

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

**Seventy-Seventh Session
April 12, 2013**

The Senate Committee on Government Affairs was called to order by Chair David R. Parks at 1:42 p.m. on Friday, April 12, 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:

Senator Barbara K. Cegavske, Senatorial District No. 8
Senator Debbie Smith, Senatorial District No. 13
Assemblywoman Dina Neal, Assembly District No. 7
Assemblyman James Oscarson, Assembly District No. 36

STAFF MEMBERS PRESENT:

Patrick Guinan, Policy Analyst
Heidi Chlarson, Counsel
Gwen Barrett, Committee Secretary

OTHERS PRESENT:

Carole Vilardo, Nevada Taxpayers Association
Jeffrey Fontaine, Nevada Association of Counties
Kim R. Wallin, State Controller
James R. Wells, Executive Officer, Public Employees' Benefits Program

Ron Dreher, Peace Officers Research Association of Nevada; Las Vegas Police Protective Association; Southern Nevada Conference of Police and Sheriffs; The North Las Vegas Police Supervisors Association
Bob Roshak, Executive Director, Nevada Sheriffs' and Chiefs' Association
Chuck Callaway, Las Vegas Metropolitan Police Department

Chair Parks:

We will hear Senate Bill (S.B.) 337.

SENATE BILL 337: Revises provisions relating to local governmental finance.
(BDR 21-92)

Senator Barbara K. Cegavske (Senatorial District No. 8):

The intent of S.B. 337 is to give our rural counties, hard hit by economic times, assistance in generating much-needed revenue by way of creating tourism improvement districts. The bill only applies to counties with populations of 55,000 or below, which excludes the Counties of Clark, Washoe and Carson City.

Section 1 prohibits a governing body from pledging money from a Local School Support Tax in connection with any tourism improvement district creation on or after July 1 and allows the creation of a tourism improvement district on land that is also part of a redevelopment district. None of the Legislators involved with this bill wanted the school fund taxes to be alleviated.

Section 2 deals with statutory requirements that a county must meet in order to create a tourism improvement district; four of these conditions would be difficult for our smaller towns and counties to meet. Senate Bill 337 modifies these requirements by allowing an existing retail business in the area that will become the tourism improvement district; not requiring the Commission on Tourism to determine that most of the projected increase in the proceeds from sales and use tax collected in the district will come from transactions with tourists; and not requiring the local governing body to obtain reports related to the tourism improvement district from independent consultants selected from a list provided by the Commission on Tourism.

Section 4 exempts excess Local School Support Taxes collected in the tourism improvement district from allocation to a redevelopment agency, ensuring that these excess funds will go to support the schools.

Section 5 provides that instead of the local government, the Commission on Tourism and the Governor approve the prepayment of bonds and other debts associated with the tourism improvement district—only the local government will need to approve the prepayment of these debts.

Senator Goicoechea:

In Nye County, predominantly Pahrump with a population 35,000, we seek to capture and retain business that is occurring and presently leaving. We have a couple of tourism attractions, the Pahrump Valley Speedway and Front Sight Firearms Training Institute. Those businesses bring about 700 people a week into the community, and the stay is 6 to 8 days. The 300-some rooms in Pahrump cause a loss of business and prohibit the expansion of both businesses.

The smaller rural counties need the flexibility to create some type of tourism improvement district that will allow them to put an infrastructure in place to help businesses relocate to their counties. The Nye County Board of Commissioners and the Pahrump Town Board are working together on this, recognizing the need to create some type of tourism improvement district. We could start with one pilot program, but we would prefer to extend it out to all the rural communities.

This bill waives a lot of requirements in statute for these smaller counties that need the help to help themselves. This bill is about that.

Assemblyman James Oscarson (Assembly District No. 36):

We ask that you help us get some economic development. We are amenable to doing what Senator Goicoechea spoke about, the pilot program in Nye County, but a tremendous amount of people who have put a lot of effort into this bill. We would appreciate your consideration.

Carole Vilardo (Nevada Taxpayers Association):

The Nevada Taxpayers Association has no position on the bill. I was brought in because the original concepts were wide, and I was asked to assist with narrowing them down.

During the last couple of Sessions, because of money, the Legislature has made an effort to split and keep a tourism improvement district independent from a redevelopment district. Senator Debbie Smith's bill, S.B. 406, will allow

a tourism improvement district in a redevelopment area, but only one increment may be received. Because it is so isolated, the Governor's provision was taken out, but that was also taken in Senator Smith's bill.

Nye County, this bill's focus, has two major tourist attractions: the Pahrump Valley Speedway and Front Sight Firearms Training Institute. For rural counties, each increment alone does not give them enough money at the local level to generate what they need. Rather than reinvent the wheel, given the original provisions and the different funding mechanisms being requested, it appeared easiest to take what we have in statute and allow the rural counties with populations under 55,000 to get the increment from both increment districts. That is the reason for the combining. The difference with tourism is you have no education funds harmed that would be received under these provisions—the sponsors are firm on this.

Despite similarities between S.B. 337 and Senator Smith's bill, the biggest difference allows the increment from both redevelopment and tourism improvement district to be received by this district, which would be created by a county commission.

Senator Hammond:

Referring to the education funds, section 1, subsection 2 says "the governing body of a municipality may not pledge the amount of the proceeds of the taxes described in subparagraph (2) of paragraph (c) of subsection 1." Does the term "may not pledge" translate to may or may not?

Ms. Vilardo:

In section 1, subsection 1, "except as otherwise provided" specifically refers to *Nevada Revised Statutes* (NRS) 374, the Local School Support Tax, which is why you are not allowing the proceeds to be pledged because you do not want to impact any of the school money.

Senator Hammond:

I just received clarification that "may not" means it is prohibited.

Assemblyman Oscarson:

I received a letter yesterday from the Pahrump Town Board ([Exhibit C](#)), where the Board unanimously voted to support this resolution with Nye County. I count that as a victory in itself; it was a collaborative effort.

Chair Parks:

Instead of the local government, section 5 seems to give the Tourism Commission and the Governor the authority to approve the prepayment of bonds and other debt associated with the tourism improvement district. It appeared that we were taking the local government, in this case Nye County, out of the picture?

Ms. Vilardo:

The collection of those funds can only be done if the local governing body adopts the ordinance which would create the districts.

Jeffrey Fontaine (Nevada Association of Counties):

There is no question that many of the rural counties need help and innovation to grow their economies. One size in economic development does not fit all, especially in Nevada. We support any measure that would help that cause. We have not taken this to the Board of the Nevada Association of Counties; therefore, we are officially neutral on the bill.

Chair Parks:

We will close the hearing on S.B. 337 and begin work session on S.B. 135.

SENATE BILL 135: Revises provisions governing redevelopment agencies.
(BDR 22-876)

Patrick Guinan (Policy Analyst):

This bill was originally heard on March 27. The amendment in the work session document ([Exhibit D](#)) is written both conceptually and in a mock-up. The new mock-up language is in green.

The stricken term is "10 percent" in section 8, subsections 1 and 2. In section 8, subsection 1, the word "unless" is replaced with "until."

In section 13, subsection 2, paragraph (d), subparagraphs (1) and (2) add the language "an area for which the legislative body has adopted a specific plan for neighborhood revitalization, an area eligible for a community development block grant pursuant to 24 CFR Part 570 or"

The amendment deletes sections 14 and 15 entirely.

Senator Goicoechea:

With the removal of the 10 percent from section 8, there is only a 15 percent retention. The deposit is completely gone?

Assemblywoman Dina Neal (Assembly District No. 7):

Yes. There is a clawback provision within the redevelopment plan. It might be overly restrictive because it is already being dealt with within the agency. Would you like to keep it in?

Senator Goicoechea:

I am clarifying that it was withdrawn. I want to understand what the redevelopment district captures.

Assemblywoman Neal:

Upon reviewing the redevelopment agency's hiring plan, I discovered that a clawback is already being done by the City of Las Vegas. I did not want to be too restrictive.

Senator Goicoechea:

The 15 percent of all contractor employees is in the present redevelopment plans?

Assemblywoman Neal:

It is currently at 10 percent.

Senator Goicoechea:

So it is an increase from 10 percent to 15 percent?

Assemblywoman Neal:

Yes.

Senator Goicoechea:

The entire bill only pertains to redevelopment projects in redevelopment districts?

Assemblywoman Neal:

Yes.

Senator Goicoechea:

That would be public works projects and developers not building for a tenant?

Assemblywoman Neal:

Yes. It applies to the contractor—whenever participates within the redevelopment that receives redevelopment dollars to do work.

Senator Goicoechea:

The second sentence of the work session summary reads, "The bill requires public agencies that use redevelopment funds for a public work to submit an employment plan and exempts private developers who do not construct a redevelopment project for a known owner from that requirement." I did not see it in the bill, but I see it in the work session summary. What is that exemption about?

Mr. Guinan:

That is in section 7, subsection 2, page 3, line 29: "A developer who constructs a redevelopment project for the purpose of conveying or leasing the property to an unknown owner or lessee is not required to submit an employment plan pursuant to NRS 279.482 but may submit an employment plan voluntarily."

Senator Goicoechea:

Technically, if you have a developer, that developer can actually take redevelopment funding and put that project in?

Assemblywoman Neal:

That provision only pertains to the developer who constructs the development project for the purpose of conveying or leasing the property. I did not create anything new to the discretionary hiring plan adopted by the City of Las Vegas. Perhaps a City of Las Vegas representative is here to clarify that section.

If you think the developer is somehow escaping because he or she is still building a project, even though the purpose is to lease that development, it makes it permissive for the developer to submit an employment plan. If you feel the developer should be treated the same way, being he or she is developing a unit regardless with the redevelopment dollars, then that makes perfect sense.

Senator Goicoechea:

It looks like a loophole. If you can say I am building for someone I do not know and do not have to file it, then everybody would say he or she neither knows whom he or she builds for nor what is to be built.

Heidi Chlarson (Counsel):

The language in section 7, subsection 2 only exempts the developer from the submission of the employment plan. This provision was in the 2011 bill. It is a policy decision of the Committee; you may want to amend it or take it out.

Senator Goicoechea:

It is up to the sponsor of the bill. To me it was a loophole.

Assemblywoman Neal:

I could discuss this with Senator Kelvin Atkinson. If it is the interest of this Committee to pass it out and there is a loophole, we could work on the language when it gets to the Assembly.

Senator Hammond:

The Governor had vetoed a similar bill last Session. What are some of the policy changes with this bill?

Assemblywoman Neal:

I will refer to your mock-up in [Exhibit D](#), section 13 on the last page. The area was widened to include the neighborhood revitalization plan as well as the Community Development Block Grant area previously identified through the City of Las Vegas. The bill was vetoed because both the boundaries and the restrictions on the developer were too restrictive. The preference issue came under scrutiny because it only dealt with a small boundary. From a previous hearing, the Committee should have copies of the Southern Nevada Enterprise Community map—showing the initial boundary—and the Redevelopment Area map and the Community Development Block Grant map—showing the original boundaries and the expansion. That is how I addressed the veto letter from last Session.

Senator Hammond:

One of the concerns we had during the hearing is what happens if you do not get to the percentage requirement?

Assemblywoman Neal:

Upon review of the language, we realized the language "at least" indicates an "up to" provision, meaning 15 percent is the minimum. I do not see running into that problem with the increased boundaries.

The Community Development Block Grant and the Redevelopment Area maps that the City of Las Vegas has as part of the City's existing plan is designed to bring in a particular group of people who would not otherwise be privy to this net.

It is the policy and discretion of this Committee, but the whole point of enlarging the boundary is to capture more people with abilities to be vendors, subcontractors or new hires.

Senator Hammond:

What is the provision if you cannot find enough qualified people to do the work?

Assemblywoman Neal:

There is still a best effort applied under redevelopment law. That language could be spelled out better, but my understanding is best effort. No one is going to be penalized; if you cannot find it, you cannot find it. We have a lot of programs where we ask people to do things, and we find out that we are limited. If you show you made best effort, you fall right into the exception, under which the City of Las Vegas already operates.

Senator Hammond:

Who determines best effort?

Assemblywoman Neal:

The redevelopment agency determines best effort and implements its discretionary hiring plan as needed.

Senator Spearman:

Other cities and counties throughout the Nation are attempting to implement something like this. They usually have a pool of community groups that can be contacted to inform them of a project and ask for people who can fit the requirements. That might be something you want to consider. Senator Hammond has the concern about best effort. The way to get there is by partnering the agency with community groups who know of those people.

Assemblywoman Neal:

That is something to consider.

Senator Goicoechea:

We are required to have contractors hire 15 percent of the employees from the area, but we have taken out the 10 percent to withhold. What is the penalty?

Assemblywoman Neal:

I took out the 10 percent because the City of Las Vegas already has something in place. I can add that back in, erring on the side of caution—if too restrictive before and vetoed—to what is in place, instead of adding an additional restriction in the bill that is viewed differently. That is the only reason I took it out.

Chair Parks:

I would like a clarification in section 8, subsection 1 of the proposed conceptual amendment. I am presuming you reference a best effort with the language “the proposed incentive must be withheld by the agency and must not be paid to the developer until at least 15 percent of all employees” Is that how you want the bill to read?

Assemblywoman Neal:

Correct, meaning that the proposed incentive would then come from the City of Las Vegas. I am not tying the City’s hands as to that proposed incentive, but there is a carrot; the City is allowed to create whatever that is. It may fall directly into the existing discretionary plan.

Senator Spearman:

A rising tide lifts all boats. The intent is to say that as the economy gets better and more jobs abound, we want to ensure that we do not forget about the least of these.

Assemblywoman Neal:

Yes.

Senator Hammond:

Chair Parks, were you suggesting to the sponsor that we include a word in section 8, or were you just clarifying?

Chair Parks:

I was hearing the words "best effort" while reading something different; I wanted to clarify.

Senator Hammond:

Do you think that the same term is not in there, but it is indicated?

Chair Parks:

I am happy with the wording submitted.

Senator Goicoechea:

We have talked about some conceptual amendments. We need to clean it up when it gets to the Assembly or through a floor amendment, just so long as the sponsor agrees.

Assemblywoman Neal:

I agree.

SENATOR SPEARMAN MOVED TO AMEND AND DO PASS AS
AMENDED S.B. 135.

SENATOR MANENDO SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

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Chair Parks:

We will now go to work session on S.B. 406.

SENATE BILL 406: Revises provisions governing tourism improvement districts.
(BDR 21-139)

Mr. Guinan:

Senate Bill 406 is sponsored by Senator Smith. We heard the bill on April 5. I will read the summary ([Exhibit E](#)). There was one more amendment submitted today and is the last page of this summary.

Senator Debbie Smith (Senatorial District No. 13):

The large amendment encompasses what we covered at the hearing. Originally, I had limited the relocation to county. As we heard from the Retail Association of Nevada, that posed some problems, so we looked at mileage and agreed upon 15 miles.

The small amendment on the last page is a result of working with the Department of Taxation. Right now you may not know what business is in the tourism improvement district when it has other businesses in the State and pays sales tax on multiple locations. Rather than have our Department of Taxation dig for that information, it will automatically be provided. The one property in northern Nevada that has multiple businesses has been working with the Department of Taxation to do just that. We want it in statute for future reference, allowing information to be more easily compiled.

Chair Parks:

How was the 15 miles determined?

Senator Smith:

We looked at the Las Vegas Valley as the stretch of town and tried to make it reasonable and realistic. In Washoe County, it would accomplish most of the business area in the County. Actual measurement took place in coming up with something reasonable.

Senator Hammond:

The amendment on the last page of the work session reads "require the owner of a project within a tourism improvement district to provide the Department of Taxation, upon request, with information." Why is that necessary? Is that common practice? Is that what Taxation does right now to have a feel for what transpires?

Senator Smith:

Tourism improvement districts create a unique situation with regard to the reporting. The Department of Taxation receives sales tax information from multiple businesses of one chain. For example, an Old Navy store located in a particular tourism improvement district could have ten additional sister stores throughout the State. This amendment will identify that the one Old Navy store is in a tourism improvement district, which will assist the Department of

Taxation in looking at what gets pledged toward the Sales Tax Anticipated Revenue bonds. It is an accounting function for the Department of Taxation.

Senator Hammond:

It is more detailed.

Senator Smith:

The Department of Taxation needs to know where the outlets are located. If you have ten Old Navy stores and one is in a tourism improvement district, Taxation may not know that.

SENATOR GOICOECHEA MOVED TO AMEND AND DO PASS AS AMENDED S.B. 406.

SENATOR MANENDO SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

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Chair Parks:

We will go to work session for S.B. 2.

SENATE BILL 2: Grants power to local governments to perform certain acts or duties which are not prohibited or limited by statute. (BDR 20-174)

Mr. Guinan:

This bill was heard on February 27. Our work session document ([Exhibit F](#)) notes this Committee bill is sponsored on behalf of the Nevada Association of Counties. There are no amendments.

Senator Hammond:

I have received several emails from constituents as well as other residents of the State with the concern that the counties would be given too much "home rule." Some of that mentality goes back to the beginning of the State. I also received comments stating that this is necessary. We can give functional "home rule" to the counties, let them take care of mundane, day-to-day activity. If we feel that it is not working, we have been empowered to take that back and

conduct business at the State level. This bill is needed. Counties are not as small as they used to be; this is worth our attention.

Chair Parks:

Nothing in the bill gives counties a trial period, but we can say that eyes will be watching. It will probably lighten the Government Affairs load by three or four bills every Session.

We have a letter from Las Vegas Township Constable John Bonaventura ([Exhibit G](#)) opposing S.B. 2.

SENATOR GOICOECHEA MOVED TO DO PASS S.B. 2.

SENATOR HAMMOND SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

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Chair Parks:

We will move forward to S.B. 21.

SENATE BILL 21: Revises provisions governing state financial administration.
(BDR 31-379)

Mr. Guinan:

Senate Bill 21 is a Committee bill sponsored on behalf of the State Controller. The bill was first heard on February 25. There is one amendment in the work session document ([Exhibit H](#)).

Chair Parks:

This was a substantial bill, leaving us with many questions, of which most have been answered.

Kim R. Wallin (State Controller):

The bill is much thicker now because we had to name every licensing agency with the provision. That is the biggest change to this bill.

Senator Goicoechea:

The licensee has to be notified at least 4 months prior to renewal if it is on that list and subject to nonrenewal because it owes that State money. Is that correct?

Ms. Wallin:

Yes, that is correct. We now have the notification process allowing time to correct it or have a hearing and establish whether it is owed or not.

SENATOR HAMMOND MOVED TO AMEND AND DO PASS AS AMENDED S.B. 21.

SENATOR SPEARMAN SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

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Chair Parks:

We will now go to S.B. 34.

[SENATE BILL 34](#): Makes various changes relating to group health insurance provided by the Public Employees' Benefits Program. (BDR 23-377)

Mr. Guinan:

Senate Bill 34 sponsored on behalf of the Public Employees' Benefits Program was first heard on February 13. The work session document ([Exhibit I](#)) includes a letter from James R. Wells of the Public Employees' Benefits Program that responds to questions from that hearing. There is one amendment ([Exhibit J](#)), submitted by Marlene Lockard on behalf of the Retired Public Employees of Nevada.

Chair Parks:

A working group was established to look at the entire Public Employees' Benefits Program. It is my recommendation, due to the financial implications that would be established if this amendment were to pass, that we refer this bill to the Senate Committee on Finance, giving us more time to work on the bill and address some of our concerns.

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

I was informed of the amendment today and have not had the opportunity to review it.

One of things that I want on the record—insurance, especially health insurance, is all about the young subsidizing the old, the healthy subsidizing the sick. When you talk about putting this nonstate group of retirees in with state active employees, you must consider that this nonstate retiree pool did not participate in the health insurance plan when they were active employees, and the active employees of the governments they come from are not part of our plan. You are now asking state employees and state retirees to subsidize retirees who did not participate in the pool when they were younger.

We estimate the costs at roughly \$8 million per year. About 75 percent, \$6 million, is financed through State sources. The remaining \$2 million per year is passed on to the participants of the Program. The impact is about \$40 per month for each State active employee and State retiree to commingle that pool of nonstate retirees into the State pool.

Chair Parks:

That is the whole reason we have organized the working group to look at this issue. More needs to be done, with other alternatives to ensure that what we do is proper. Because this 2003 Legislature put us into this position, we have an obligation to address this. I will be supporting the amendment at this time to move the bill to the Senate Committee on Finance.

SENATOR MANENDO MOVED TO AMEND AND DO PASS AS AMENDED
AND REREFER S.B. 34 TO THE SENATE COMMITTEE ON FINANCE.

SENATOR GOICOECHEA SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

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Chair Parks:

We will go to work session for S.B. 144.

SENATE BILL 144: Revises provisions governing the investigation of peace officers. (BDR 23-100)

Mr. Guinan:

Senate Bill 144 is sponsored by Senator Tick Segerblom. The Committee first heard the bill on March 6, with work sessions on March 27 and April 10. A new amendment was received today; the text is included with the work session document ([Exhibit K](#)). The amendment also deletes section 1.5, the *Garrity* language, limiting the admissibility of peace officers' statements relating to internal investigations.

Chair Parks:

When we last considered this bill, it was our understanding that a meeting would take place with all interested parties to see if some consensus could be developed. With the amendments, it appears that some movement was made.

Mr. Dreher, did Senator Segerblom ask you to speak on his behalf?

Ron Dreher (Peace Officers Research Association of Nevada; Las Vegas Police Protective Association; Southern Nevada Conference of Police and Sheriffs; North Las Vegas Police Supervisors Association):

We did as the Committee suggested and met yesterday in Senator Segerblom's office with the Nevada Sheriffs' and Chiefs' Association's representatives and members of the State. We had a long, productive meeting, resulting in the amendment in front of you, [Exhibit K](#).

There were concerns about the notice and when audio and video recordings would be shown and at what level. We incorporated the part that said "immediately prior to the internal affairs interview," not 5 days before.

Another suggestion was to give some flexibility to the internal affairs investigators. Senator Segerblom made the suggestion that we put in the words "exigent circumstances," so there is not an always-and-anytime blanket that you would get to see the audio and video recordings. If the internal affairs investigator stated that we do not want to show you this audio and video recording at this time because of a given situation, then it is our understanding and agreement that the "exigent circumstances" is vague on purpose because investigators have to tell us the reason.

We discussed dash cameras and how to narrow this focus down to where we make it so audio and video complaints and statements from witnesses are excluded to provide impartiality to get a fair and consistent statement. We also wanted to put in the part about the stores; not inclusive to, but more than likely that includes a lot of the surveillance, convenience and retail store videos are the types of things that you could see.

The bottom line, from our perspective, was to get to the truth. Putting in this compromised language accomplished what the Committee suggested we consider. In an effort to move this entire bill, we took out the portions on the civil sections. We did our best to do everything we could to get the Nevada Sheriffs' and Chiefs' Association on board, and we gave a lot to do that. We provided good, sound reasoning for both sides. The Sheriffs and Chiefs provided their reasons for not wanting to budge; they were still under the impression that we had agreed to disagree. They told us that they were happy with one provision in the bill, the part about the representatives.

I have sent this Committee emails about this amendment. The amendment was not shown to anyone because we wanted to make it a point to be transparent, make sure everybody saw this, make sure everybody had a right to come back and tell us. As of right now nobody has come back; we are still at the agree to disagree level. We would like the Committee to support the bill the way it is.

Senator Spearman:

This question is to the Nevada Sheriffs' and Chiefs' Association. What are the concerns in the proposed amendment?

Bob Roshak (Executive Director, Nevada Sheriffs' and Chiefs' Association):

We have major concerns about conducting an investigation. First, we run internal investigations very similar and parallel to a criminal investigation. If I am arrested and charged with robbing a bank, and I am going to be interviewed, the detectives will not show me a video of me robbing the bank before they ask me what happened. Second, internal investigations go all the way up to a homicide. If we talk to an officer, we want to know what was in his or her mind at the time it happened. If the officer views or listens to something prior to an interview, the initial perspective can be taken out of the officer's mind and we could get something completely different than the original response to why did you do what you did. I thought I saw this; I thought I saw that. If the officer

sees the video, the testimony could be convoluted and reality could possibly harm him or her.

Our concern is that we want an investigation to remain an investigation. I reviewed and explained yesterday's meeting with the committee from the Nevada Sheriffs' and Chiefs' Association. There was a consistent vote back of "no," we do not want that to occur.

Senator Spearman:

Unless the entire investigation is contingent upon that video, those concerns would be addressed in the amendment, [Exhibit K](#), page 3, where line 23 says "upon exigent circumstances as justified by the internal affairs investigator." That leaves a lot of leeway.

Mr. Roshak:

After listening to testimony provided by Mr. Dreher, I am not certain that it does. Mr. Dreher stated the investigator would say "I do not want to show it to you for this reason." I got the impression the intent was to debate that issue.

Senator Spearman:

Mr. Dreher, is that true?

Mr. Dreher:

That is not true. We put "exigent circumstances" in the amendment to specifically allow the investigator conducting the internal affairs interview to provide a reason. Being ambiguous and vague on purpose allows the investigator the flexibility we discussed in our meeting yesterday. The exigent circumstances provide a broad range to the investigator to say yes or no to that; it is not a matter of arguing at that point. There could be an appeal down the road, but the initial investigation is covered by the internal affairs investigator—the investigator controls the interview. We want to provide the flexibility to say we do not want to show you that for this reason, period.

Senator Spearman:

I am trying to get responses with a greater deal of specificity because, with respect to law enforcement, it is everyone's intent to balance rights with responsibilities. I understand the hesitancy to give up anything. Part of the amendment on the work session document reads "except as otherwise prohibited by federal or state law, or upon exigent circumstances as justified by

the internal affairs investigator, any audio and video recordings of the incident.” The words that proceed say that any audio or visual evidence you have is at the discretion of the investigator as to release. That language addresses the concerns.

Mr. Roshak:

The big concern with that, as mentioned earlier, is the mere fact that you are allowing someone to look at a video prior to giving a statement. You are not getting a true perspective of what happened because that viewing can act as a refresher in a positive or negative fashion.

Senator Spearman:

I hear that. The Fifth Amendment to the United States Constitution is the right against self-incrimination. Let us try to balance this; everybody might not get everything. That sentence says what we are going to do, except in these instances. The word “exigent” is really broad; it does not say limitations are on the parameters involved in that decision-making process.

If you have someone being interviewed, you do not have to get the recording 4 or 5 days ahead, it is just before the interview. Years ago we had our tablet; we did not use electronics. We could always go back to that tablet, even in court, just to make sure that what we were saying was true. If we are to get at the truth in an investigation and there is other evidence, unless the whole case revolves around that tape or video, I am struggling to understand why that caveat is an issue. The Police Protective Association is not making the determination; the investigator is making the determination that this is something we cannot show you. Does that make sense to you?

Mr. Roshak:

It does make sense, but it does not make sense. I would like to defer to Director Callaway.

Chuck Callaway (Las Vegas Metropolitan Police Department):

In yesterday’s meeting, I agreed to a compromise with respect to everything in the bill being stricken except for the final component on the representative section of the bill. I had spoken with Kirk Hooten prior to the Legislation Session and had agreed that if unions wanted to pursue that, management would agree. I would be good with this bill if all the other components were stricken except that final section of the bill.

I must stand firm on the part regarding the cameras. Las Vegas Metropolitan Police Department currently provides video and audio evidence to the person prior to interview. As stated in my previous testimony, there are some rare occasions where it would not be appropriate for us to do that. I do not want to codify into law that we must.

Exigent circumstances are vague and open for interpretation. An investigator says—I do not want to show you the video because of these exigent circumstances, and the peace officer says those are not exigent circumstances, we demand to see the video. If we refuse, that could have an influence on further appeals down the road; it could have an influence on civil action against our agency because we refused to show the video prior to the interview; and then it would be up for interpretation—what were exigent circumstances?

In criminal law, exigent circumstances are used, for example, in the case of a search warrant, when a building is burning down or there is a fear that the evidence will be destroyed immediately. This particular amendment does not address those situations which would outline exigent circumstances.

On the other side of the coin, a lot of officers carry their own cameras. If we were to require video to be turned over and shown, it is a two-way street. Management should be allowed—in the cases where officers have their own cameras and potentially have their own video evidence—to be provided that evidence without having to subpoena or get a court order if officers refuse to turn evidence over.

I stand firm against the provision on the cameras. We have used up a lot of your time. We agree to disagree; we will respect the Committee's decision.

Senator Spearman:

The concerns you expressed seem to be under the exigent umbrella, and the last sentence still provides cover. I do not know how the amendment can be strengthened to address those concerns; you cannot address everything with every law. Sometimes you have to trust that people of good faith and good nature do the right thing. It has been addressed in that area.

Here is a practical example: When I was a company commander, one of my soldiers had a court martial. Due to circumstances, in part because of post-traumatic stress disorder, he did not remember some things. With his

counsel, he was allowed to talk out the situation. Some people said this is what happened, and bits and pieces would come back to him. At times, showing a video could lead you to the truth. Bad cops need to be off the street. Given ambiguous circumstances, it is just a matter of remembering what was done or said; even a court of law allows that to happen.

Mr. Dreher:

It needs to be pointed out that we have tried every conceivable way to bend over backwards to find a middle ground here by coming up with language that provides flexibility. As Senator Spearman stated, you cannot put in everything, and you cannot codify everything. The intent of this language, which is crucial to a potential appeal, is to provide the flexibility for the internal affairs investigator to say when he or she can and will not show you the videos or the audios. It is an investigative strategy.

To get to the truth, if you show the video and then ask the question, you say you did not hit that person, the video shows you did. The flexibility provided in this language provides the internal affairs investigator the tools he or she needs. It stops us because in an internal affairs interview, this notice states the allegation of misconduct. The investigator is limited to the four corners of the misconduct on the notice. This provides the investigator the flexibility with what he or she needs and provides us, as representatives for those individuals we are assisting, the tools we need to also say, "the language is clear here, the investigator has the right to say this is an exigent circumstance, we are not going to argue with that." If someone was to appeal, we have legislative language on intent to specify that it is vague on purpose to provide the internal affairs investigator the ability to get to the truth.

Senator Hammond:

I thought there was a system in place that once you have an internal affairs investigation, if it runs its course, due process is afforded to somebody who has been wrongfully terminated. The amendment muddles it more. The word "exigent" is nebulous. It is similar to a term like "with all deliberate speed." It is in the eye of the beholder.

Mr. Dreher:

The trial for the officer who is in an investigation is provided in the internal affairs investigation finding. The findings that come out justify that. A sustained finding is the same as a guilty trial. You do not get to the appeal phase until

way beyond the investigation. The investigation is a trial. You are compelled to put on the notice that you must provide these answers. You do not have Fifth Amendment rights.

Senator Hammond:

But you still have access to a trial afterwards?

Mr. Dreher:

If an employee decides to appeal a termination, yes, he or she can go to trial as an appeal, just like a court of law.

We are talking about areas that at the time of an internal affairs investigation officers are compelled to provide truthful statements. Based on truthful statements, if they are shown video or audio and the like, then they provide what should be truthful information. The findings are sustained-guilty, not sustained-not guilty or exonerated or unfounded which are basically not guilty. That is the preliminary portion of an investigation. That is the trial for the officer under investigation.

These tools are for management to get to the truth, and that is our job. We compromised and did everything we could in this language to incorporate every conceivable way, allowing flexibility by including the words "inclusive of", "except for" and "exigent circumstances." We put those things on the record here as stated. Anybody can appeal anything. By defining it here, with your assistance, we worked to make it so we have the tools we need.

Chair Parks:

I would like Ms. Chlarson to weigh in on "exigent circumstances."

Ms. Chlarson:

The language of the [Exhibit K](#) amendment starting on page 3, line 23, written in green—"upon exigent circumstances as justified by the internal affairs investigator"—is the subject of most of the questions and conversation right now.

Mr. Dreher's stated intent of this amendment is that the internal affairs investigator would be able to say that the recordings would not be given to the peace officer. There may be some concern about the language "as justified," which implies that the investigator would have to give a reason, and that reason

would be subject to debate. My understanding of the intent, from listening to the testimony, is to say that the peace officer would have the right to review these recordings as listed here unless the internal affairs investigator determined otherwise. I do not read the words to match up. If the Committee decides to adopt the amendment, Legal Division would use different language based on the stated intent.

Senator Spearman:

From a legal standpoint, there are ways the language can reflect the intent and cover all the dubious aspects that may come later. So that tightens it up and still says the investigator is the one who determines whether to release the recording. That addresses the concern based upon what Ms. Chlarson said.

I know what Mr. Dreher and his organization have given up on this amendment. What have you given up to move toward the middle?

Mr. Callaway:

As stated in my initial testimony, there has been an ongoing whittling away at *Nevada Revised Statutes* 289 over the past several Legislative Sessions. Last Session, at least three bills dealt with this portion of the NRS; we negotiated and allowed witness officers to have a representative. The language in this bill allows them to have two representatives. In past Legislative Sessions, we have given up management rights. The unions come back and ask for more and more changes to NRS 289 in every Session. That was one of the reasons another bill came forward this Session from the Sheriffs and Chiefs because they felt the need to try to gain back some management rights. I understand the bill will not get a hearing and is dead at this point.

Our compromise goes beyond this particular bill and what took place yesterday in Senator Segerblom's Office. We have been compromising, negotiating and giving up management rights for many sessions.

Senator Goicoechea:

We are affording police officers an opportunity not afforded to the general public by allowing them to see and review some of the evidence in place. We have to hold officers to a higher standard, and I am afraid by even this small piece, we are affording them something we do not give the general public. I will be opposing the bill.

Senator Spearman:

I do not know how I will vote for this bill. I will reserve the right to change my vote on the Senate Floor should other information become available. The higher standard is already there. As I said before, for me, it is a matter of balance. We want to get at the truth. If I were accused of something and simply did not remember, memory is one of the nebulous things. I want to make sure we are doing the right thing for the right reasons and not whittling away at the statute. The statute needs to be fair and just to everybody, because if any of us in here were in that situation, we would want to have all the tools and accoutrements available to prove our innocence.

Senator Manendo:

There is still work to be done on this bill. It does not appear that any of us are comfortable. If we move something forward and folks sit down and talk about this again, that would give me more comfort and the bill would not die.

Chair Parks:

In general, most individuals do not get put into a situation to which a police officer may get involved. We can always entertain a floor motion. It seems that section 1 of the bill is the area of greatest contention. While I have some preference that we not delete it, we could pass the bill without section 1 and leave it for a floor amendment or action by the other House. A question to legal counsel is whether there may be a precedent for this.

Ms. Chlarson:

To clarify, do you mean precedent as to taking action on the bill?

Senator Spearman:

Is it in existing law?

Ms. Chlarson:

I am not sure of any caselaw or legal precedent that would require specific language in section 1. The Committee could take action other than that presented in the work session document, as the Chair suggested. Amend and do pass with the amendment to delete section 1 of the bill would be appropriate.

Senator Manendo:

That keeps the bill alive, keeps the vehicle alive, keeps the opportunities for folks to talk. There would be more support than the other way, instead of not bringing up the bill. I would make a motion to amend and do pass, striking section 1 and keeping section 2.

Chair Parks:

A lot of work went into section 1; I would hate to see it for naught. It does not appear that I am getting a motion for an amend and do pass as the bill has been brought forward to us this afternoon.

Senator Manendo:

Mr. Chair, would you like to determine the appetite of the Committee is and do that? If that motion fails, you can take an additional motion.

Chair Parks:

The floor is open for a motion.

SENATOR MANENDO MOVED TO AMEND AND DO PASS AS AMENDED
S.B. 144.

SENATOR SPEARMAN SECONDED THE MOTION.

THE MOTION PASSED. (SENATORS GOICOECHEA AND HAMMOND
VOTED NO.)

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Chair Parks:

We will now go to S.B. 376.

SENATE BILL 376: Proposes to revise provisions relating to the preservation and promotion of the arts and museums in this State. (BDR 18-625)

Mr. Guinan:

Senate Bill 376 was heard by this Committee on April 1. The work session document ([Exhibit L](#)) has no amendments.

Chair Parks:

This bill should be looked at by the Senate Committee on Finance. We could refer the bill or if we are in support of the preservation and promotion of the arts and museums, we could suggest a do pass and rerefer to the Senate Committee on Finance. It does have eligibility for exemption.

SENATOR HAMMOND MOVED TO DO PASS AND REREFER S.B. 376 TO THE SENATE COMMITTEE ON FINANCE.

SENATOR MANENDO SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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Chair Parks:

The next work session is S.B. 232.

SENATE BILL 232: Revises certain provisions relating to the regulation of certain municipal utilities. (BDR 58-481)

Senator Manendo:

Mr. Chair, instead of going through the work session document ([Exhibit M](#)), I would like to make a motion.

SENATOR MANENDO MOVED WITHOUT RECOMMENDATION TO REREFER S.B. 232 TO THE SENATE COMMITTEE ON FINANCE.

SENATOR SPEARMAN SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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Chair Parks:

That concludes our work session for the day. We are adjourned at 5 p.m.

RESPECTFULLY SUBMITTED:

Gwen Barrett,
Committee Secretary

APPROVED BY:

Senator David R. Parks, Chair

DATE: _____

<u>EXHIBITS</u>				
Bill	Exhibit		Witness / Agency	Description
	A	2		Agenda
	B	7		Attendance Roster
S.B. 337	C	1	Town of Pahrump	Support Letter
S.B. 135	D	4	Patrick Guinan	Work Session Document
S.B. 406	E	15	Patrick Guinan	Work Session Document
S.B. 2	F	1	Patrick Guinan	Work Session Document
S.B. 2	G	3	John Bonaventura	Written Testimony
S.B. 21	H	67	Patrick Guinan	Work Session Document
S.B. 34	I	13	Patrick Guinan	Work Session Document
S.B. 34	J	1	Marlene Lockard	Proposed Amendment
S.B. 144	K	12	Patrick Guinan	Work Session Document
S.B. 376	L	1	Patrick Guinan	Work Session Document
S.B. 232	M	1	Patrick Guinan	Work Session Document