

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

**Seventy-Eighth Session  
March 25, 2015**

The Committee on Government Affairs was called to order by Chairman John Ellison at 8:05 a.m. on Wednesday, March 25, 2015, in Room 4100 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website: [www.leg.state.nv.us/App/NELIS/REL/78th2015](http://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](mailto: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  
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:**

Assemblyman Harvey J. Munford (excused)

**GUEST LEGISLATORS PRESENT:**

Assemblywoman Marilyn K. Kirkpatrick, Assembly District No. 1

Minutes ID: 620



**STAFF MEMBERS PRESENT:**

Jered McDonald, Committee Policy Analyst  
Eileen O'Grady, Committee Counsel  
Lori McCleary, Committee Secretary  
Aubrie Bates, Committee Secretary  
Cheryl Williams, Committee Assistant

**OTHERS PRESENT:**

Richard Daly, representing Local 169, Laborers International Union of North America  
Brian Reeder, Government Affairs Coordinator, Nevada Chapter, The Associated General Contractors of America, Inc.  
Steve Walker, representing Storey County, Douglas County, Lyon County, Carson City, Eureka County, and Truckee Meadows Water Authority  
Carl Ruschmeyer, P.E., Director, Douglas County Public Works  
Deonne E. Contine, Director, Department of Taxation  
Constance Brooks, Vice Chancellor, Government and Community Affairs/Public Relations, Nevada System of Higher Education  
Ronald Zurek, M.B.A., Vice President, Finance and Administration, Public Service Division, University of Nevada, Reno  
Wes Henderson, Executive Director, Nevada League of Cities and Municipalities  
Yolanda C. Jones, Purchasing and Contracts Manager, Purchasing and Contracts Division, City of Las Vegas  
Jeff Fontaine, Executive Director, Nevada Association of Counties  
Yolanda T. King, Chief Financial Officer, Department of Finance, Clark County  
Kathy Ogle, Member, Nevada Public Purchasing Study Commission, and Construction Project Coordinator, City of Henderson

**Chairman Ellison:**

[Roll was called. Committee rules and protocol were explained.] We have two bills for work session today. We will take Assembly Bill 202 first.

**Assembly Bill 202: Makes various changes relating to the acquisition of land by a county. (BDR 20-570)**

**Jered McDonald, Committee Policy Analyst:**

Assembly Bill 202 makes various changes relating to the acquisition of land by a county. The bill is sponsored by Assemblyman Hansen and was heard in this Committee on March 18, 2015.

Assembly Bill 202 authorizes a board of county commissioners to apply for and accept grants of rights-of-way, permits, leases, and patents over, upon, under, or through any land or interest in land owned by the United States pursuant to any applicable federal law or regulation. The bill also authorizes the State Land Registrar to transfer property that was formerly the site of the National Guard Armory in Hawthorne to Mineral County, without consideration, and requires Mineral County to pay the costs relating to the transfer.

There are no amendments for this bill. [Referred to work session document ([Exhibit C](#)).]

**Chairman Ellison:**

I will entertain a motion.

ASSEMBLYMAN STEWART MOVED TO DO PASS  
ASSEMBLY BILL 202.

ASSEMBLYWOMAN SHELTON SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMEN FLORES, MUNFORD  
AND SILBERKRAUS WERE ABSENT FOR THE VOTE.)

**Chairman Ellison:**

I will ask Assemblyman Hansen to take the floor statement. We will move to Senate Bill 109.

**Senate Bill 109: Revises provisions relating to the sale or lease of a county-owned telephone system. (BDR 58-603)**

**Jered McDonald, Committee Policy Analyst:**

Senate Bill 109 revises provisions relating to the sale or lease of a county-owned telephone system. The bill is sponsored by Senator Settelmeyer and Assemblywoman Titus. This bill was heard in this Committee on March 17, 2015.

Senate Bill 109 authorizes a board of county commissioners to initiate proceedings to sell or lease a county-owned telephone system by adopting a resolution to evaluate the propriety of receiving offers for the sale or lease of the system and without the requirement of holding a primary or general election or obtaining approval of the registered voters of the county. The bill requires a board of county commissioners that adopts such a resolution to receive offers to sell or lease a county-owned telephone system to contract with an expert to market and sell or lease the telephone system in a commercially reasonable manner, removing the requirement for newspaper advertisements. The board is not required to accept the highest bid but must consider other factors, including the return on investment to the county, the preservation of jobs, future revenue, and local control of the telephone system.

We received an amendment from Barry Smith of the Nevada Press Association, which was discussed in the hearing. The amendment adds new language requiring a board of county commissioners to publish in a newspaper in the county a notice of a possible sale or lease prior to a vote being taken by the commission. The notice must be placed in the newspaper three days prior to the commission taking action. [Referred to work session document ([Exhibit D](#)).]

**Chairman Ellison:**

Is there any discussion?

**Assemblyman Trowbridge:**

I think it is sad to say goodbye to the last publicly held phone system in the United States.

**Chairman Ellison:**

I will entertain a motion.

ASSEMBLYMAN TROWBRIDGE MOVED TO AMEND AND DO  
PASS SENATE BILL 109.

ASSEMBLYMAN SILBERKRAUS SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMEN FLORES AND MUNFORD  
WERE ABSENT FOR THE VOTE.)

**Chairman Ellison:**

I will ask Assemblywoman Shelton to take the floor statement. I will open the hearing for Assembly Bill 332 and welcome Assemblywoman Kirkpatrick.

**Assembly Bill 332: Makes various changes concerning government purchasing and bidding. (BDR 28-256)**

**Assemblywoman Marilyn K. Kirkpatrick, Assembly District No. 1:**

If the Chairman will indulge me, I would like to explain why we are hearing this bill, provide some history, and then get into the bill itself.

There is no secret that the state is looking for revenue. We know there are some true shortfalls within our state. As many of you recall, we had the mining shortfall. During the last summer, the Governor and I were discussing the potential shortfalls, and we were watching the sales tax numbers on a regular basis. We spent a lot of time trying to make sure we were close to the Economic Forum projections.

We kept seeing in the smaller counties, Washoe County in particular, that the sales tax numbers kept dropping. We knew there was building and construction going on, but did not know why the sales tax numbers kept dropping. We heard from contractors who said there was work being done, but we were informed the local agencies were buying their own materials. We worked with our legal staff, and the Governor and I worked with the Department of Taxation to find out how this was possible and how it was working. We conducted an audit to determine which agencies were doing this and how widespread the issue was. We needed to determine how this would affect the state in the long term.

As you know, the 2 percent sales tax is a constitutional requirement and the state counts on that 2 percent. We project based on that 2 percent. Many of you know that the consolidated sales tax is based on sales tax generated in our state. There are 15 counties who are guaranteed revenue from the state based on the sales tax collected. There are two counties that receive the consolidated sales tax. Sales tax is a big portion of how that is generated and disbursed among the cities and enterprise districts. I know this is a complicated dynamic, but I wanted to explain why this is so important and how it affects everyone down the road in the future.

Sales tax is one of the top five generators of revenue in our state, which both the state and the local governments rely on. Anytime there is a shift in sales tax, it causes unintended consequences.

Many local governments will be here today to oppose this bill. As a state, we need to be mindful that 15 counties are guaranteed revenue based on the sales tax collected. We are currently looking for revenue because we do not have enough. Anytime the system is circumvented, it affects the entire state.

I have had a discussion with Nevada System of Higher Education (NSHE), and we have agreed to disagree. At the end of the day, the only reason NSHE has donors is because the state funds most of their budget. The state has a stake in all of this, which is why we are having this discussion today.

To give you an example, Douglas County built a senior citizen center. They went to Washoe County and purchased all of the materials and had a contractor put them in place. That information is directly from the county manager when I spoke to him this summer. Not only did this affect Douglas County, but it also affected Washoe County and the state. You can see how something as simple as the local governments trying to save a penny is costing the state. We have to choose. Are we going to cut back on some of their dollars because they do not need as much money for capital improvement projects (CIP), or are we going to continue looking for revenue to replace it?

I would like to walk you through the history of how this all came about. I have Mr. Daly with me today because I had asked him to look into the issue during the last legislative session. Are we robbing Peter to pay Paul? The purpose of A.B. 332 is to close the loophole.

In the *United States v. New Mexico*, 455 U.S. 720 (1982), the Supreme Court of the United States decided the states could impose sales tax on contractors performing work on government contracts. Subsequent to that decision, the Nevada Legislature took up the issue and passed Assembly Bill No. 469 of the 62nd Session in 1983. The bill placed a question on the ballot to confirm that sales tax would apply to the purchase of construction materials for public construction projects. Unfortunately, the ballot question failed, so the Nevada Legislature, rightfully so, took up the issue again and passed Assembly Bill No. 502 of the 63rd Session in 1985. Assembly Bill No. 502 of the 63rd Session also placed a question on the ballot that was approved by the voters in 1986, confirming that state taxes would apply to the purchase of construction materials for public construction projects.

*Nevada Revised Statutes* (NRS) 374.345 states, "The taxes imposed under this chapter apply to the sale of tangible personal property to and the storage, use or other consumption in this State of tangible personal property...." In *United States v. New Mexico*, the court wrote, "constituent part of that entity." What does that mean? The Supreme Court stated, "Tax immunity is appropriate in only one circumstance: when the levy falls on the United States itself, or on an agency or instrumentality so closely connected with the Government that the two cannot realistically be viewed as separate entities, at least insofar as the activity being taxed is concerned...." It is clear who the partners are in these situations.

I worry for the smaller counties because there are no checks or balances, even today. As an example, Esmeralda County hires a contractor to construct a building, but the county purchases all the material tax-exempt. In the real world, someone has to make up that difference. There are no lists or inventory, so we do not know what local governments are buying. We do not know if they are getting the correct product. We do not know about warranties and who is subject to all of that. If we are going to allow this, then checks and balances must be in place. We need to make the law clear so the state can appropriately identify what the projections are for the future.

I believe the construction workers were hit the hardest in the recession. We realized how important that industry was in our state. Those dollars go back into the community. Now local governments are asking them to do the work, but not buy the materials so they can pay the sales and use tax.

This is a complicated issue, but there is a real history and a nexus as to the state's responsibility. When we guarantee 15 counties that they will have a certain amount of revenue, we also need some kind of guarantee within our forecasting to show that. When local governments do this, it affects everyone's formula based on those dollars. There are no dollars too small at this time that we can look the other way.

That is the history as to why we started talking about this issue in July. I can promise you there will be many local governments who will oppose this. They will say they are trying to save money because times are tough. The state is in that same boat, so we need to figure this out. We cannot continue to find dollars to ensure the local governments have a safety net if we cannot project what that safety net is going to be.

**Chairman Ellison:**

I think everyone is under the impression that the law states a municipality is tax-exempt. As the tax is given to the state, the state turns around and gives it back to the county. Can you elaborate on that?

**Assemblywoman Kirkpatrick:**

Local governments are tax-exempt on purchasing. However, it is very clear, based on the legislative history, that they are not exempt on construction materials. The law is very clear and there was an Attorney General opinion done in 1996. I believe there is another opinion coming along these same lines. We encourage local governments to work together on their purchases, such as fuel and automobiles. However, back in the '80s, it was very clear that construction is different. We need to be concerned about the purchasing agents. Who, in some of our smaller counties, is going to know specifically

what we need? Who is going to track the inventory and ensure the warranties? Having been the chair of this Committee in the past and getting to know the counties across the state, they do not have the resources to do that. Who is to say they are saving money because there is no one protecting their interests. I would be shocked if every county in our state had some type of purchasing department. We have counties that do not have building departments, so how are they going to have purchasing departments? They are exempt on some things, but it is very clear the voters decided in 1986 that they should not be exempt from construction. It has been discussed in the Legislature. I think there may be a lot of people here today who do not know that history.

**Assemblyman Stewart:**

The intent of the law is to allow a city or university to buy restroom supplies, but in building the restroom, they need to pay construction costs, including the sales tax. Is that correct?

**Assemblywoman Kirkpatrick:**

That is correct. To be clear, we have passed laws in this building that allow local governments to purchase apparatus for firefighters and police and those sorts of things. Last time I checked, local government is not supposed to be in the construction business. They are in the business of serving their constituents. There need to be some checks and balances. I am quite passionate about this because I lived it all summer as we were looking for dollars to close out the 2014 budget.

**Assemblywoman Neal:**

Section 1, subsection 3 states, "A contract entered into in violation of subsection 1 is void." Does that apply retroactively or is that going forward?

My second question is regarding section 2, subsection 17 with the strikeout language on lines 10 through 12. How are NSHE institutions now going to be treated? That language states, "A building for the Nevada System of Higher Education of which 25 percent or more of the costs of the building as a whole are paid from money appropriated by this State or from federal money." What does that mean?

**Richard Daly, representing Local 169, Laborers International Union of North America:**

To answer your question specifically, it all goes back to the definition of the public work, which is in NRS 338.010. In order for this provision to apply to NSHE, if it was a project that was not financed 25 percent or more, they could simply say they can still do it because they are a non-taxable entity and the



project is not a public work. We need to define their projects as public works, which is why that language is being taken out.

**Assemblywoman Neal:**

I have one last question. Section 1, subsection 4 states the person will be guilty of a gross misdemeanor. Is that already in law?

**Richard Daly:**

No. That is new language. We do not want them to do this, so we want to have a penalty appropriate to the issue. When the Chairman is ready, I can help explain what actually happens with information I have through contractors on specific projects.

**Chairman Ellison:**

Mr. Daly, Assemblywoman Neal asked a question regarding section 1, subsection 3 and whether it was retroactive. When you answered, your microphone was not on. Could you repeat the answer, please?

**Richard Daly:**

It would not be retroactive.

**Assemblywoman Kirkpatrick:**

Because Mr. Daly worked on this issue during the interim as an Assemblyman, I would like him to go through the bill. I think that may answer some questions. I asked Mr. Daly to work on this issue during the interim because he sat on this Committee and he is from the north, which is where the problem is. This is one of Mr. Daly's strengths. The Governor does know I am bringing this bill today. He did not tell me to back down, even though many local governments oppose the bill.

**Richard Daly:**

As Assemblywoman Kirkpatrick said, I did work on this issue during the interim. To circle back to the Supreme Court case, *United States v. New Mexico* was regarding a federal contract where a contractor claimed he should not pay sales tax on the materials he was purchasing and installing because it would be turned over to the federal government. The contractor indicated he should not have to pay sales tax because the materials were really being purchased by the United States and they are tax-exempt under the Supremacy Clause. The Supreme Court said unless the contractor is a constituent part of the government entity, in other words, so closely related we cannot distinguish between the two, they are separate. Although the contractor is buying the material, placing it on the job, and turning it over to them, the contractor must still pay sales tax. The government, then, is not being taxed.

That is when the Legislature took up the case and said anyone else who is buying materials in Nevada for a federal project, we want to make sure you are paying sales tax on the construction materials being used in the state of Nevada or being brought in from other states and utilized in the state of Nevada. In *Nevada Department of Taxation v. Ryan-Kelly, Inc.* 871 P.2d 331 (1994), the Supreme Court of Nevada upheld the same issue.

You are correct, Chairman Ellison. Universities and local governments are all tax-exempt under state law. The intent of the Legislature was to exempt these entities in the purchase of things like a truck or office supplies for their own use. This particular problem on the construction materials came up recently as an unintended consequence from the construction manager at risk (CMAR) process.

Normally, the entity would have a design-bid-build, put the project out for bid, and get a bid back from a general contractor. They would never see what the subcontractors were doing. The contractor's bid would be for a certain amount of money. The contractors, of course, have always had to pay sales tax on the materials they purchase because they are not exempt.

Under the CMAR method, an entity hires a private contractor to do the preconstruction services, and then they go out to bid for each component on the subcontractors. I believe when agencies saw the construction materials the contractors were buying and paying sales tax on, they thought they could buy the materials tax-exempt. Theoretically, I believe it is a false economy. I do not think the savings is really there for them. Nevertheless, the agencies felt they could save that sales tax.

That was never the intent of the exemption for local governments. With the history from the court cases and the legislative action that took place that said contractors need to pay sales tax because they are not a constituent part of government, there is a loophole that was never intended. It is hurting the state in revenue and basically taking money that would otherwise go to the state.

These agencies are not actually doing normal purchasing. They are telling the contractor to purchase the material for the job from their vendor and have the vendor send the bill to the agency. The vendor then sends the bill to the agency without the sales tax. I think they circumvent what is required under local government purchasing, which is competitive bidding, even though they are tax-exempt. They fail to inventory those materials. This subjects them to the possibility of fraud over ordering. Any leftover materials they would have to store. None of these things are taken into account. It also goes against the intent of what we are trying to do.

When I was given the assignment to try to figure this out, I did not think it would be efficient. I started looking into what we could say to local governments having exemptions to pay sales tax, except for certain purchases. I found that to be very problematic and more difficult to do. I did not want to explain what was voted on by the people about the constituency portions they do have to pay sales tax on. I wanted to leave that alone. The easiest way, and I think the best way because this is a construction public works purchasing issue only, was to approach it using the process in NRS Chapter 338. That process says if an agency is going to enter into these types of contracts and the agency is going to try to circumvent the sales tax issues and the laws, those contracts should be voided and there should be a penalty.

The Legislature should clearly state that agencies are not in the construction business. They need to get a bid from the contractor, let the contractor buy the materials, install the materials, and pay the sales tax. It had always been done that way until we started using the CMAR method. I have spoken to contractors, which is how I know this is how it is done. The contractor purchases the material and has the vendor send the bill to the agency without the sales tax. The agencies are not inventorying the materials, and they are not storing the materials. If there are extra materials, the agency is then on the hook. If there is a delay in the ordering, it could create disputes on the job. If there is a warranty issue because of substandard materials, currently the agency goes to the contractor to reject the materials. The dispute is then between the contractor and the vendor. Now the agency would have to reject their own material and send it back. Now the dispute is between the agency and the vendor. The agency does not have the expertise and is not equipped to handle those disputes as a contractor would. It also adds delay. If there were a warranty issue after the fact and it was not a work-related issue, if it was installed properly by the contractor, they would not have to warranty it or guarantee it because they did not purchase it. All of these problems come along with this scenario in trying to save a little sales tax. I believe it is a false economy.

I hope that answers some of the questions about this approach. It only involves public works projects with tax-exempt public agencies. I believe this is a narrow fix and the easiest way to resolve this issue.

**Chairman Ellison:**

If general contractors were adding additions to high schools, they do not add the sales tax until they are ready to bill it. If it is a tax-exempt purchase, they do not include the sales tax. Is that correct?

**Richard Daly:**

Prior to this process coming up, if the agency had a general contractor on the job, the contractor's bid would include the cost of materials, including sales tax. The cost of materials and the sales tax is part of their bottom-line bid. That is the way it has always been and that is the way the Legislature intended it. Under the court cases we have cited, those purchases by contractors were not tax-exempt. The contractors are required to pay the sales tax. If there is a change request where an agency wants the contractor to add additional square footage, the contractor will provide the agency with the cost of the material including the sales tax, his fee, and labor costs. That is how it has always been done. Under the CMAR method, the agencies saw the detailed costs of the project, including the sales tax on materials. The agencies then decided they would buy the materials. That is where we created a loophole that did not exist before and was not intended to be there. Agencies are taking advantage of that loophole, which is robbing money from the state. This had never happened prior to the CMAR method from what I can see looking at the history.

**Assemblywoman Kirkpatrick:**

The one thing we need to be mindful of is ensuring people are making good decisions. In some of the smaller counties where they do not have a purchasing department, they have no idea what they should or should not be paying for the materials. They do not know about the inventory or the warranties. How are we actually saving the state money by saving local governments money? There are guaranteed counties within our state that we protect because they do not currently have the resources they need. If we cannot count on that revenue and cannot ensure they are inventorying supplies and have proper warranties because they are not properly equipped to have those types of purchasing pieces, that then becomes a liability for them, which at some point the state will be asked to step up to help with.

Yes, it is about the revenue source. I have been in this building for ten years and everyone has always told me we do not collect what we are supposed to collect. Here is one reason why we cannot collect what we are supposed to. This issue was decided by the voters, and construction was specifically talked about. At the same time, we have to protect our smaller counties and have some kind of test. We need to know what the constituency part is so we know what that test is and what our expectations are. It is very limited in statute, so that is why it is spelled out in the bill. We want to know what type of inventory the agencies are keeping.

If any of you are on the Assembly Committee on Ways and Means, you can ask Assemblywoman Dickman. I drive people crazy because I am always talking

about chillers. It seems we buy chillers more than any other governmental agency in the world. Chillers are supposed to last 20 years, but it seems in our state we are needing to buy them every 4 years. Being married to a plumber, I know all about chillers. In the end, if we are not getting good warranties, we are not being fiscally responsible with our own dollars. That, then, makes the state responsible for covering that piece. It is a two-piece issue in my mind, which works better for the state as a whole.

I know the agencies are going to oppose this bill. I will not get my feelings hurt, and they will not get their feelings hurt. At the end of the day, we have to determine, on the state level, what our responsibility will be. I am happy to hear from the agencies.

**Assemblyman Silberkraus:**

I am from a big county, so I cannot speak to the smaller counties' ability to manage their own projects. Hopefully, some representatives from the smaller counties will speak to that later. I do have two issues. There seems to be a circular reasoning being talked about. The contractor will pay the sales tax, which will increase the agency's cost for the project so the state gets more money, so that the state can give more money back to the agency in order to pay for the more expensive project. That is one-half of the circle. The other half of the circle goes to a comment on the penalty side. It should be a fair penalty. With some of the smaller counties, a minimum half-million dollar penalty does not sound fair to me; it sounds punitive. I have a real issue with finding a half-million dollars in a state where we are scraping for a couple thousand dollars.

**Assemblywoman Kirkpatrick:**

The way Nevada's tax structure is set up, there are 15 guaranteed counties that get what they need regardless of what they bring in. The state takes care of these counties that do not currently have the resources. To say the state is charging them more so we can give it back is not the case. We are simply filling their coffers. That is difficult to do today when it comes to their consolidated sales tax. This is a guarantee to ensure these counties can provide the basic services they need. On the economic development side, when the agencies spend the money in their own community, it also generates money. We can talk about in-plan models that for every \$1 spent, \$1.37 will come back, but that is not what we are talking about. We are talking about having the money continue to work so it does expand over time.

The state is just receiving what we rightfully projected. As a state, we make projections on a two-year cycle, which is difficult to do. Many of our counties have a difficult time projecting on a six-month cycle. I have been involved with

more special sessions than regular sessions because of our projections. I receive those sales tax numbers every quarter, so I know what is going on. That is when I noticed Washoe County's sales tax numbers dropping, yet there was work going on. At some point, it affects everyone. It not only affects the state's 2 percent share, but it also affects constituent services. Quite frankly, many counties are asking for supplemental dollars.

I have a different take on this issue than you do, Assemblyman Silberkraus, because I have been in the building and seen it for a long time. If you ever have a day or so, I will walk you through the consolidated tax structure. It will make your head spin because it is such a complicated formula, and any deviation from the formula hurts everyone. Part of the state's sales tax revenue goes to schools. If we are not getting the sales tax projections, it puts the state in a position to decide what benefits are cut. It is not helping the state as a whole. I will let Mr. Daly answer your question regarding penalties.

**Richard Daly:**

I have always been a believer that if there is no penalty, there is no rule. The \$500,000 is not written in stone. It is in the bill, but it can be changed. The penalty needs to be high enough so the agencies will not continue this practice.

When you talked about the circular argument, the government is not actually supposed to be purchasing construction materials; the contractor is. We have the administration of purchasing in order to safeguard the expenditure of public dollars. That is why we have put all those rules in place. This practice circumvents all of those rules. If we were to look at what the agencies are doing and the problems it causes, there is probably no savings at all. Only by circumventing the system, creating the loophole, taking money away from the state, is there perceived savings. We do not want the agencies to do it, and we want to have a high enough penalty so they will not do it.

**Assemblyman Silberkraus:**

I am glad to hear the \$500,000 is not in stone because that was of great concern to me. Assemblywoman Kirkpatrick, if you can find the time, I will find the time. I would love to have you walk me through the consolidated sales tax formula.

**Chairman Ellison:**

If the public work were a federal project, would we be collecting and paying sales tax?

**Richard Daly:**

Yes. That was the case in New Mexico. It was a federal contract, and the contractor who was purchasing the material wanted to claim a tax exemption. His argument was that the federal government was being taxed. The Supreme Court said no, unless the contractor is a constituent part of the agency, in other words the agency owns the construction company, they are separate and have to pay the sales tax. The contractor had to pay the sales tax, even though the material was being used on a federal project.

The case of *Department of Taxation v. Kelly-Ryan, Inc.* is similar. If there is an out-of-state purchase but it is used in the state, the Supreme Court of Nevada ruled use tax must be paid in Nevada. In that particular case, the contractor manufactured some components that were then brought to the state and used in the state. The contractor said the components were made in another state so sales tax should not be paid. The Supreme Court said they must pay the use tax. The court went through many of the same considerations as the United States Supreme Court.

**Assemblyman Moore:**

If the contractor is not currently paying sales tax on materials used in the construction on a public works project, and then they start paying the sales tax, will that not just raise the cost of the project for the state?

**Richard Daly:**

Currently, the contractors are paying sales tax. With the CMAR method, the agencies were seeing the sales tax being charged. There are only some agencies that are purchasing the materials directly. That is when the drop in the construction sales tax revenues was noticed. Contractors had always purchased the material to be installed on public works jobs. The agencies discovered they could save the sales tax by purchasing the materials directly. They are then circumventing all the purchasing laws, and there are no safeguards. Contractors are required to pay the sales tax. The loophole that is being exploited was not anticipated. The only effect it is having now is the state is not getting the money they used to get from sales tax from construction projects.

**Assemblywoman Kirkpatrick:**

We as a state could cut some of these capital improvement projects (CIP) because we assume the sales tax is going to be included. We need to do a better job of going through the CIP budgets to cut some of those dollars. If an agency requests \$10 million, we need to make it \$9 million because the agency is removing the sales tax. We will then see in two years if they are actually saving money. I would be happy to start reducing CIP budgets. If we

are talking about costs, then everyone has to know the rules. I do not believe it is costing more for projects because now the agency will be responsible for the inventory. The agencies will submit change orders and ask for more money from the state. The state has nothing to lose by cutting the CIP budgets. It makes our jobs as state legislators a little easier. I guarantee the local governments will say it is going to cost them more money, but I do not understand how it will cost them more money when the state is actually supplying the guaranteed source. I implore all of you to sit in my office and go through the CIP budget because there is some sales tax that could be removed.

**Assemblyman Moore:**

Would this not be a transfer of money from the state to local jurisdictions? In other words, the state collects the sales tax and receives a portion, but the bulk of it goes to the local jurisdictions.

**Assemblywoman Kirkpatrick:**

That is true. The state does receive a portion of the sales tax. We should not forget, we are looking for dollars to cover the 2015 budget cycle. Across our state in the 17 counties, each county does something different with their sales tax revenue. For instance, 2 percent of the sales tax is required by *The Constitution of the State of Nevada* to be collected for the state. The remainder of the sales tax goes directly to the county where it was generated. Of the counties' portion of sales tax, 2.6 percent goes to the local school support tax. Each county has different uses for the remaining sales tax dollars. It is guaranteed by the state that if the counties do not have enough money, we make up the difference. I am a big advocate for not giving away the dollars that go to our schools. The 2.6 percent to the schools is statutorily required.

I would like to use Sales Tax Anticipation Revenue (STAR) bonds as an example. This body passed a law stating the sales tax did not have to be paid on STAR bonds. Because of these STAR bonds, Washoe County, the City of Sparks, and the City of Reno all suffered. They all came back to the state for financial help. Anytime the sales tax formula is messed with, because it is a key component to many of our tax discussions, it affects everyone.

[Assemblyman Moore assumed the Chair.]

**Assemblyman Carrillo:**

I have a few questions that are tied to each other. If Contractor A and Contractor B were bidding on a contract, and Contractor A is aware the local government could purchase the material tax-exempt, but Contractor B is not aware, could Contractor A change the bid to compensate for that? Not



that there are backroom deals going on, but after a while the entities become aware of who bids these contracts, and maybe they have one contractor they would prefer do the contract. My question is, could contractors change the bid when they know the sales tax is going to be exempted?

**Richard Daly:**

I think the answer to that is yes. On a traditional design-bid-build, the agencies receive one number from the contractor for the entire project. Under the CMAR provisions, which is where we first encountered this practice, the agencies see the contractor and subcontractor's bids. Even under a design-bid-build, contractors could still submit a bid without the sales tax and submit their proposal stating the price is contingent upon the agency purchasing the material. To answer your question, Assemblyman Carrillo, I think it will eventually affect the bidding process. Contractors will no longer know whether sales tax is included or not, which will cause other problems.

To address Assemblyman Moore's previous question, it reminds me of the Western movies where one man places a board in the stream to block the water, which affects everyone downstream. We have a process in place. By circumventing that process, it disrupts the entire scheme. Unless you want to revamp the entire process, we have to close the loophole.

**Assemblyman Carrillo:**

The contractors could change other things on their bids to make them lower, too. I have seen bids with a difference of only \$1,000. It could make the difference in a contractor getting the contract or not.

**Richard Daly:**

It would add another variable into the bidding process that does not need to be there.

**Assemblyman Carrillo:**

My follow-up question is regarding purchasing of items from out of state. I have a feeling we might have an onslaught of outside contractors come into our state. I do not know if that could actually happen, but what happens if they start bringing equipment into the state and purchasing materials from out of state to be used in Nevada? Do we have checks and balances to ensure that materials are not purchased out of state, but from a Nevada vendor?

**Assemblywoman Kirkpatrick:**

Tax is required to be paid even on out-of-state purchases. However, we want our local vendors to benefit from public works also. When folks are working, that helps the Medicaid rolls, the unemployment rolls, and other rolls. There are

protections in statute dealing with out of state purchases. However, the goal is to utilize our local vendors. When local workers work, the local community does better.

**Assemblyman Stewart:**

I have had the class from Assemblywoman Kirkpatrick and Carole Vilardo, President of the Nevada Taxpayers Association, on the sales tax formula, but I still do not understand it completely. It is my understanding that we have this pot of money from consolidated tax, which is mostly from sales tax but includes other things, like tobacco tax. All the counties contribute to this big pot of money. The smaller counties do not have the resources to put enough in the pot, and if they received the same amount back, they would not be able to take care of their expenses. We have created a system where these smaller counties are guaranteed a certain amount of money no matter what. The counties receive that guaranteed amount so they are able to function at a certain level. If I understand correctly, what they are trying to do, because of this practice of paying for materials tax-exempt, is to contribute less money to the pot, which is normally not even enough to run their own county. The agencies are taking advantage of the situation, even though the larger counties are supporting them. They want to contribute even less, even though they are getting more than what they are putting in. Is that correct?

**Assemblywoman Kirkpatrick:**

You have put it much nicer than the way I have said it. We have a responsibility as a state to take care of our smaller counties. That is why it is so important for everyone to give 100 percent.

**Assemblyman Stewart:**

I want to take care of the smaller counties. I took a tour of the smaller counties again this summer. I enjoyed every bit of Austin, Eureka, Wendover, and all the other small cities and towns. I think they need to pay as much as they can and not find ways to lessen their contribution.

**Assemblywoman Kirkpatrick:**

It is good for the smaller counties' local vendors and contractors to get these public works. It brings economic value back to their own county.

**Assemblywoman Joiner:**

The University of Nevada, Reno is in my district. I am curious about the provisions that affect NSHE on page 7, line 10. It looks like it is a definition change. I am asking for clarification so I understand this correctly. Does deleting the language on page 7, lines 10, 11, and 12, mean all the NSHE projects would be considered public works, regardless of how much of the

project is paid for by private dollars? I would like to know in real-world terms what this means and why that decision was made to put it in this bill.

**Assemblywoman Kirkpatrick:**

The Nevada System of Higher Education is going to speak in opposition to this bill. We have had heated discussions over the summer. They will tell you it is very frustrating because they get donor dollars. We are one of the very few states in the country that funds our higher education system, but rightfully so. We want our higher education system to do well. However, if they are not contributing to our economy, then how helpful is that? They had a \$290 million increase, but we could not get the sales tax we felt should go into our pot to disperse among agencies. That portion of the bill is specific to NSHE and they are aware of it. They were the first agency we called to let them know public works are subject to sales tax. We do a lot compared to other states for our higher education system. Other states use predominately fundraising dollars.

**Assemblywoman Neal:**

My question ties into what Assemblywoman Joiner asked. Section 2, subsection 17(a) states, "a project financed in whole or in part from public money...." How does it work when student fees are a part of the collection or creation of the project? How will we deal with that?

**Richard Daly:**

Those dollars collected by the university are still public dollars, regardless.

**Assemblywoman Neal:**

Even if they are student fees?

**Richard Daly:**

It is like the fee you pay at the airport. It is a fee, but it is still a tax dollar. Someone gave the university system authority to collect that fee. The university system is set up under *The Constitution of the State of Nevada*. Any money they collect, whether it is a fee or not, is public money.

**Assemblywoman Kirkpatrick:**

We have seen donors contribute 90 percent of the cost for a project, but 10 percent still comes from the public sector. If not for the state funding, these entities would not have the ability or the authority to collect those fees. We do give local governments the authority to collect fees and raise taxes. However, it always seems it falls on the state's shoulders. They are a creation of the Legislature, so "in whole or in part," they can only do that because the Legislature allows them to.

**Richard Daly:**

I am not trying to pick on NSHE, but they are the only agency that has an exemption like that under the definition for public works. No other agency in the state has that exemption. Anything other agencies do with public money is a public work. If we do not remove that exemption, every agency should have that exemption. I do not think treating government agencies differently is beneficial to anyone.

**Assemblywoman Neal:**

For the Committee's benefit, what is the history behind the exemption? Why were they exempted in the first place? There had to have been a public policy purpose for that.

**Richard Daly:**

That provision has never been much of an issue because virtually all of the projects had at least 25 percent of the state's money. When there was a shifting of some of the donations and fees, that was not money appropriated by the state, so there were more projects they were claiming to be exempt from public works. There are other provisions that do not apply when it is not a public works, which means they do not have to follow the public bidding laws for public works because it is not a public project.

There was a project bid at the university about two years ago. They did not follow the bidding procedures, even though they advertised it would be done under the CMAR procedures. The university was sued by two of the contractors. The university's first defense was it was not a public works and they were exempt. I am sure they will say the same thing when it comes to paying sales tax, which would be unfair to every other agency and entity in the state.

**Assemblywoman Spiegel:**

I know a lot of the testimony has focused on sales tax, but I want to make sure this also includes use tax.

[Assemblyman Ellison reassumed the Chair.]

**Richard Daly:**

Yes.

**Assemblywoman Spiegel:**

I would like to use a specific example from the Department of Taxation's website regarding use tax and when it is required. A Utah contractor wins a bid

for a public project and they purchase sheetrock in Utah and have it shipped to Nevada. Under this bill, would the use tax have to be paid?

**Assemblywoman Kirkpatrick:**

That is correct. Out of state purchases are currently subject to use tax.

**Assemblywoman Shelton:**

I know we are talking about policy and not the fiscal impacts, but I was wondering if you could tell me how big of a problem this is? You mentioned Washoe County as an example. If this bill were in place several years ago, how much difference would we have seen in Washoe County?

**Assemblywoman Kirkpatrick:**

I can give you an example. Douglas County purchased material in Washoe County for a project in Douglas County. In doing our internal audits, we have seen it is becoming a bigger problem. Imagine Washoe County losing \$400,000 of sales tax when their sales tax revenue is already dropping. This also affected Sparks and Reno because of the sales tax formula. We have a list of these types of situations. At one point, we believed it was only a few agencies that were doing this. However, we are now seeing a trend by many agencies. This affects us at the state level for the 2 percent portion, and it affects our construction workers. I would be happy to provide the list. It has increased in the last three or four years and has turned into an epidemic.

**Assemblywoman Shelton:**

Would that not have increased the cost of the project by \$400,000?

**Assemblywoman Kirkpatrick:**

It may increase the amount for that particular project being paid for by local government dollars. However, it also costs the state and Washoe County because the state has to subsidize some of their needs. We fund many things with state dollars: foster care for example. The state funds foster care and sends money to the different counties who match the amount the state provides. If the county cannot pay their share of what is needed for foster care, the state then has to provide additional money to the county. It may save local government money, but it is costing the state more.

The state is faced with the challenge of raising revenue and finding revenue. The amount of revenue the state needs to raise may be a little less if everyone paid a little more and more people were working. I understand it is a hard choice for many agencies having to pay a little more for these projects. If the Committee is comfortable not passing this bill, I know what my marching orders

are. I have to cut the CIP budgets. I need to know what we are going to do so we can forecast properly for the next two years.

**Assemblywoman Shelton:**

It seems we are taking it from one pocket and putting it another pocket.

**Assemblywoman Kirkpatrick:**

The state has a responsibility to fund things like education and transportation. Local government has the responsibility to fund things we allow them to fund. We may be saving the local government dollars, but the state is required by the *Constitution* to fund certain programs. We have to fund these programs regardless of whether local government does. Local government is not required to pay the basic service costs. However, many of them do with the revenue generated. If they are saving money on these projects, perhaps the state should shift some of those responsibilities.

At this point, we have to determine our forecast. How can we forecast if we do not know what the rules are? I bring this to your attention because it is a problem. As a state, each and every one of us is faced with finding more revenue. The most important point is saving those small, guaranteed counties so they have the right purchasing people in place, they are inventorying materials, and they work with the Department of Taxation. If the direction we are going in is to allow this practice, we must protect these counties. At the end of the day, the state has to make up the difference. If the Committee chooses not to pass the bill, then we need to shift resources so the counties can save those dollars, but they must own the responsibilities that go with it. We as legislators would not have to find the dollars. We may have to cut their CIP budgets in half or take out what we believe is the sales tax portion. I am sure no one in this room wants to be raising taxes every two years. I do not know if anyone here wants to shift all the sources to local government, and I am not sure they would do any better than the state does. There has to be some oversight.

This was a long answer, but we are in a situation where we are starting to close budgets and we need to forecast appropriately. The Economic Forum needs to know what that expectation is.

**Richard Daly:**

The question is whether the counties are truly saving dollars on these projects. What Assemblywoman Kirkpatrick is saying is if you pull the thread, part of that sales tax would have gone to the school district in Douglas County and part of it to the school district in Washoe County. The shortfall is falling to the state. The state now has to put more money in. The state will pull that thread a little

more and wonder where the money will come from. When one county saves money by not paying the sales tax, they disrupt the whole system we use to project. There is no real savings there. The flow is being dammed upstream, but everyone downstream is being affected. When you pull the thread all the way through, someone has to pay. There is a savings for that one particular entity at the expense of everyone else. We are trying to stop them from disrupting the process we have had in place for a long time. The process needs to be adjusted occasionally, and this is one of the adjustments that needs to be made.

**Assemblyman Silberkraus:**

Was the \$400,000 in your example actual sales tax or was that the amount that was taxable?

**Assemblywoman Kirkpatrick:**

The \$400,000 was what was not paid in sales tax.

**Chairman Ellison:**

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

**Brian Reeder, Government Affairs Coordinator, Nevada Chapter, The Associated General Contractors of America, Inc.:**

The Associated General Contractors of America, Inc. is in support of this bill. Compared to most government expenditures, construction is unique in that millions of dollars are spent all at one time on construction materials, and that money is spent locally. Large chunks of that money go to the schools, water improvement districts, and public safety. The entities that truly need it are the ones who benefit from those tax dollars.

I would argue they are not saving the full amount of the tax. A portion of that goes to the contractor and to do the paperwork to deal with getting the owner a tax exemption. We think this bill is better public policy.

**Chairman Ellison:**

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

**Steve Walker, representing Storey County, Douglas County, Lyon County, Carson City, Eureka County, and Truckee Meadows Water Authority:**

I would like to turn it over to Douglas County's Public Works Director, Carl Ruschmeyer, who is an expert on the subject.

**Carl Ruschmeyer, P.E., Director, Douglas County Public Works:**

I have submitted written testimony outlining our basic objections and opposition to this bill ([Exhibit E](#)). From a public works perspective, we do see that it can have a financial impact on our ratepayers, as well as our utilities.

There were questions I heard regarding safeguards for the smaller, rural counties. I will state on behalf of Douglas County, we do have the staff and expertise to manage our contracts and to purchase through existing contract law in the provisions provided to us by law. We have dedicated professional insurance staff who are experts in contracts and contract administration. We have an outstanding finance department that reviews our contracts. Our contracts are also reviewed by the district attorney's office. There is a full vetting of public works projects, and ultimately, they go before the board of county commissioners before approval.

We do not see it in a sense that the provisions that allow us to provide materials and supplies on a public works contract is an abuse of any authority or power that we have. Those are provided to us in law by purchasing, as well as contract law. We use them discriminately and properly. In many cases, on a standard design-bid construction contract, that decision is made up front, so those terms and provisions are built into our contracts for the proper handling and distribution of any materials that would be supplied to a general contractor. We are minimizing any risks and covering provisions to protect the county, as well as our taxpayers and ratepayers.

The potential cost savings sometimes go beyond the sales tax. Contractors have administrative overhead profit charges that would not be added on those components of a project that we supply. There are also bid and bond costs, which can be another 2 or 3 percent on top of the sales tax. The sales tax rate in Douglas County is 7.1 percent, so the reality is we could be looking at, in certain situations, potential savings back to our taxpayers and ratepayers, 10-plus percent. That can be significant.

I understand from the presentation that the state is looking for tax dollars. We are looking for revenue too. We are budget managers. In today's economy, costs are going up dramatically in many sectors of the public works, and our revenues are either flat or, in many cases, declining. We are fiscally responsible to our taxpayers and ratepayers for trying to manage our budgets responsibly and save money where we can, and where it is appropriate to do so.

I would like to comment on one issue of enterprise funds. There is talk about the taxes being paid and redistributed back to the counties. It is standard common practice in the West to operate water, wastewater, and some of the



other utilities as enterprise funds, meaning they are self-supporting through rates, fees, and charges. Essentially, they have to be self-supporting. General Fund dollars do not go into these funds. In the case of paying a tax on material for goods supplied on a public works, the ratepayer would carry the burden for that. Regardless of whether any of this money is redistributed through consolidated tax, it would come back to the General Fund and not be realized back to the enterprise fund. In a sense, counties are paying the tax without a benefit back in their actual rate.

Douglas County is opposed to this bill. We believe it is a provision by law that can, when used properly, benefit our taxpayers and ratepayers. I am available for questions. [Written testimony was also submitted ([Exhibit C](#)).]

**Assemblywoman Spiegel:**

As the bill is presented, one of the comments made is if the bill does not go forward, it will send a message to the Economic Forum that as they are looking at how to distribute revenues to the counties, they might take this into account and then decrease the distribution to counties, such as Douglas County. If that were to happen, you would also lose out on the multiplier effect of those revenues in the county. Could you speak to that loss of revenue that could happen if this bill does not go through versus the economic positive impact of having those monies in Douglas County?

**Carl Ruschmeyer:**

That is an area I am not an expert in, and maybe it is not appropriate in terms of my background for me to speak to that based on the discussions in the presentation. I believe that is, in fact, something that could truly impact us. At this time, I am not in a position to make that finding.

**Assemblywoman Spiegel:**

In your office, is there someone who has access to in-plan software who could come up with the multiplier effect that would be felt in Douglas County?

**Carl Ruschmeyer:**

We would have to forward that to the finance department.

**Assemblywoman Spiegel:**

Could you please do that and get the information back to me?

**Carl Ruschmeyer:**

Yes.

**Steve Walker:**

I would like to go on the record to state those entities I represent are opposed to this bill. The basic issue is we are paying taxes with taxes. Does that really make sense? Also, for clarification, Mr. Reeder mentioned distribution of the consolidated tax to water improvement districts. That is not typical. Water improvement districts, as Mr. Ruschmeyer said, are enterprise funds and do not receive consolidated tax money. Again, the basic issue of paying taxes with taxes does not make sense to us.

**Assemblyman Flores:**

To be clear, there is no middle ground through your perspective. You believe the bill does not work and there is nowhere we can find consensus or an alternative approach. Is that correct?

**Steve Walker:**

That is not correct. I think we could find some consensus. It is not a zero-sum game. There could be some solution or willingness to compromise. I do not think that discussion has occurred.

**Assemblyman Flores:**

Could you give some insight on what that compromise would look like so we could understand it a little more?

**Steve Walker:**

Not right now. I think I would have a group discussion and someone could come up with some ideas that could be evaluated by the group, which is typically how it is done. Currently, I do not have that individual concept.

**Assemblyman Carrillo:**

You mentioned paying taxes with taxes. The sponsor of the bill stated that at the end of the day, without this change, the counties will get less money back from the state. Is what the sponsor of the bill saying incorrect? Do you feel it is something that should be vetted through the counties so they realize they are basically cutting their own throats by decreasing the amount of funds they receive back from the state? When the state goes through their budget hearings and the counties ask for money, we all have to pay a tax. I will give you an example. I can purchase from two different automotive retailers online. I choose the one where I will pay taxes. Why? Because I understand the money will come back to my state, that it will go back to the people who support the state and the infrastructure. There are many other things in play here. When you say paying taxes with taxes, could you elaborate a bit more?

**Steve Walker:**

The distribution of the tax back to the county once it is collected is not equal to the tax savings by not paying sales tax. Two percent of that sales tax goes to the state. The actual savings on the sales tax is the actual amount of sales tax. That is the difference.

**Assemblyman Carrillo:**

Are you saying it would be better to pay zero percent to education rather than 2.6 percent?

**Steve Walker:**

I am not arguing the education distribution or even changing the tax distribution formula. It is self-defeating to avoid paying the sales tax because you do not get the distribution back. If you do not pay the sales tax and save more money than you would save by paying the sales tax, that is the economy the counties are looking for.

**Assemblyman Carrillo:**

I am looking at the back end, when all the counties ask for money. The state will have less money because we were not able to recover the taxes we had anticipated based on the sale of items throughout the state of Nevada.

**Chairman Ellison:**

I would like Ms. Contine from the Department of Taxation to answer a question. As you are hearing both sides, could you give us the history on this?

**Deonne E. Contine, Director, Department of Taxation:**

I was going to speak as neutral on this bill and give you an overview of what the Department sees. Traditionally, the construction contractors are the consumers of tangible personal property. If they purchase materials for a project, they pay sales tax. If they purchase materials from out of state, they self-accrue use tax. That has been the rule in Nevada for many years. More recently, within the past few years, as Assemblywoman Kirkpatrick mentioned, some contractors and local governments are working together to basically create a loophole to not have the sales tax imposed.

From the Department of Taxation's perspective, it creates some administration issues. We generally look at construction contractors as taxpayers, so when we audit them, there are administrative issues. We have generally said that the taxpayer is the contractor when they purchase the materials. It has caused some issues within the department and issues with administration.

The second part, with respect to that, is entities have asked us if they can do that. Some of the questions the department has received over the last few years indicate, at least in my mind, some of the local governments do not really understand what is going on because they are used to the rule that everyone has had for many years. In one case, I was asked if they could pay the contractor an amount that was equal to sales tax and then the contractor could give that amount back to them. I do not really know how that question got presented to the government. It further identifies there is some confusion when some people are going by one rule and others are going by another rule. I think it causes a problem in administration.

As Assemblywoman Kirkpatrick mentioned, she and the Governor have had many conversations about this issue. I believe it is a growing concern, and it is something my office is asked about more often as time goes by.

**Chairman Ellison:**

In most cases, if the taxes are collected on one end, they still have to be paid on the other end. If a contractor is paying the sales tax to the vendor, then he must pass that on. Is that correct? The contractor does not absorb the cost of the sales tax, so they must put that cost in their bid.

**Deonne Contine:**

I cannot speak to that issue. I can speak to how this has traditionally been looked at by the department. If we are assuming there is no additional cost to the local government for what would otherwise be tax, based on some of the questions I receive from local governments, I do not know how that is really working out for them. Obviously, there are local governments who can protect their interests and ensure they are truly getting the benefit if they are entering into these agreements or doing this on their own. Based on some of the questions I have received, I do not know if that is actually happening.

**Chairman Ellison:**

It was my understanding the tax was not paid to the vendor, and it was not paid during the project on public works.

**Deonne Contine:**

For clarification, in the context of the contractor being the consumer of tangible personal property, they purchase the materials in the regular sense by paying sales tax, and then they build that cost into their contract or bid. If the contractor does not pay the sales tax on the purchase of the materials, the idea would be that the contractor is then not building that cost into their bid. I do not know if that is actually happening or not. One of the questions we have received includes a local government asking whether they are supposed to pay

the sales tax to the contractor. I am saying, based on some of the questions, I wonder if the rules being inconsistent by having applicability in one situation and not in another, causes problems with administration.

**Assemblyman Stewart:**

How long has this new practice been going on?

**Deonne Contine:**

It is hard to say. More recently, we have been getting the questions. So over the last couple of years.

**Assemblyman Stewart:**

Do you have any way of measuring how much money the state is losing with this practice?

**Deonne Contine:**

We do not because it is not reported.

**Assemblyman Stewart:**

Do you think this bill would make it more clear and solve the problem? Would it eliminate the questions the department is receiving and make it easier for you to answer?

**Deonne Contine:**

I think so, yes.

**Chairman Ellison:**

I apologize to the presenter of the bill. We needed to have those questions answered. Is there anyone else wishing to testify in opposition?

**Constance Brooks, Vice Chancellor, Government and Community Affairs/Public Relations, Nevada System of Higher Education:**

We would like to thank the sponsor, Assemblywoman Kirkpatrick, for her support of higher education, in particular for her support with respect to capital improvement projects. We have had discussions with her, as well as with the Office of the Governor, for the better part of a year. We understand the intent of the bill with respect to purchasing agency agreements (PAA). We do disagree; however, we do understand the goal they are trying to achieve.

We would like to address section 1, subsection 17 in our testimony this morning, which is regarding the definition of public works. We are a unique public entity, and members of the Committee have brought forward questions relative to the use of the donor funds and student fees. It makes us unique

with respect to the fact that we actually do our own fundraising for some of our projects using student fees.

I have with me today, Mr. Zurek, who would like to give some clarifying information with respect to that section of the bill.

**Ronald Zurek, M.B.A., Vice President, Finance and Administration,  
Public Service Division, University of Nevada, Reno:**

I thought it might be most helpful to give examples relative to this proposed change. If the change had been in effect during this biennium, the \$45 million William N. Pennington Student Achievement Center project would have been managed by the State Public Works Board because we received some state funding. The total funding amounted to \$437,000, a little less than 1 percent of the total cost of the project. The State Public Works Board indicated they would charge a 2.5 percent management fee on projects over \$35 million. In this instance, the fee would have amounted to an additional cost of \$950,000 to the project.

That is not money the university puts in its pocket. Almost every project we have has enhancements, or add-alternates as we call them, that we have to eliminate from the project. When we have savings of this magnitude, we pile them back into the project, and they become additional jobs and additional material purchases that we make in the market in northern Nevada.

Similarly, during this biennium, we completed a new student residence hall, called the Living Learning Center, a 300-bed residence hall. The total cost of that project was \$38 million. The construction cost was about \$28 million. There was zero funding from the state in that project. It was done entirely from the room rents that we charge the students. Yet, under the proposed legislation, we would be paying approximately \$560,000 in an additional management fee to the State Public Works Board.

**Chairman Ellison:**

If that was donated money or fees from the students, would that not be under nonprofit status?

**Ronald Zurek:**

The non-state funding that went into this building was composed of donor funding from the William N. Pennington Foundation, student fees, and some institutional reserves. Those were the non-state portions of this project. In the case of the residence hall, again, that was entirely student room rents that paid for that project.

We would also note that the University of Nevada, Reno (UNR) and I assume the University of Nevada, Las Vegas (UNLV), has the staff to perform project management at no additional cost. We have a track record of success in doing so. We have the \$32 million Living Learning Residence Hall, a \$40 million Peavine Residence Hall under construction, the Student Achievement Center, and we are also embarking on a new \$45 million E.L. Wiegand Fitness Center. That is a total of \$163 million in capital projects. Again, there is a little less than \$500,000 of appropriated state funding in those projects. Given the funding and given the expertise on our campus to manage these projects, we would like to continue to be able to do in the future what we believe we have successfully done in the past.

We are also very concerned about the potential adverse impact on our donor gifts. The higher administrative costs associated with the Public Works Board managing these projects as opposed to our own institutional management, could make private fundraising much more difficult. It is already difficult to raise private funds for public institutions. We would certainly like to avoid that.

Those are concrete examples that would explain the changes we would envision if this proposed legislation were to be passed.

**Chairman Ellison:**

Could you repeat the section of the bill we are talking about?

**Constance Brooks:**

We are referencing section 1, subsection 17 of the bill, specifically page 7, line 9, where there is a strikeout in reference to language specific to the Nevada System of Higher Education (NSHE) and the threshold of 25 percent or more of the costs of the building as a whole paid from money appropriated by the state or federal funds.

**Ronald Zurek:**

Since this is a bit of clarifying testimony, I would like to touch on a couple of other points, if I may. First of all, a question was asked earlier about how long this methodology had been in effect. In the mid-1990s, we constructed a new West Stadium Parking Complex on our campus. In that particular instance, we were using the PAA.

I would like to talk about another issue that was mentioned, and that is that NSHE should be contributing to local economic development. I know here in the north, during the darkest days of the recession, 2008 until 2012, due in large part to the construction the university was able to do, largely because of the help of our donors and because of student fees, we kept much of the

construction industry in northern Nevada going. We wanted to point that out. I would also note, we truly believe there are savings associated with the PAA issue, and we are able to demonstrate that.

There were also some questions about some of the nuances and vagaries that might or might not happen using a PAA. In fact, the agreements that we sign between the contractor and ourselves are very specific. They deal with issues of inventory and warranty. We have used these successfully in the past, and we believe they are the same kind of controls and benefits that we heard earlier from some of the counties.

The last piece of clarifying information I have is there was also earlier testimony about the fact that the university was sued by two general contractors regarding the use of the CMAR bidding process. I think it is important to note that the court found in favor of NSHE.

**Chairman Ellison:**

How long have you been using this practice at the university?

**Ronald Zurek:**

The West Stadium Parking Complex was our last biggest project before the previous two years, which required an immense amount of concrete and cement work. The PAA process was used then. We have also used the PAA with our three most recent projects, which were the Peavine Residence Hall, the Pennington Student Achievement Center, and the E.L. Wiegand Fitness Center.

**Assemblyman Carrillo:**

How much does the state fund UNR?

**Ronald Zurek:**

Are you talking in terms of the capital budget?

**Assemblyman Carrillo:**

Total funding.

**Ronald Zurek:**

I would have to get that information for you because there are several components to the funding streams.

**Assemblyman Carrillo:**

I would certainly like to get that information from you.



**Ronald Zurek:**

We can certainly get that for you.

**Chairman Ellison:**

Are there any further questions from Committee members [There were none.]  
Is there anyone else wishing to testify in opposition?

**Wes Henderson, Executive Director, Nevada League of Cities and Municipalities:**

We are in opposition to this bill as it is written. Our opposition is a little different. We are more concerned that the bill applies to repair parts. An example I like to give is the traffic safety devices. A municipality will purchase light poles or traffic control devices to have them on hand in case one is destroyed in a traffic accident. These devices may end up being installed by a contractor. This bill would not allow a municipality to pre-purchase these products and have them on hand.

I certainly understand the concerns voiced by Assemblywoman Kirkpatrick, especially the 2.6 percent that goes to fund education. That does have to be backfilled somehow. We would be happy to work with her on this bill and to address our concerns. I would be happy to answer any questions.

**Assemblywoman Spiegel:**

If there is a traffic accident and a light pole goes down, how long would it take to order a new one?

**Wes Henderson:**

I cannot answer that question right now, but I can certainly find out the answer for you. Light poles are a specialty item you cannot just purchase at Wal-Mart.

**Assemblywoman Spiegel:**

You raised the public safety issue, so that is why I am asking.

**Wes Henderson:**

I will find out what the lead time is for you.

**Chairman Ellison:**

Are there any further questions? [There were none.] Is there anyone else wishing to testify in opposition?

**Yolanda C. Jones, Purchasing and Contracts Manager, Purchasing and Contracts Division, City of Las Vegas:**

We would like to provide testimony opposing this bill. The city does, in fact, currently procure large, long-lead or standardized construction materials for our

public works projects. This includes things like large diesel generators, gas flares, structural steel, or street light poles. The state and local governments do hundreds of millions of dollars in public works construction projects on an annual basis. When you look at the items we purchase, they are a very small dollar amount of the total construction cost.

Clearly, we do not procure these items to avoid paying taxes. We do so when it is in the best interests of the city from a cost savings and process efficiency perspective. Basically, the benefits of directly buying some of these construction materials and having a contractor do the installation includes the standardization of materials across the city, such as street light poles, maximizing cost savings using the bid process defined in NRS Chapter 332, the use of the request for proposal process to allow for the evaluation and selection for new technology, control over security materials such as final master keyed key cores and fire department access lock boxes, and the most important one that impacts our cities, the avoidance of costly construction delays for long-lead items. I can assure you, as a purchasing agent, any type of material we purchase for construction projects is done in accordance with our state laws.

In closing, I would suggest that the construction materials we procure using this process are done for taxpayer cost savings, which is the mission of the many purchasing professionals in this state. I urge your opposition to this bill.

**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?

**Jeff Fontaine, Executive Director, Nevada Association of Counties:**

We are neutral on this bill. We understand the revenue issue, that being if one county is able to save revenue by not paying taxes on materials as part of a public works project, that has an impact on other counties, other entities, and the state. There are guaranteed counties, so there is that dynamic, as well. No one understands this issue better than Assemblywoman Kirkpatrick, who worked tirelessly with local governments on revamping the consolidated tax formula last session. We appreciate that, as well.

What I want to talk about is the issue of what the practice is that is taking place. There are many contracts that are bid out as owner-furnished contracts. In other words, it is clear in the bidding documents that the equipment or materials that are part of the contract are going to be furnished by the public entity. That could be a traffic signal or any one of a number of things. You heard testimony from the public works director from Douglas County, and others, who said that is all up front. I do not know if that is what we are trying

to address here, or the situation as described by Mr. Daly. We agree that a situation or scenario where a contract is bid out as all-inclusive, then somehow or somewhere along the line, there are negotiations to have the local entity purchase the equipment and material and then work a scenario where it is actually done through the contractor so the entity can avoid paying taxes, is problematic. We agree that needs to be addressed. However, owner-furnished contracts are standard in the industry, are legitimate, and I think appropriate.

With regard to the capability of the various counties to manage those kinds of contracts, it is true that in the larger counties they do have the expertise and the ability to have full-functioning public works departments, engineers on staff, and project managers who are capable of managing an owner-furnished type contract. In the rural counties, where they do not have public works directors or staff engineers, they probably would not be able to manage those kinds of contracts. However, even in the rural counties when they do a public works project, they are going to hire a contractor or an engineer firm to manage those projects for them.

You have heard testimony that it does save the local governments dollars in these cases. How that impacts the state and other local governments is obviously something that needs to be examined. I do want to comment on one aspect, which is the consolidated tax. The state does not get a distribution from consolidated tax. Those are distributions that go to over 100 local governmental entities, including counties, cities, special districts, and others. Again, that is something that was worked on under the leadership of Assemblywoman Kirkpatrick last session. The issue of how this impacts the state is the 2.6 percent sales tax that goes to schools. There are many sales tax exemptions for other types of situations in this state that are held harmless. In other words, the revenue still goes to the state, but all the other sales taxes are exempted. I am pointing that out because this is not the only situation where sales taxes are being exempted.

We think the ability for local governments and counties to save money on these types of projects only benefits the public because you can build a bigger project. That means there are more contractors on the job. I do understand the revenue impact. In response to Assemblyman Flores' question, we are certainly interested in working with the sponsors of this bill and others to come up with a way to address the concerns.

**Assemblyman Carrillo:**

If the entity were to have light poles or equipment they wanted installed by an outside contractor, does that fall under the same category as being considered

a public work? Would installing that light pole have to go out to bid? Would the entity not be able to provide the contractor with that light pole, or would the contractor have to go buy a light pole to install?

**Jeff Fontaine:**

I am not sure I totally understand your question, but there are situations where local governments will buy equipment to stockpile in order to have them installed. That would still require a contract with a contractor in a bidding situation. However, there are other types of contracts where a county may want to build something and wants to specify the equipment. It could be new traffic signals, for example. They have already determined the equipment they want and they want to purchase that equipment because they can get it through a purchasing alliance or they have specialty equipment they want to purchase and still have a contractor, through the contracting process, install that equipment they purchased for that particular project. I am not sure if that answered your question.

**Assemblyman Carrillo:**

I am still a little gray on that issue, but I will ask the bill sponsor.

**Jeff Fontaine:**

Assemblyman Carrillo, if you are asking me if this bill applies to both of those situations, I do not know the answer.

**Yolanda T. King, Chief Financial Officer, Department of Finance, Clark County:**

I wanted to point out some things which may be somewhat of an issue for Clark County.

I do understand the revenue issue that Assemblywoman Kirkpatrick spoke of during her testimony. I also understand that this may or may not increase the cost of the projects and what that means if the governments have to pay additional taxes and increase the cost of the project on the backend.

For Clark County, to give you an example, we have been talking about traffic devices. Those are specialty-type purchases, which generally have a longer lead time with regard to purchasing. With our public works department, we will purchase and have an inventory of those traffic devices. We do that to have that inventory because we know we will need them, and we know it will take a longer period of time to order them. The contract will go out to bid and it expedites the project, simply because we have already ordered it, and the contractor can start on the project once they have been awarded the bid.

What also happens is that contractor will purchase those devices and in return, they give the devices back to Clark County to replace their inventory. On the front end, we are ordering it and getting it in advance so when the bid is issued the contractor can immediately start work. They have already ordered a replacement and they paid the sales tax, but they are giving it back to Clark County. In this particular situation, if we would have to pay the sales tax, we would be paying the sales tax at the front end. We are simply doing it to increase our inventory so it is available, and it will expedite the project on the back end. In that situation, I can see where it would impact us. My thought is why would we need to do that because the project could take a little longer because we would have to wait on the contractor to purchase those devices.

Another issue of ours I would like on the record is, while I understand the part about the sales tax and not collecting the sales tax, and I have not spoken to the sponsor or to the Department of Taxation, perhaps a compromise would be to collect the state sales tax portion of these purchases. Administratively, this may be difficult for the Department of Taxation, but it may solve the concern of the state receiving sales tax on these types of purchases. We have that in other policies where the state is exempt and maybe in this case, you collect the state portion of the sales tax. I have not talked to the Department of Taxation in terms of what that would look like administratively.

With regard to the consolidated tax distribution, if Clark County were to pay the full amount of the 8.1 percent sales tax, a portion of that goes to the consolidated tax bucket, which is distributed back to Clark County. What happens is, although we are paying the total amount that goes into the consolidated tax bucket, that full amount does not come back to Clark County because of the distribution formula. For Clark County, the consolidated tax distribution is 53 percent. Although we would be paying the sales tax, we would not get back 100 percent of what we put into that consolidated tax distribution. It would go to other local governments. The state is essentially collecting the tax, about half of which goes back to Clark County, and the other portion goes to the special districts or cities.

Those are the things I wanted to bring to your attention and talk about what that means to Clark County and what it would look like if we had to pay sales tax, specifically on our traffic devices, and what that means for projects with regard to the timing.

**Assemblyman Stewart:**

You get back 53 percent of what you pay in to the consolidated tax bucket. Is that correct?

**Yolanda King:**

Yes. Fifty-three percent of the consolidated tax distribution comes back to Clark County.

**Assemblyman Stewart:**

How much do you pay in per year?

**Yolanda King:**

I do not have that specific number.

**Assemblyman Stewart:**

Can you give me a ballpark figure?

**Yolanda King:**

In terms of the sales tax that is collected?

**Assemblyman Stewart:**

How much do you put in the bucket?

**Yolanda King:**

I do not have that information.

**Assemblyman Stewart:**

I would be very interested in getting that information.

**Chairman Ellison:**

We have someone in Las Vegas who would like to testify in opposition to the bill.

**Kathy Ogle, Member, Nevada Public Purchasing Study Commission, and Construction Project Coordinator, City of Henderson:**

Our membership is in opposition to this bill for the same reasons presented by others. I would like to add there was a suggestion about a compromise or discussion on the bill. Since the majority of the problem seems to be with the CMAR delivery method and the application of the tax exempt status of those construction materials, we would be willing to have discussions regarding narrowing the scope of the bill to only affect CMAR rather than the entire purchasing process.

**Chairman Ellison:**

Assemblywoman Kirkpatrick, would you care to answer that?

**Assemblywoman Kirkpatrick:**

Although that may be a piece of what we are seeing today, that does not address the issue. Chairman Ellison, thank you for allowing me to have this hearing because this is a real discussion in order to determine where we are headed. I am happy to try to work with local governments. There are some things I believe we can compromise on, but there are some things we cannot. To give you an example, I will probably never agree with NSHE that those are their dollars. We give them those dollars. We passed a law last session that said they could keep the tuition fees and other things so we do not need to fund them as much as we do now. I will agree to disagree with them because I see their budgets come through this building, which is a significant piece of what we fund as a state.

Ironically, it was the northern Nevada contractors and the northern Nevada folks who were complaining about this process, which made me, the Governor, the Department of Taxation, and the Legislative Counsel Bureau's Legal Division investigate the issue.

I am a statesman, so I look at all issues. As I said earlier, we do have to protect some of our smaller counties. To my point on the consolidated tax, when one county deviates from the plan, everyone is affected. It is great that Clark County is saving, but Washoe County, Esmeralda County, Eureka County, and all the other counties are affected. I am happy to work with anyone. There are a couple of technical points I want to change in the bill. I need to look at the state's best interests. We are being asked to fund education and that 2.6 percent stays in the county where it is generated. If the Committee could give me some time to work out the technical issues, I would appreciate it.

**Chairman Ellison:**

The Committee will give you the time you need.

**Assemblywoman Kirkpatrick:**

For those who would like to work with me on this, let me know and I will put something together.

**Chairman Ellison:**

Is there anyone else wishing to testify in neutral? [There was no one.] I will close the hearing on A.B. 332. Is there anyone here for public comment? [There was no one.] This meeting is adjourned [at 10:26 a.m.].

RESPECTFULLY SUBMITTED:

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Lori McCleary  
Committee Secretary

APPROVED BY:

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Assemblyman John Ellison, Chairman

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



**EXHIBITS**

**Committee Name:** Committee on Government Affairs

**Date:** March 25, 2015

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

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 202	C	Jered McDonald, Committee Policy Analyst	Work session document
S.B. 109	D	Jered McDonald, Committee Policy Analyst	Work session document
A.B. 332	E	Carl Ruschmeyer, Douglas County	Written testimony