do that.

Vice Chairwoman Neal:

We will go into opposition now.

Mary C. Walker, representing Carson City, A Consolidated Municipality; and Douglas County:

We agree with the discussion from the Redevelopment Association of Nevada. Some of the concerns in regard to the bill include administrative time and expense to set up the program. I think the biggest problem that I have heard from Douglas County and Carson City is that we are not bankers and have never done this type of thing before. South Lake Tahoe, California had a similar type of program, but when the economy declined, the redevelopment agency became responsible for foreclosing on properties and filing liens. Those are not things with which we are experienced. We have some concerns in regard to that. We do agree with the Redevelopment Association of Nevada wanting to make this enabling, but I understand Assemblywoman Kirkpatrick does not really want to do that.

I very much appreciate how this bill was drafted. It is broad. I know that is difficult for you and there are a lot of questions about it, but Assemblywoman Kirkpatrick is absolutely correct that this kind of program in Carson City or Douglas County would be much different than a program set up in Las Vegas. By keeping it broad, you give the redevelopment authority, who are elected officials in most cases, the opportunity in public hearings to establish the program and make those policy decisions with the community. Also, you give them the opportunity to work with the local banks. For 12 years I was Carson City's finance director, and for about a six-year period I was also Carson City's redevelopment director. We worked very closely with the local banks on how to stimulate local businesses and how to stimulate the banks to give loans to blighted areas in particular.

I think this is a good way to do a public/private partnership. We just have concerns because we are not bankers, and we may have some problems with that coming down the line. I do very much appreciate the flexibility Assemblywoman Kirkpatrick has given us in this bill to create our own programs.

Assemblywoman Bustamante Adams:

Yesterday, I attended a redevelopment authority event. Douglas County was there. They are hungry for this. I hear your administrative concerns, and I think this is broad enough that it can be flexible. I cannot speak for northern Nevada, but that is what I heard. I just think that you have done an amazing job of establishing yourselves. I think, honestly, this would fit really well into your portfolio of what you are doing for the northern part of the state.

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

We are in opposition to the bill but in support of the concept. We believe that this is a good tool, and rather than just giving somebody something, you are giving them an opportunity to get started and then pay that something back. I think that is a critical point that should be made about the whole concept of a revolving loan account.

I wanted to focus on two different items. Assemblyman Daly brought up the issue of NRS 279.500, and it is our belief that making these loans at or below market rate is an activity that is a financial benefit to an organization in a redevelopment zone, and those provisions should apply. Additionally, I wanted to touch on the amendment that has been submitted by the City of Henderson ([Exhibit J](#)). I realize that I may be putting the cart before the horse, but I do have a concern with one of the provisions of their amendment [[Exhibit J](#)], page 4], which incorporates an amendment that had been submitted

by the Clark County School District (CCSD). What we are concerned with is that in blighted areas contained within redevelopment zones, there are existing school facilities, educational facilities, and they should really be the priority when you talk about the 18 percent carve-out for improvement and rehabilitation of those facilities. With their amendment, it would also allow the redevelopment zone to increase the physical number of the educational facilities, and we do not think that should be the number one priority. We believe that the number one priority should be rehabilitating existing facilities first. I did speak with Ms. Rourke about that, and I believe that is their intention. However, it should be clarified if this is to be included in the statute.

Assemblywoman Bustamante Adams:

Thank you so much for understanding that opposition is not the end. It is constructive criticism for those who offer solutions.

Vice Chairwoman Neal:

I am glad you brought that up because CCSD's amendment is in conflict with language that is in Assembly Bill 50, where there is a set date with the 18 percent. It is supposed to start up in 2031. That date is not here, and increasing the number of public educational facilities is also new language that is not in the City of Las Vegas' A.B. 50. That is up for discussion, but we will have that discussion when they come to the table. Thank you for your testimony. I am trying to figure out if City of Henderson is in opposition.

Assemblywoman Kirkpatrick:

Let me clarify, Madam Vice Chairwoman. Henderson has asked if they could put an amendment on the bill because it has to do with redevelopment. Before they do that, though, I want to address some of the issues before I leave. In all the years that I have done redevelopment bills, I have never heard of this statewide agency. I would love to have a conversation with them because I did not know that they represented all of these local entities. There would be no need for local entities to come up and speak because the Redevelopment Association of Nevada would be speaking on their behalf.

I do not take opposition personally because this is not my first rodeo with redevelopment bills. I am happy to kill my own bill before I say that you do not have to have a revolving loan. I do not know any agencies who would close their redevelopment areas because they do not have a dollar to set up this initial fund. In the past, we have had the opportunity to follow suits like other states and sweep that money from the redevelopment, but I truly believe in redevelopment, so I do not think we should do that. I think we should invest in redevelopment. I think we should invest in the smaller businesses. The person who has four or five employees in a small, already empty storefront

is going to bring some value to the state. I have issue with the small business definition because we are already helping those people with 50 employees. Tell me one that we have not helped. I can look across the state in redevelopment and see we have helped them all. We can do that today. This bill is meant for the little guy who needs a leg up to get started in the business world. Technology companies today do not have a lot of employees, but they pay some pretty good wages. That is an ever-evolving workforce these days. Those are the businesses that we should be focusing. I support my local, smaller businesses before I support the bigger ones. I believe everybody wants to do that or else we would not have redevelopment. You can look at other cities' redevelopment areas. Those are not your normal chains in those areas. They are off the beaten track. They are more localized, little stores that appeal to somebody. I think that is where people want to shop.

I do not take it personally. It is just that is not my vision. If this bill dies, I will just try next session. I will come up with something even better. I get that these folks are not in the banking businesses. I am a little scared when they talk like that because we are already loaning hundreds of millions of dollars across the state in redevelopment. We are giving it to them. There must be some kind of criteria to do that. Every governmental agency banks with somebody. I know they have been here before and asked if they could have their things sent to Arizona so that they can get a better interest rate. It is not like we have stupid people who know nothing about banking working for the local governments. I take that a little personally because it kills me to watch all these business license fees be banked out of Arizona. You know why we do that? We do that so that local governments can get better interest rates and can have accessibility to those dollars sooner.

We did that three sessions ago for them. If they do not have smart people in banking, I am happy to take that bill and bring it back tomorrow, saying to bank everything in Nevada where you know who your banker is. That brings a whole other issue to me. I have faith that local government has smart people who deal with dollars and know what kind of people we want to come here. We have fiscal people and economic development people within most local agencies. Otherwise we would not have all those departments.

I am feeling a little passionate about this, but I would rather not do anything further with this bill than pass something I do not believe in. I did say Henderson could bring their amendment forward because it is germane, and I think that everybody should have the opportunity to hear it. I would rather do it in the open than do it on the sidelines at the end of session.

Vice Chairwoman Neal:

Are you accepting everything that is in the amendment, or are you just willing to let the Committee hear Henderson's amendment?

Assemblywoman Kirkpatrick:

I am willing to let the Committee hear their amendment and have the discussion. Vice Chairwoman Neal, you have seen it yourself last session on redevelopment bills on the floor and behind the bar. Some nasty things came about. I would rather just be open and have it up front. Ultimately, I have a vision for a reason, and if other states can do it, why can we not?

Vice Chairwoman Neal:

What about CCSD?

Assemblywoman Kirkpatrick:

I will go with whatever the Committee feels is in the best interest of redevelopment. It is entirely up to you. I will work with Assemblywoman Bustamante Adams on the definition, and I will look at section 5 to clarify some things and put in the Nevada-based piece. There is only one thing I will not give on. I know there are more neutral people, and I am always open to open amendments. It is the behind-the-scenes amendments I do not like. Thank you.

Michelle Romero, Redevelopment Manager, City of Henderson:

We would like to thank the sponsor of this bill for the opportunity to talk about this amendment ([Exhibit J](#)) and the Committee for having us here today. We do have a short presentation ([Exhibit K](#)) that might give you some background on some of the things that we have done in the past for this.

To clear this up, our amendment is completely new language. It is not related to the loans. It is regarding resetting the base year to keep those redevelopment areas that are currently more than 10 percent underwater from becoming functionally obsolete. It does not extend the life of an area, but it helps the schools become whole, for those areas that do reset immediately, requiring them to set aside 18 percent to schools.

With that we will start the presentation. Redevelopment areas are formed through a public process, a comprehensive plan, and meeting legislatively established criteria. [Continued to read from presentation ([Exhibit K](#)).]

In Henderson, we have established some very comprehensive due diligence criteria for those applicants seeking any type of financial assistance from us. The applicants must apply for assistance. Applications are reviewed by a third-party financial consultant. We use the National Development Council.

They are a nationally recognized financial consultant that deals only with public entities. That enables any financial information of a personal nature to be kept personal and private; yet a recommendation is made so that we understand whether or not they are financially viable.

Requests for assistance are heard at a public meeting, and for small amounts of money they are heard at one public meeting. For larger amounts they are heard at two public meetings. Henderson does not provide up-front funding. [Continued to read from presentation ([Exhibit K](#)).]

In Henderson, we have five redevelopment areas, and while all of them have seen significant reductions in both assessed value and tax increment revenue, two are completely underwater [([Exhibit K](#)), slide 5]. Eastside's current year assessed value is \$38.2 million below the base year or almost a 12 percent reduction. Lakemoor is \$6.5 million below, equating to 68 percent below the base year. That means there is no revenue and there would have to be new construction of over \$150 million just to get out of the hole in Eastside. It is anticipated that with no new construction in Eastside, Henderson will not see redevelopment revenue until 2029, rendering redevelopment as a tool to be functionally obsolete. Nevada only has small amounts available for economic development. Therefore, redevelopment financial assistance has been very effective as a tool.

Vice Chairwoman Neal:

In the effort of time, when you get to slide 8, can we stop there and then get into your amendment?

Michelle Romero:

Yes. We have seen an uptick of interest of developers coming to look at some of the blighted areas and to bring projects, and they are having great difficulty getting financial assistance from the banks. They often come to us to look to fill that gap. With the reduction in the revenue that we receive, we are unable to fill that gap. It means that we are at risk of not being able to bring those new construction projects into the area, the new developments, and we are also, in some instances, at risk of not being able to pay bond payments.

We have an extremely viable project that is currently ready for our Eastside redevelopment area. It is called Union Village. It is a 150-acre, 3.3-million-square-foot, mixed-use medical services campus in Henderson that is approximately \$1.5 billion in construction. They have the ability to bring significant jobs to the order of about 15,000 and tax revenues over a long period of time, and they also have the ability to generate some medical tourism dollars for the entire state. However, they do have a financial gap. Nevada has

a "but for" clause. If they cannot have redevelopment and cannot move forward, that is when they are eligible to receive redevelopment dollars. This project has such high infrastructure costs that without our help it is highly unlikely that this project can be built to its full potential, which means the entire state will lose out. This is in our Eastside redevelopment area, and this is the one that is \$38 million below the base year.

Vice Chairwoman Neal:

Thank you for the presentation and trying to reduce the time because we have some Committee members who have to get to another committee. Let us go into your amendment and lay out section by section what you are trying to change or add to the bill.

Michelle Romero:

We are proposing to amend NRS 279.676 ([Exhibit J](#)). Subsection 1, paragraph (b), subparagraphs (1) and (2) establish when a tax roll will be equalized if an ordinance to reset an area has been adopted [([Exhibit J](#)), page 2]. Subsection 5 establishes the requirement that assessed value has decreased by 10 percent or more before an ordinance to reset can be adopted in any redevelopment area. In NRS 279.685, subsection 1, paragraph (a), subparagraphs (1) and (2) require that those areas that reset must set aside 18 percent toward public educational facilities regardless of their population [([Exhibit J](#)), pages 3 and 4]. Currently, the requirement set-aside is set at a population of 500,000, but if an area was to reset, then they would automatically have to do the set aside for public education. Subsections 4 and 5 just refer back to that subparagraph [([Exhibit J](#)), page 4].

Assemblyman Daly:

When you say "reset," what are you resetting? You are at an old tax rate. Are you going to reset to the new tax rate? Are you going to reset and take all the money this time? What are you talking about?

Michelle Romero:

When a redevelopment area is originally established, a base year is created. For example, in our downtown redevelopment area, that base year is 1995. All the tax revenue at that point is frozen. Anything below that base year continues to be distributed to those taxing entities that they have always been, and any incremental value then comes to the redevelopment agency and is reinvested into that area. What we are asking is for the values in those areas that are currently more than 10 percent below the base year to be reset to the year current. For example, in Eastside, that \$38 million gap would go away, and we could essentially start fresh.

Assemblyman Livermore:

You have multiple redevelopment areas. Could you comingling the accounts? Do you loan for money from one account to another district? How do you deal with that?

Michelle Romero:

Statute prohibits a comingling of funds, so all of the redevelopment areas are kept completely separate. We do not use one for the other.

Assemblyman Livermore:

How did you deal with business outside the redevelopment district that felt slighted because they could not apply to the city for funding?

Michelle Romero:

We have an economic development division, not within redevelopment, for the city that deals with other businesses outside of redevelopment area, and there are state incentives and other things that they do for those businesses. For those businesses within redevelopment areas, we have a separate set of incentives, and we really have not had any problems with complaints with one for the other. We are very good about laying out to a new business that is coming in what the benefits are for any particular area. They typically will gravitate toward the area that suits their needs the best and has the incentives that best help them with their particular kind of business.

Assemblyman Livermore:

I asked that because these things tend to just cannibalize from other areas of the city. The redevelopment area becomes the center of excitement, and then all you do is create new pockets of blighted area. I am just curious about how you dealt with a relocation of a business from three blocks away to within the boundary. I know that was part of criticism that we had.

Michelle Romero:

We actually have not had businesses relocate from one area to the other in Henderson unless they were expanding a great deal and needed a larger location or were opening a second location. We would not offer an incentive to one business to move from one area of the city to the other.

Vice Chairwoman Neal:

I would like for our Legal Counsel to deal with an issue concerning the amendment.

Jim Penrose, Committee Counsel:

I have not had a chance to review the amendment in depth, but based on your discussion of it, although it obviously relates to redevelopment and redevelopment areas, it does not seem to me to have any connection to A.B. 417, which relates to revolving loan accounts in redevelopment areas. That being the case, unless there is some connection, we would be precluded from drafting it as an amendment to this bill.

Lisa Sich, Principal Redevelopment Administrator, City of Henderson:

I would like to respond to Assemblyman Livermore's question about NRS Chapter 279, which requires the funds to be spent within or servicing the redevelopment area. It is NRS 279.486, which states:

Purchase and construction of certain buildings, facilities and improvements; contribution by and reimbursement of community or other governmental entity. 1. An agency may, with the consent of the legislative body, pay all or part of the value of the land for and the cost of the construction of any building, facility, structure or other improvement and the installation of any improvement which is publicly or privately owned and located within or without the redevelopment area. Before the legislative body may give its consent, it must determine that: (a) The buildings, facilities, structures or other improvements are of benefit to the redevelopment area or the immediate neighborhood in which the redevelopment area is located.

Vice Chairwoman Neal:

Could we address the germaneness issue?

Javier Trujillo, representing City of Henderson:

To provide a response to Mr. Penrose, we had been in touch with Assemblywoman Kirkpatrick's office, which was in touch with the LCB Legal; specifically, Ms. Erdoes, who stated that it would be fine to amend into this bill. However, we are happy to defer to the Committee and get in touch with Assemblywoman Kirkpatrick's office to confirm that.

Michelle Romero:

Using our Eastside example, currently, because it is so far below the base year, we are receiving no tax increment whatsoever, which means there are no dollars coming in at all. That means there is no money to be put into a revolving fund. Unless there is tax increment coming in, there is no money to put into a fund.

Vice Chairwoman Neal:

Thank you for that response. Now, I know that you did not know this bill was coming forward. However, you knew you had Union Village as one of your projects. When Las Vegas brought forth A.B. 50, asking for a tourism improvement district (TID), which they did not have or trying to basically change some of their pools, how come you did not work with them on their bill to try to get in it?

Javier Trujillo:

I believe there was conversation over the interim, but it was our understanding that part of that bill provides for an extension of time, where our legislation is not seeking an extension of time. We did not want to insert ourselves in that legislation. That is why we pursued an alternate route.

Vice Chairwoman Neal:

Okay. They had sectioned out Sparks and did caveats based on the population. With the TID language, it just seems like it would have been appropriate in that particular section of A.B. 50 to have this discussion. If you are missing tax increment dollars to move forward and do your project, regardless of the extension language in the back, there was a way to deal with it in the same way they dealt with Sparks. In your amendment, you are doing the caveats here, where the 10 percent base applies to certain populations. I thought it was interesting that, when we had another bill in the Senate side on redevelopment, we found out that Las Vegas actually has 598,000 people. It put them in between the two caps and, statutorily, not even really in this. No one has dealt with that issue at all. I was just trying to put that out there because the germaneness seemed like an issue to me, like this may not be the best vehicle for you to try to get this.

Javier Trujillo:

I believe this vehicle was selected simply because it opened up NRS Chapter 279. Again, that is what was shared with us from Assemblywoman Kirkpatrick's office and LCB.

Assemblywoman Bustamante Adams:

If we have the reset, is there not money already bonded against what you have taken out? What happens to that? Somebody is going to lose here. Originally, the way that I understand it, it was at a certain value. The assessed value has dropped. If \$100,000 has dropped to \$40,000, that \$60,000 is where the loss is. We are going to reset it to \$40,000. What happens to that \$60,000? I do not know if you have the formulas to look at it. It just concerns me.

Lisa Sich:

We had Applied Analysis do some of the formulating and calculations for us so we can make those determinations. Are you asking that if we reset, what happens going forward? How is the money redistributed? Is that what you are asking?

Assemblywoman Bustamante Adams:

I do not want to know how the money is redistributed, but there is a loss here. Who is going to recoup the loss? Are the bonds not already out on the money?

Lisa Sich:

There currently are no bonds issued in this redevelopment area. We were only seven years in for this redevelopment area. We looked at bonding two years ago right when the market started to really fail and redevelopment agency (RDA) tax increment went down so significantly for this redevelopment area that we could not see ourselves bonding. We went through the process and looked at it. We need to come to a point where we stabilize before we issue bonds, even though two years ago we did have some money to work with. We have not issued bonds.

Assemblywoman Bustamante Adams:

Going back to your applied analysis, you have the numbers on those, correct?

Lisa Sich:

That is correct.

Vice Chairwoman Neal:

Are there any additional questions? [There were none.] Is there any other testimony in opposition? [There was none.] Is there any testimony in neutral?

Terry K. Graves, representing Henderson Chamber of Commerce:

We are in support of A.B. 417 with the Henderson amendment. The Henderson Chamber of Commerce has had a long-standing, cooperative, working relationship with Henderson on economic development and redevelopment projects. Henderson Development Association is, in fact, a division of the Henderson Chamber and worked closely with Henderson's economic development department. Of course, as Assemblywoman Kirkpatrick pointed out, redevelopment is a strong aid to economic development by redoing the local entities' economically obsolete areas into a more desirable, attractive area. It certainly helps attract and recruit new businesses, not only to the redevelopment area but also to the city at large. If the issue can be resolved about the germaneness of this amendment, we would support the amendment to the bill.

Vice Chairwoman Neal:

Are there any questions? Seeing none, we will shift into neutral.

Nicole Rourke, representing Clark County School District:

We are neutral on the bill, and we are neutral on the Henderson amendment. We just wanted to bring to your attention a couple of things. Our understanding of their amendment to include an 18 percent set-aside for public educational facilities was that it was specific to the Henderson RDA. If it is not and is in conflict with Las Vegas' amendment to include a set-aside for public educational facilities beginning in 2031, then we would be happy to sit down and work with everyone and figure out what language works for each entity. We are just appreciative that Henderson is looking at making education whole and wanted to bring to your attention that. While the funds that are redirected from the school district and property taxes to partially fund the RDA are operational in nature, a set-aside would be capital in nature. It is specific to facilities. While we definitely appreciate looking at getting those funds back, we want you to realize that they will be repurposed.

Vice Chairwoman Neal:

Thank you for that comment. Are there any questions? [There were none.] I think the larger issue with this amendment and how it works is that Assemblywoman Kirkpatrick's bill applies to all redevelopment agencies across the state. On the surface, the insertion seems like it would apply to all, but there is some cleanup later.

Cadence Matijevich, representing City of Reno:

We are neutral on the original bill. Unfortunately, our redevelopment agencies are a few of those that are functionally obsolete. We service as a dead agency. We will be one of those that sets up the revolving loan account and probably only has a dollar to put in it, but we are optimistic that something will turn around. We appreciate having the extra tool in our toolbox when things get better. We are going to keep our fingers crossed.

To your most recent comment, the Henderson amendment, we would respectfully request if it is not reflected in there, that it not apply in Washoe County. Assemblywoman Bustamante Adams brought up some concerns that we would have. If you reset that base level, we do in fact have bondholders and others who would be looking and would potentially see that as additional tax increment they would be entitled to at the expense of other public entities in our county. We would respectfully request that if the Committee looks favorably on resetting bases for some redevelopment agencies, that it not be applicable in Washoe County.

Vice Chairwoman Neal:

Are there any questions? [There were none.]

Lisa A. Gianoli, representing Washoe County:

We are basically in the same position that Ms. Matijevich just mentioned. We are neutral on the bill but opposed to the amendment unless we can be taken out of it. We had had an agreement amongst ourselves already, and we do not want to undo that at this point, which is what this amendment would do.

Vice Chairwoman Neal:

Are there any questions? [There were none.]

Yolanda King, representing Clark County:

I would echo the comments made by the two previous speakers. We are neutral on the bill as written, but we oppose the amendment as written by Henderson.

Vice Chairwoman Neal:

Are there any questions? [There were none.] We can officially close the hearing on A.B. 417. I will open up for public comment. [There was none.]

Meeting adjourned [at 12:58 p.m.].

RESPECTFULLY SUBMITTED:

Maysha Watson
Committee Secretary

APPROVED BY:

Assemblywoman Dina Neal, Vice Chairwoman

DATE: _____

EXHIBITS

Committee Name: Committee on Government Affairs

Date: April 3, 2013

Time of Meeting: 8:07 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 285	C	Greg Smith, Purchasing Division	Testimony
A.B. 285	D	Gus Nuñez, Public Works Division	Testimony
A.B. 285	E	Keith Lee, Nevada State Contractors Board	Testimony
A.B. 363	F	Assemblyman Carrillo	Presentation
A.B. 418	G	Mike Cathcart and Richard Derrick, City of Henderson	Testimony
A.B. 418	H	Mike Cathcart, City of Henderson	Amendment
A.B. 417	I	Assemblywoman Kirkpatrick	Testimony
A.B. 417	J	Michelle Romero, City of Henderson	Amendment
A.B. 417	K	Michelle Romer, City of Henderson	Presentation