

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

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

The Senate Committee on Government Affairs was called to order by Chair David R. Parks at 1:37 p.m. on Wednesday, May 8, 2013, in Room 2135 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412E of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator David R. Parks, Chair
Senator Pat Spearman, Vice Chair
Senator Mark A. Manendo
Senator Pete Goicoechea
Senator Scott Hammond

GUEST LEGISLATORS PRESENT:

Assemblyman David P. Bobzien, Assembly District No. 24
Assemblyman Ira Hansen, Assembly District No. 32
Assemblyman William C. Horne, Assembly District No. 34
Assemblyman Harvey J. Munford, Assembly District No. 6

STAFF MEMBERS PRESENT:

Patrick Guinan, Policy Analyst
Heidi Chlarson, Counsel
Suzanne Efford, Committee Secretary

OTHERS PRESENT:

Joanna Jacob, Associated General Contractors, Las Vegas Chapter; Nevada Contractors Association
Boyd Martin, Associated General Contractors, Las Vegas Chapter; Nevada Contractors Association

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Sean Stewart, Associated General Contractors, Las Vegas Chapter; Nevada Contractors Association
Warren B. Hardy II, Associated Builders and Contractors of Nevada
Ted Olivas, City of Las Vegas
Craig Madole, Associated General Contractors, Nevada Chapter
Jack Mallory, Southern Nevada Building and Construction Trades Council
Paul McKenzie, Building and Construction Trades Council of Northern Nevada, AFL-CIO
John Griffin, American Council of Engineering Companies of Nevada
Yolanda King, Clark County
Jenni Eyerly, Nevada Department of Transportation
Tom Clark, Black Rock City LLC
Raymond Allen, Black Rock City LLC
Adam Belsky, Black Rock City LLC
Tray Abney, The Chamber, Reno-Sparks-Northern Nevada
Pat Irwin, Chair, Board of Commissioners, Pershing County
Jim Shirley, District Attorney, Pershing County
Jeff Page, County Manager, Lyon County
Joe Mortensen, Chair, Board of Commissioners, Lyon County
Jeff Fontaine, Executive Director, Nevada Association of Counties
Dan Love, Region 3 Special Agent-in-Charge, Bureau of Land Management
John Wagner, Independent American Party
Janine Hansen, Nevada Committee for Full Statehood
Craig B. Mingay, Deputy District Attorney, Churchill County
Brett Kandt, Special Deputy Attorney General, Office of the Attorney General
Chuck Callaway, Las Vegas Metropolitan Police Department
Robert Roshak, Nevada Sheriffs' and Chiefs' Association
John T. Jones, Jr., Nevada District Attorneys Association
Todd Koch, President, Building and Construction Trades Council of Northern Nevada, AFL-CIO

Chair Parks:

We will open the hearing on Assembly Bill (A.B.) 172.

ASSEMBLY BILL 172 (2nd Reprint): Revises provisions governing bidder preferences on certain public works. (BDR 28-110)

Assemblyman William C. Horne (Assembly District No. 34):

We passed A.B. No. 144 of the 76th Legislative Session which expanded existing bidder preference law to a 5 percent advantage when bidding on State or local projects.

It requires:

- At least 50 percent of all workers and design professionals employed for public work projects be Nevada residents and hold a valid Nevada driver's license or identification card.
- At least 25 percent of materials used in a public work project to be purchased in Nevada.
- Certain payroll records to be maintained and available in the Nevada.

As with any new policy, sometimes there are issues found during implementation and the Legislature must revisit the law in order to make necessary changes. Assembly Bill 172 makes technical changes to A.B. No. 144 of the 76th Session in order to ease compliance with the enacted regulations.

Section 1 of A.B. 172 revises the requirements for preference in bidding by limiting the requirement for design professionals to design-build teams and eliminating the requirement that a percentage of suppliers of materials used for the public work be located in this State.

The intent of these changes is to reduce undue burden on the general contractor. Since the general contractor is the one signing the affidavit required in section 1 and only has control over designers as part of a design-build team, the general contractor does not have any control over any designer who may have been hired directly by the public agency. Therefore, he or she cannot warrant whether the designer would have a Nevada driver's license. In addition, we are removing the percentage of materials requirement because many general contractors are having issues finding 25 percent of their materials in Nevada. Many manufacturers and retailers of materials needed for large-scale projects cannot be found in this State.

Section 1 also defines the term "vehicle used primarily for the public work" to clarify that the contractor and subcontractors, who received a preference in bidding on a public work project, must register all their construction vehicles in Nevada. It also allows flexibility for situations where a vehicle is used

incidentally, or where a contractor must use an out-of-state specialty contractor for a time. In addition, section 1 requires a contractor to meet those requirements only if the contractor was awarded the contract for a public project because of the preference in bidding.

This change is to remove undue burden on the general contractor. Under law, anyone submitting a bid on a public works project who wishes to receive bidder's preference would have to fill out and sign an affidavit saying he or she would comply with the provisions of A.B. No. 144 of the 76th Session, regardless of whether he or she received the preference. This creates unnecessary paperwork for the general contractor. Assembly Bill 172 ensures a smoother bidding process.

Law prohibits a contractor from being qualified to bid on certain State and local public works if the contractor has failed to comply with certain requirements within the preceding year for a public work contract that costs more than \$25 million. Existing law also prohibits a contractor who has failed to comply with certain requirements for a contract which exceeds \$5 million from receiving a preference in bidding for a public work for 5 years.

Instead, sections 3 through 8 of A.B. 172 condition those prohibitions on a material breach of a contract for a public work which exceeds \$25 million or \$5 million, as applicable.

The reason for this change is to reduce undue burden on the general contractor. With the added provisions of A.B. No. 144 of the 76th Session, the general contractor runs a risk of losing his or her privilege to bid on a public works project by having 51 percent of workers who are non-Nevada residents. This was an unnecessary consequence because the contractor is still liable to the public body for a penalty in the amount of 1 percent of the cost of the largest contract to which he or she is a party. For this reason, we limited the contractor's ability to lose a contract to a material breach of that contract.

Section 9 of this bill provides that the revised requirements for a preference in bidding on a contract for a public work apply to any public work that is first advertised for bid after July 1. Section 9 also declares that any contract for such a public work that fails to comply with this bill is void.

In addition, a conceptual amendment to A.B. 172 ([Exhibit C](#)) came to our attention earlier today. In section 5, subsection 13, lines 23 and 24, as well as section 7, subsection 13, lines 30 and 31, change the words "A person or entity who submitted a bid on the public work ... ," to "A person who submitted a bid on the public work or entity"

The reason for this change is to make these sections consistent with section 1, subsection 3 of the bill. This is to allow a third party to file a complaint if he or she believes a contractor who received a bidder's preference has failed to comply with paragraphs (a) through (d) of section 1, subsection 1 of this bill.

Senator Hammond:

What is the background of the definition on page 5, section 1, subsection 8, paragraph (b) that reads:

"Vehicle used primarily for the public work" does not include any vehicle that is present at the site of the public work only occasionally and for a purpose incidental to the public work including, without limitation, the delivery of materials.

What do you mean? How is that going to work in the field?

Assemblyman Horne:

There are instances when vehicles on projects are incidental to the projects. Contractors did not want any negative consequences for having a vehicle on the project site from out of state. We had difficulty defining about which vehicles we were talking. Are they just delivering materials? Some materials that we cannot obtain in Nevada have to be transported here. Some of those transport vehicles may not be in-state vehicles. This is to give them some latitude.

Senator Hammond:

I welcome their interpretation of this because it is important to get it on the record.

Joanna Jacob (Associated General Contractors, Las Vegas Chapter; Nevada Contractors Association):

For approximately 8 months during the interim, Boyd Martin worked diligently on this issue along with Assemblywoman Marilyn Kirkpatrick and Assemblyman William C. Horne. We had working group meetings attended by

contractors, representatives from Associated General Contractors (AGC), Las Vegas Chapter; AGC, Nevada Chapter; the design community; and public agencies including the City of Las Vegas, Clark County, the Southern Nevada Water Authority, the State Public Works Division, the City of Henderson and the Nevada Department of Transportation. All the stakeholders came together with the goal to make A.B. No. 144 of the 76th Session more workable for everyone.

After the initial hearing on A.B. 172 in the Assembly, a group came together to work out any remaining issues on the bill. The version before you and the conceptual amendment, [Exhibit C](#), are a product of the agreement reached at that meeting.

This bill passed out of the Assembly on a split vote. We followed up with all of the Republican Assembly members after that vote and learned it was due to a misunderstanding because they believed the bill had not yet been finalized. Today, there is strong bipartisan support for this measure.

Boyd Martin (Associated General Contractors, Las Vegas Chapter; Nevada Contractors Association):

The goal we had to define the language further is specific to what has been referenced by Ms. Jacob and Assemblyman William C. Horne. There are occasions when we are required, through specification, to use contractors and material suppliers not available in Nevada. Due to the language requiring all vehicles be licensed in this State, we did not want to get into a situation where we were complying with the contractual requirement but violating the statute. Therefore, this language was drafted in order to give us some leeway and allow us to occasionally have out-of-state vehicles on a job site from either material suppliers or subcontractors that we had no choice but to use because of the specifications. That was the intent of the further clarification.

Senator Hammond:

I appreciate your clarifying that issue.

Sean Stewart (Associated General Contractors, Las Vegas Chapter; Nevada Contractors Association):

I will echo the comments made so far. Much work and effort have been put into A.B. 172. It represents good feelings across the industry by addressing the issues created by A.B. No. 144 of the 76th Session.

Ms. Jacob:

We support the conceptual amendment as testified to by Assemblyman Horne. This is something to which we had agreed in the meeting we had with all the stakeholders after the Assembly hearing on the bill. We have restored the ability of a third-party entity to file an objection. It was merely an oversight that has been corrected with the conceptual amendment and becomes consistent with the rest of the bill.

Warren B. Hardy II (Associated Builders and Contractors of Nevada):

We support A.B. 172.

Ted Olivas, City of Las Vegas:

We, too, are in support of this bill and the amendment.

Chair Parks:

There is a fiscal note attached to this bill from the City of Las Vegas.

Mr. Olivas:

We submitted a fiscal note when the bill initially came out. We have since reviewed that and with this amended bill, we are fine with it.

Craig Madole (Associated General Contractors, Nevada Chapter):

We support A.B. 172.

Jack Mallory (Southern Nevada Building and Construction Trades Council):

We support this critical bill that cleans up some well-intended legislation from the 76th Session.

Paul McKenzie (Building and Construction Trades Council of Northern Nevada, AFL-CIO):

We support A.B. 172.

John Griffin (American Council of Engineering Companies of Nevada):

We echo the comments of everyone else and support A.B. 172.

Yolanda King (Clark County):

We, too, support this bill.

Jenni Eyerly (Nevada Department of Transportation):

The Nevada Department of Transportation takes a neutral stance on this bill. It is a good workable solution for our agency.

Chair Parks:

We will close the hearing on A.B. 172 and open the hearing on A.B. 374.

ASSEMBLY BILL 374 (2nd Reprint): Revises provisions relating to the authority of a board of county commissioners to regulate certain assemblies, events or activities. (BDR 20-520)

Assemblyman David P. Bobzien (Assembly District No. 24):

You have before you a policy question. I bring you this bill as a constituent issue. I have a number of constituents in my district who support and participate in the Burning Man festival each year. But also, and equally important, I have a number of merchants and businesses in my district that benefit greatly from Burning Man's approximate \$35 million economic impact on the State and the community.

Section 1 of A.B. 374 prohibits a county commission from regulating, licensing or requiring any type of permit or fee for organizing, managing or attending any assembly, event or activity occurring on federal land if a federal agency licenses, permits or otherwise authorizes the activity.

We are also presenting an amendment today ([Exhibit D](#)); therefore, part of section 1 will be changed. We are going to focus more on the events to address the concerns of the Nevada Association of Counties (NACO).

Section 1 authorizes a board of county commissioners to enter into an agreement to provide reasonable and necessary law enforcement services for activities licensed or permitted by a federal agency on federal land, and allows a county to receive compensation for providing those services.

With this legislation, it is not my intent to preclude services from being provided at the event nor preclude services from being properly compensated. There is a history of cooperation and ensuring those services are paid.

Lastly, section 1 provides that county commissions have authority to regulate, license or permit events taking place on federal land if the land is either under

lease between the federal government and the county or has been licensed by the federal government to the county for recreational or other public purposes. This was a change in the bill to address concerns from Clark County.

Section 2 adds conforming language regarding the adoption of county ordinances.

Section 3 does the same with regard to obtaining a license from a county commission for an outdoor assembly.

Section 4 adds conforming language to chapter 244 of the *Nevada Revised Statutes* (NRS) to clarify that the prohibitions listed in paragraphs (a) through (g) in that section, which apply to events licensed by the county, do not apply in the case of an event licensed by a federal agency.

In addition, I have submitted my written remarks ([Exhibit E](#)).

Tom Clark (Black Rock City LLC):

We amended the bill in the Assembly because we wanted to make it clear that we are not, in any way, taking away the ability of local governments to be compensated for services they provide for activities that take place on federal land.

We have spent numerous hours over the last 6 months working on this bill. In the last week, we worked with law enforcement, Pershing County, NACO and the federal government to address their concerns. The result of this is the amendment before you, [Exhibit D](#).

We also worked with the Attorney General's (AG) office. The AG has proposed a friendly amendment ([Exhibit F](#)) which we support. It should be adopted to allay the AG's concerns about this bill.

Raymond Allen (Black Rock City LLC):

In order to understand from where this bill is coming, it is necessary to understand the permitting scheme for events on federal land. Remember, this bill is targeted specifically at events on federal land.

In 2010, Burning Man applied for a permit from the federal government to use the Black Rock Desert in Pershing County. One of the first things the federal

government did was to publish a notice to hold scoping meetings to address local concerns in order to mitigate them as well as to review County costs and how the County could be compensated.

We had a meeting in Lovelock with representatives from the Pershing County Board of Commissioners, the Sheriff's Office and the District Attorney's Office. I have a letter from Pershing County stating that the Commissioners' primary and sole concern is to ensure that the services for the Burning Man event are not compensated from the taxes paid by the citizens of Pershing County. Therefore, during the next 1.5 years, the Bureau of Land Management (BLM) worked that into the agency's environmental assessment scoping process.

A report analyzed the cost of our event on the County. The report had a section on local law enforcement. That 1.5-year process resulted in a published environmental assessment, which is on the BLM Website, as well as a set of stipulations that apply to the Burning Man event ([Exhibit G](#)). Those stipulations require that we get a contract with Pershing County to address all of the County's costs, not just for law enforcement but also other event-related costs. We have complied with that process every year since BLM required us to do so.

The first year we did that was 2005; however, we have not done it for 2013 because we are dealing with issues in a lawsuit outside the context of this hearing. We have also been reviewing this bill and how to clarify a process already in place under Title 43 CFR Part 2930, subpart 2932 that applies in all states in which the BLM has land. It covers all events, not just Burning Man, that take place on federal land within counties.

There already is a process that works in which Pershing County participated. After that process, Pershing County officials decided to take a different position on NRS 244 that we are asking you to amend. They contend that they can participate in the BLM process and then institute a second process and bring up concerns not brought up in the first process.

This is not about money, but the opposition will tell you that it is. Since they will bring it up, I would like to say one thing about that. In a sense, it is about money because in one year, Pershing County doubled its costs and in the next year, it quadrupled its costs. The County will also tell you that it gave us a refund in 2012. That is correct. However, it did not give us a refund for 2011, nor have they accounted for the missing costs for 2011.

This is why A.B. 374 is necessary to clarify that a process already takes into consideration all the issues that any county could have regarding events on federal land. It is consistent. It is a single process that brings everyone to the table.

Mr. Clark:

We have modeled this bill after ordinances in Washoe and Storey Counties because they have similar language. This is not unprecedented. We are making it statutory across the board.

Senator Spearman:

You said that the lawsuit is outside the scope of this hearing. Is that because it is still pending or because that information is not germane?

Mr. Allen:

It is a little bit of both. The lawsuit is deciding monetary issues that exist between Burning Man and Pershing County. There is a forum for that.

The facts of our history between Burning Man, Pershing County and BLM overlap with this legislation. That is a part of this hearing. I would be happy to take questions on anything related to that history and how this all came to be, but we would not be able to answer anything regarding the pending litigation. However, we can navigate through that and answer any questions we can.

Adam Belsky (Black Rock City LLC):

There obviously has been some confusion about the scope of this bill and what it does and does not do. The bill has a narrow focus. It is about outdoor assemblies taking place on federal land, pursuant to a federal permit, with more than 1,000 people attending the event. It does not in any way involve or modify a county's existing mechanism for regulating mining, grazing or other activities on federal land. Its purpose is to clarify that no second, duplicative and potentially conflicting permit or license is required for the event to take place.

As Mr. Allen just explained, the comprehensive federal permitting scheme provides for extensive state and local involvement in the permitting process and for state and local concerns to be addressed, mitigated and compensated through contracts between the event organizer and the county.

Assembly Bill 374 does not take away any existing rights. It is modeled on ordinances that already exist in Washoe and Storey Counties. It clarifies, consistent with those counties' existing outdoor assembly ordinances, that when the federal government has issued a permit for an outdoor assembly on federal land, the county cannot impose its own duplicative and potentially conflicting permitting regime.

Nothing in the bill affects or in any way impairs a sheriff's right and duty to enforce State and local laws on federal public land. Nothing in the bill takes away the county's ability to be paid for those services.

To give you history, this process was in place and worked well from 2005 to 2011. Burning Man and Pershing County entered into an agreement in 2005 and then again in 2011 in which the County agreed the federal permit was sufficient and the County would not require Burning Man to obtain a second permit.

Burning Man agreed to make payments to Pershing County for the services the County provided. Under those agreements, Burning Man paid Pershing County \$66,000 in 2006, \$110,000 in 2007, \$148,500 in 2008, \$156,000 in 2009, \$166,000 in 2010 and \$175,000 in 2011. Everything was working fine.

In 2011, Pershing County decided that it no longer wanted to be bound by the two contracts entered into freely with Burning Man. The County declared the contracts illegal under Nevada law and that it would no longer comply with them.

The County amended its festival ordinance to require Burning Man to get a permit from the County, and it increased the fees from the \$175,000 that Burning Man paid in 2011 to \$450,000 in 2012 and to \$600,000 in 2013. These fee increases are the subject of the litigation between Burning Man and Pershing County. That fee dispute is not in any way affected by this legislation. It will be resolved by federal court litigation and not by this bill. This bill has nothing to do with that.

With Senator Spearman's invaluable help, we worked to understand the concerns that various interested agencies have about the scope and effect of the bill. We agreed to a series of amendments, both in the Assembly and today, to clarify the bill and address those concerns, [Exhibit D](#).

We agreed to delete the word “activity” from section 1, subsection 2, paragraph (a) to clarify that the bill only applies to outdoor assemblies and cannot be interpreted to apply to other activities that take place on federal land.

We have worked with the AG’s Office on the friendly amendment it will introduce, [Exhibit F](#), which clarifies that nothing in this bill is intended to affect the State’s existing immunity from liability.

In response to concerns that the bill only authorizes contracts between counties and event organizers for law enforcement and not for other services, we agreed to amend the bill to clarify that it is not limited to law enforcement agreements, [Exhibit D](#). Any services provided can be compensated through a contract between the event organizers and the county.

To address a concern raised by Clark County in the Assembly, we amended the bill to clarify that it does not apply to events on federal land that has been leased to the county.

In the lawsuit pending between Black Rock City and Pershing County, the judge issued a ruling on the defendant’s motion to dismiss. The judge dismissed the federal preemption claim, but he allowed the First Amendment and the breach of contract claims to go forward.

This is just a preliminary ruling at this point. The judge gave Burning Man permission to amend its complaint. The ruling is also subject to appeal. This issue in litigation will be ongoing for quite some time. We do not yet know what the resolution will be.

I understand that the Legislative Counsel Bureau (LCB) has issued an opinion about the Washoe County festival ordinance ([Exhibit H](#)). That opinion indicates confusion among the counties about how to interpret existing law. Washoe and Storey Counties interpret it one way. In fact, Pershing County, by practice, interpreted it the same way from 2005 to 2011. The purpose of A.B. 374 is to clarify the law in order to have one prevailing interpretation.

The State has a strong interest in clarifying the outdoor assembly’s law to give Burning Man, and other large outdoor events similar to Burning Man, certainty about the regulations that apply in order to allow these type of events to continue to take place in Nevada and benefit the economy.

Senator Goicoechea:

Is there anyone here from the federal licensing agency who could explain the steps of this process?

Mr. Clark:

There are people in the audience who could answer some of the technical questions that come up.

Senator Goicoechea:

We need to see all the hoops through which they have to jump to get through that process.

Senator Spearman:

You mentioned the benefit to the people of Nevada. If that is a financial benefit, what are we talking about? In the interest of transparency, I have a copy of the lawsuit, which identifies the provisions of the contract with respect to giving a portion of the proceeds to nonprofit groups. Can you give me an estimate of the amount for nonprofits and what it might be in additional revenue?

Mr. Allen:

We conduct a census every year to gather information from participants on what they spend in Nevada. Since December, a team of volunteers has been calling every business in northern Nevada identifying itself as a business catering to Burning Man participants. We have confirmed that \$30 million was spent by our participants in businesses in northern Nevada. That includes \$10 million spent at the Reno-Tahoe International Airport. Krys Bart, CEO of the Reno-Tahoe Airport Authority, corroborated that \$10 million.

Our organization spent another \$5 million in local businesses for infrastructural work such as water truck companies and fuel companies. We ran a search in our accounting database on northern Nevada zip codes. Much of this money goes to businesses in Reno, Sparks and Washoe County.

Some of the smaller rural counties may not have the casinos or other services that Burning Man participants use on their way to and from the event; therefore, we have designed a charitable donation program that focuses our charitable efforts in some of the smaller towns that were impacted. Since 2003, we have given over \$404,000 to charities in Pershing County. Our efforts are focused on

Pershing County; however, we also give charitable donations to nonprofits in northern Nevada. The total donations to those entities since 2004 is \$585,000.

Between the \$30 million spent by our participants, the \$5 million that we spend and the additional \$585,000 we have donated, we provide many economic, artistic and cultural benefits to Nevada.

Senator Hammond:

I am glad we are hearing this. I have spoken with both sides of this issue. I understand that at some point in the negotiations, there was talk about increasing admissions in order to pay Pershing County for public safety expenses. There was talk of a surcharge on admissions of 7 percent or \$7. What was your response to that?

Mr. Allen:

There is a threshold question. Is such a surcharge legal? Our pending lawsuit is reviewing that.

Senator Hammond:

Legal in what way?

Mr. Allen:

It affects First Amendment claims that are pending.

Mr. Belsky:

That is the issue. Under the First Amendment, it is unconstitutional to charge more than the necessary and actual costs incurred. Therefore, a per head fee beyond the actual, reimbursable costs is unconstitutional under the First Amendment. That is an issue in the lawsuit, which is being litigated.

Senator Hammond:

Does it have anything to do with being on federal lands and already having an agreement with the federal agencies?

Mr. Belsky:

No, it is about whether you can impose a fee on expressive conduct under the First Amendment regardless of where the event takes place.

Senator Hammond:

That will be interesting. Today in the Assembly, one of the leaders proposed another tax to be assessed on not only Burning Man but also other similar events. That will be another interesting dynamic to this.

Mr. Allen:

The first hurdle is getting through that constitutional challenge that is working through the court. The second hurdle is whether we can impose a surcharge to cover the County's costs. Every government agency has asked us that question.

We are looking at increases from the federal government and a Live Entertainment Tax (LET). We also have to deal with local tribes and every other government agency. Everyone asks why we do not add a small surcharge to take care of our issues. That will come up in the next couple of weeks. However, the LET mixed with what Pershing County wants to do under this vague statute and what the BLM is hitting us with could be an increase that we might not be able to cover. We want to continue our event and bring money into northern Nevada, but the combination of all those things could be lethal.

Senator Hammond:

The concern you have is not necessarily with the increase in charges, it is whether the surcharge is legal or constitutional. Is that correct?

Mr. Allen:

Both of those things are correct. We are reviewing both of them.

Mr. Clark:

It is important to understand that Burning Man is considerably different from every other major event in this State. There are no concessions. There are no other ways to make revenue to cover the fees necessary to allow the event to take place. We are looking at it from federal, State and local government levels, since the Live Entertainment Tax was brought up and introduced this morning, to ensure that we do not price this event out of existence. The last thing we want from Nevada, especially northern Nevada, is to put us in that position.

Assembly Bill 374 goes to that extent. It asks local governments to come to the table, as we did 2 years ago. We agreed on what will be reimbursed based on receipts presented by the County. The receipts could include the costs to provide law enforcement, health and human services, and all of the services

that the County has to provide to allow the activity to take place. It is a uniform policy across the State.

Mr. Belsky:

As stated in the bill, this should be done by contract, not by the County imposing something through its own separate permitting scheme.

Senator Goicoechea:

I have represented Black Rock and Burning Man in Gerlach for the last 10 years in Assembly District No. 35. You raised a constitutional issue. You make it sound as if you are not making any money out there. I know better.

Mr. Allen:

Senator Goicoechea, our financials are on our Website. Many people are doing the math. They are multiplying what we charge for a ticket times the number of people who come to the event, and the approximate resultant number is \$24 million. You will see that our expenses to put on this event come very close to that figure, and we are teetering on profitability.

Senator Goicoechea:

I have seen your financials in the past. You were turning a profit of \$45 million in some of those years. You were granting money to Gerlach and foundations; therefore, the money was there to do that.

Technically, under a federal permit, as part of your permit, you cannot affect local jurisdictions. I agree with you that Burning Man is great for Nevada. It brings millions of dollars into the State. We are in support of that; however, a jurisdiction cannot be impacted by your activities. That is part of the Code of Federal Regulations.

Mr. Clark:

The intent of this legislation is to make sure that local jurisdictions are reimbursed for the activity that takes place and the costs incurred within their jurisdictions. Every year Burning Man pays nine law enforcement agencies, whether they are the Highway Patrol that patrols the highway, the Investigation Division in the Department of Public Safety, the BLM or Pershing County Sheriff personnel that contract with the Washoe County Sheriff. We want to make sure, through this legislation, that all of those costs are reimbursed and the impact is minimal on the local jurisdictions.

Senator Goicoechea:

I appreciate that. That is what we all want. The bottom line is how we get there.

Tray Abney (The Chamber, Reno-Sparks-Northern Nevada):

We support this concept and this effort. You have heard many comments about how beneficial Burning Man is to the economy in Washoe County. For those of us who live up north, we see these people coming to town. They spend money. We definitely can tell when they are leaving town. They are spending money on the way out too. Many of the Chamber's members benefit from this event; therefore, we want to make it as easy as possible for these people to come here, participate and put on this great event.

Pat Irwin (Chair, Board of Commissioners, Pershing County):

We have never been opposed to bringing Burning Man into Pershing County. I have been out there 15 times during 15 separate events. I have enjoyed going out there and meeting the people. The artwork is impeccable. It is a group that everyone should experience. Therefore, I understand. We have never been the morality police or said we do not want this event. We want to ensure that we do not have expenses paid by our citizens. That is the bottom line.

The other issue is public safety. There are two sides to public safety. One is protecting those who live in and those who visit our community. We need to protect them both. However, on the other side, our sheriffs and law enforcement need to have enough people to protect them and back them up. When an incident occurs, we need to protect our own. Therefore, we bring in a national standard on what is enough law enforcement for an event based on certain numbers of people.

Jim Shirley (District Attorney, Pershing County):

I have submitted a presentation ([Exhibit I](#)). I echo the positive things Mr. Irwin said about Burning Man. We have had a productive relationship with Burning Man over the years; however, we would disagree with some of the comments made during the meeting, but that is counterproductive.

Assembly Bill 374 prohibits local governments from enacting ordinances restricting events and activities occurring on public lands.

In 1970, Pershing County enacted its first outdoor assembly ordinance. The majority of those provisions are still contained in the ordinance. Clark County also introduced its festival ordinance, which mirrored Pershing County's. At about the same time, almost all the counties adopted outdoor assembly ordinances.

In 1973, Nevada enacted two sections of law, one is NRS 244.354, which applies to county governments, and the other is NRS 268.429, which applies to city governments. These statutes provided a uniform, statewide application of outdoor assembly law for any assembly over 1,000 people.

Why are we here? We are here because proponents of A.B. 374 claim there is no uniformity in the statutes and this bill is needed to provide that. Our response to that is this is a federal lands bill because it affects federal lands by restricting county authority. This is contrary to NRS 321, which provides for coordinated management of federal lands.

The proponents cite Washoe County's ordinance as the basis for what they are doing. We submitted the LCB opinion, [Exhibit H](#), from April 18 which states that Washoe County had public lands in its ordinances until 1997 when that provision was eliminated and two separate ordinances were created. One excluded Washoe County parks, federal, state, tribal and trust lands. The other was applicable only to Washoe County parks.

Looking at that scheme, page 2 of the LCB opinion in [Exhibit H](#) states,

In order to comply with the provisions of NRS 244.354, Washoe County [*sic*] must adopt an ordinance regulating and licensing outdoor assemblies at any outdoor location. Because the Washoe County code does not address outdoor events proposed to take place on State, trust, tribal or federal lands, it is the opinion of this office that Washoe County is not in compliance with statutory provisions regarding the regulation and licensing of outdoor assemblies.

The LCB opinion is clear and concise. There is no ambiguity in State law. Perhaps this issue was overlooked by Washoe County when it made the initial changes to its ordinances and did not come back to it.

Pershing County, in dealing with federal lands, defers to the BLM for any conditions that are the same. The NRS states that we may impose certain conditions; but if those conditions, such as water or sanitation, are the same as BLM's conditions, we adopt the BLM regulation.

Mr. Shirley:

In the Assembly, the proponents of A.B. 374 argued that preemption was the issue. As they have said, the federal court stated that the preemption claims Black Rock City had were dismissed. Something else might happen in the litigation. However, you have to understand that a Federal Rule of Civil Procedure 12(b)(6) "Failure to State a Claim for which Relief can be Granted" motion to dismiss is rarely granted and highly disfavored by the courts. We prevailed on that because the court found that the facts and the law did not justify the claim made.

Making a ruling to dismiss the preemption claim brings up the issue of double regulation that was mentioned earlier by Mr. Belsky. Chapter 321 of NRS states that the goal of Nevada law is to provide coordinated management of federal lands. Ordinances regarding assemblies allow us to have coordinated management of federal lands. There is no reason that an assembly in the middle of the desert should be treated differently under Nevada law than one that occurs in the city or just outside of a city. They should be treated the same. Therefore, all events should have to show their impact on local governments.

Business licensing is an area where State and county governments have a dual role with BLM. This is not a federal issue. A business license is required at the State, county and city government levels. They all have different impacts. However, on federal lands, think of geothermal, wind, solar, building permits and planning in counties in which there is dual management and dual permitting processes. The BLM defers to the county on fireworks, burn bans and the regulation of qualified public roads under federal Revised Statute 2477. The Bureau of Mining Regulation and Reclamation, Division of Environmental Protection, State Department of Conservation and Natural Resources does everything the BLM does regarding mining on public lands. The Bureau of Mining Regulation and Reclamation oversees drilling, mining, milling, air pollution, reclamation and water quality, which are all things the BLM oversees. If a mine does not get a permit from the State, it cannot go forward. It is dual regulation; however, it allows impacts on local and State issues to be addressed that the BLM does not address.

Our primary concern in the counties is public safety. The crux of the Burning Man issue is money. We are being told that Burning Man will leave because of the Pershing County fee increase. That is not true, and if you take a closer look at the money, Pershing County is charging less than 2 percent on gross receipts. It is not that much money compared to everything else.

In contrast, the County is concerned about cost recovery. Supplying law enforcement at Burning Man for a population 10 times that of the County is expensive and difficult. The event is 2 hours away from the Pershing County seat. It takes 2 hours for law enforcement to respond to Burning Man.

Can you imagine applying that same ratio in Clark County? It would be a 21-million-person event. In Washoe County, it would be a 5-million-person event. Can you imagine the strain that would have on local government? The counties should have a seat at the table and have someone obtain a permit or a license to give the counties authority over what transpires.

The proponents are correct that Pershing County gave Burning Man a refund from the Sheriff's budget of \$43,000 in 2012. That means the Sheriff's Office was watching its money and not out to make a profit. In fact, in the next week or two, a \$6,300 refund goes to Burning Man in anticipation of an after-event investigation.

Mr. Shirley:

The ultimate issue for the County is public safety and having sufficient law enforcement on the scene to deal with problems. Think of Columbine High School with an active shooter; think of the Boston Marathon; and think of Sandy Hook Elementary School, another active shooter event. Public safety at an event of 70,000 people is critical, and we should have appropriate government services to deal with it. Burning Man wants to do it by contract. Pershing County and I understand their concerns, but that is not the way government should work. Government should operate independently and determine what services are needed. That is what should be required.

There is little or no economic benefit to Pershing County from the Burning Man event. However, we are happy for the revenue for Washoe and Lyon Counties. If that money were coming into Pershing County at the 6 percent tax rate of Washoe County, it would cover the law enforcement for the event. We do not have that economic benefit. We are charging less than the actual cost of the

services provided to the event. We are not charging for the costs to house and feed someone or to have to transport someone to the doctor. A deputy has to do those things. Regardless of the 6 percent tax on money spent in Washoe County, the participants still spend money.

If we are looking at the total number of officers, our numbers are reasonable. Clark County's ordinance provided for 1 officer for every 500 people. Pershing County is providing the same. If the BLM is involved, we increase the ratio to 1 officer per 1,000 participants in order to have coordinated management of the event. The true numbers, even when you get to that number of 1 per 1,000, would be 60 county personnel for 60,000 people. We have less than 60 officers on the street. We have dispatchers, people in the jail and transport officers to transport people from Black Rock City to Pershing County. We have 48 or 50 officers.

Law enforcement is conducted 24 hours a day for 8 days during the event, prior to the event and after the event. The most officers we have on duty at one time is 1 officer for every 2,500 participants. Law enforcement would tell you that the optimal number is 2 officers per 1,000 participants. We do not get close to that. The other 12 hours of the day we have 1 officer per 5,000 people; however, that does not include Burning Man.

Pershing County has at least 1 officer per 2,500 participants for 12 hours at Burning Man; BLM has 1 officer per 1,714 participants. Together there is 1 officer per 857 participants. This starts to become reasonable. Next year, there will be 68,000 participants at Burning Man. The numbers would be 1 officer per 2,833 participants for Pershing County; BLM would have 1 officer per 1,943 participants; and together there would be 1 officer per 1,133 participants.

If you were to compare that to Mardi Gras, Mardi Gras has about 1 officer for every 450 people. Mardi Gras occurs in New Orleans, a city with better backup systems. The city brings in state, local and federal officers to cover Mardi Gras.

When we talk about the costs, on page 30 of the presentation, [Exhibit I](#), the blue line on the graph represents Burning Man's payroll in 2007 and 2012, compared to BLM's payroll in green and Pershing County's payroll in red. The charge is small for the services we provide. Page 31 shows the percentage of increase in payroll from 2007 to 2012. Page 32 is a diagram of revenue for

Burning Man and the fees for Pershing County and BLM through the years up to 2013. The numbers for 2013 for Pershing County are projected.

Senator Hammond, you asked about a fee earlier. We advise Burning Man what the license fee is before they start selling tickets. Therefore, they can take whatever that license fee is, divide it by the number of tickets they are going to sell and know how much to increase the price. The increase is less than a hamburger or a gallon and a half of gas. Ticket prices have gone up.

Page 33 contains a comparison of Burning Man's projected revenue, expenses and salaries, and the BLM and Pershing County fees. The fees, as a percentage of their revenue, even in 2013, are under 2 percent.

Mr. Shirley:

Page 35 shows the costs for toilets in 2012, which was over \$800,000. The cost for all of our services was less than \$376,000.

Why are we here? There is no good reason for this bill. Burning Man has threatened to leave the State, but the Pershing County fee increase is less than \$5 per ticket. We should not be here.

The bottom line is that they are asking for a change in the law for one activity. We would be happy if you can find a way to apply this only to Burning Man. If you want to eliminate our right to regulate that event, do not take away the right of other counties to regulate similar events. If you want to put a knockout provision in the bill, we would put on the record that the Pershing County Board of Commissioners will hold a meeting next week and would be glad to opt out and not allow Pershing County to regulate Burning Man. We do not have any objection to doing that. Our objection is to eliminating the authority that has existed for 40 years.

We proposed an amendment to some of the proponents of the bill yesterday. We had a productive discussion. We ask you to empower the counties to make the choices they should make and not punish the counties because of some perceived thing Pershing County might have done or might have done wrong.

Ira Hansen (Assembly District No. 32):

I have been watching this carefully from the beginning. Until the admonitions from Senator Spearman, not much work went on behind the scenes. Despite

attempts by all parties to get together, it was clear there was no good-faith effort on the part of Burning Man people who thought they had this thing in the bag.

The idea that this lawsuit is somehow outside the context of this hearing is preposterous. What is unusual about this, from a legislative perspective, is how often we pass bills when there are federal lawsuits dealing with the same issues. That is why the opponents are pretending the lawsuit is somehow outside the context of the hearing. However, it is not.

If you read the issues addressed in the Burning Man lawsuit and the judge's responses, this bill deals with the exact same issue that is in federal court. Therefore, in effect, this is somewhat of a bill of attainder. If we assume that Pershing County is the bad guy and we pass the bill that came out of the Assembly, we are saying that Pershing County has done wrong before the issue has been heard in federal court.

On the money question, \$30 million is the low figure. We did some calculations. Burning Man is required to use a 3 percent figure to determine what to pay the BLM for the permit. So the amount is somewhere between \$40 million and \$50 million. Burning Man is making a considerable amount of money.

Senator Hammond brought up a very important point. Burning Man organizers have threatened several times to shut down the event if the fees keep increasing. In 2003, they were charging \$130 per ticket. There was a fuss because at \$130 a ticket, Pershing County wanted a \$7 fee. Burning Man said the County could not have that fee because it would shut down the event. In 2012, the fee for the ticket alone was \$300, and the tickets sold out completely. Organizers sold 68,000 tickets versus 38,000; therefore, the idea that if the government gets a bigger share of this that would drive this event out of business is ridiculous.

I also represent Washoe County. We do not want to have a financial impact on businesses. Clearly, the canard the proponents use that if fees are raised, Burning Man will go out of business is nonsense. Tickets sell out quite easily every time. Burning Man has more than doubled the fees—from \$130 in 2003 to \$300 in 2012. In 2003, the event's total payroll was just over \$1 million with 38,000 participants. Today, the payroll is just under \$8 million. Burning Man organizers are paying themselves well to run the same event.

The issue came up about the constitutionality of Assembly Bill 498 introduced by Assembly Speaker, Assemblywoman Marilyn K. Kirkpatrick. This is an interesting interpretation of the First Amendment, because the Speaker's bill, which deals with the issue of raising taxes on outdoor events, would not have gotten out of the LCB if it were unconstitutional to raise those taxes. That is another canard. There is no First Amendment issue. Governments have a legitimate reason to charge certain fees to cover legitimate costs.

ASSEMBLY BILL 498: Revises the tax on live entertainment to create the Nevada Entertainment and Admissions Tax. (BDR 32-1212)

I do not understand why Pershing County has to almost crawl on its belly and apologize when it does not get a single nickel from this event. Since when is it wrong for local government to make a little revenue off a big event that occurs in its county? Pershing County is being completely reasonable. It is only charging for costs, which are itemized for Burning Man. I am not sure why Pershing County is in trouble for that.

The other issue is the crimes that occur at Burning Man. If this is passed, the bill should indemnify Pershing County from the law enforcement responsibilities we gave them. *Nevada Revised Statute 244.354* is the law that Pershing County must follow: "The board of county commissioners of each county shall adopt an ordinance regulating and licensing outdoor assemblies." The minimum requirements are set forth. Pershing County is in trouble for obeying the very law we told it to follow.

Assemblyman Hansen:

For example, if a fee dispute between a plumber and the client cannot be resolved, it would go to court. However, the plumber's license is not taken away because the client believes he or she is being overcharged. This bill is taking away the right of the county to regulate an event on its land.

The AG's Office has introduced an amendment, which we have not yet seen, Exhibit F. One of our concerns is that this bill as written regulates all events occurring on federal land. Whether for grazing, mining or whatever, the activity would be exempt from any county oversight. It is a real big step backward.

We have been working for almost 50 years to regain and maintain some control over federal public lands in Nevada. We want to ensure that in the process of

making things fairer for Burning Man, we do not shoot ourselves in the foot and reverse 50-plus years of efforts to regain the right to our own public lands.

I requested the LCB opinion, [Exhibit H](#), because A.B. 374 is based on the fact that Washoe and Storey Counties had a different practice under NRS 244 than the other counties. In her opinion, Brenda J. Erdoes, Legislative Counsel, said the following:

... in order to comply with the provisions of NRS 244.354, the Board of County Commissioners must adopt an ordinance regulating and licensing outdoor assemblies at any outdoor location. Because the Washoe County Code does not address outdoor events proposed to take place on state, trust, tribal or federal lands, it is the opinion of this office that Washoe County is not in compliance with statutory provisions regarding the regulation and licensing of outdoor assemblies.

Storey County Commissioner Chair Bill Sjovangen advised me:

Storey County does not support this bill. If we can't control events, then we would not take responsibility for any emergency or emergency services. Storey County has minimal federal land, but what we do have is always being used for specialized events. Not allowing us to review and analyze the potential risk cost to the County is a dangerous proposition.

The idea that Washoe and Storey Counties are happy with the way things are going or that somehow they are doing what Burning Man wants is not true. Storey County rejects it and Washoe County does not comply with statutes.

This is all about money. This is about a big, powerful corporation flexing its muscles against a small county of 6,000 people. Pershing County's total budget is \$8 million, and it has been taken to federal court. Pershing County did not mention that it would have to pay as least \$200,000 in legal fees defending the fact that it has followed the laws we have supplied to the County. There is no way for the County to recoup those costs.

All the way around, you have at least a \$30 million to \$40 million enterprise paying minimal amounts to a County that is obeying Nevada laws. I strongly suggest that this bill die in this Committee because it is bad policy.

Senator Goicoechea:

If federal officers make an arrest, where do they take that person? They do not have facilities. Are they remanding them to Pershing County because it has jurisdiction?

Mr. Shirley:

Federal officers do not arrest on State law crimes. My understanding is that they transport the arrestees to Parr Boulevard in Reno to be housed at the jail there. Any State law arrestees go to the Pershing County jail.

Senator Goicoechea:

What are those federal officers arresting for if they are not under State law?

Mr. Shirley:

They are arresting under federal law for federal drug crimes or violations of the BLM regulations regarding the land because it is a National Conservation Area with specific requirements.

Senator Goicoechea:

I am sure getting drunk and disorderly, wrecks and other misbehaviors are happening out there. There is no federal code against that. If people are taken to Parr Boulevard, then they are being incarcerated in Washoe County.

Mr. Shirley:

Yes, there is a division there between the federal and county government at Parr Boulevard.

Senator Goicoechea:

How many can be housed there?

Mr. Shirley:

I do not know. That is beyond our expertise. I would say that all the State law crimes such as rapes and those types of things are State jurisdiction.

Senator Goicoechea:

Typically, the State makes most of those arrests.

Mr. Shirley:

There are rapes out there routinely every year and domestic violence cases. Those arrests come through State officers.

Senator Goicoechea:

We also have officers from the Investigation Division and Department of Public Safety.

Mr. Shirley:

You did until this year. They will not be out there this year.

Senator Goicoechea:

Would you expand on that, please?

Mr. Shirley:

My understanding is that the Investigation Division does not have the resources to send people to Burning Man due to budget reasons.

Senator Goicoechea:

I know they have had a presence in the past.

Assemblyman Hansen:

Information from the BLM federal register shows incidents that occurred at Burning Man requiring BLM law enforcement action include aircraft crashes; motor vehicle accidents with injuries both within and outside the event; fights; sexual assault; assault on law enforcement officers; reckless or threatening behavior; crimes against property; crowd control; issues associated with possession of alcoholic beverages; persons acting in a manner where they may pose a danger to themselves or others; possession; use and distribution of controlled substances; and increased use of public lands outside the event perimeter. There may be some moans and groans in the audience, but this is from the BLM's federal registry. These types of crimes are occurring out there. Obviously, a significant police presence is needed when you are dealing with almost 70,000 human beings.

Senator Hammond:

My question pertains to the additional \$7 cost you mentioned and now talking about a potential tax that would affect not only this event but also many others. You mentioned an opinion rendered by LCB about the tax proposed in A.B. 498.

When the opposition said that the pending court case does not have anything to do with the bill, I was skeptical but did not ask the question. You said it might have something to do with this bill. However, you think that perhaps that went through the minds of those who were drafting A.B. 498 for the Speaker.

Assemblyman Hansen:

That is another canard, a phony issue. There is no First Amendment issue on whether this can be taxed. The opposition is coming up with a reason to fight a legitimate tax. I was mentioning that the Speaker has a bill that adds a substantial potential tax to outdoor events.

Obviously, for that to get through the LCB, the Division screens for constitutionality. If this tax somehow denies the Burning Man people their free speech rights, I guarantee you that the LCB would have put a block on that law. Instead, it is fully drafted, and we will be hearing it in the Assembly soon.

The First Amendment issue is phony, and so the opposition is creating a reason not to pay the fees legitimately requested by Pershing County.

Senator Hammond:

The LCB does a good job.

Mr. Irwin:

When Burning Man was talking about dual permitting, one of the things we put in our stipulation is to ensure that if BLM has any portion of a permit issued to support that event, we do not touch it. There are things that we can do, such as person-to-person crimes, which the County has to control. The Sheriff does a great job out there. One of the things that we have been commended on every year is law enforcement.

The costs we have charged in the past are for the services upon which we have agreed. We need to have 1 officer per 1,000 participants. That is the minimum, and we have made that stipulation. We are not actually putting those people on the street. We are incurring those costs. We are not like Mardi Gras where

New Orleans has 1 officer per 500 people on the street. We are doing that as a cost-budget perspective. We are looking at coming up with a role, a national standard, of what we need to do and get that reimbursed.

Originally, we were at Burning Man for 8 days, now we are looking at the week before and the week after, and those costs have gone up. We have also had to incur the costs of workers' compensation. We have had all of the issues added to our budgets that we need to cover. We actually have done a better job of tracking. We have absorbed those costs in the past, and we do not need to absorb those costs in the future. That is where we are today.

Senator Parks asked us to talk with Assemblyman Bobzien, which I did today. Assemblyman Bobzien's focus is making sure that this event continues to happen. When BLM puts the Burning Man permit together, it triggers our permit in a friendly way. We have a great relationship with the people at BLM. They advise the County when there is to be an event such as motocross, which has an impact on the counties even though it is a smaller event. This triggers the County to contact the event planners and permit them to come across our roads. After the event, we conduct a review to determine if there was any damage or impact. We want to ensure that the process does not go away.

We do not issue dual permits. We have a permit and BLM has a permit. We permit different items and if there is a dual impact, we make sure that BLM takes precedence.

Burning Man spoke about the donations to our community. The huge donations are good for the community. We want to support Burning Man and keep the event coming to Washoe County, but we want to be reimbursed for any costs.

We request that this bill go away and be readdressed 2 years from now based on the pending lawsuit because it is conflicting. We need to wait and see where this falls.

Senator Goicoechea:

There is no doubt that Black Rock City lies within Pershing County's jurisdiction. The Sheriff and you, as a County Commissioner, are charged with the health and public safety of the residents of Pershing County. Unfortunately, you have 68,000 new residents for a week in September. I understand that; however, I cannot support anything that erodes that jurisdiction because that is the way

the State is set up and you are charged with public safety. You should go back to Burning Man and continue this. Just because we hear this today should not stop you from working on amendments.

Let us see if we can develop something that allows you to be whole. Let us move away from the jurisdictional challenge that A.B. 374 presents. It is not good for the State or you or I or this body. You should continue to work on it to find some middle ground. I am concerned about the challenges to jurisdiction for Pershing County or any other county in this State.

We have to go beyond Burning Man. We have all these Tough Mudder contests. There is one in Beatty and one in my jurisdiction with well over 1,000 people. Law enforcement and emergency services are required for those functions. If local jurisdictions do not have the right to participate or recover their costs, and, technically, they do not have the right to participate if they do not have the right to contract with event organizers, then the bottom line is: who is going to do it?

Mr. Irwin:

We had great conversations with BLM this morning. The people at BLM offered assistance in a way I had not heard of in the past which could help us reduce some of the costs and further negotiations with Burning Man. We are open to anything we can do to make this happen and make this friendly.

Senator Spearman:

Do you have specific numbers on the arrests made at Burning Man?

Assemblyman Hansen:

I do not at this time. I can provide that by working in conjunction with the Pershing County District Attorney. We can obtain accurate numbers, and the BLM can provide the numbers for the arrests they handled.

Senator Spearman:

I am looking for some numbers now because, since it is on the record, I would like to put this into perspective in terms of what happened. While I am doing that, what is the formula? Commissioner, you said you use a national standard formula to determine how many law enforcement officers you need.

Mr. Irwin:

Yesterday, we had a meeting with the executive director of the Sheriffs' and Chiefs' Association. He gave me the national standard the Association uses to determine values for cities, counties and other jurisdictions to create a sheriff's organization or a city police organization based on the population. That is an across-the-board-standard that we also use for events. It helped us put that into perspective. We are well below those numbers as well.

We have after-action reports for the Sheriff's Office that we can provide to you later. We will forward them to you.

Mr. Shirley:

We will get you those crime reports.

Senator Spearman:

I pulled up a preliminary report, but we need to double-check it. In 2012, there were 13 misdemeanor citations for possession of a controlled substance, 7 DUI arrests, 4 felony drug arrests and 4 arrests on warrant. There were also 472 traffic violations in the area between August 22, 2012, and September 6, 2012, by Washoe County. That is less than 1 percent.

Mr. Shirley:

Those are Washoe County's numbers and perhaps the Nevada Highway Patrol's numbers. There would also be numbers from the event from BLM, Pershing County and the Investigation Division.

Senator Spearman:

I am asking for that, not to challenge the veracity of the number of public safety officers you have, but to make sure everything is reasonable on both sides. I do not doubt what you say. When you are planning for an event like that, you usually take into consideration law enforcement response and emergency services that occurred in the previous year and extrapolate a number.

Another way of saying that is you may think it is 30 or 300 that you need based upon the actual arrests or emergency responses, maybe it is 350. I do not know. That information is probably germane to whatever formula you use.

Jeff Page (County Manager, Lyon County):

We support Burning Man. We receive a great deal of revenue in the Fernley and north Lyon County communities from Burning Man. My issues are not with Burning Man but with the content of the bill and things it addresses. I understand there are some proposed amendments that I have not yet seen.

One of the issues I have is with Assemblyman Bobzien's amendment to section 1 and how we authorize a board of county commissioners to enter into an agreement to provide reasonable and necessary law enforcement services for activities licensed for the assembly or activity. The language change not only authorizes but mandates parties coming into the county to enter into agreements. In the event they decide they do not want to enter into agreements, we have some control over that.

My concern and fear is that a large portion of Lyon County is owned by the federal government, whether it is the BLM, the U.S. Forest Service, the Bureau of Indian Affairs, the Department of Defense, Walker River Paiute Tribe, Yerington Paiute Tribe and a whole litany of acronyms. Each of those entities has its own regulations for special events that occur on its own property. The County ordinance charges a simple fee of \$100 for the permit process. Then we negotiate what it costs to provide services depending on the event.

We have an event every year called the Valley Off Road Racing Association Race, which is usually held on Memorial Day weekend. It is an off-road vehicle race with a limited impact to us for the public safety we must provide. Therefore, there is no cost. If the organizers were to add a large after-party event on BLM land, that would be a different story. We would have to provide law enforcement.

There was discussion earlier about BLM and its enforcement capabilities in Nevada. Neither the BLM nor the U.S. Forest Service is authorized under NRS 289 to enforce State law. When you see the numbers from the BLM register or the U.S. Forest Service register, those laws are the agency's own regulations or federal law. These agencies are not authorized to enact or enforce State statutes.

As we have gone through this process in the past on these issues, we, like Pershing, Churchill and Eureka Counties, have a small public safety component. We have to rely upon our friends and neighbors to assist us with large events.

Every year, Mason Valley holds Night in the Country, which is a 2-day, over the weekend, country-western concert. It started with about 3,000 people. This year we expect 10,000 people to come to Mason Valley. That will triple the population of the City of Yerington in a weekend. Because the concert occurs on our County Fairgrounds property, we do not have these issues. My point is that we have to reach out to Carson City, Douglas County, Storey County, the Nevada Highway Patrol and the Investigation Division to assist us with law enforcement.

The sponsor of that event pays the County, and we reimburse those agencies that are providing services. That is how it is done in rural Nevada. We are not Metro. We are not Washoe County. We do not have a wealth of employees to run those functions.

My concern is if this passes as presented today, it may limit our ability to go after those funds to reimburse our citizens. Then our citizens become irritated because we are a conservative county. Why are we paying our tax dollars to have this big party out in the middle of the desert when we are getting nothing out of it?

Lyon County does not have a fire department. It has four different fire protection districts operated under chapter 474 of NRS. As A.B. 374 is written, the Lyon County Board of Commissioners can enter into an agreement, but it cannot enter into an agreement for the fire protection districts. They have their own governing bodies to provide services to those events. Issues there have to be addressed. Other counties are in similar situations, such as Douglas County, which has two fire protection districts.

From our perspective, after what I have heard today, I am more comfortable with the bill. We could clean up language wherein it mandates that everyone enter into an agreement; we deal with those issues and address those special districts in our County that provide services to these events as well.

Senator Spearman:

When you reach out to friends and neighbors for assistance, how do you determine the salaries, workers' compensation and all the ancillary costs that go along with that? Is that something you determine prior to the event or do you estimate and then reconcile that with the actual costs at the end?

Mr. Page:

In the old days, it was a wild guess. Today, it is specific. Douglas County sends me a sergeant and five deputies at their actual hourly wages plus all the added benefits. When we get the bill, we charge the person putting on the event that dollar amount.

We are not making money; we are just breaking even. When everyone was fat, dumb and happy with lots of money, we helped each other out. Those days are over. Whether it is a not-for-profit event, which is the case with a Night in the County that the Boys and Girls Club puts on, or a for-profit activity, we still have to charge for that service so we can reimburse.

Joe Mortensen (Chair, Board of Commissioners, Lyon County):

Assemblyman Hansen covered some of the topics about which we were concerned. I agree with Mr. Page, our County Manager. One of the biggest concerns I have—that has not been mentioned—is the legal cost and its implications. One incident could cost a small county hundreds of thousands of dollars. We have a \$27 million budget. We just had to cut \$1.1 million, which meant reducing jobs. A \$300,000 or \$400,000 legal action could be devastating.

We have not mentioned the other costs, such as retirement and everything else that is involved. You do not consider the human resources departments and the prosecuting or defending attorneys. The list of expenses is long. Those should be considered. We should be allowed to be involved in the permitting process.

Jeff Fontaine (Executive Director, Nevada Association of Counties):

The Nevada Association of Counties is not opposed to Burning Man. We are not opposed to outdoor festivals on public lands, and we, like the counties, value the many significant benefits that Burning Man brings to Nevada.

We are opposed to A.B. 374 because it has broad and significant impacts to all the counties, potentially creates liabilities for counties and establishes a negative press for preemption of county laws.

Over 80 percent of the land in Nevada is managed by the federal government. In some counties, it is greater than 95 percent. State and local government authority over these vast amounts of federal lands is essential to the protection

of the health, safety and welfare of our citizens as well as economic development. We should seek more authority over public lands and not less.

The proponents say it is unworkable for a person to have to undergo two separate permitting processes and that the BLM permit process addresses all the county's concerns. We agree that there should not be conflicting requirements by the federal and county governments. The federal court recently ruled that Pershing County's ordinance was not in conflict with the BLM requirements. The Burning Man representatives indicate that they could comply with both the BLM requirements and Pershing County ordinance.

Counties should not always have to rely solely on the federal government to look out for their best interests or address all their concerns. The general terms of the BLM permit require that a person comply with all federal, state and local laws and ordinances applicable to the area or operations covered by the special recreation permit. That person wants the Legislature to do away with the very ordinance that is applicable to the operation.

An argument against the ordinance is that it gives the county veto power over the event. Special Recreation Permit Stipulations for 2012 Burning Man Event, [Exhibit G](#), require the person to complete formal agreements with all affected parties, including the Pershing County Sheriff's Department. The Burning Man representatives argue that this condition does give the county the ability to establish the requirements for law enforcement, including fees. If there is no agreement, then the BLM will not issue the permits. If it is true that no agreement means no permit, then the ordinance does not give counties any new or additional powers to stop this event.

Many outdoor events and festivals take place in Nevada. Some occur on private lands, some in city parks, some on State lands and those on federal lands; under A.B. 374, we would establish a different set of rules depending on where the event takes place. The bill would apply to all assemblies on federal lands regardless of the type of event or the associated risk.

We understand that Burning Man wants certainty. Ordinances based on specific standards—some of those you heard from Pershing County about law enforcement—apply to all festivals, and they bring certainty as opposed to having to negotiate agreements for each festival.

We have offered several suggestions that do not preempt county authority but would have addressed the Burning Man concerns. We agree that the Washoe County ordinance that does not apply to federal lands is probably fine as long as the counties decide whether to apply that ordinance.

You have already heard that Pershing County has gone on record as indicating that it would be willing to consider not applying its ordinance to Burning Man.

We are more than willing to continue to work with Burning Man to find a possible solution to this issue and other concerns.

Senator Spearman:

The issue for Black Rock is some type of certainty or stability with respect to cost from a business perspective. For the counties, it is an issue of domain, who has the right to say what happens and how it happens. If these two issues could come together based upon some documented formula that says these are the costs, and if there were to be a 5 percent or 2 percent or whatever increase per year, then at least that gives some certainty. You do not give up the authority of the county to regulate the goings-on.

Both parties are at the line. It just a matter of how do you really meet. Did I get any of that right? That is the question. Does it make sense?

Mr. Clark:

You are close. We are getting close to reaching some level of negotiated agreement on A.B. 374. It is important for the Committee to understand that it is not our intention to take any money out of Pershing County or keep the County from recouping all of its costs. We want that to occur. It is important. We want law enforcement out there.

I am not going into details brought forward on crime because they are not true. We can get some information to the Committee that refutes that.

However, you are right. We are both at the line and we are close. We can get there through the process you brought forward and through the legislative process in the coming days.

Mr. Fontaine:

I agree, and we commit to working to get there. We all want the same thing. We want Burning Man and other outdoor festivals to feel welcome in Nevada and that they are something we can support. We want to make sure that our counties can sustain hosting those types of events in Nevada and that they continue to exercise their authority over the federal lands.

We are close and are more than happy to work with everyone.

Mr. Clark:

There is a third party here on the BLM side. The BLM, the County and the event constantly work together. We brought this bill forward in July 2012 and started talking to the invested and interested stakeholders.

Before the event occurs, all of these agencies and counties get together and negotiate how all public safety assets work for the event. If the local government does not agree and we do not develop a plan that meets the stipulations of the federal government, the federal government will not issue a permit. We cannot push the counties out of the way. We have to have them at the table. When we have them at the table and negotiate a contract based on A.B. 374, if we can reach agreement, we have an event. If we cannot reach an agreement, we do not.

Senator Spearman:

In a cursory review of some statistics, when you take into consideration the areas that may have had some law enforcement activities, the number of arrests is about 2.5 percent for the entire event.

Senator Goicoechea:

If you can sell the tickets, it is appropriate to expand beyond the 68,000 participants. I know there are people who would love to attend and participate. It is a great function if you are into great functions like this.

The limiting factor in this is the BLM's capability and how much the Black Rock Playa can sustain. If you had 75,000 tickets this year, with the economy bubbling along, you could probably get there.

Mr. Clark:

You are right. The BLM is the governing agency that will be the determining factor for how we can expand. The environmental assessment is complete. We may get to the place where a complete environmental impact study needs to be done. We take good care of the playa and the Black Rock Desert. That is because of the relationship we have with the BLM, Pershing County, Washoe County and everyone else affected.

The environmental concern is way beyond what many people understand. It is the largest leave-no-trace event on earth. We are proud of that. We maintain that, we will continue to do that, and we look forward to working with other stakeholders to ensure that.

Senator Spearman:

Perhaps you can answer the question about the standard formula for law enforcement personnel. Uniform and nonuniform personnel are usually at events like this, and they need other accoutrements to carry out their duties.

Dan Love (Region 3 Special Agent-in-Charge, Bureau of Land Management):

Yes, there are, and I want to clarify that BLM is not taking a position on A.B. 374. I am here to answer any specific questions within my purview.

Burning Man is a unique event because of the remote location, the ever-changing population and the yearly theme changes. From a strategic planning standpoint, we look at what occurred in the previous year. We use our statistics as a basis for determining if we need an increase or a decrease in law enforcement. We also review the emerging threats that appear across the Country. We use all of those formulas.

You referenced a statistical formula. I have statistics from BLM for 2001 to 2012 and from Pershing County for 2004 to 2012. I would advise this Committee to reach out to Pershing County directly to verify those numbers. The 2012 numbers from BLM totaled 52,385 participants, 70 officers and 365 citations. Two hundred and fifty-three of those were for drugs, 14 were drug arrests from the joint operation we run with BLM special agents and the Investigation Division. Until this year, our operation was completely integrated with the Investigation Division. Our officer ratio is 1 per 748 participants. Our 12-year average is 1 BLM officer per 918 participants.

Senator Spearman:

Mr. Shirley, I would like to go back to one of the slides in your presentation that said 1 officer per 2,500 participants. Would you help me reconcile those figures? I am asking these questions because if the issue is financial stability for Black Rock, then these details matter to the counties to obtain what is due them and not have to absorb costs they cannot afford. It is an appropriate way to explain those costs in order to give them a frame of reference.

Mr. Shirley:

Last year, Special Agent Love said there was 1 officer per 748 participants; however, they run in two shifts. You would have to double that; therefore, they would have 1 officer per approximately 1,500 participants on the playa, which is close to my number. I added in the State officers who would be on the playa with them. It was 1 officer per 2,500 participants for Pershing County.

Three 12-hour shifts have two shifts that go 6 to 6 and 6 to 6 and one shift covers swing between those two shifts. When two shifts occur at once, there would be 1 officer for every 2,500 people for a 12-hour period. I estimated BLM shifts based upon my knowledge of their operations and combined those two, and the result was 1 officer for every 900 people for 2012. That is how we arrived at those figures.

Mr. Love:

That is correct. My assessment was on total officers. Obviously, we do an analysis as we structure our shifts and staff them depending on where we saw the majority of our activity in the previous year. Our shifts overlap. If the day shift runs from 6 to 6, when the swing shift comes on, there will always be an overlap. The man burn tends to be the rowdiest time or the biggest party for Burning Man participants; we bring all of our officers to the playa for that event to ensure maximum coverage and public safety during that period.

There could be a number of ways to calculate that. It would fluctuate depending on shifts and the way they are staffed.

Senator Spearman:

My initial question was how many uniformed and nonuniformed staff are there.

Mr. Love:

Unfortunately, I do not have my operational plan with me. I do not know. I have an entire command staff that does a majority of the planning. I am looking at our officer increase in ratio, and I will use the last 4 years. In 2009, with a population of 43,000, we had 45 officers; in 2010, with a population of 51,000, we had 51 officers; that number remained the same in 2011 with a population of 53,000. In 2012, we jumped to 70 officers with a population of 52,385. Of note, Burning Man did not hit the expected ceiling of participants that year.

We have special agents, uniformed and a large plainclothes group that has been in a joint drug operation with the Investigation Division to identify high-level trafficking needs. It is important to note that with this event, there is a layered law enforcement approach. The BLM has proprietary jurisdiction and an expectation of a maximum, feasible reliance on the County for State and local law enforcement.

A federal mission is important to the National Conservation Area and the public lands as well as a local incidence of crimes that need to be addressed and the Investigation Division statistic and portion of crimes. It really is a layered, cooperative approach to ensure the appropriate public safety for this event.

Senator Goicoechea:

How are you compensated for your people? Is it out of the permit, or do you actually charge on an hourly basis?

Mr. Love:

We are under a cost-recovery agreement with the special recreation permit. All direct and indirect costs incurred by the federal government are billed back to Burning Man. There are a number of steps with the cost recovery. We have to give the organizers an estimate. They have the right to appeal that estimate. We then have to give them the actual costs. Unfortunately, I cannot testify to all the specifics, but I can hit some. Once we give Burning Man those costs, organizers have the right to see full detail of those cost expenditures and incurrences; then they have the right to appeal or challenge those costs.

Senator Goicoechea:

Why is Pershing County not doing the same thing? This bill would go away.

Mr. Shirley:

Do you mean documenting the costs?

Senator Goicoechea:

Yes, documenting and charging back the costs as Mr. Love said. The BLM does a cost recovery. That is what Pershing County and Black Rock want.

Mr. Shirley:

In 2012, we did cost recovery. We had a budget up front. We are a small county and afford the type of resources that have to be put into that event; therefore, Black Rock City LLC paid a certain amount over the summer prior to the event in order to allow us to build up for Burning Man. After the event, we had true costs and numbers, which we reviewed. That resulted in the refund about which we spoke. The Sheriff was wise in the use of resources and did not spend all that money, so we refunded it.

Mr. Clark:

Senator Goicoechea just nailed A.B. 374 on the head. We are bringing this bill forward in order to reimburse the County for all of the costs incurred based on the services provided. Will we make a down payment on the front end, as we have done in previous years, and do the cost recovery? Absolutely. However, it need not be done by ordinance because we already have to follow the BLM festival laws. We can do that by contract or by agreement.

Senator Goicoechea:

That is fine. However, A.B. 374 reaches well beyond that to any jurisdiction on public lands with an event of over 1,000 people. Assembly Bill 374 expands it to capture every county in the State and many functions. That is what has been problematic and why we have spent several hours here on this bill.

Mr. Clark:

We are working diligently to correct that.

Senator Goicoechea:

I appreciate that.

Senator Spearman:

We started this conversation with duplicative requirements. What requirements are overlapping? The BLM requires certain things for its license, and

Pershing County wants to get into a licensing or permit contract with Black Rock. Is there any duplicity? Is there overlap?

Mr. Shirley:

Pershing County recognized that the federal government has jurisdiction over federal lands and issuing a permit. To get away from any kind of preemptive conflict, we put into our ordinance that if the BLM has a plan of operations that is in State statute, we adopt it. We do not make any changes. We adopt it as sufficient for the license. The only issues that we have are State law issues which, if the BLM covers them, we do not need to cover them. The BLM does not cover State law enforcement. There is potential that BLM would not cover other issues that affect the County; however, there is no overlap that way because we adopt BLM requirements.

Mr. Belsky:

The problem is what can happen in the future. The County has the ability, under the permitting process, to impose whatever conditions it wants to impose. The fact that the sitting County Commissioners have decided for the last 2 years to adopt the federal permitting requirements is fine. We do not have an issue with that. The issue arose from much talk in the past about imposing other conditions involving children at the event and other morality issues that can be imposed through the permitting process. That is one of Burning Man's major concerns and what is driving the bill.

Mr. Shirley:

Public hearings to discuss what was going on at Burning Man were similar to this legislative body. You sit down and you hear opinion and differing issues from people who present to you. That is what has happened in the past. Regarding BLM requirements, it is written into our ordinance that the County has to adopt those if BLM puts them forward.

Mr. Belsky:

It was put in Pershing County's ordinance 2 years ago during the time this controversy started. The County is free to come back and amend the ordinance at any time, which it has done repeatedly. That is the problem. The County has the authority to impose whatever conditions it wants. That can conflict with the federal permit and will lead to future conflict and litigation. That is bad, and that is what we intend to prevent.

Senator Spearman:

It sounds like that is the disconnect. I would anticipate that all parties could get together and determine what is beneficial, from a business perspective, in order for the County not to incur any costs for which they have not budgeted or which result in the taxpayers picking up the tab. If that is the linchpin, then that is where you can start. Did I get that right?

Mr. Belsky:

Yes, we agree with that. The County's statement today of its willingness to exempt Burning Man from the ordinance goes a long way toward helping us reach an agreement.

Mr. Shirley:

It is not that we agreed. If you pass legislation allowing us to exempt Burning Man, we will do so. We do not have the authority right now under State law to countermand what the Legislature has told us to do.

Senator Spearman:

We are not doing a work session on this today. You have a little bit of time to determine that.

John Wagner (Independent American Party):

They are close to talking about this. The County is right in wanting its expenses paid back, and Black Rock City does not want to pay anymore that it needs to. I can understand that. They are close; maybe in the process the lawsuit can be resolved peacefully too.

Janine Hansen (Nevada Committee for Full Statehood):

Our issue is one already addressed. It is an issue of jurisdiction. We have always been in a position in Nevada and in the counties to have jurisdiction over police power and law enforcement. We are concerned about this bill because it undermines the police power jurisdiction. There are other ways to resolve this without undermining the police power authority of the counties. We oppose this bill and hope that it can be resolved in another manner without jeopardizing State sovereignty rights that we have. This bill jeopardizes those State sovereignty rights.

Craig B. Mingay (Deputy District Attorney, Churchill County):

I agree with the opponents of this bill. They have done a good job of explaining the concerns of the counties.

Brett Kandt (Special Deputy Attorney General, Office of the Attorney General):

We submitted an amendment, [Exhibit F](#), after consulting with the sponsor of the bill to clarify or confirm that the bill is not intended to create any new or additional liability for the State.

Chuck Callaway (Las Vegas Metropolitan Police Department):

We are neutral on the bill. I have spoken with Mr. Clark, and he has assured me that if an agreement were not made regarding public safety at an event, the event would not take place. He stated that is part of federal law along with the contracts Black Rock City has with BLM. I want to ensure that is the case and if events like this were to come to Clark County, they would not have a negative impact on the level of public safety we can provide.

Robert Roshak (Nevada Sheriffs' and Chiefs' Association):

Our main concern with the bill from the Nevada Sheriffs' and Chiefs' Association is that it would limit law enforcement's ability to decide correct staffing levels for providing public safety and holding back the permit process until those levels could be reached in order to not jeopardize those areas.

Senator Spearman:

We will close the hearing on [A.B. 374](#).

Chair Parks:

We will not hear [A.B. 59](#), [A.B. 65](#), [A.B. 131](#), [A.B. 445](#) and [A.B. 493](#), the work session bills today.

[ASSEMBLY BILL 59 \(1st Reprint\)](#): Revises various provisions relating to the State Public Works Division of the Department of Administration. (BDR 28-282)

[ASSEMBLY BILL 65 \(1st Reprint\)](#): Revises various provisions relating to open meetings. (BDR 19-402)

[ASSEMBLY BILL 131 \(1st Reprint\)](#): Revises provisions governing the Board of the Virgin Valley Water District. (BDR S-634)

ASSEMBLY BILL 445: Revises provisions relating to the posting of notices for public meetings. (BDR 19-1121)

ASSEMBLY BILL 493: Abolishes the Nevada Commission on Sports. (BDR 18-572)

Chair Parks:

We will open the hearing on A.B. 249.

ASSEMBLY BILL 249: Revises provisions governing vacancies in the office of district attorney. (BDR 20-39)

Assemblyman Harvey J. Munford (Assembly District No. 6):

The office of the district attorney (DA) for each county is an elected position. This means that under normal circumstances, voters get the chance, every 4 years, to decide who will be their chief prosecutor and litigator. However, circumstances are not always normal. The office of the DA might become permanently vacant due to death, removal or other reasons. Under statute, the board of county commissioners appoints a person to serve as DA for the remainder of the unexpired term. Theoretically, this period could be almost as long as the original 4 years. This statute will disenfranchise many voters, and it needs to be changed.

The DA is an important public official. He or she evaluates the evidence of alleged criminal acts and decides when defendants will be taken to court. Voters have the right and the obligation to choose someone qualified to do this.

Some of the things DAs do are to evaluate and oversee the evidence-gathering performances of law enforcement personnel. They also set the proper tone when prosecuting alleged criminals and sometimes protect the interests of law-abiding citizens.

Section 1, subsection 5 of the bill removes language attached to NRS 252.060 that provides for an appointed DA to serve the unexpired remainder of the 4-year term. Instead, this section inserts a reference to NRS 245.170. This statute applies to appointments made to fill vacancies in most county offices and government offices, the length of service of a person appointed to fill a vacancy and the election of a successor.

This means that the office of the DA must be placed on the ballot of the next or biennial election under the following conditions. The vacancy requiring the permanent appointment of a new DA must occur at least 30 days before the date upon which a person must declare candidacy for the office. This office is not otherwise scheduled for election until the next biennial election. If the vacancy occurs closer to the election, that is, fewer than 30 days before the deadline for declaring candidacy, the appointment would serve an unexpired portion of the term.

The office of the DA should not be treated differently than any other county office governed by NRS 245.170. Four years is a long term of public office. Potentially, law allows a nonelected DA to serve nearly that long. Under A.B. 249, voters will not need to wait unnecessarily long to elect a replacement for the DA of their choice or for the State to get the approval of their appointee if he or she decides to run.

Senator Goicoechea:

I did not realize that DAs were separate. I thought they were appointed only until the next general election. This is a good bill.

Assemblyman Munford:

Yes, it is. Even in rural counties, sometimes changes occur abruptly. Unfortunately, a DA might pass away or something and someone is appointed, but you want him or her to serve only until the next election. This will enfranchise the residents so they are involved in that choice. Someone who is appointed will not serve for the 4 years remaining or whatever the case might be. It should in some way give people the opportunity to participate. That is the gist of this bill.

Chair Parks:

I reviewed the statute. District attorneys normally serve on a 4-year cycle with a specific reelection date. There is a situation in Las Vegas where the DA resigned shortly after being elected and taking office. The Clark County Board of Commissioners appointed an individual to fill the unexpired term. Essentially, the unexpired term was 4 years. In this case, the appointment by the Clark County Board of Commissioners would be for 2 years until the next general election. Would someone run for the balance of the 2 years or for the full 4 years?

Assemblyman Munford:

If the election came up 1 year after the appointment or within months or whatever, then your question was would the person serve the remainder of the 3 or 4 years that is left. Was that your question?

Chair Parks:

No, my question is: If the person had to run for election, would he or she be elected to a 4-year term or a 2-year term? Normally these elective offices are on a specific cycle.

Assemblyman Munford:

Maybe I could insert that in some way. If the person wins the election by the choice of the people participating, it should be a 4-year term because that is the normal cycle of the office.

Heidi Chlarson (Counsel):

The answer would be that the person elected would fill the unexpired term. It would not start the clock at a 4-year term; it would be a 2-year term for that election.

Assemblyman Munford:

Then that would mean in 2 years there would be another election, and that would start the 4-year cycle.

This bill was constituent-driven because of the appointment that recently occurred in Clark County. Many of my constituents came to me and said that the previous DA was only there a short time, and he still had almost 4 years remaining. People questioned this County appointment. He gets to stay there for 4 years and not let the people have any input or any involvement at all in that choice. That is why my constituents came to me.

Senator Manendo:

Our own Senator Justin Jones ran for a 4-year seat, which had only 2 years left in its term, and now he will have to run again in 2 years if he chooses to run for reelection.

This makes sense. It is a great bill.

John T. Jones, Jr. (Nevada District Attorneys Association):

We appreciate Assemblyman Munford bringing this bill forward. The Nevada District Attorneys Association discussed the bill and took a neutral position. Our issues have already been addressed by Assemblyman Munford by putting DAs on the same level as most other county officials with the exception of district court judges.

Chair Parks:

We will close the hearing on A.B. 249 and open the hearing on A.B. 218.

ASSEMBLY BILL 218 (1st Reprint): Revises provisions relating to public works.
(BDR 28-981)

Todd Koch (President, Building and Construction Trades Council of Northern Nevada):

I have submitted written testimony ([Exhibit J](#)), payroll report examples ([Exhibit K](#)) and survey examples ([Exhibit L](#)) explaining the need for A.B. 218.

Senator Goicoechea:

Page 3 of [Exhibit L](#) lists TJ Maxx, which is not a public works job; however, it shows fringe benefits paid. Then the UNR entry shows that fringe benefits were not paid. Is this an error?

Mr. Koch:

Those are correct. The TJ Maxx at the Sparks Marina was a Sales Tax Anticipated Revenue bond project; therefore, it is public works. The UNR Ansari Building project was probably under \$100,000 and did not meet the threshold.

This employer filled out these forms correctly.

Senator Goicoechea:

Does that mean that under the bill, no matter whether the works are public or private, employers would have to show the fringe benefits in their rates? Is that what you are saying?

Mr. Koch:

The fringe benefits would have to be annualized. I will give you an example of how that would work. On page 4 of [Exhibit L](#), we took the liberty of taking the projects that were listed on pages 2 and 3 for this employer and entered them

into a spreadsheet. You can see all the project names, the number of reported hours worked, the base rate of pay per hour, the fringe benefits per hour, the total wages paid and the total benefits.

The first sentence below the spreadsheet shows that the total benefits are divided by the total number of hours. The total benefits are \$7,918.45, divided by total hours, 1,700, which is \$4.66 per hour. By annualizing under the provisions of A.B. 218, the employer would be able to claim \$4.66 per hour for fringe benefits.

The employer would also owe the worker an additional \$8.04 per hour for the hours worked on public works projects. Fringe benefits reported paid on public works projects minus the annualized fringe benefit equals the additional money owed to the worker. This is an example of how annualizing would work.

Senator Goicoechea:

I do not understand why the employer would owe \$8.04. You are annualizing by dividing the total benefits by the 1,700 hours and the result is \$4.66. Where does the debt come in?

Mr. Koch:

The fringe benefits are annualized over the whole year for public and private works. If the same employee did all of this work, in 1 year he or she would have a total of 1,700 hours. In that case, you would take the total number of hours that employee worked, 1,700 hours. That is how you would get the annualized benefit. You divide the total amount that the employer claimed as paid in fringe benefits for the year divided by the 1,700 hours. You would allow the employer to claim the \$4.66 toward fringe benefits.

Senator Goicoechea:

Then you are increasing it \$8.04 for the public works projects.

Mr. McKenzie:

The idea of annualized benefits is that if a contractor pays those benefits on all the work, then there is no adjustment to the wages. If he or she pays benefits on public work and does not pay it on private work, then you annualize that out to his or her annual hours of work and the result is a value for the benefit allowed on the public work.

If that contractor knew that was the amount allowed on the public work and that amount was entered on the certified payrolls as benefits paid the employees on public works, then the contractor would not owe additional money. The contractor could be paying as I just outlined and could only claim \$4.66 on the certified payroll toward the hourly wage, and it would equal out.

Senator Goicoechea:

Would the contractor pay the \$4.66 on the nonprevailing wage projects?

Mr. McKenzie:

We prefer that the contractor pays the \$4.66 all year-round. However, we are addressing the people who do not pay it all year-round. If the contractor pays that \$4.66 all year-round, there is no issue. It is annualized out.

Senator Goicoechea:

The contractor would have to pay the \$4.66 except on prevailing wage jobs, and then the benefits would increase to the \$12.70.

Mr. McKenzie:

No, the benefits would not go up. They would be the same all the time on all the projects the contractor works on. There is a wage credit employers can use when they only pay on the public works and do not pay on the private works. That is when annualizing applies, and this is how much they can claim.

Senator Goicoechea:

Under the bill, do employers have the option to go either way?

Mr. McKenzie:

They can go either way. They can pay benefits year-round or just pay on the public works and only get credit for the amount which they annualize.

Mr. Koch:

I will continue with my written testimony, [Exhibit J](#), page 2, which addresses changes to the bill.

Senator Goicoechea:

This bill only pertains to NRS 338, public works, and yet you are annualizing and going back to the private sector.

Mr. Koch:

The bill does not affect how a contractor or employer pays his or her employees on private work projects. The bill states that if the employer claims benefits on public work projects as part of the prevailing wage, then he or she cannot do it off the backs of the taxpayers. It has to be annualized and spread out over all of the projects.

Senator Goicoechea:

Under the bill, if someone was to bid a public works job, then that person had better be prepared to pay fringe benefits all the way through whether it was public or private. I do not see there is any way to avoid it. You either have to be a straight public works contractor or a private contractor. You cannot mix them.

Mr. Koch:

That is not completely true. The bill forces contractors to make conscious decisions. Do they want to provide benefits to their employees all year-round or do they just want to provide benefits to their employees when they are working on public works projects? If they decide to provide benefits only on public works projects, then they are only allowed to take a certain amount of the benefit they are paying to apply toward the prevailing wage for that trade.

Senator Goicoechea:

Was that the rationale for applying the \$8.04 to those hours worked under public works? Would employers be able to ignore any of the private sector jobs they worked on? Is that correct?

There is a difference. One had the \$4.66 rate and the other was \$8.04 because the benefits were annualized out on both public and private jobs. Therefore, they have that option. If employers only worked one public works project, it would be cheaper for them to pick up just those hours they worked on the public works project at the \$8.04 rate and skip the rest of it. That is the way I am reading the bill.

Mr. McKenzie:

We have confused you with the application of the \$8.04. The contractors would have options to buy benefits year-round, or if they do not buy benefits year-round, they cannot buy benefits on public works and pay the full prevailing wage rate all in cash on the employees' checks. This bill addresses the

contractor who wants to take a portion of that money off the full prevailing wage and apply it to benefits so he or she does not have to pay the taxes on it.

The \$8.04 is for a contractor who decides to claim a large amount of money on fringe benefits. When the contractor submits to the public body that he or she has paid \$12.70 on fringe benefits for public work but did not pay it on public work, and the public body tries to annualize it back, that \$8.04 cannot be claimed as a fringe benefit. The \$8.04 should have been applied to an employee's hourly wage. That reduces the amount a contractor can claim on a fringe benefit for that project because he or she does not pay it year-round. The employer only pays it for the hours worked on public works projects.

Senator Goicoechea:

The example I am looking at shows 1,700 hours. Roughly 600 hours of that were public works projects. It would probably be less expensive for the employer to pay the \$8.04, since you said he or she has the option of going either way, because it is only 600 hours rather than pay the \$4.66 on the additional 1,100 hours. He or she can choose. If the employer only had one public works project with only 100 or 200 hours, then under this bill and the way I read it, the employer would only pay the \$12.70 on 200 hours. That would be less expensive, and he or she would not have to pick up all those other private sector jobs at the \$4.66 rate. That option is in the bill.

Mr. McKenzie:

This is where we are getting the confusion. The employer does not have to pay anything back on the private work. It is not a payment toward the fringe benefit that the employer has to make. I am claiming \$12.70 for fringe benefits, but because I do not pay it year-round, I annualize out. However, because of annualizing, I can only claim \$4.66 of that. The difference between the \$4.66 and the \$12.70 should have been on the employees' checks.

A contractor with few public works projects is better off not paying fringe benefits if he or she does not pay them year-round. The contractor should just pay the benefits on the employees' checks and not get into this confusion.

People who work public works projects, many or few, find that they can get relief from overtime, rollout taxes and other costs by claiming the fringe benefit. The employee does not get the benefit of the wages and many times does not get the benefit of the fringe benefit.

We intend to prevent people from doing that. We want them to either pay for the fringe benefits year-round or not claim them on public works. That is the preference of the bill. If you are not claiming them year-round, then do not claim them on public works and try to finance an employee's fringe benefits off a public works project.

If this bill passes and becomes law, the employer cannot do that because he or she is not able to finance a full year's benefit off the small segment one is allowed to claim on the public work. It is either fringe benefits or not.

There are a couple of things that I needed to clear up today because I failed to fully advise you of changes this was making in the law when I spoke with you previously. We thought we had gotten past a provision in this bill that was contentious in the Assembly. I needed to address that contentiousness in the Assembly and apologize to you for not bringing it up.

That provision pertains to the exemption of people under collective bargaining agreements. I would like to explain the reason that is appropriate.

Joint employee-management trust funds are managed by federal law more stringently than State law even gets close to managing them. Those provisions of the law have methods to collect from people who do not pay fringe benefits. We are required to pay benefits on all hours worked by the employee; we automatically have to annualize under those trust fund agreements. We put exemptions in for collective bargaining because they are burdened more heavily by the federal law than by the State law. This by no means exempts an employer working under a collective bargaining agreement from enforcement under the law if that employer decides not to pay fringe benefits.

If the employer does not pay fringe benefits, there is a twofold retaliation. The first one is that a complaint can be filed with the Labor Commissioner for failing to pay fringe benefits. The employer is then in violation of prevailing wage for falsifying the certified payrolls by saying that the fringe benefits were paid when they were not. The second one is the trust funds Managers can continually pursue the employer until they collect the fringe benefits.

I want to make clear that for employees working under collective bargaining agreements, the trust funds have reserve funds to cover those employees'

fringe benefits until the collection process is completed. Once completed, we reinstate that money into the reserve if it happens again.

We have assurances under federal law and our trust fund agreements that the employees are to have benefits paid into the fund on their behalf. No one can touch that money.

An employer who does not pay fringe benefits can be pursued under the law for failing to pay the fringe benefits and reporting that he or she did. That employer is not exempt from this law. Because the benefits are under a trust fund and governed by federal law, we recognize that they are bona fide fringe benefits. This is addressed in the bill on page 2, lines 15 through 16. It says that we recognize those as bona fide fringe benefit programs because of the requirements set by law.

This reduces the encumbrance on a public body to determine if it is a bona fide fringe benefit program because by federal law it has to meet the requirements established in this bill. The second place mentioned in the bill is on page 7, lines 35 through 37 where employers are exempt from the annualizing process. It is appropriate to exempt them under those trust fund agreements, by federal law and by the negotiated contract, because they have to pay in on every hour that an employee works. No hours worked are exempt from fringe benefits.

That is why it is appropriately in here. This was a cause of disagreement. I wanted to clear the air because I felt badly that I did not talk to you about something brought up in the Assembly that we did not address here.

The other issue is the comments on the fiscal notes on this bill. Under NRS 338.070, these public bodies have no further burden placed on them under the provision that by law they are required to review the certified payrolls for compliance issues. Provisions in the *Nevada Administrative Code* 338.094, 338.096 and 338.110 govern how to review the certified payrolls and ensure compliance. There are no changes to those provisions. Requirements of this bill that the employer provide information will ease the burden on the public agency because it is in the statutes that the employer must provide that information.

Mr. Mallory:

I will not repeat anything that my counterparts from the north have said other than to say we support A.B. 218.

Mr. Hardy:

We had some serious concerns with this bill in the Assembly along the lines of the questioning from Senator Goicoechea. When I started with the Associated Builders and Contractors (ABC)—ABC represents the nonunion sector of the construction industry—I recognized that we had a real problem with companies not paying for fringe benefits. I started a crusade against that to get people to pay those benefits instead of paying cash. We made some great strides on that.

My concern was that this bill would be a disincentive for that and push contractors and owners back to the day where they paid cash instead of dealing with all of the things related to fringe benefits. The main concern was with retirement benefits. The amendment adopted in the Assembly took care of that. Therefore, we no longer oppose this bill on that issue.

Our concern specifically relates to the exemption from the bill for collectively bargained agreements. Mr. McKenzie did a good job of explaining why that should be the case. One could even argue that he is right. Collective bargaining agreements are tightly controlled by the federal government. If that is the case, there is no reason to exempt them from this bill.

The first exemption says that sometimes people have an “other” category or they were taking gym memberships and those sorts of things. We all want to eliminate that type of activity, which is why we do not have a problem with the majority of this bill. If the unions decided to have an “other” category or a gym membership category, that would automatically become a bona fide fringe benefit the way it is drafted now. I understand that is controlled by the federal government; but if it is good for the goose, it is good for the gander.

We continue to oppose the bill and page 7 where it once again exempts collective bargaining agreements from any provision of the bill. If these are in fact controlled by the federal government, there is no reason not to have that in the bill. There does not need to be that inconsistency.

We appreciate the proponents of the bill amending it to define “contribution program.” Our members who work in the private sector and sometimes in the public sector pay benefits year-round for the most part. The employees receive that on private sector and public sector work. Where it differs and becomes a problem for us, preamendment, is that our retirement programs can vary and are not annualized. For example, one of our largest members has one 401(k) for

the employee on private sector work for which the employer has an arrangement to pay of which the employee pays part. On public sector work, the employer has another program paid at a different rate. This was recognized in the federal law, which is why the exemption was put into the federal law. The bill before you mirrors federal law when it comes to the annualizing issue, which is why we have no concerns.

I am concerned about the unintended consequences of pushing small businesses back to the point where they just throw up their hands and say this is too complicated and pay cash on prevailing wage jobs.

Mr. Koch:

Several places in Nevada law specifically address Mr. Hardy's concerns about the unions and collective bargaining agreements' automatic exemption. The reason is a special relationship between a union, its employees and union employers. These trust fund benefits are jointly managed by labor and management. They are Taft-Hartley Act trust funds. I understand Mr. Hardy's concerns; several places in Nevada law already exclude that.

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Chair Parks:

We will close the hearing on A.B. 218, and having no further business to come before the Senate Committee on Government Affairs, we are adjourned at 5:20 p.m.

RESPECTFULLY SUBMITTED:

Suzanne Efford,
Committee Secretary

APPROVED BY:

Senator David R. Parks, Chair

DATE: _____

<u>EXHIBITS</u>				
Bill	Exhibit		Witness / Agency	Description
	A	2		Agenda
	B	10		Attendance Roster
A.B. 172	C	1	Assemblyman William C. Horne	Conceptual Amendment
A.B. 374	D	1	Assemblyman David P. Bobzien	Proposed Amendment
A.B. 374	E	2	Assemblyman David P. Bobzien	Written Testimony
A.B. 374	F	1	Tom Clark	Attorney General's Proposed Amendment
A.B. 374	G	10	Raymond Allen	Burning Man 2012 Special Recreation Permit Stipulations
A.B. 374	H	2	Adam Belsky	Opinion Letter From LCB Legislative Counsel
A.B. 374	I	39	Jim Shirley	Presentation
A.B. 218	J	3	Todd Koch	Written Testimony
A.B. 218	K	28	Todd Koch	Payroll Report Examples
A.B. 218	L	4	Todd Koch	Construction Wage Survey Examples