

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

**Seventy-Eighth Session
February 19, 2015**

The Committee on Government Affairs was called to order by Chairman John Ellison at 8:33 a.m. on Thursday, February 19, 2015, in Room 4100 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4404B of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website: www.leg.state.nv.us/App/NELIS/REL/78th2015. In addition, copies of the audio or video of the meeting may be purchased, for personal use only, through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblyman John Ellison, Chairman
Assemblyman John Moore, Vice Chairman
Assemblyman Richard Carrillo
Assemblywoman Victoria A. Dooling
Assemblyman Edgar Flores
Assemblywoman Amber Joiner
Assemblyman Harvey J. Munford
Assemblywoman Dina Neal
Assemblywoman Shelly M. Shelton
Assemblyman Stephen H. Silberkraus
Assemblywoman Ellen B. Spiegel
Assemblyman Lynn D. Stewart
Assemblyman Glenn E. Trowbridge
Assemblywoman Melissa Woodbury

COMMITTEE MEMBERS ABSENT:

None



GUEST LEGISLATORS PRESENT:

Assemblywoman Irene Bustamante Adams, Assembly District No. 42

STAFF MEMBERS PRESENT:

Carol M. Stonefield, Managing Principal Policy Analyst
Jered McDonald, Committee Policy Analyst
Eileen O'Grady, Committee Counsel
Lori McCleary, Committee Secretary
Cheryl Williams, Committee Assistant

OTHERS PRESENT:

Roberta (Bobbie) Gang, representing Nevada Women's Lobby
Marlene Lockard, representing Nevada Women's Lobby
Helen Foley, Private Citizen, Las Vegas, Nevada
Elisa Cafferata, President and CEO, Nevada Advocates for Planned
Parenthood Affiliates
Stacey Shinn, representing Progressive Leadership Alliance of Nevada
Janine Hansen, representing Nevada Families for Freedom
Lynn Chapman, representing Nevada Eagle Forum
Douglas V. Ritchie, Private Citizen, Minden, Nevada
Daphne DeLeon, Administrator, Division of State Library and Archives,
Department of Administration
Jeffrey M. Kintop, Assistant Administrator, Division of State Library and
Archives, Department of Administration
Scott K. Sisco, Deputy Director, Support Services, Department of
Corrections
Pat Whitten, County Manager, Storey County
Lance Gilman, Vice Chairman, Board of Commissioners, Storey County
Michael D. Hillerby, representing American Institute of Architects Nevada
Russell Rowe, representing American Council of Engineering Companies
of Nevada
Jean A. Weil, Private Citizen, Las Vegas, Nevada
Bill Valent, Private Citizen, Las Vegas, Nevada

Chairman Ellison:

[Roll was called. Committee rules and protocol were explained.] We are going to take things out of order. We will start with Assembly Bill 134.

Assembly Bill 134: Revises the qualifications for appointment to the Nevada Commission for Women. (BDR 18-550)

Assemblywoman Irene Bustamante Adams, Assembly District No. 42:

I had the honor of being the chair of the Sunset Subcommittee of the Legislative Commission during the last interim. With me today is Carol Stonefield, who was the legislative staff person for the subcommittee. Before you is Assembly Bill 134, with recommendations from the Sunset Subcommittee. Before I begin, I would like to give you some background so you understand what our mission was, and then I will go into the recommendations.

The subcommittee was created by the Legislature in 2011 under Senate Bill No. 251 of the 76th Session. It was a bipartisan-sponsored bill, and it had unanimous support in both houses. They gave us the mission of reviewing all boards and commissions that the Legislature has created. Our goal was to determine whether to continue, modify, consolidate, or terminate the boards and commissions we reviewed. At the end of the interim, we had the responsibility of giving those recommendations to the Legislative Commission, who then decided if the recommendations should be brought forth before you and if there were any changes to the *Nevada Revised Statutes* (NRS).

You will find the full report of the Sunset Committee on a link provided on the Nevada Electronic Legislative Information System ([Exhibit C](#)), but we also have hard copies available.

In the last interim, we reviewed a total of 31 boards and commissions. We recommended 10 for continuation, 8 for continuation with statutory revisions, 2 for consolidation, 9 for termination, and 2 with termination and transfer of their functions to other entities. Those bills will be presented in other committees according to what NRS Chapter they are associated with.

Assembly Bill 134 has to do with the Nevada Commission for Women. During our testimony, we learned the commission was created in NRS in 1991. It seems to have been active through the 1990s. The last recorded meeting we have was between 1999 and 2000. There is no record that the commission has had members since then. By statute, the Legislature asked that the commission consist of ten members appointed by the Governor with two criteria. The first criterion was that the members must reflect varied political philosophies regarding issues of concern to women. The second criterion was that no more than five members could be from the same political party.

The Legislature gave the commission the charge of studying the changing role of women, including socioeconomic factors, with the duty to propose legislation, if necessary. The commission could collect and disseminate the information on programs and services available to women in Nevada.

Although the commission appeared to be inactive, during the hearing we were approached by several members of the community requesting the subcommittee not recommend termination of this commission. They asked that the commission be reactivated with new appointments by the Governor. We did hear from the Governor's staff asking us not to terminate the commission at this time.

The Sunset Subcommittee is recommending continuation of the commission with the proposed changes in the composition of the membership. I explained the two criteria, but we are asking that the membership also reflect the diverse demographics of Nevada, including race, national origin, gender, age, marital and family status, sexual orientation, and income level.

In conclusion, the recommendation from the Sunset Subcommittee is that the commission membership be more representative of the people of Nevada, and also that the appointments made by the Governor reflect the new Nevada demographics of today. I would be happy to answer any questions. [Written testimony was also provided ([Exhibit D](#)).]

Assemblyman Stewart:

I notice in the bill that the commission may consist of either gender. Is that correct?

Assemblywoman Bustamante Adams:

Yes, that is correct.

Assemblyman Stewart:

I would like to declare my candidacy for that position. I believe I am eminently qualified. I have been directed by five generations of women, including four granddaughters, a daughter, a daughter-in-law, a wife, a mother, and a mother-in-law. I have also been directed by two wonderful female Assembly Speakers and eight committee chairwomen.

Assemblywoman Bustamante Adams:

Thank you for volunteering. It is duly noted and will be communicated to the Governor.

Assemblyman Trowbridge:

Because you are limited to ten members, and the goal is to achieve the diverse demographics, is the intent that an individual who may happen to be a single, Hispanic, high-income-earner with children qualify for multiple categories? There are not enough member slots to give one of each.

Assemblywoman Bustamante Adams:

I am going to ask Carol Stonefield to respond to that question.

Carol Stonefield, Managing Principal Policy Analyst, Research Division, Legislative Counsel Bureau:

As Assemblywoman Bustamante Adams said, I was the staff person to the subcommittee last interim. I seem to recall that when the suggestion was made by a member of the subcommittee to list the various demographics, there was no discussion that each one of these would be a category, but rather the membership would reflect a variety of people across Nevada's demographics.

Chairman Ellison:

Could you give us a makeup of the board?

Assemblywoman Bustamante Adams:

As I stated in my presentation, there has not been a meeting of this commission since 2000. The commission does not currently have any members, and that is why we are recommending that the Governor make the appointments. He did send a draft to the subcommittee asking us not to terminate the commission, as he would be interested in reactivating it and appointing the members.

Carol Stonefield:

At the beginning of the interim, the chairwoman requested that we examine the inactive boards and commissions, and there were approximately 15 in the statutes. Some of these boards and commission had not had members for quite some time. The Nevada Commission for Women was one of those that had not listed any members in the "Directory of State and Local Government" since 1999. Along with a number of those that had been recommended for termination, the expectation was that this commission would possibly be recommended for termination, as well. However, there were a number of people who did not want to see that, and in fact, the Governor's staff indicated he would respectfully request that the subcommittee not recommend termination. There have not been any members for quite some time.

Assemblyman Moore:

I am not sure this is going to be relevant since there are no current members of this commission. What demographic did you feel was underrepresented that caused you to make this recommendation? Was it an issue?

Assemblywoman Bustamante Adams:

No. We did not encounter that because they have not had membership for quite some time.

Assemblywoman Neal:

In your written testimony, it said this commission was active in the 1990s. What were they able to accomplish when they were active?

Assemblywoman Bustamante Adams:

I am going to ask Ms. Stonefield to give you some remarks on what they had accomplished.

Carol Stonefield:

When we were doing some background research on this commission, the Research Library of the Legislative Counsel Bureau worked with the Division of State Library and Archives of the Department of Administration to determine what sort of records we had from this commission. In the 1990s, the commission issued a report to the Governor and the Legislative Commission. It also issued "Nevada Women's Legal Guide" in 1995 and "Domestic Violence: A Handbook for Victims and Professionals," which was issued in 1998. In addition, there are minutes in the holdings of the archives. The commission did actually produce some publications during the 1990s.

[Assemblyman Moore assumed the Chair.]

Vice Chairman Moore:

Are there any further questions from the Committee? [There were none.]
Is there anyone wishing to testify in support of the bill?

[Assemblyman Ellison reassumed the Chair.]

Roberta (Bobbie) Gang, representing Nevada Women's Lobby:

Nevada Women's Lobby was actively in the building in 1991, when this legislation was passed. We supported the Nevada Women's Commission then, and we support it now. My prepared remarks are a duplicate of everything you have just heard from your staff and Assemblywoman Bustamante Adams, so I will not repeat them. I will tell you the commission conducted intense research. At their meetings, they held hearings with experts from around the

state and outside the state to study the issues they determined were important. Those issues included nontraditional job training, which is a big issue today with women entering fields considered nontraditional jobs. They looked at parity in education, making sure women were receiving equivalent education and had the same opportunities as men. They looked at child care, which is continually a huge issue for women and their families. They looked at the judicial issues affecting women. They also looked at the economic issues impacting women, their families, and how the economy affects the status of women.

Paula Quagliana, who was a member of the Nevada Women's Commission, summed up the commission by saying, "The Women's Commission is the missing link between what we know and the fact that we're not doing anything about it."

As you heard, they did publish two guides. They also have reports on their issue areas that are filed somewhere. I believe they may be at the university, but I have not been able to determine that.

It was unfortunate that the Nevada Women's Commission became inactive once the Governor at the time stopped appointing members. There were many issues confronted in the state regarding women, men, and families. We were mostly concerned about the economy, the recession, and we were struggling to find ways to fund the basic necessities for our state. I hope you will approve this legislation.

Assemblywoman Shelton:

Ms. Gang, were you on the commission at the time?

Bobbie Gang:

No, I was not. I attended several of their meetings.

Marlene Lockard, representing Nevada Women's Lobby:

The Nevada Women's Lobby is a statewide, nonpartisan coalition of organizations and individuals who work on issues affecting women and families. Our theme for this legislative session is, "Raising voices on issues of poverty, sustaining women, children, and families."

To demonstrate we feel the need for this commission to be reestablished, I put together a quick summary of some recent reports. Did you know that Nevada is the second worst state in the nation to raise girls according to a new report by the Girl Scout Research Institute? [Continued to read from prepared text ([Exhibit E](#)).]

Chairman Ellison:

Could I get a copy of the report from the Girl Scout Research Institute?

Marlene Lockard:

I would be happy to provide that to you.

Helen Foley, Private Citizen, Las Vegas, Nevada:

I am very active in southern Nevada with some of the women's organizations, and I am proud to speak on their behalf today. There is some good news in Nevada. Between 1997 and 2013, women-owned businesses in Nevada have increased by 91 percent. That is a very good sign. Unfortunately, one of the problems is the rate of poverty for Nevada families has more than doubled when that family is headed by a woman. In southern Nevada, there are many service industry jobs with single mothers who are trying to provide for their families.

We have learned that Nevada women rank very low on a number of health issues, as well. We have the highest mortality rate for women with lung cancer and suicide. There are many unhealthy behavior problems, such as smoking, drinking, and drug abuse.

We do have one of the highest rates for elected women. As a former elected woman in Nevada, I am extremely proud of that. Unfortunately, we have one of the lowest rates for women in voter registration and turnout. That is a shame, since we earned the right to vote in 1914, and we were a full six years ahead of the national suffrage movement.

The last study we found was produced in 2005, called "The Status of Women and Girls in Nevada." The Nevada Women's Fund from northern Nevada really spearheaded that drive, but the research came from several different sources: the Women's Research Institute at the University of Nevada, Las Vegas (UNLV); the Center for Business and Economic Research at UNLV; and the Center for Applied Research at the University of Nevada, Reno. Because there has been a census since the 2005 document, I am sure the statistics have changed. If we could utilize the national statistics of 2010 to do the next report, we may find what is happening in Nevada more clearly. The other reason I think this study would be very good is in providing recommendations to our state agencies in the way they obtain information. We know there have been national studies showing that for women who have heart attacks or strokes, their symptoms, many times, are different from men, and the outcomes can be very different. Unless those types of studies are done and segregated women versus men, we really do not know how to treat those issues. This is a very comprehensive study the commission can look at.

As you noticed in the bill, there is no money. However, there might be. We would strongly suggest and recommend that you support this and pass it to the Assembly Committee on Ways and Means. Let them look to see if there is money that could be expended for this study. I believe that most of the individuals on the commission would do it pro bono. However, there does need to be some money to do the research. We believe \$75,000 would be appropriate, but that is something we could discuss at a later point.

As far as Assemblyman Stewart's comments about men on the commission, I believe it is highly appropriate to have men on this commission. The status of women is not something that is isolated to women. Most of the time when you have women in a marriage, you also have children. When my parents were married, it was a Donna Reed society, where the wife stayed home and took care of the children. Unfortunately, most families can no longer afford to do that. When you have a man and a woman both working, and the woman is just not treated the same way as a man, it affects the entire family, including the children. I am strongly in support of having men on this commission. We certainly hope you can support this legislation.

There were some letters submitted in support of A.B. 134. One letter was from Joanne Goodwin ([Exhibit F](#)), who is a professor of history and the Director of the Women's Research Institute of Nevada at UNLV. There is a letter from Lorri Jackson ([Exhibit G](#)), who is with Merrill Lynch Wealth Management. There is also a letter from Carole Turner ([Exhibit H](#)), who has served for many years in the federal government with veterans and understands the difference between male and female veterans and their impact on society.

Chairman Ellison:

One of the questions that has arisen is, of course, the fiscal impact. Will there be an amendment for a fiscal note? Currently, the bill shows a zero fiscal impact.

Helen Foley:

Because of the way the Sunset Subcommittee is formed, they either move to continue or eliminate a board or commission. That was their task, so they did not add funding to this bill. We would request your support and have you refer the bill to Ways and Means. We would then work with them on what would be appropriate. We could also find gifts and grants to supplement whatever amount Ways and Means may provide. It would certainly show different foundations and organizations a commitment by the state if the Legislature could at least partially fund it.

One of the reasons this continued and was not completely killed, besides the great dedication of Assemblywoman Bustamante Adams, was the Office of the Governor wanted to see it proceed, as well.

Elisa Cafferata, President and CEO, Nevada Advocates for Planned Parenthood Affiliates:

As many of you know, we have three health centers throughout the state that provide education and preventative health care services for women. Part of our mission is to empower women to be able to understand their own health care, their family's health care, and to make healthy and responsible choices for their family.

I wanted to follow up on Ms. Foley's comments about women and the role they play in family health. We know women make about 80 percent of the health care decisions in this country. Over the last few years, we have been seeing the great need for education around the responsible use of health care, particularly preventative health care in taking care of families and children. We see this bill as an opportunity to have discussions and provide education throughout the state to help women have healthy families and children. We are in support of this bill.

Stacey Shinn, representing Progressive Leadership Alliance of Nevada:

I will say ditto to the words of the women who testified before me. Until we have an equitable society, we need to continue these discussions and view policy through a lens that analyzes underrepresented communities.

Chairman Ellison:

Are there any questions from the Committee? [There were none.] Is there anyone else wishing to testify in favor of the bill? [There was no one.] Is there anyone here in opposition?

Janine Hansen, representing Nevada Families for Freedom:

I have been the state president of the state affiliate of the National Eagle Forum since 1978, which is a national pro-family, pro-life, pro-constitution, limited government organization. We have long opposed the Nevada Women's Commission. We think political philosophy should be promoted in the free realm of ideas on their own dime and on their own time and not be under the auspices of the government.

In the legislative history, in 1991, it was stated that opponents argued that the Nevada Commission for Women would promote feminist, political agendas and create a special interest lobby. We have never been part of the Nevada Women's Commission, and we have not been included. A vast majority

of women's ideas and concerns are not included. I have two daughters and seven granddaughters. This commission has been inactive for 15 years. I certainly believe it should be sunsetted, and they should do as we do, work on these issues on their own time.

The best remedy for economic problems is liberty. Liberty is the answer for addressing poverty, not government programs. We need to give people the economic resources to take care of themselves. Women, wives, mothers, and grandmothers are working to support families.

We are especially opposed to any money going to this commission. We do not need tax dollars going to a particular political philosophy that is in opposition to many women in this state. We believe it should be eliminated. We appreciate your interest and concern in this. We hope the inactive status of the Nevada Women's Commission will continue, because we, as women, do not want it continued. Perhaps they should have a commission on families that includes everyone, then certainly Assemblyman Stewart would be happily included. We are concerned that this commission has one political philosophy, and we do not think the government should be promoting that. They should do it as we do, on their own time and dime. We appreciate the opportunity to communicate with you this morning. We ask that this bill not be approved and the commission be sunsetted.

Assemblywoman Neal:

In the bill, section 1, subsection 2(b), where it says "varied political philosophies," you do not think that is going to be real?

Janine Hansen:

It has not been real so far. It has never been the experience of this commission to be varied, and we do not believe it will be now. If it is, it will only be a token representation.

Assemblywoman Neal:

This is new language. The prior board did not function the way this new sentence changes the commission.

Janine Hansen:

I do not have the optimism to believe this will be any different. I do not think the government should be funding special interests.

Assemblywoman Neal:

Really? We may have to come up with a list.

Janine Hansen:

I am ready for it.

Assemblywoman Neal:

Would this mean you are not going to join the board?

Janine Hansen:

I doubt that I would ever be invited.

Assemblywoman Neal:

Really?

Janine Hansen:

Certainly. I have not been invited in all these years. I have been around this Legislature since 1974. I guess a miracle could occur.

Assemblywoman Neal:

We should keep hope alive that the new board has a different vision and a different ability to embrace varied political philosophies.

Janine Hansen:

I would be happy if that were the case, but I think people should work as volunteers in influencing government outside of the government, not within. I think it is an inappropriate role for government to be advocating these things. It should come from the people themselves through the process of liberty and the legislative process.

Assemblyman Flores:

I would like you to help me understand. Every single day people in government are making decisions that are negatively impacting women. Is that true? The research says Nevada is the second worst state to raise a young woman. Your stance is not having a board that would bring women's issues forth. You feel individuals have a tainted perspective and those who do not share your perspective do not have an understanding of the needs of women. Is that correct?

Janine Hansen:

I am not exactly sure if what you are saying is what I am saying. I would like to know where the state stands in raising boys. I have four brothers, five grandsons, and two sons. I think oftentimes the welfare of women and the welfare of men is directly tied together. Women's welfare is not separate from men. I am not separate from my husband in my welfare. My children are not separate from one another or their spouses. We need to look at families. I am

concerned about everyone in the state of Nevada. I believe there are a lot of things the private sector can do in promoting the welfare of women. I belong to the largest women's organization in the nation. We are engaged in training young women to have success in their families, in their lives, and in everything they do. We train them in leadership and give them leadership responsibilities. I have been teaching classes for women for 40 years. I believe there are many things we can do in the private sector to improve the welfare of women, which I am fully engaged in doing, not only first and foremost with my children and grandchildren, but also within my church and my community. In being here, I am an advocate for the concerns of women and families, and that is how I view myself. I do not think we need the government to do that for us. I think we are very capable in advocating that to our elected officials. I appreciate the opportunity to come here and speak to those of you who have been chosen by the voters, rather than to unelected, and usually unaccountable, boards and commissions.

Assemblyman Flores:

I genuinely appreciate your passion. I understand what you are saying, that the private sector can do it. However, if the data shows that we are the second worst state, that means through the private sector, we have not fulfilled that objective. Perhaps ensuring that individuals who do not understand government be a part of government and that they have a voice may be beneficial. I am not disagreeing with you that the private sector should obviously have a huge responsibility in that, as well. I am trying to see it both ways, and I appreciate your comments.

Janine Hansen:

Assemblyman Flores, I appreciate getting to know you better and appreciate your questions. I know you are sincere. I believe the best answer is in freeing the private sector from the burden of additional government that allows them to succeed.

Assemblywoman Dooling:

I do not see any kind of reporting to the Governor in this bill. I am sure it would happen. If you felt this was an opportunity with no money attached to it, would you be more inclined to join if you were invited?

Janine Hansen:

I am always open to opportunities which may increase the liberties, economic freedom, and future of families, women, and men in the state of Nevada. I would never preclude that. However, I do not believe it should be the role of government. I think if I were invited to be on the commission, I would simply be a token and the report would be one of a philosophy with which I do not

agree. That is conjecture and assumptions made over long years in the past. I do believe those things could change, and I would certainly be open to any opportunities I think may increase the welfare of women, girls, men, and boys in the state of Nevada. I think they are inextricably tied together in their welfare.

I was a single mother with two children. I worked in the nontraditional field of painting houses and construction in order to support my children. I know about those difficulties. I have been divorced and alone. I understand those problems. I have now been married for the last 28 years and have 13 grandchildren, so I also understand those challenges. I am always open to opportunities to serve. I have been serving almost entirely as a volunteer my entire life trying to make things better for families.

Assemblyman Munford:

I might be jumping into another area, but the private sector has a legacy and a history of not treating people in an equal way. The private sector has never had equal hiring practices. There has always been discrimination with the private sector. If you know the legacy of civil rights and the history of this country, you know the private sector was the one being attacked or confronted, and being required to adhere to the laws that the government established. The government was set up on the premise of equality, justice for all, and equal opportunity. The number one problem in this society is the lack of opportunity. All people ever wanted was the opportunity. You can also include justice.

You are talking about a private sector whose history and legacy are not very good. I would not leave it up to them to make the decisions. The private sector is disconnected with what is going on in this country today. That is what the President is talking about right now: the private sector, because they are not doing their job to bring about equality and opportunity. What do you say about that?

Janine Hansen:

I appreciate this opportunity, and you and I have had many friendly conversations. There are many different parts of the private sector, some of which are churches that have been very involved in advocating for individual rights. We know the legacy of Dr. Martin Luther King and the religious movement to gain those things. We also see many persecutions that have taken place with the government. I belong to a particular religion that suffered immensely at the hands of the government. In fact, an extermination order was issued in the state of Missouri in order to murder the leader of our church. The people were forced to leave Missouri and flee to Illinois in order to be saved from the Missouri militia. They were then forced to leave Illinois by the government and the governor of that state and move to Salt Lake City. It is not

only the private sector that may fail in defending individual rights, but it may be the government itself which is perpetrating persecution upon individual organizations and people of different philosophies. That is certainly what happened to my predecessors and ancestors, who were denied all of their rights, including freedom of religion. They left the United States because of the persecution by government. It is not just the private sector that fails, but often the government that fails.

Certainly, the private sector has many colors, including those who have worked tirelessly to gain the rights of other individuals. The Abolitionist Movement was almost entirely people of religion who were trying to free those who had been oppressed. I do not think it is a one-sided story. There is no perfect answer. When you have liberty, people can make choices. Those choices impact others. That is why we believe in liberty, in choice, and the opportunity to continually work to make things better. That is why I have come to this Legislature to work every session since 1971 as a volunteer to try to improve that. I appreciate your concerns because I have similar ones. However, sometimes it is the government who perpetrates the loss of rights.

Assemblyman Munford:

I am not going to turn this into a debate because this is not the forum for it.

Chairman Ellison:

You can go into private meetings with these issues.

Assemblyman Munford:

I will let it pass now. You have your position, and I have my position. I know history as well as you, and I have lived it too. I know in a lot of ways, living it firsthand, I have gone through some distressing and disgusting experiences as a black man.

Janine Hansen:

We have certainly all had some of those.

Assemblyman Munford:

You are going to weigh your struggle as difficult as black people in this country? Slavery is the worst thing that happened to mankind.

Janine Hansen:

Certainly it is. However, the murder of the people who were members of my church was also significant.

Chairman Ellison:

We are getting off the point of this bill, and we need to move on. You can both revisit that conversation together at another time.

Janine Hansen:

We have talked to Assemblyman Munford many times and have enjoyed it very much.

Assemblyman Trowbridge:

What we are talking about here is different philosophies of life. The bill primarily addresses diverse demographics. I think the issue of the varied philosophies that exist might be given a lot more credibility. If we look to line 3 on page 2, where it says, "varied political philosophies," if we were to simply delete the word "political" and say "varied philosophies," it might give the opportunity for discussion of a broader issue rather than just demographics. I do not think philosophical issues are tied to demographics, necessarily, nor to political parties. Deleting the word "political" may open the door for broader discussions.

Janine Hansen:

Certainly, that is a possibility. I do not have much faith in any of this, I am afraid, over many years of experience.

Lynn Chapman, representing Nevada Eagle Forum:

I am the state vice president of Nevada Eagle Forum. We, too, are very concerned with what we have been talking about. Ms. Hansen has touched on just about everything I was going to talk about. However, I believe the quality of life for all Nevadans should be the issue. We should not go off on tangents. We should be concerned for all Nevadans. I was wondering if there was a commission for Nevada men, but I have never seen anything like it. Certainly, the men in this state are also concerned about their families. There are many people out of work, and we have one of the highest unemployment rates. I think we should keep that in mind. I also believe if you want to raise money, that would be great, but do it on your time, your dime. I have been coming to the Legislature since 1987 as a volunteer. We have to raise our own money. Maybe you should think about giving us money because we are working for women, children, and families.

In 2009, there was a bill for the Nevada Women's Lobby, and they were asking for \$250,000. When I looked at the list of the things covered by this group, there was nothing I would be interested in. It was all about reproductive rights, aid for AIDS, and the culture center opening. These are things I would not necessarily be interested in working on. A lot of the tax money went to things

I was not interested in. I have a feeling the Nevada Women's Commission is going to be the same way. If the Nevada Women's Commission was so important, why have they been defunct for 15 years? Maybe that should be your first clue.

In addition, we have been talking over the years about how there is no money for children, schools, school buildings, et cetera. Are we really going to put money into this? If you are going to do anything, save that money for the schools and for the school buildings. Put the money, time, and effort into something that would benefit all Nevadans.

Assemblywoman Neal:

Did you serve on the Nevada Women's Commission?

Lynn Chapman:

No, I did not.

Assemblywoman Neal:

Do you have an interest in serving in the future?

Lynn Chapman:

That is a question I am not sure of at this point in time. I have a husband ready to retire. It would be interesting. I have served on other boards for various things throughout my life, but I would be a little concerned with this one because I do not know how many people would be on the board who think as I do.

Assemblywoman Neal:

Freedom is essentially the crux of the definition of liberty. If you have the ability to voice your opinion in a group, you cannot challenge it when you do not participate and add your voice to the collection. Perhaps in the past there were people who did not want to hear your voice, and I would say that is wrong. At the end of the day, you cannot take hurt from the past and place it in today's context, then challenge something going forward without putting your voice in the process. What you are doing today is putting your voice in the process.

As a woman, if you do not believe in it, fine. However, there are real public policy concerns that need to be addressed, and I would suggest you let the hurt go and put your voice in the future. I do think, regardless of whether or not it is a minority viewpoint, or one that is not necessarily believed in, this is still an important part of the dialogue and discussion in this building. This is only my opinion, but I would suggest to you not to take something from the

past and place it in the future, but look forward and apply for that commission, get your voice heard, and make sure it is a part of the other discussions so they are well-rounded.

Lynn Chapman:

I understand exactly what you are saying. That is why I have been taking my time, my dime, to the Legislature since 1987 to give my opinion. My opinion on this bill is to oppose it. This commission should be sunsetted because I do not believe the commission should be paid for with taxpayer money. If there are those who want to do this on their own, that would be great. Have a commission, but pay for it on your own. I think that would be a better way to go. I also think people would listen more because when you are part of a government-sanctioned commission, I do not think people really listen as well as they do if you are out there working hard to have your voice heard.

Chairman Ellison:

Is there anyone else wishing to testify in opposition? [There was no one.]
Is there anyone wishing to testify as neutral to the bill?

Douglas V. Ritchie, Private Citizen, Minden, Nevada:

I am a citizen of Douglas County. I am neutral on this bill and did not come today to testify on this bill, but it has been an interesting discussion. It sounds like a commission in search of a problem. As I understand it, since 1999, the commission has not been active. Since that time, we have had a very viable female presidential candidate and a female United States Secretary of State. In our own state, according to those in favor of this bill, women-owned businesses have increased dramatically, we have one of the highest participation rate of females in our Legislature, and 80 percent of health care decisions are made by women. I did a count of the females on this Committee and there are seven women and nine men. I hate to count because in a represented democracy, we do not separate people, we represent the citizens.

I think government's tendency is there is not a problem for which a committee cannot be appointed. Maybe there is a purpose for having a committee. I will note, in *Democracy in America*, Alexis de Tocqueville said the genius of America was private action. He stated that in Europe, if there was a problem, they looked to the government to fix it, but in America, they fixed it themselves. That made sense in the west. The community got together to help someone build a barn, or if someone was sick, people would bring over meals.

I think the danger here is special interest groups who think they have a greater need. Today, there was a discussion about which group was more persecuted. I think what we are trying to do is encourage people to look out for one another,

to respect each other's differences, and to work together to solve problems. De Tocqueville thought that was the genius of America. Maybe America has changed and we do need a committee for every problem. Again, I think the issue is whether we have a committee in search of a problem.

Assemblywoman Spiegel:

This commission has been dormant since 1999, and during that time the plight of women in this state puts us as the second worst in the nation overall. Yes, there has been some good data to share; but if you look at the Girl Scouts report and if you look at where we are standing, it seems apparent that the private sector, which has been theoretically addressing this issue since 1999, has come up short and has not been providing the solutions that you say the private sector can provide. What do you do when such a large percentage of the population is doing so poorly, and the private sector cannot or will not help address the issues of that group? Is that not something the government should be looking into, to see that there can be justice for all?

Douglas Ritchie:

The first thing I thought of was the Girl Scouts are not exactly known for their peer-reviewed studies. A lot of the issues that were brought up, problems with smoking rates, educational outcomes, and poverty, are general issues that the State of Nevada must address. Cancer rates and smoking rates are high regardless of whether you are male or female. The same thing with educational outcomes. If you want to talk about educational outcomes, there are many studies that talk about young men; the highest rates of prescription drugs are for young men. There are arguments being made that young men are being drugged because there are no socialization skills until later, even later than females.

Regarding the issue of the private sector being effective, as I recall, the Civil Rights Movement involved private citizens who were concerned about the rights of African Americans in this country. The Reverend Martin Luther King was not a government official, and the people who marched were not government officials; they were people who saw a problem and represented democracy, and they had their voices be heard. Those changes were initiated by private action. Regarding the plight of women in Nevada, maybe the Girl Scouts are right about Nevada being the second worst for families in the nation. However, as I look at this board, there are a lot of very competent legislators here who are women. The opponents to this bill have already pointed out that women are doing pretty well, except in areas that are general interest, meaning educational outcomes, smoking rates, et cetera. Again, these are issues that impact everyone, regardless of gender or race.

Assemblywoman Spiegel:

Some of the issues you brought up are things the government is taking an active role in, and we are looking at improving the plight of every Nevadan. Some groups need a little more help, and I think it is important, as representatives of the people, we all strive to represent all of our constituents and see that they are all lifted up and doing better. I do thank you for coming in and making your voice heard.

Chairman Ellison:

Is there anyone else neutral on this bill? [There was no one.] Do you have any closing comments, Assemblywoman Bustamante Adams?

Assemblywoman Bustamante Adams:

Our authority is to review the board, whether it should be continued, terminated, or transferred. We do not have the statutory authority to recommend money. I know that was brought up, and that is your decision. That is not the recommendation or the authority of our subcommittee. I would hate to see the bill go to the Assembly Committee on Ways and Means and die. However, that is your decision to make, not ours.

The previous board had a very diverse group of individuals, from very conservative to liberal, Republicans and Democrats, people such as Nancy Ernaut and Senator Bernice Mathews. They had no problems producing the reports and working together.

I would like to add that it does matter who the governor is at the time, and whether they consider women's public policy issues as an important matter, because the governor has the authority to make the appointments. As I stated earlier, Governor Sandoval has communicated to me and the subcommittee that he would like to reactivate the commission and appoint individuals.

I appreciate Assemblyman Trowbridge's question about eliminating the word "political" in section 1, subsection 2(a). That would be your decision to make, as well.

Chairman Ellison:

Are there any further questions from the Committee? [There were none.] I will close the hearing on Assembly Bill 134 and open the hearing on Assembly Bill 135.

Assembly Bill 135: Revises provisions relating to schedules for the retention and disposal of official state records. (BDR 19-547)

Assemblywoman Irene Bustamante Adams, Assembly District No. 42:

I was the chair of the Sunset Subcommittee of the Legislative Commission during the last interim. Joining me at the table is Carol Stonefield, who was the legislative staff person for the subcommittee. Before you for your consideration is Assembly Bill 135. The entity that we reviewed as the Sunset Subcommittee was the Committee to Approve Schedules for the Retention and Disposition of Official State Records. This committee does just what it implies in its name. It reviews the schedules that determine when official state records must be retained and when and how they must be disposed of.

During our review of the committee, which is made up of both Republicans and Democrats, the members learned two things. The first was among public employees, there seems to be a lack of awareness concerning the preservation of official state records. Secondly, the only available consequence for stealing, damaging, or destroying official records is to charge an employee with a category C felony, which includes imprisonment and a fine. Therefore, the subcommittee makes the following recommendations: (1) In section 1, subsection 1 of the bill, it requires the Division of State Library and Archives of the Department of Administration to develop a program of education and training on the retention and disposition of official state records, including the penalties or disciplinary action for disposing of a record in a manner contrary to the schedule; (2) In section 1, subsection 2 of the bill, it requires the head of an agency, board, or commission to issue a letter of reprimand to an employee who disposes of an official state record in a manner not provided by in the schedule; and (3) It authorizes the head of an agency, board, or commission to take more severe disciplinary action against such an employee if circumstances warrant.

In its review, the subcommittee learned that theft or deliberate destruction of official state records is punishable as a crime, and the subcommittee felt there was no leverage a supervisor could use other than that. Therefore, the subcommittee wishes to establish a range of options for supervisors when they have to deal with the loss of an official state record.

In conclusion, in order to be fair to state employees, we are recommending an educational program and raising the awareness so they understand the responsibility required when dealing with state records. We have the authority to enable boards and commissions to function more effectively, and we believe that our recommendations allow the agencies more options in this manner. I would be happy to answer any questions. [Written testimony was also provided ([Exhibit I](#)).]

Chairman Ellison:

Who was involved with these recommendations?

Assemblywoman Bustamante Adams:

The subcommittee consisted of me, Assemblyman Paul Anderson, Assemblywoman Michele Fiore, Senator Pat Spearman, Senator David Parks, and Senator James Settelmeyer.

Chairman Ellison:

Where do the official records of the subcommittee go?

Assemblywoman Bustamante Adams:

I would like to invite the officials from the Division of State Library and Archives to answer that question.

Daphne DeLeon, Administrator, Division of State Library and Archives, Department of Administration:

I have with me today Jeffrey Kintop, and I will have him respond to that question.

Jeffrey M. Kintop, Assistant Administrator, Division of State Library and Archives, Department of Administration:

Which records in particular are you asking about?

Chairman Ellison:

The minutes of the meetings and the recommendations from the members.

Assemblywoman Bustamante Adams:

I want to make sure I understand the question. Are you asking about the minutes from the Sunset Subcommittee?

Chairman Ellison:

Yes.

Jeffrey Kintop:

Those records reside in the Nevada Electronic Legislative Information System and are reviewable online.

Assemblyman Stewart:

Was there a problem with people destroying records? I see a fiscal note on this, but it seems to me a simple warning from the administrator to the employees about being careful when destroying records, which would take maybe five minutes, would be sufficient.

Daphne DeLeon:

The fiscal note derives from the requirement that is proposed in A.B. 135 to provide a mandatory training on records management. The State Library and Archives already provides training, but it is discretionary. You can see from the fiscal note, we have a half-time staff person. We train 120 people per year. The bill gives the authority to each agency head to decide which employees handle official state records and require those employees to attend the training. If you look at the fiscal notes submitted, there is an agency that submitted a fiscal note that would swell that number far beyond \$120,000, and it would require a staff person.

Assemblyman Stewart:

How long is this training?

Daphne DeLeon:

We have a two-hour training on records management, which has already been instituted, that we conduct four times a year. It is a full class every time. I think what is important, and what we have seen in the past is, especially this past fiscal year, as our agencies move to electronic records, more issues of identifying what is a public record, what is a copy of a record, how to manage those, and the increasing desire from the public to have access to those official state records, is driving even more of a need. Two hours is not overly burdensome, but it is enough for us to provide the basics for records management, allowing our state agency staff to look at records retention, understand it, implement it, and be full partners with our agency if they need to make a change to their records retention schedule.

Assemblyman Stewart:

My first question was never answered. Have there been instances where records have been destroyed improperly and have criminal charges been filed?

Jeffrey Kintop:

There has not been because it is a category C felony, which usually requires proving intent in filing charges and going to court. This bill provides for administrative procedures for punishments, reprimands, and even dismissal if something is a violation of the records retention schedule. State law states no record can be destroyed unless it appears on a records retention schedule approved by the Committee to Approve Schedules for the Retention and Disposition of Official State Records. We have to provide constant training. Requirements change occasionally on retention of records, and we have to provide that training on a continual basis so things are understood by the people who actually handle the records in the agencies. There have not been any arrests or convictions on destroying public records. There was a discussion in

the Sunset Subcommittee where individuals claim they were denied access to public records because they were thrown away. Upon review, they should have been kept. This bill will provide the training to all state employees who handle public records so they are aware of the retention requirements and what the penalties are for destroying them without authorization.

Assemblyman Moore:

Has anyone reached out to the Office of the Secretary of State for this bill?

Daphne DeLeon:

The Secretary of State chairs the State Records Committee, and they are aware of this bill coming forth. I know they are in discussion regarding this bill.

Assemblyman Moore:

It is your testimony that the Secretary of State is aware of this bill and is engaged in this discussion.

Daphne DeLeon:

Yes, the Secretary of State is aware of this bill. In terms of being engaged with the discussion, very preliminarily in the beginning stages.

Assemblyman Moore:

Who will attend this class?

Daphne DeLeon:

Every agency is required to have a records official and a records officer. At minimum, they are required to attend this class. We have a listing of approximately 240 staff people, at a minimum. If you look at the bill, it does state that an agency can have the discretion to require any employee who touches an official state record to attend the training. Sometimes, that is the majority of employees in an agency.

Assemblyman Moore:

Is the fiscal note approximately \$580,000?

Daphne DeLeon:

We are asking for one full-time employee, in addition to the half-time employee we already devote to training, which would be a total of \$138,200 for the biennium.

Assemblywoman Joiner:

I am glad this conversation is happening. I most recently came from the Department of Health and Human Services, and as the Deputy Director there,

we had so much turnover in some of these positions, we were often unsure of the retention and disposition schedule. I know several of our employees attended your training, and it was valuable to then have those experts in our office to be able to answer any state records questions. I definitely see the need for this. It looks like the Department of Administration submitted a fiscal note. Do you have any word from any of the other agencies or the Office of the Governor if they have a position on this, or if they have been involved in this conversation through the development of this bill?

Daphne DeLeon:

The Department of Corrections contacted us, and you will see they submitted their fiscal note indicating they intended to send every one of their employees to the training, which is over 2,000 employees.

Assemblyman Moore:

I see the fiscal note in the amount of \$138,200. I see another fiscal note for \$588,000. Can you help me understand why we need that amount of money for one full-time position and one half-time position?

Scott K. Sisco, Deputy Director, Support Services, Department of Corrections:

That is our fiscal note. I was going to testify later as neutral because we are not opposed to this bill at all. However, when we read this bill, we specifically saw that we were beginning the process of writing a specific employee sanction in the statutes. A majority of our employees are police officers, and there is a peace officers' bill of rights [*Nevada Revised Statutes* Chapter 289, Rights of Peace Officers]. We started looking at this, and it is already mandated that an employee will receive a written reprimand if he destroys a public record.

Public records have gotten much more complicated. Over the last three weeks, probably every one of you have been handed something in the hallway or you have received an email. Is it or is it not a public record? You have to be trained and you have to understand whether or not it is a public record. That is no different for our employees. We started looking at this from the aspect of the peace officers' bill of rights, but then we decided every employee needs to be trained if there is going to be a sanction written into it.

The language in this bill does not say "knowingly and purposefully." If the language said that an employee knowingly and purposefully destroys a public record, then our fiscal note goes away. Currently, the way the bill is written, we feel an obligation to train everyone. For the Department of Corrections, it is a matter of taking a correctional officer out of a tower to go to the training, and using overtime to cover the tower. This training may be 40, 60, or 90 miles away. What it would take for us to do away with this

fiscal note is to add language that reads "for a state employee to knowingly and purposefully destroy a public record." We would then be back to just dealing with our records custodians. The way the bill is written, we see the need to have every employee trained on what a public record is or is not.

Assemblyman Moore:

I understand your testimony, but in total, we are looking at about \$728,000. You just mentioned something that troubles me. You are so willing to pay someone overtime to cover another shift, when that could very easily just be scheduled. If this bill, in fact, were to move forward, then you have plenty of time to schedule accordingly and not use overtime. I have a hard time understanding a \$728,000 fiscal note for something that is not necessary.

Assemblyman Trowbridge:

I think we have taken a good idea and have gone overboard. I think there is definitely a need for training for records retention. It is an incredibly complex issue, as it was years ago when I was involved in it. I can only see it becoming more of a problem. I also think there are probably laws in existence that deal with the destruction of records and do not need to be addressed in a state statute regarding disciplinary action for someone not following the proper procedures. It could strictly be handled administratively within the departments. I support the idea of training programs, but I think there is a concern having in the statutes a punishment for someone who, with good intentions, may have just been trying to clean out a pile of files that have been sitting around for years. The first question that always comes to my mind when I see a pile of records taking up storage space is that no one had the guts to throw them away. When someone develops the guts to throw them away, because they are irretrievable clutter at that point, someone says they have always been kept. That is the world's worst excuse. I think the whole issue can be addressed in another way. The training is great for a complex problem, but it can be broken down to financial records. Keep financial records for seven years if you are worried about the Internal Revenue Service (IRS). A personnel matter should be kept for the length of the person's employment. There are short and quick ways to address these kinds of problems rather than spelling out how we are going to charge them with a category C felony.

Chairman Ellison:

There are some areas of the bill I would like to work with you on in section 1, subsection 2. I will get with you on that, and we can submit an amendment. Any other questions from the Committee? [There were none.] Anyone else wishing to testify in favor of the bill? [There was no one.] Is there anyone in opposition to the bill? [There was no one.] Is there anyone in Las Vegas wishing to testify on this bill? [There was no one.] Is there anyone

wishing to testify as neutral to the bill? [There was no one.] Would you like to make any closing comments, Assemblywoman Bustamante Adams?

Assemblywoman Bustamante Adams:

I know that sometimes we get a little sidetracked, but the focus is on policy. The Assembly Committee on Ways and Means does have the authority to pull this bill in because it does have a fiscal note. I would ask the members to focus on policy. I welcome the opportunity to work on the amendments with you.

Chairman Ellison:

I will close the hearing on Assembly Bill 135. We will now hear the presentation from Storey County.

[Assemblyman Moore assumed the Chair.]

Pat Whitten, County Manager, Storey County:

Joining me today are Lance Gilman and Marshall McBride. Thank you for the opportunity to join you today and hopefully enlighten you on who we are and what we do. If this is your first session, I welcome you and thank you for your service. If you were here, especially for the 2014 Special Session, thank you for Tesla. I am proud to say that project is going great and if any of you, individually or collectively, would like a tour of the facility to see how it is coming along, you can contact me.

I would like to give you an overview and an update of Storey County. Like many of the other local governments that have appeared before you or will appear before you, we have our challenges, but we try to structure those as opportunities. We have learned over the past many years, during economic tough times, banding together as a region makes us much more efficient and able to provide better services with better cost efficiency.

I will walk you through the PowerPoint presentation ([Exhibit J](#)). This is who we are and what we do. As you can see on the statewide map, we are only 20 minutes from Carson City, nestled in the mountains at 6,200 feet.

[Assemblyman Ellison reassumed the Chair.]

It takes me 30 minutes to drive to Reno. I have the pleasure of saying I live and work in historic Virginia City. Excluding the chairman, and perhaps one other member who might remember the glory days of Bonanza, that was Virginia City. One of the two gentlemen joining me today owns the Bucket of Blood Saloon, and the other one owns the best steakhouse in Virginia City. If you are inclined to take a break during the session, come on up.

Storey County is literally in the heart of northwestern Nevada. We were founded in 1859, and we have the second smallest landmass in size for a county in the great state of Nevada. I love to tell people I have perhaps one of the greatest jobs in the state, and perhaps in the world. I like to talk about Storey County as my bookends. I have a rich history in Virginia City, and then, only 40 minutes away, I have the opportunity and glory of the nation's largest industrial park, the Tahoe-Reno Industrial Center (TRI). I will briefly focus on Virginia City and our history and then I will turn it over to the principal developer of TRI, Lance Gilman.

Virginia City has often been referred to as the richest place on earth, after \$500,000 million worth of gold and silver were discovered in 1859. We are also the birthplace of Mark Twain. He arrived as Samuel Clemens and left as Mark Twain, and never let the facts get in the way of a good story. We claim we were rushed into statehood simply because it was those riches that helped the Union finance the conclusion of the Civil War. By the way, we celebrated our sesquicentennial two years before the state of Nevada.

There was a slide I just sped past [page 4, ([Exhibit J](#))] that showed some of the scenic beauty. I commute four blocks to the Storey County Courthouse, which is the longest continually operating courthouse in the state of Nevada, rebuilt in 1876 after the great fire that decimated the town.

We balance our sense of rich history with quirky events. We are event-driven. During this session, up until early June, there are four weekend events that you can participate in, if you are not busy. There is the Rocky Mountain Oyster Fry, for those who are brave, around St. Patrick's Day in March. We have the Chili on the Comstock chili cook-off on May 2 and 3. In the middle of May we have a parade for the Silver State National Peace Officers Museum. On Memorial Day, we have the Celebration of Heroes Parade. We are definitely event-driven and proud of it.

The other side of my bookend is something I am absolutely thrilled with. Storey County is home to the Tahoe-Reno Industrial Center. I am going to let Mr. Gilman give you the overview because no one knows it like he does.

Lance Gilman, Vice Chairman, Board of Commissioners, Storey County:

My mission is to introduce to you the Tahoe-Reno Industrial Center. I was told I have five or six minutes to share with you. I am reminded of the time when Tesla came in to sit at the table, and they told me I had 15 minutes to tell them why they should locate in Nevada. I told them we would be looking at the largest industrial park in the United States, so I suppose in 15 minutes we could

hit the high points. I am going to tell you in five or six minutes how this park came together [page 6, ([Exhibit J](#))].

I would like to share some data with you. On the Rand McNally map shown [page 7, ([Exhibit J](#))], you can see the Tahoe-Reno Industrial Center in yellow, and it is about 104,000 acres. On the left-hand side of the screen, you can see the Reno and Sparks city limits sit well within the parameters of that particular landmass. The park, actually a ranch, was purchased in 1998. We spent a couple of years with Storey County, and we are blessed to be in Storey County. They are wonderful, visionary, can-do, get-the-job-done folks. Over a couple of years, we crafted a public-private development agreement that was approved by ordinance. We also crafted a public-private finance plan that allowed us to come into the county and capitalize the majority of the infrastructure that had to take place.

Out of those general meetings, we identified 30,000 acres that are presently zoned for industrial. The magic that happened along the way, up to and including Tesla, was the development agreement. Rather than waiting for a lot of the elements of development, we recognized them, we worked with the county, the building departments, and the federal codes, and we crafted a development agreement that basically identified the majority of the challenges that a new company coming to a community would encounter.

What does that mean? All of the zoning, land uses, and companies are preapproved. If businesses come to the industrial park to reconstitute tires, they can do that. If businesses want to build machine guns, they can do that. If businesses want to build automobiles, they can do that. All of the uses are preapproved within the park. Along with that are all the general conditions we had to look at with the Storey County Planning Commission, for example, curb cuts, landscaping, building facades, or setbacks. Everything was looked at and preapproved within the park in 1999 and 2000.

When Tesla told us we had 15 minutes, we asked them to identify one component that was most important to them to select northern Nevada. They were initially negotiating with 37 other states, and then it was reduced to 5 states. Those states were throwing huge quantities of money at them. We had 15 minutes and asked what they would like to hear from us that would pique their interest and give Nevada a strong position in capturing the Tesla business. The words that were enunciated at that time, and that have become kind of a trademark for me in a lot of ways, was scheduling risks. I had never really thought about it with Storey County, but what we were doing in 2000 was creating an answer for scheduling risks. We had preapproved so much, we were able to offer a grading permit in 30 days, or a building permit in 30 days,

and occasionally only two or three weeks. In other jurisdictions, it may take nine months to a year to get to that point. The scheduling risk component of the development agreement was the magic that really helped capture what we were doing.

[Assemblyman Moore assumed the Chair.]

Those have been the buzzwords in the newspapers across the globe. I believe every periodical out there has carried something about it. It was the most unusual negotiation I had ever seen. They negotiated all of us as states in the newspapers. By the time they got here in 2014, we already had 160 companies doing business in over 14 million square feet within the park. It was not a new project. I would like to point out the diversity at the park. We could visit 1-800-FLOWERS to purchase flowers, Duraflex International to buy a diving board for a pool, pick up some diapers from Diapers.com in Eagle Valley, or visit the 50-caliber machine gun manufacturer. All of those companies were already in northern Nevada, enjoying our marketing. Tesla arrived and we are all fortunate. I would like to thank you for the diligence that went into putting that together. The State's effort was monumental. It is a David and Goliath story. One of the smaller states in the nation captured the largest high-tech transaction to ever be available on the world stage.

I would like to introduce you to Switch. I suspect you have all either heard the word Switch, or are somewhat acquainted with them. Switch is, from my desk, the largest data storage facility in the world. They store all of the world's secrets. They are associated and do business with 1,000 of the largest corporations on the globe. When you drill down into that company, it is so exciting. I have never encountered anything that equals it in my 40 years of development.

Switch has really given us a strong signal that they would like to be in northern Nevada. Ghost Systems and Apple are already here, and I am sorry, but I cannot name two other world-class data storage companies that are considering relocating to northern Nevada. We have the probability of having the most connectivity in the United States today. Switch is talking about digging a 580-mile trench from Las Vegas to northern Nevada to give us the fiber connectivity that would be equal to some of the largest connectivity in the world, which I believe is currently in Amsterdam. I believe we have the probability of seeing that in Nevada. They will connect that loop all the way to San Francisco and down to Los Angeles.

I have heard rumors that I can not necessarily substantiate, that Switch is planning to light up over 127 schools in northern Nevada. They will do that as

they did with the University of Nevada, Las Vegas with all of the computer technology they offered, and as they are already doing with the University of Nevada, Reno.

From a public, private, investment, and educational opportunity, Switch is something everyone should recognize and pay attention to. There is incredible potential in the future.

Pat Whitten:

There is at least one bill that has been introduced by Steve Hill, Executive Director of the Governor's Office of Economic Development, Senate Bill 170, that specifically addresses changes to the data center. For those of you from southern Nevada, you are well familiar with Switch, I am sure. It is so refreshing that those affiliated with Switch have truly brought us the dynamic opportunity to link the north with the south and bring us together, if you will. Mr. Gilman and I have toured the facility in Las Vegas, and it is certainly something to be proud of. I can tell you if Rob Roy ever appears before you, he is a true vintage Nevadan, no matter where he may have been born. He wanted Nevada despite what Arizona or anyone else threw at him.

If you have any questions, our information is here [page 9, ([Exhibit J](#))]. Your Committee staff has my cell phone number. We would love to give you a tour of the park. We welcome you with open arms and appreciate your service.

Assemblyman Stewart:

I have had the pleasure of visiting Virginia City a number of times. I was surprised you did not mention your beautiful, historic cemetery. There has been a conflict between some of the historical towns, such as Gold Hill and the new mine there, and some problems between tourism and mining. Could you comment on that? Secondly, could you give us an update on Tesla? I had a contractor tell me they had to shut down part of Tesla because there were some problems, and they had to do some redesign on the major building. Could you also comment on that? Thirdly, what percent of the industrial park is now full?

Pat Whitten:

I will take those questions in order and defer the park build-out to Mr. Gilman.

As far as tourism versus mining, you are very astute. We are in the news, probably even as of today. The mining operation is a contentious one, in some respects. They certainly have attracted a significant number of opponents. To be very frank with you, our stance has been Virginia City, the Comstock, northern Nevada, and Nevada itself, has its history in mining. The position

really becomes that we do not want to stop it, but we want to regulate it to the extent we can through special use permitting and controls. It is a small operation compared to the mines in Assemblyman Ellison's district, but it does attract a lot of attention. We want to make sure that whatever they are doing, they do it right.

Virginia City and the entire Comstock's major history is in underground mining. The contentious issue now is surface mining, or pit mining, if you will. We are trying to encourage and prompt them to go underground as soon as possible. We have somewhat of a hotbed issue because approximately six times in the last century, a state highway has had some failures in a particular area. A mineshaft has sunk from a bit to a lot. There were some concerns with the last rainstorm we had two weeks ago, and the Department of Transportation (NDOT) made the decision, which we fully supported at the time for the interest of public safety, to temporarily close the road. We met in a public forum onsite yesterday morning and addressed the public. I will be making a phone call today to the deputy director of NDOT to tell them of our proposed work-around that accommodates safety and provides convenience. I would like to express to the media and everyone else that the roads to Virginia City are still open. There is only a temporary problem with one of them.

Moving on to Tesla and their workflow, Tesla is a very private company, so if I am a little marked or measured in some of my words, I apologize. This is probably the most dynamic design-build program I have ever seen. They began what they called Block 1 of their gigafactory with a 1 million square foot footprint. They were going to build in five blocks. They have moved a path in excess of one mile long and a quarter mile wide, certainly the largest development in our park. I am told it is larger than the Pentagon. Tesla began putting the footings in and erecting steel beams, but partway through the process, the engineers and others wanted to put in an extra floor. The building was going to be 70 feet high in the beginning. Some of the ironwork had to stop simply because they are in the redesign process. I believe they are approaching \$100 million invested so far in labor and materials. That program is ongoing. They are a great company to work with. I will refer your question about the build-out to Mr. Gilman.

Lance Gilman:

To share a little history with you, Tesla has been an evolving opportunity in northern Nevada. When we first met them, they wanted 100 acres and rail service. After some time, they felt they needed 300 acres. After a bit more time, and after they learned a bit more about northern Nevada and Storey County and the opportunities, they decided they wanted 500 acres. A bit later, that was not quite enough so they moved to another valley and

decided 1,000 acres would work better. This has been a fascinating work in progress to follow from an industry standpoint. The building seems to be no different. As they move forward with their ideas and whatever is behind the scenes with their building performance, they are building what will certainly be the largest building of its kind in the world. Only the first phase is up. It is fascinating if you can come out and look at it, and it is truly a monumental building.

Regarding the total build-out in the park, I would like to put it in context. Our first 15,000 acres have been identified as developable, industrial property. In that 15,000 acres, there are three 5,000-acre components. Fox Consulting has indicated in their studies that we can put 100 million feet in one 5,000-acre component. There are about 60 million feet in Reno/Sparks today. We have three 5,000-acre components completely ready to deliver to you today. One hundred percent of the infrastructure, including roads, curbs, gutters, water, sewer, fiber optics, et cetera, are installed to accommodate 300 million feet. Each 5,000-acre component with 100 million feet will employ approximately a city the size of Carson City, about 50,000 people. We are absorbing land throughout that 15,000 acres because it is ready to deliver, and different companies require different environments to locate. Currently, the development is spread, but we have sold and are under development with approximately 3,000 acres of the 15,000 acres. We have another 15,000 acres that will be developed along the way of the path of development. It is certainly epic and the largest development of its kind in the United States today.

Assemblyman Stewart:

I appreciate the foresight that Storey County has had and the efficiency of your government in accommodating Tesla and other companies. I also appreciate you using some companies from southern Nevada who are coming up to Tesla.

Assemblyman Munford:

The iconic church in Virginia City, is it still there?

Pat Whitten:

I believe you are referring to St. Mary's in the Mountains Catholic Church. It is alive, well, and glorious. Due to the state Office of Historic Preservation and some federal funds, about three years ago they underwent a tremendous upgrade. There were unreinforced masonry walls that were shored up with columns. They actually restored the choir loft that "the mad monks" had removed in the 1950s, and they replaced the roof.

Assemblyman Munford:

I extend an invitation to all the new legislators, if you have the opportunity, to visit Virginia City and see that church. It is spectacular.

Regarding Tesla and Switch, how many jobs were created on the front end, since the factory has not yet been built?

Pat Whitten:

I believe with Tesla, we probably have between 1,200 and 1,500 construction workers at any one stage. It is currently low because of the temporary delay in the steel work that was mentioned. With Tesla itself, and all the various affiliates, you are probably looking at 300 to 400 additional employees. Currently, you are looking at 2,000 employees overall on any given day for construction.

With Switch, they are just now beginning to get to the point where they will clear land. They are currently in escrow for roughly 1,000 acres. We have a public safety facility out there for our road crew and our fire crew. We had intentionally overbuilt it five years ago. We are loaning out gratis space to both Tesla and Switch for their offices. It is premature for me to answer the question regarding Switch. We anticipate it will be a little smaller, having seen the SUPERNAP 8 or 9 under construction when we were in Las Vegas last year. I think we will see a slightly smaller effort because this will be a phased program. Their first tenant from eBay spoke before a Senate committee on Tuesday, who will be their anchor tenant in their first SUPERNAP. I believe we are SUPERNAP 11. I do not have accurate numbers.

Assemblywoman Spiegel:

I have to say I love going to Virginia City, as well. I have a question partially related to what we learned when we had the 2014 Special Session. I see you are looking at building out to about 150,000 employees, which I think is fabulous, but I also remember there really was not going to be any housing built in Storey County for the employees, and they would be living in nearby counties and commuting. That is part of the reason why we accelerated development of the highway. Are there or have there been discussions with the surrounding counties about perhaps doing some revenue sharing of the tax base so they can develop schools, roads, and infrastructure for those employees who will then be coming into Storey County for work?

Pat Whitten:

There have been discussions. Typically, the forums are through efforts on a regional, coordinated basis through the Economic Development Authority of Western Nevada. We have what we call an epic committee or economic

planning indicators committee. This is a "thank you," not a "do not forget." I oftentimes have to carry a little flip chart with me that has a big zero with a slash through it that says these are the taxes we are receiving from Tesla for the first ten years, because there is none. They were all abated. I flip the chart over and it shows the sales and use taxes that we will receive for the second ten years. The total Tesla impact is about 6,500 jobs. That is presumably over about five years while they ramp up production, so there is time for things to happen. There are certainly opportunities to absorb vacant housing stock regionally.

We are grateful for the efforts of the Legislature and NDOT with getting USA Parkway completed. Having that done, I believe we will open markets in the Silver Springs area, which has hit hard times, and Lyon County. We are indeed hoping we can be a catalyst for not necessarily growth, but revitalization in those markets. At the same time, I think one of the things we are painted with oftentimes is we do not want residential. We are updating a master plan that was generated in the mid-90s. We do provide and intend to focus on housing down the road; it is just where the housing is strategically positioned. There are some out there who are advocating for their clients who say they want it in one place, but it is adjacent to a more rural area of our county, and, quite honestly, not provided for in our master plan. We are looking out on the stretches of the Truckee River for our own housing stock. We share those challenges others have, especially in the educational areas.

Assemblyman Stewart:

Would it be possible to get a one- or two-page fax sheet about the industrial park, Tesla, Switch, the number of jobs, and how things are going?

Pat Whitten:

It would certainly be possible. It would be difficult to compress that massive picture, but I would be happy to get that to you.

Vice Chairman Moore:

Are there any further questions from the Committee? [There were none.] I will now open the hearing on Assembly Bill 106. Will the sponsor please come forward?

Assembly Bill 106: Revises provisions related to public works. (BDR 28-244)

Michael D. Hillerby, representing American Institute of Architects Nevada:

We are one of the proponents of Assembly Bill 106, along with the American Council of Engineering Companies of Nevada, represented by Mr. Rowe, who will be joining me momentarily.

I would like to briefly walk you through the bill. We have a couple of witnesses in Las Vegas, including Jean Weil, who is a partner in the law firm of Weil & Drage and an expert in these types of contracts with the State Public Works Division of the Department of Administration, and the legal actions that sometimes occur from them. We also have Bill Valent, who is an insurance broker and insurance expert and serves many design professionals around the state.

Assembly Bill 106 deals with *Nevada Revised Statutes* (NRS) Chapter 338, which is Public Works and those construction works done by state and local government entities. In particular, the bill deals with NRS 338.155, which deals with the elements of a contract between a design professional and a public agency on a public work. A design professional is defined as architects and engineers primarily, as well as land surveyors, interior designers, and related professionals.

This is an area we have been dealing with for a number of years in front of multiple legislators, trying to solve some of the problems we see as design professionals with contracting. Specifically in section 1, subsection 1(e) is the language we are proposing to change. We dealt with this issue in 2005, 2009, and 2011, and this particular statute has been amended. The key provisions are these: on line 30, we propose to delete the language "defend." That is a duty to defend versus indemnification. Those are two down in the weeds topics, and we appreciate the time you will give us this morning. We will try to make it as simple as we can. We have experts in Las Vegas to answer questions about the insurance, about indemnification, about the duty to defend, and particularly about some recent court cases that have made this issue even more imperative to fix.

Before I turn it over to Mr. Rowe, I would like to say, from a high-level point of view, we have tried to make it very clear in the language. For a decade, the language has included a provision that the public entity "shall" be awarded reasonable attorney costs and fees in an action that involves a claim of negligence against a design professional. We support that and absolutely want to be a part of paying our share once negligence has been determined, either through a settlement process or by a trier of fact. The issue is about the duty to defend and how our insurance treats that. That is the distinction. We want to strengthen the language on the indemnification on our professional liability insurance and separate that from the duty to defend.

We have met with a number of local governments, who are signed in today in opposition of the bill, to try to explain what we are trying to do. They have concerns they will express about whether they feel they might be losing some

ability to be paid or be protected if any of these lawsuits occur. We believe we have addressed that, but they will share their concerns with you. They have raised an issue about the difference between our general liability policy and our professional liability policy, and are concerned with the way the bill is currently drafted that the deletion of the word "defend" on line 30 could apply to the general liability policy, which is the policy that is required by these contracts. The general liability policy would cover incidents such as driving a truck on a work site and hitting someone. That is a general liability and is outside of the professional liability.

Assemblyman Ellison was nice enough to connect us with the Legal Division of the Legislative Counsel Bureau and we met with Ms. Erdoes. They are working on an amendment for the Committee to deal with that concern, to make sure the defense language does not inadvertently encompass the general liability policy, but is focused on the professional liability policy. With that, I will let Mr. Rowe take over and then we will be happy to answer questions.

Russell Rowe, representing American Council of Engineering Companies of Nevada:

As Mr. Hillerby said, we have been dealing with this issue and trying to resolve it for essentially a decade, beginning in 2005 before this Committee. We thought we had resolved it in conjunction with the public entities. In fact, the language we came up with and which you see in the statute today was a compromise reached in 2005. We do have witnesses in Las Vegas who are much smarter than the two of us on these specific issues, but I am going to try to boil it down to the nuts and bolts without getting into the weeds of indemnity and defense obligations.

The nuts and bolts are this: you can have a duty to defend in a contract, and you can have an obligation to indemnify in a contract. Related specifically to professional liability of a design professional, there is insurance that design professionals obtain for any professional negligence they commit. We provide coverage for that, just like any professional does, and if we are liable for anything, we should pay. There is no question about that whatsoever. If we are liable, we want to pay the attorney fees and costs of the public entity. After all, they are our clients and we want to make sure they are okay because we want to continue doing work with them.

The problem is the duty to defend. That is not an insurable risk. We cannot purchase insurance on the market to cover a contractual obligation to defend, which just means we will pay their up-front attorney fees and costs. In 2005, we put language in the statute that said if our insurance company does not defend the public entity, which they will not because they do not cover it, and if

there is an adjudication of our liability in any proportion, whether it is 5 percent or 100 percent, we shall pay the attorney fees of the public entity in proportion to our liability. The key is not only are we making sure the public entity is covered for their costs, but because we put it in the statute, it now wraps under our indemnification professional liability insurance. We are covered for those attorney fees, and the public entity is paid. We thought we had it taken care of. We did not eliminate the word "defend" from the statute, so the statute essentially authorizes a public entity to put in a contract an obligation to defend them. They do not have to put it in the contract, but they may put it in the contract. Everyone puts it in, and it is standard language no matter how many times we ask them to remove that language because we have no insurance coverage for that.

I understand the deputy attorney generals and city attorneys want to protect their clients as best they can, but the reality is we cannot cover that. If it were ever enforced and we had to pay out-of-pocket the defense costs of a public entity, we would go bankrupt. Most of these engineers and architects are small businesses and do not have \$500,000 lying around to pay up-front attorney fees and costs. They would not be covered, and we would go out of business. The duty to defend is essentially an illusory protection.

We thought we solved this issue by wrapping the attorney fees and costs into our indemnification policy by the language in 2005. Contracts continue to have the duty to defend, and we continue to sign them because the language will not come out of the contracts. It becomes a business decision for us; do we take the work or not take the work? We are business people and we have to pay our bills and provide work for the employees. We take the work and hope nothing happens.

Fast forward to 2010. Our friends in California in district court issued a ruling to an engineer that said even though in this particular case the engineer had zero liability for a claim on a case, because the engineer signed a contract that also had a clause that said he would defend the entity, the court ordered \$550,000 in attorney fees against the engineer. The court indicated it was a separate obligation. That decision has been affirmed by the circuit court, and the California Supreme Court refused to hear it. Now that case is precedent.

We are in a situation where we thought this language protected us, but now it does not because we are not sure what Nevada courts would do with that language. The language is already being cited in court briefs in Nevada. That is why we are before you today. We are trying to avoid having to sign a contract that requires us to defend up front. We would rather have those attorney fees and costs paid by our insurance policy on the back end. If we are liable, we will

pay, and we have no problem with that. However, we cannot sign contracts for which we have no insurance. The end result is the duty to defend obligation is essentially to cover us if we are not liable, and we would actually still potentially have an obligation to pay attorney fees. We already have language in the statute that makes it mandatory we pay attorney fees and costs if we are liable. We are trying to resolve this once and for all. In our opinion, the only way to do that, particularly now with the California case out there, is to remove the authority to put in a contract a duty to defend specifically for professional negligence. Not for general liability; only professional negligence. We think everyone is covered as we had crafted it in 2005 and with our professional liability coverage through indemnification. This would clean up the last problem in this statute.

Michael Hillerby:

We know it is late in the Committee schedule, and you have a floor session. We would be happy to take questions, and I would like to remind the Committee that Jean Weil is available in Las Vegas if there are questions about the legal aspects or the operational aspects of these contracts. She has defended many design professionals. Mr. Valent can answer questions about the fact that this coverage is not available in any insurance policy, and if you have any questions about the difference between the general and professional liability.

Assemblywoman Neal:

If this is a standard and the permissive language has always been in the contract, why have the insurance companies not added it as something to cover?

Michael Hillerby:

The simple layman's answer is they would not want to provide a policy that guaranteed they would cover unlimited attorney costs and fees without any finding of negligence. There would never be anyone who would want to insure that we would pay a \$550,000 defense bill when, in fact, there was no negligence found at all. I will let Ms. Weil and Mr. Valent answer that question in more detail.

Assemblywoman Neal:

That answer was good. I would like the attorney to answer my second question. I was reading *Crawford v. Weather Shield Mfg. Inc.*, 44 Cal. 4th 541 (2008) and I need you to give me the real life examples. They delineated in the case that the duty to defend could arise when it is embraced by the indemnity issues. What typically falls into this category of claims embraced by indemnity? That seems to be the trigger when the duty to defend

comes into play. I think we need to see the real life examples of what those are.

Jean A. Weil, Private Citizen, Las Vegas, Nevada:

I am an attorney who specializes in construction litigation. Looking at the *Crawford* case is probably not the best analogy. California has something that Nevada does not, which is a statute that spells out definitions of indemnity and definitions of defense. The statute states that the defense is embraced by the indemnity. Please let me take a step back and explain those concepts because they are often confused, even by judges. They are separate, but there is an overlap to a certain extent.

Indemnity is essentially the obligation to make good when someone else has to pick up the tab for your mistake or your negligence. That is true even in common law. You do not need a statute or a contract. If I screw up and others are left holding the bag, I am obligated to defend them for the portion of the damages caused by my negligence. That is true of design professionals and any other player in the construction industry. Indemnity is merely reimbursement for damages caused on a pro rata basis for what the client, owner, or contracting party on the other side had to pay on their behalf.

[Assemblyman Ellison reassumed the Chair.]

Defense is a separate concept because that essentially deals with being obligated to pick up attorney fees and costs associated with defending a lawsuit whereby, under our example here, a design professional is charged with having contributed to the damages that, in this case, a public entity may be required to pay.

The issue with insurance companies and why *Crawford* meshes those two concepts together is because of the unique statute in California. Nevada has no such statute and most states do not. It is a little difficult to compare apples to apples if you are focused on the *Crawford* decision. However, at the end of the day, what is going to govern is the language of the contract. The reason insurers have balked at picking up the defense obligation is because it is an obligation their insured has assumed by contract, but they do not otherwise owe by operation of law. It is an extra contractual promise that the insurer did not bargain for when they were setting premiums that the design professional was going to pay for that policy. Oftentimes, the defense obligation can be many multiples of what the indemnity obligation is. We could say it was only a \$100,000 dispute, and the design professional is tasked with paying 20 percent of that as his indemnity obligation. The defense costs could have run into \$500,000 or \$1,000,000. It is not uncommon in the construction

industry for the attorney fees to outweigh, dollar-wise, the amount in dispute, particularly when you have multiple parties in a single lawsuit. The reason insurers have balked is because that is a risk that is far beyond the premiums they have garnered to protect the design professional that they might have to pay in connection with that design professional's negligence.

Assemblywoman Neal:

I know we have to make the policy decision for our state, but when I was reading the *Crawford* case, they cited to the *City of Watsonville v. Corrigan*, 149 Cal. App. 4th 1542 (2007). In that case, they said when the duty to defend arises, it must be immediately tendered upon the defense of the indemnity, which is who we are trying to protect and which would be the public entity. It also said before the litigation to be defended. Would we run into this situation? I understand why we are changing the liability to shift to the end because the design professional may not be liable. If the case from 2007 is saying the duty to defend kicks in before the litigation is to be defended, what would our policy position be if someone wanted to attack the statute we would create? They could say we did it in reverse, and this case says it should happen before.

Jean Weil:

The issue is a matter of equity. Remember, California has a statute that spells out that the defense obligation is triggered from the beginning. However, here is the issue: in the realm of construction, design professionals and their fees are a very small percentage of the total cost of construction, and their profit margin is even less. It has to deal with this concept of risk and reward, whereby often design professionals are being asked to accept a risk, particularly if they are being asked to provide an up-front defense that is grossly disproportionate to the fee that they charged. The public entity does get the benefit of the low, competitive fees the design professionals charge on their projects. If design professionals were forced to shoulder the risk of an up-front defense fee from before even the commencement of a lawsuit, it would make no sense whatsoever for them to have accepted that project at the fees they quoted.

This is really a timing issue. It is not saying the public entity is not entitled to reimbursement of its fees that are proportional to the negligence of the design professional. All it is saying is there should be an adjudication of fault. In the example of the case *UDC-Universal Development v. CH2M Hill*, 181 Cal. App. 4th 10 (2010), how unfair for a design professional to pay the up-front defense costs of their owner or developer client, go through two or three years of litigation, and then find out they were not negligent. It is patently unfair and, again, it is grossly disproportionate to the fees the design professional could ever have hoped to garner in accepting that project in

the first place. It is risk and reward and putting those two issues in line so they are fair to both sides.

What A.B. 106 is proposing to do is simply codify that there is an absolute obligation for the design professional to pay their share of the negligent acts they committed that caused damages to that public entity. Assuming they are found to be liable for committing negligence, they will secondarily be responsible for reimbursing the public entity for their share of reasonable attorney fees.

This actually has perhaps an unintended result, but also an equitable result. It incentivizes public entities to be reasonable with respect to the attorney fees and costs they accrue. Oftentimes, defense attorneys representing design professionals work for very low rates that are negotiated through the insurance industry. Our hourly rates are often a half or a third of what other attorneys are charging public entities for the work they do. Consequently, this incentivizes public entities to treat those defense costs as if they are going to be their own, and not hiring firms that are charging \$700 or \$800 an hour for their time. They would be hiring competent firms that are qualified to defend them for a reasonable price. I do not think anyone believes this process is served by attorney fees becoming so out of control that they have far exceeded the amount in dispute. It is simply not necessary and not reasonable for any party to have to shoulder that kind of expense.

In my view, A.B. 106 is essentially a win/win. The public entity does not win if they force a defense obligation on a design professional who simply cannot afford \$500,000, as Mr. Rowe mentioned. Sometimes the attorney fees and costs are even more than that. It could be \$1 million or \$2 million. That would simply drive the average design firm out of business, even if it were a large firm. The reality is, in Nevada most of the firms doing this work are small or medium-sized firms. There are large firms, as well, but the average design firm simply could not shoulder that risk and would be put out of business. The public entity is not served, and the design community is not served.

Assembly Bill 106 would essentially compel the insurers to have to pick up the tab for the attorney fees at the conclusion of the case, assuming the design professional had been found negligent. The public entity is served because they can now be sure there will be funds to satisfy that portion of the defense costs, which are attributable to the design professional who contracted with them. By the same token, it serves the design community because they are not forced out of business by a bill that forces them to shoulder fees that are beyond their ability to finance.

Russell Rowe:

I want to make sure we answered your question.

Assemblywoman Neal:

Yes.

Assemblyman Stewart:

As I understand this, you want to be legally responsible and assume responsibility only for the part of the project that you actually did. If it is some other part of the project, you do not want to have to cover that. Is that correct?

Russell Rowe:

That is correct. We are only talking about attorney fees. If we are liable for underlying professional negligence, we absolutely should pay those attorney fees and costs. In fact, we made it mandatory in 2005. We are trying not to pay up-front attorney fees and costs without insurance, especially if we are not liable.

Assemblyman Stewart:

If the architects are negligent, they are responsible for that portion. If the structural engineers are negligent, they are responsible for that portion, but they are not responsible for the construction company if the workers are incompetent. Is that correct?

Russell Rowe:

That is correct.

Assemblyman Carrillo:

What would happen if there was a bad design for a building and the building is built to those bad specifications? It was not caused by bad construction or workmanship, it was simply a bad building design. For example, if there was not enough rebar or the construction was not thick enough, et cetera, or perhaps it was never inspected.

Russell Rowe:

If it was a bad design, and it was our design, we should be liable for that and pay damages, costs, and attorney fees. That is what this bill does today.

Assemblyman Trowbridge:

Is this the process where the owner is responsible for defending in a private project, or is the design professional financially responsible to defend?

Michael Hillerby:

This bill only deals with public works.

Assemblyman Trowbridge:

It appears you are trying to offload the defense of a public project, while in a private project you accept those liabilities. If this bill applied to all construction projects, public or private, would this language fly?

Michael Hillerby:

The contract between a private developer, owner, or builder and the architect is negotiated privately. They will negotiate the provisions. In many cases, they will look fairly similar. A contract from an owner is going to require the general liability insurance and the professional liability insurance on a large project. It would all be negotiated in a private transaction, so this does not apply. We would not, as a design professional, take on the duty to defend in a private contract because our insurance is not going to cover it. It is exactly the same situation. The indemnification insurance will pay our portion of the costs and fees and our portion of the negligence, regardless of whether it is a public or a private project. Our members would not want to sign a private contract that included a broad duty to defend. That is something we would negotiate on a private contract.

John Copoulos is an architect in Carson City and is here to testify on behalf of the bill. He can talk about some of the contracts he negotiates if the Committee is interested, either today at the hearing or we can follow up with you. The American Institute of Architects has standard forms that are used throughout the construction industry. Our members like to use those forms because it makes these obligations clear about what professional indemnity insurance covers and what it does not cover. We would not want this provision in either a public or a private contract. There is a different kind of negotiating dynamic in the private sector, where we can keep these things out of a contract. It is more difficult with public entities, hence what we are requesting to do to change the law.

Assemblyman Trowbridge:

It is a forced requirement in a public project, where in a private contract it is negotiable. If it were permissive under this language, it would be negotiable.

Michael Hillerby:

It is currently permissive under this statute. In reality, the local governments require it in a contract, and because of the competitive environment, that has not been, in our experience, a negotiable provision. You are correct. It is permissive, but they are, in fact, a standard part of the contracts, and they are

not something we have been able to successfully negotiate out of the contract. Therefore, we need to change the law to say these are not allowed to be included in a contract.

Assemblyman Trowbridge:

Now I have it clear. What you are trying to do is legislatively change the rules of what is currently a negotiable item. You are limiting the negotiation ability of a governmental agency and the use of public funds.

My second point, and the other part of this proposal, is to avoid up-front costs. I have had practical experience where a contractor would come forward and say they were not liable because you, as the governmental entity, gave us bad plans. I purchased those "bad plans" when I hired a professional engineer to design them. However, I am involved and the taxpayers are liable for my involvement in a dispute that goes on for ages as to who is responsible. The governmental entities, who I will call the taxpayers, are responsible for funding this up-front fight that may or may not ever be resolved, with attorney's clocks running because the subcontractors are the ones leading the deferral causes adding to the cost. That is the objection I need to have clarified.

Russell Rowe:

To address your first point, while it is permissive and theoretically negotiable, I cannot find, in ten years of working on this issue, one public entity contract that was willing to take out the obligation to defend no matter how many times we told them it is not insurable. To be perfectly blunt, the response is to sign the contract or not take the work. In these economic times, and even in good times, someone will take the contract. At some point, we have to address practical reality. We thought we covered public entities by guaranteeing their attorney fees. We took the discretion away from the judge and said we "shall" award attorney fees and costs if we are liable. What we are asking for is not to have an obligation put into a contract that we cannot negotiate. We do not have that kind of leverage. We have tried to negotiate it out, but it does not happen. We are stuck in a situation where if we want to work, we have to take on that risk. Now we have a court in California saying it is an entirely separate obligation, and regardless of whether you are liable, we have to pay those attorney fees and costs. We have no problem paying them if we are liable. We just want it to be insured.

Michael Hillerby:

Regarding the second point you made, Assemblyman Trowbridge, you are correct. Some of these disputes, whether they have been through a settlement process or in court, have been lengthy on some significant public works projects around this state. Once blame or fault has been apportioned, we should and

must pay our fair share. If I may make an analogy, you would not expect a criminal defendant to pay the costs of his prosecution from day one when he may ultimately be found not guilty. We may ultimately be exonerated, exactly as in the case from California, *UDC-Universal Development v. CH2M Hill*, but because of the obligation to start paying the public entity's costs from day one, be stuck with a legal bill when we have been exonerated. We understand they are expensive. We have no objection, and in fact are legally required, and we put the language in ten years ago. We will pay our proportionate costs. I do not think it is appropriate to ask someone to pay from the beginning when no blame or negligence has been determined.

Chairman Ellison:

We are running out of time. We have a couple of questions, but we have not yet gone to opposition of the bill. There is another witness in Las Vegas in support of the bill.

Bill Valent, Private Citizen, Las Vegas, Nevada:

I would like to say this bill, as I read it, would be covered under professional liability insurance. As far as the defense obligation by itself, there is not an insurance carrier, at least in professional liability, that would be willing to provide coverage.

Assemblyman Carrillo:

What happens if the engineering firm goes bankrupt or closes its doors? Who pays for the negligence at that point? Is it on the taxpayers' backs?

Russell Rowe:

I believe Ms. Weil could answer that question better than I could.

Jean Weil:

If that design professional goes bankrupt but has an insurance policy that covered them for the claim, the insurer would continue to pick up the defense, even though the insured has gone bankrupt. To the extent that there is a judgment in excess of available insurance, that portion would not be covered and that would be discharged in the bankruptcy as any other debt. The policy would be there as an asset to be tapped into were that to happen to a design professional, so long as that policy was in effect at the time the claim was made.

Chairman Ellison:

We are being called to the floor, so we are going to have to reschedule this meeting for next week. Mr. Hillerby and Mr. Rowe, if you could talk to the staff, we will get this rescheduled. Is there anyone here for public comment? [There was no one.] This meeting is adjourned [at 11:14 a.m.].

RESPECTFULLY SUBMITTED:

Lori McCleary
Committee Secretary

APPROVED BY:

Assemblyman John Ellison, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Government Affairs

Date: February 19, 2015

Time of Meeting: 8:33 a.m.

Bill	Exhibit	Witness/Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 134	C	Assemblywoman Bustamante Adams	Sunset Subcommittee of the Legislative Commission Bulletin No. 15-30
A.B. 134	D	Assemblywoman Bustamante Adams	Written testimony
A.B. 134	E	Marlene Lockard, Nevada Women's Lobby	Written testimony
A.B. 134	F	Joanne Goodwin, UNLV	Letter of support
A.B. 134	G	Lorri Jackson, Merrill Lynch	Letter of support
A.B. 134	H	Carole Turner, Private Citizen	Letter of support
A.B. 135	I	Assemblywoman Bustamante Adams	Written testimony
	J	Pat Whitten, Storey County	PowerPoint presentation