

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

**Seventy-Eighth Session
April 8, 2015**

The Committee on Government Affairs was called to order by Chairman John Ellison at 8:05 a.m. on Wednesday, April 8, 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. In addition, copies of the audio or video of the meeting may be purchased, for personal use only, through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

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

COMMITTEE MEMBERS ABSENT:

None



GUEST LEGISLATORS PRESENT:

Assemblywoman Teresa Benitez-Thompson, Assembly District No. 27
Assemblywoman Jill Dickman, Assembly District No. 31

STAFF MEMBERS PRESENT:

Jered McDonald, Committee Policy Analyst
Eileen O'Grady, Committee Counsel
Aubrie Bates, Committee Secretary
Olivia Lloyd, Committee Assistant

OTHERS PRESENT:

Russell Rowe, representing American Council of Engineering Companies of Nevada and American Institute of Architects
Kent Ervin, Private Citizen, Reno, Nevada
Robert Ostrovsky, representing Nevada Resort Association
Lea Tauchen, Senior Director of Government Affairs, Grocery and General Merchandise, Retail Association of Nevada
Kareen Masters, Deputy Director, Administrative Services, Department of Health and Human Services
Craig M. Stevens, Director, Intergovernmental Relations, Government Affairs, Community and Government Relations, Clark County School District
Carrie P. Hughes, Personnel Analyst, Consultation and Accountability, Division of Human Resource Management, Department of Administration
Dan Burdish, Private Citizen, Las Vegas, Nevada
Wayne Carlson, Executive Director, Nevada Public Agency Insurance Pool and Public Agency Compensation Trust
Joan Hall, President, Nevada Rural Hospital Partners and Liability Cooperative of Nevada
Michael Rebaleati, representing Nevada Public Agency Insurance Pool and Public Agency Compensation Trust
Ernest E. Adler, representing Nevada Rural Housing Authority
Patty Mamola, Private Citizen, Las Vegas, Nevada
Yolanda C. Jones, CPM, CPPO, Manager, Purchasing and Contracts Division, City of Las Vegas
Lisa Foster, representing Boulder City
Jeff Fontaine, Executive Director, Nevada Association of Counties
Yolanda T. King, Chief Financial Officer, Department of Finance, Clark County

Lisa A. Gianoli, representing Washoe County
Joyce A. Humphrey, Manager, Purchasing and Materials Management
Division, Reno-Tahoe Airport Authority
Andrea Sullivan, CPSM, CPM, Director, Procurement and
Contracts, Purchasing Department, Washoe County School District;
and representing the Nevada Public Purchasing Study Commission
Adam Mayberry, Manager, Community Relations, City of Sparks
Mike Cathcart, Business Operations Manager, Finance Department,
City of Henderson
Scott Gilles, Legislative Relations Program Manager, Office of the
City Manager, City of Reno
Wes Henderson, Executive Director, Nevada League of Cities and
Municipalities
Carl Ruschmeyer, P.E., Director, Douglas County Public Works
Daniel Rotter, P.E., Engineering Manager, Carson City Public Works
Department
Mary Walker, representing Carson City, Douglas County, Lyon County,
and Storey County
Kathy Flanagan, Assistant Management Analyst, Southern Nevada Water
Authority and the Las Vegas Valley Water District
Greg Smith, Administrator, Purchasing Division, Department of
Administration
Kimberlee Tarter, Deputy Administrator, Purchasing Division, Department
of Administration

Chairman Ellison:

[Roll was called and rules and protocol were explained.] We are going to remove Assembly Bill 88 from the work session and we will not be hearing Assembly Bill 345. We will now take a short recess until everyone is in the committee room [at 8:07 a.m.].

We will now reconvene the meeting [at 8:08 a.m.]. First, we will open the work session. The first bill for work session is Assembly Bill 25. Mr. McDonald, please go forward.

Assembly Bill 25: Revises provisions governing the residential construction tax. (BDR 22-454)

Jered McDonald, Committee Policy Analyst:

Assembly Bill 25 revises provisions governing the residential construction tax and was sponsored by this Committee on behalf of the Nevada League of Cities and Municipalities. The bill was heard in this Committee on February 11, 2015. [Mr. McDonald continued to read from the work session document ([Exhibit C](#)).]

Assembly Bill 25 authorizes the use of money collected through the tax for the improvement of park facilities and specifies that improvement includes replacement, modification, redesign, redevelopment, or enhancement, but does not include routine or preventative maintenance.

We do have an amendment submitted by the bill sponsor. There is a mock-up in the work session document drafted by the Legal Division. There are a couple of changes on page 4 of the document, in section 1, subsection 5, and on page 5, in section 1, subsection 8, paragraph (b).

Chairman Ellison:

We have done a lot of work on this bill. We have had a lot of meetings to make sure that this bill was right. Ms. O'Grady did a great job trying to get the amendments in. Is there any discussion? [There was none.] Is there a motion?

ASSEMBLYMAN WHEELER MOVED TO AMEND AND DO PASS
ASSEMBLY BILL 25.

ASSEMBLYMAN SILBERKRAUS SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYWOMAN WOODBURY WAS
ABSENT FOR THE VOTE.)

Chairman Ellison:

Assemblyman Flores, would you do the floor statement?

Assemblyman Flores:

Yes, Mr. Chairman.

Chairman Ellison:

Thank you. Please continue, Mr. McDonald.

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

Assembly Bill 106 revises provisions related to public works. This bill was heard in this Committee on February 19 and March 4, 2015. [Mr. McDonald continued to read from the work session document ([Exhibit D](#)).] Assembly Bill 106 eliminates the requirement that design professionals who are not members of the design build team defend a public body in any lawsuit alleging negligence, errors, omissions, recklessness, or intentional misconduct on the part of the design professional or his or her employees or agents resulting from his or her work. The measure also provides that if the design professional is held to be liable as a result of a lawsuit, the judge or jury shall

order the design professional to reimburse the public body for an appropriate share of the attorney's fees and costs.

We did receive an amendment from Mr. Rowe. The amendment seeks to include both general and professional negligence within the design professional's duty to indemnify and hold harmless. The mock-up is in the work session document ([Exhibit D](#)).

Chairman Ellison:

Is there any discussion from the Committee?

Assemblywoman Neal:

On the second page of the amendment, the language "responsibilities of the design professional" has changed to "services of the design professional." What is the effect of that?

Chairman Ellison:

Could the presenter of the bill please come to the table to answer that question?

Russell Rowe, representing American Council of Engineering Companies of Nevada and American Institute of Architects:

With respect to the question, we worked on language with Brenda Erdoes in the Legal Division to accurately capture the services provided by design professionals. In particular, the way the bill was originally drafted it would have excluded general liability from the responsibilities of design professionals to indemnify and defend public bodies. That was not the intent of the bill. This amendment brings that back into it. With respect to the language itself, I really rely on the Legislative Counsel Bureau's (LCB) drafting of that to accurately capture the intent of the language and make sure it covers all of the activities provided by design professionals. That is my understanding of the use of the word "services"; it is to make sure it fully captures what design professionals do so all of what they do would be included in those responsibilities owed to the public body.

Assemblywoman Neal:

I understand the rest of the language. When it comes to depositions and the early parts of trials, you are still responsible for showing up and participating as witnesses in the depositions and everything else. Is that correct?

Russell Rowe:

Thank you so much for that question because that has been one of the biggest concerns about this bill. Working cooperatively with public bodies is something that design professionals take very seriously. They are our clients, so we strive

to participate with them when there are any problems. We do not foresee any changes whatsoever to the level of cooperation and collaboration with public bodies when these types of issues arise. Thank you.

Chairman Ellison:

I know we have done a lot of work on this bill. We have met many times in my office trying to make sure this bill was right. I still have concerns, but I still think this bill deserves to go to the floor where the entire body can vote on it and send it to the Senate. If there are any other amendments they will be addressed later.

Russell Rowe:

I would like to thank you all for the time you have given this issue, especially Mr. Chairman. You have our industry's commitment if there are any concerns that arise after this bill is passed and signed by the Governor, if it is. We do not expect concerns to arise at all, but you have our commitment to continue to work on this issue.

Chairman Ellison:

Is there a motion?

ASSEMBLYMAN WHEELER MOVED TO AMEND AND DO PASS
ASSEMBLY BILL 106.

ASSEMBLYMAN SILBERKRAUS SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

Chairman Ellison:

I will reserve my right to change my vote on the floor. Assemblyman Moore will give the floor statement for A.B. 106. Mr. McDonald, please introduce Assembly Bill 445.

Assembly Bill 445: Makes various changes relating to redevelopment.
(BDR 22-1100)

Jered McDonald, Committee Policy Analyst:

Assembly Bill 445 was up for work session yesterday. We have been able to clarify a few things since then. [Mr. McDonald continued to read from the work session document ([Exhibit E](#)).] This bill extends to a maximum of 45 years the date of termination of a redevelopment plan and any amendments to the plan adopted by a city whose population is 250,000 or more, but less than 500,000. We have the same amendment from yesterday that the City of Henderson

submitted that adds a population cap of 700,000 and a few other provisions. There was a date piece that has been stricken and is not part of this work session today.

Chairman Ellison:

Is there a motion?

ASSEMBLYMAN SILBERKRAUS MOVED TO AMEND AND DO
PASS ASSEMBLY BILL 445.

ASSEMBLYWOMAN WOODBURY SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

Chairman Ellison:

Assemblyman Stewart, would you please give the floor statement?

Assemblyman Stewart:

Yes, thank you. Mr. Chairman, I would like to commend Mr. Moore for being here this morning. I know he has been very ill and has made a great effort to be here. I think he should be commended. Thank you.

Chairman Ellison:

He is a trouper. He was sick last night and ended up at the hospital about 3 a.m., and is still back here today. I hope he takes some rest in a little bit. We might have to lock the door behind him.

We will now open the hearing for Assembly Bill 304.

Assembly Bill 304: Revises provisions relating to employment. (BDR 18-1067)

Assemblywoman Teresa Benitez-Thompson, Assembly District No. 27:

I would like to thank this Committee for allowing me the time to present Assembly Bill 304 and to have what I think is a very important public policy conversation about some principles to which we ought to give more enforcement authority here in the state of Nevada.

Fifty-two years ago, we made a declaration in American public policy. As a nation, we said it was time to end discriminatory practices, including unjust, unfair, and just plain wrong gender-biased pay compensation. The Equal Pay Act of 1963, which amended the Fair Labor Standards Act, was passed by Congress. It was signed into law on June 10, 1963, by

President John F. Kennedy. Also, Title VII of the Civil Rights Act of 1964, which prevented workplace discrimination, was signed into law.

Now we are in 2015, and let us take stock of where we are. The numbers I am about to quote to you are from documents I have provided for you. They are coming from different fact sheets from the Institute on Women's Policy Research [([Exhibit F](#)) and ([Exhibit G](#))]. Comparing women's and men's median annual earnings for year-round, full-time workers shows an earnings ratio of 78.3 percent, which means there is a gender wage gap of 21.7 percent. The wage gap between the sexes has only narrowed by 1.5 percent during the last ten years. Not a lot of headway has been made there at all. Women's median earnings are lower than men's in nearly all occupations. As stated by the fact sheet from the Institute for Women's Policy Research ([Exhibit G](#)), "Data for both women's and men's median weekly earnings for full-time work are available for 112 occupations; there are only three occupations in which women have higher median weekly earnings than men." There are only three. Who has the lowest median earnings at \$541 per week? That is me; that is our Latina women in this nation. Black women follow with earnings at \$606 per week, which is 68.6 percent of the median weekly earnings of white men. We have a gender gap there. There is a lot of racial disparity along with it, but we are going to address first and foremost the gender issue today. I think that will be quite enough for this Committee at 8 a.m. on a Wednesday morning.

What is the big deal? Why should we, as legislators, care about pay inequity? Simply put, wage discrimination ends up costing the state money when impoverished working women cannot support their families. To quote again from the Institute for Women's Policy Research, "Persistent earnings inequalities for working women translates into lower pay, less family income, and more poverty in families with a working woman, which is of no small consequence to working families" ["How Equal Pay for Working Women Would Reduce Poverty and Grow the American Economy," 2014]. I would like to include myself in that group, but as you all know, we are not being paid at this moment.

Let us examine the impact on women and their families. If women were paid the same as men, nearly 60 percent of them would earn more when comparable hours and education attainment are accounted for. Also, the poverty rate for women is 8.1 percent, which would fall by half if women were paid equally to men. Lastly, most relevant to our state budget is the fact that an increase in pay equity for women would be 14 times what the state and federal government budgets spent on Temporary Assistance to Needy Families (TANF) in 2012. As you know, our Department of Health and Human Services budget is one of the biggest portions of our budget in the state. Lots of that money is going to TANF dollars, traditionally known as welfare dollars. Most of those

recipients are single mothers with children. There is a way to fix that, and that is with pay equity.

I have to be honest, I think today's hearing in some ways will serve as a bellwether for women in the state of Nevada. This should not become a referendum on women's worth or even a battle over data. Rather, it should be an honest discussion about a way to address discriminatory wage practices, and I believe A.B. 304 can be that vehicle.

Let us review A.B. 304. Section 1 addresses *Nevada Revised Statutes* (NRS) 233.160, the Nevada Equal Rights Commission (NERC). Current statute outlines the way a person may 1) make an allegation of unlawful discriminatory practices in housing, employment, and public accommodations; and that 2) an allegation must be made within 300 days of an occurrence and must be made under oath. "Within 300 days of an occurrence" has been ambiguous language not well defined by statute, and we have language to address that. I propose to add to the statute a requirement that the Nevada Equal Rights Commission notify each party of the complaint of their time frame to apply to district court for relief. That is subsection 1 of section 1 of this bill, which also further explains the time frame with "occurrence of the alleged practice."

Section 2 of the bill outlines the process that follows the allegation—what happens once an allegation is made. The NERC decides if it wants to hold an informal meeting to attempt to settle the dispute. If no resolution can be reached, then an investigation is undertaken as outlined by regulation. If the allegation is substantiated during that investigation, then the Commission attempts to mediate between the two parties to find relief. If that mediation fails, then the Commission can hold a public hearing on the matter. I propose to add the section that if the allegation is substantiated at the public hearing, the Commission 1) may allow for an aggrieved person to have his or her attorney's fees paid; 2) may award damages if the discrimination was based upon sex or gender bias; and 3) will enact a progressive civil fine structure for those who willfully discriminate and are frequent flyers, if you will, before the Commission.

Section 3 is about wage transparency. It states that an employer cannot discriminate against employees for talking about their wages or salaries. We just want some sunshine on this. If we are told as workforce members that we cannot discuss our wages and salaries, then we never have an idea of what the baseline for parity is. We do not have a way to know or talk amongst each other about who is being paid what to know if there are indeed discriminatory practices happening.

The last piece that has been changed is on page 9 of the bill where we spell out a better definition of "bona fide occupational qualifications." There is legitimate cause for businesses to hire specific genders for specific purposes. An example would be needing a male model. We are not going to force an agency to hire a female model to be a male model; they would be able to hire a male in that instance. With the language in section 7, subsection 7, we are saying that gender preference cannot be based on an unfounded bias. If someone thinks a job would be better suited for a man, so they are only going to hire a man, that is not going to fly. If an employer, employment agency, labor organization, or joint labor management committee is refusing to change their practices for hiring based on gender after there has been an NERC process in place, and continues to hire based on an unfounded gender bias, that is not acceptable either.

That is the intent of this bill. I do not understand how anyone could ever possibly be against this. I look forward to your questions.

Assemblywoman Neal:

Thank you for the bill. Can you give me examples of "malice or reckless indifference," on page 4, line 39? What are some good examples of a person acting upon this?

Assemblywoman Benitez-Thompson:

It states, "If the Commission determines that the employer acted with malice or reckless indifference, then punitive damages...." The intent of that language is that if the Commission finds through the course of the hearing that the employers intentionally hire using a discriminatory practice, especially based on gender, then the Commission would have the ability right now to award punitive damages to the aggrieved person. The key part to remember is that when Title VII of the Civil Rights Act passed, it was a great public policy statement, but it was widely criticized for not having any enforcement authority. If you look at this process, it is pretty arduous, and at the end, if someone is found to have discriminatory wage practices, they are told they must stop. The Nevada statutes do not give a lot of other options or powers to the NERC to help the aggrieved person correct the matter in a way they might feel is fit. We think it is reasonable to give the NERC a tool to consider for redress for the aggrieved if, at the end of their investigation, they believe someone was acting recklessly and was being pretty open and blatant about discriminatory practices.

You are going to tell me you love it, right, Assemblyman Wheeler?

Assemblyman Wheeler:

Of course. I just have a few questions about the statistics. I am looking at the Bureau of Labor Statistics report from 2014, with a very liberal administration. You said that women receive 77 percent of the pay that men do. Is that correct?

Assemblywoman Benitez-Thompson:

Assemblyman Wheeler, I believe what you have are two different fact sheets from the Institute for Women's Policy Research. One report ([Exhibit G](#)) was about occupational data and came from the U.S. Department of Labor, Bureau of Labor Statistics in 2013. That data has been aggregated into the chart that is on page 2 of that report. We might be referencing the same source.

Assemblyman Wheeler:

The way I read the report from 2014 ([Exhibit F](#)), which is a year later, unmarried women without children are actually making 96 percent of what men are making. I am wondering if I could save 23 percent on my biggest expense, which is payroll, given that women are making 77 percent of what men make. If I still ran a business, why would I not just hire all women? Where is this disparity? I did not hire all women, but I hired some. I hired whoever was best for the job.

Assemblywoman Benitez-Thompson:

Thank you for the question. Please remind me of the occupation for which you hired.

Assemblyman Wheeler:

I was in manufacturing.

Assemblywoman Benitez-Thompson:

That is perfect. If you look at this report ([Exhibit G](#)), it is talking about the discrepancy in wages, especially among occupations. You want to take into account that you are comparing apples to apples, and not apples to oranges. You do not necessarily want to base the comparison of a single woman who is in manufacturing with a man who is in retail, because we know that by occupation people make different amounts of money. When we compare a man and a woman in the same occupation, with the same educational attainment, working the same number of hours, the woman will be paid substantially less than the man.

Assemblyman Wheeler:

Again, why would I not hire all women in that case?

Assemblywoman Benitez-Thompson:

In manufacturing, if you hired all women, that is fine. It is not about a gender bias, so I am not saying that the pendulum swings the other way and you hire all women. It is saying that we have to be able to talk about wage discrepancies among those sectors. I believe that manufacturing is one of the 112 occupations considered in this report ([Exhibit G](#)). You can look at what the discrepancy is. Were you referencing manufacturing specifically with the 94 percent?

Assemblyman Wheeler:

It was 96 percent. No, I am referencing that overall single, childless women are making 96 percent of what men are making. Even if I could save 4 percent, I would hire a woman.

Assemblywoman Benitez-Thompson:

I would hope that if you are hiring people, it is because you think they are qualified for the job and pay them as such, and not that you hire them at the point of paying them less.

Assemblyman Wheeler:

I also look at the degrees that are normal. Women usually attain degrees in subjects such as sociology, liberal arts, and philosophy, whereas men usually obtain degrees in engineering, medicine, et cetera. Of course, they may also attain the same degrees, though men will attain them in greater numbers. What I am seeing is that there are degrees that lead to occupations which make more money. Is that not part of the disparity as well?

Assemblywoman Benitez-Thompson:

Yes, that was the first quote that I mentioned. When you look at the survey of 112 occupations, there were only three occupations where women made more. There is a lot to be said about that argument. There is a lot to be said about the fact that the type of work that women do is not necessarily valued monetarily in the way it ought to be. I work with caregivers every day as a social worker and hospice worker. I would propose that one of the hardest jobs out there is being a personal aid attendant, someone who is laying hands on and physically caring for a person at the end of life. Is it one of the lowest paying industries? Absolutely. Does that beg the question of fairness and how we perceive women's work? Yes.

Chairman Ellison:

Is there any other discussion?

Assemblywoman Spiegel:

Assemblywoman Benitez-Thompson, I would like to personally thank you for bringing this bill forward. About 30 years ago, I was working on Wall Street in New York City for a very large Fortune 100 company. I was speaking with one of my male colleagues; we were two people in the department who had the exact same job function. It had been a job that was split into two positions because there was just too much work for one person. The person they hired to work with me was a man who had less experience than I did and did not go to a school of the same caliber as I had attended. I had a degree in economics and he had a degree that was not exactly pertinent to something we were working on; but that was fine.

One night he and I were talking while we were working really late and the subject got around to salary. He told me that while I was being paid \$29,000 per year, he was being paid \$33,500 to do the exact same job with less experience and not as good a degree. I was really upset by this. I talked to a childhood friend who was working in human resources. She was so outraged that she went to the senior vice president of this Fortune 100 company around the same time I went to my boss and asked how this could be. My boss said to me, "Well, Paul is a man." I replied, "I know he is a man, but that is not right." He said, "You know, you are single, and he is getting engaged to his girlfriend. He is saving up for an engagement ring. He is going to have this whole life with her, so he needs more money than you do." I repeated, "That is just not right. It does not matter that I am single. I have bills to pay, I have obligations. This just is not right."

Eventually, I was called into the senior vice president's office, and she suggested that I look for alternate employment. There was nowhere for me to go. She said that there was nowhere for me to complain; there was no recourse I had within the corporation; if I went to hire an attorney, it would just cost me tens of thousands of dollars, I would lose my case; and that I would be blackballed and forever barred from working in corporate America ever again.

Ultimately, I did find another job. I did leave that place of employment, but it was wrong. It was wrong then; it is wrong today. If two people are doing the same job and they are delivering the same results for an employer, there should not be an over 30 percent pay gap on the basis of gender, particularly when the one who is being underpaid has more experience and better qualifications. I thank you for this. I think it is very necessary. I think that the women of Nevada deserve to have these protections.

Chairman Ellison:

Thank you. We have a couple more questions.

Assemblywoman Neal:

I read statistics from the Women's Bureau of the U.S. Department of Labor and they stated that white women, 16 years of age and over, earn \$722 per week while white men earn \$884. Black women earn \$606 per week, while black men earn \$664. Hispanic women earn \$541 per week, while Hispanic men earn \$594. There is wage discrepancy, even though small, when talking about black and Hispanic people, but when you compared white men and women there is a significant difference. The stats also stated that when you looked at the ratio of women's to men's earnings in 2013 it was 81.7 percent overall. I think there is a serious discrepancy out there. There are several other statistics under the Department of Labor that speak to and engage on several different levels, the ratios of wage and salaries. It also breaks down the confluence of college education and the unemployment rate. Women have a higher unemployment rate than men.

Assemblywoman Benitez-Thompson:

Thank you, Assemblywoman Neal. Part of my statement at the beginning was that it should not necessarily be a battle over data because there are lots of numbers and statistics. However, the thing that is most consistent across the board is that regardless of what statistic you pull up, women are going to be making less. Even as you look at it through the lens of race, even within the different racial categories, women still make less than men. If you can find a statistic that you can show me where men are making 80 cents to the dollar that women make, that might convince me that maybe we ought to rethink this. Otherwise, all of the data is telling us that there is a problem.

Assemblywoman Joiner:

I appreciate your bringing this bill so much. It has been fascinating to listen to the discussion. My favorite part of this bill is that it states that when there is discrimination, which we know is already unlawful, there is recourse. You cannot discriminate against someone for enquiring about this information. It is not even a matter of whether or not it is happening; we could go around all day about the statistics. The great thing is that if it happens, there is recourse. It is not changing the law; it is just saying, make people aware of their rights, give them some recourse if it happens to them. I cannot see who would be opposed to that concept.

Assemblywoman Benitez-Thompson:

Assemblywoman Joiner, I agree. It is giving teeth to the statute.

Chairman Ellison:

Is there any more discussion? [There was none.] Would anyone like to testify in favor of the bill?

Kent Ervin, Private Citizen, Reno, Nevada:

Nevada has public policy statements in its antidiscrimination statutes, but with little teeth. That has been mentioned. Complainants ought to have a process for relief when it is appropriate. That acts as a deterrent. To the extent that the state should have those processes instead of sending people to the federal government, I think that is a good idea. I happen to work for an employer where all of our salaries are public information, so it is very transparent. I find that transparency, which is part of this bill, actually reduces suspicions about discriminatory pay. Employers who are doing the right thing ought to want to be transparent about their pay. Certainly, when it is on a website, it eliminates that awkward conversation of having to ask colleagues what their pay is. I support this bill. Please support A.B. 304.

Chairman Ellison:

Does anyone else wish to speak in favor of the bill? [There were none.]
Is anyone wishing to speak in opposition to the bill?

Robert Ostrovsky, representing Nevada Resort Association:

We have worked very hard on a bill in the Senate relative to the Paycheck Fairness Act and the Lilly Ledbetter Fair Pay Act. I think that bill has left committee and will hopefully find its way to the Assembly. We do not object to the Paycheck Fairness Act or the Lilly Ledbetter Fair Pay Act, or some iteration of that applying beyond what the federal standard is. My objection to this bill has nothing to do with that.

My problem is relative to the penalties in the way this is structured. You are, for example, for the first time ever giving punitive damage authority to an administrative agency. Punitive damage authority is generally left to juries in very specific kinds of cases. In this case, this bill would delegate that authority to the Nevada Equal Rights Commission as well as the right to recover legal fees. There is a way to get to district court in these matters. A district court has procedures, policies, and lots of case law to follow about adjudicating these matters. We object to the expansion of that authority to an agency which has never had that authority. I cannot think of any other state agency which has similar authority. The authority in this bill is very clearly given.

A question about malice and reckless indifference was asked earlier, and I think there are legal standards which can be looked at to address that. However, in this case, you are asking appointed officials, who serve voluntarily on that board, to make decisions that are normally left to a judge and instructions that are given to a jury.

The other issue is administrative penalties as high as \$25,000. That is a substantial amount of money. Perhaps some of the smaller employers can talk about that. Those types of fees can put smaller employers out of business. I do not profess to represent small employers here.

We have no objection to the discussion of wages. Their wages, not someone else's wages, as this bill clearly points out. I just think those are important issues. The last issue I would like to raise is the question about bona fide occupational qualifications. I am not sure about the impact of this language because I do not understand where the applicant would bring alternative practices that would serve the same purpose without producing the same amount of differential treatment. We make reasonable accommodations all the time under the Americans with Disabilities Act (ADA). I think employers should make reasonable accommodations. I am just not sure how this language would be interpreted by a court, because that is where it is going to end up when someone suggests that an employer would not make that accommodation. It is going to end up at the NERC and then in district court.

There are just a few issues. We support the policy. We do not have a problem with that. I think you will see that clearly displayed in the bill that comes across. We think those are just flaws in this particular draft. We would be happy to answer any questions.

Chairman Ellison:

Thank you. Have you talked to the bill sponsor about some of your concerns?

Robert Ostrovsky:

Mr. Chairman, I have not. The bill was posted in the last couple of days. I should apologize to her for not meeting. I did not know it was going to be heard. We have concentrated on working so hard on Senate Bill 167. We should not have ignored the sponsor here. Thank you.

Chairman Ellison:

If you could talk with the sponsor so we can come to a working solution, it would be appreciated.

Robert Ostrovsky:

Thank you Mr. Chairman, I would be happy to do that.

Chairman Ellison:

Is there any other discussion? [There was none.] Does anyone wish to testify as neutral to A.B. 304?

Lea Tauchen, Senior Director of Government Affairs, Grocery and General Merchandise, Retail Association of Nevada:

I am testifying as neutral this morning because the Retail Association of Nevada does agree with the principal concept we are discussing here today: Pay discrimination based on gender is not right. However, I have had an opportunity to speak to the bill sponsor to address our concern, which is very similar to Mr. Ostrovsky's, that the penalties are quite severe and there are already federal laws that address this issue. We would like the opportunity to continue to work with the bill sponsor to address those concerns.

Chairman Ellison:

Please work with the bill sponsor, thank you.

Kareen Masters, Deputy Director, Administrative Services, Department of Health and Human Services:

Our department is neutral on the bill, but we did want to bring up one issue that we have concerns with. That is the language in section 7, subsection 7, which would eliminate the exception for a bona fide occupation qualification on the basis of sex. Within our department it is necessary to balance the rights of employees with the rights of our clients and the laws and regulations that surround those rights. For example, in our youth correctional facilities, statute requires that the youth be dealt with as far as practical by or in the presence of someone of the same gender. Also, in our psychiatric hospitals and facilities for individuals with developmental disabilities, we need to respect the privacy of the clients we serve and ensure their safety. In such facilities, staff have the need to engage in activities such as showering and toileting clients. In those situations, we do want staff of the same gender to be able to serve the clients to respect their privacy.

In state facilities we hire both males and females in those occupations, so it allows us through staffing patterns to address the need for individuals of both genders to serve our clients. Such flexibility is more difficult for small employers, such as group residential facilities, where we may have a particular business that is serving three or four individuals with disabilities in their homes. Currently, the Centers for Medicare and Medicaid Services require home- and community-based services that we consider person-centered. As part of that planning, individuals do have the ability to express a preference for who would be their caregiver. Again, we do want to protect their rights to privacy. If they express that they do want to be served by a caregiver of the same gender, we want to be able to honor that request.

I want to point out that the state nondiscrimination laws are patterned after the federal nondiscrimination laws, and the federal nondiscrimination laws are very

clear that there is a narrow interpretation of the bona fide occupational qualification. In reviewing those, the federal agency would determine whether it is a valid rationale, whether it really is necessary to normal business operations, and if all other alternatives have been considered. The courts, as well, have been clear that they give this exception a very narrow interpretation. We feel that there are protections available in the federal law.

We also have concerns about the wording of section 7, subsection 7, paragraph (b), which appears to eliminate consideration of a bona fide occupational qualification on any basis if an affected person has presented an alternative practice that would serve the same purpose. Our concern there is that there is no language that would place parameters for the affected person to demonstrate that the alternative practice is reasonable and would not place an undue hardship on the employer. For those reasons, we would request an amendment that would eliminate the language in section 7, subsection 7. I appreciate your consideration.

Chairman Ellison:

Thank you.

Craig M. Stevens, Director, Intergovernmental Relations, Government Affairs, Community and Government Relations, Clark County School District:

We are testifying as neutral to the bill. The Clark County School District fully supports the concept of A.B. 304, and we have spoken with the sponsor. We do believe a few sections need to be tweaked. I do not want to be duplicative in the testimony for all the reasons other testifiers have mentioned. We do look forward to working with the bill sponsor in ensuring equal pay for everyone here in the state of Nevada. Thank you.

Carrie P. Hughes, Personnel Analyst, Consultation and Accountability, Division of Human Resource Management, Department of Administration:

We are here this morning due to concerns related to sections 3 and 7 of this bill. In section 3, subsection 2, we recommend changing the reference to "essential job junctions" to "job functions or duties." Staff in an office may have access to wage information through a function of the job that is not primary or essential. Restricting disclosure of wage information by all who have this information as a function of their job would better protect confidential information. However, as a public employer, state salaries are a matter of public record. This is not a particular issue for us, but it may be for a private employer. Additionally, we want to say that we support the Department of Health and Human Services' request for an amendment to section 7 related to the bona fide occupational qualification.

Chairman Ellison:

Is there any discussion? [There was none.] We are hoping we can get this bill out in the next few days. All of those who have questions or concerns, or need clarification, please meet with the bill sponsor. We are down to the wire if we are going to make amendments.

Assemblywoman Dooling:

Assemblywoman Benitez-Thompson, I have a comment regarding the concept that businesses will no longer have the authority to fire employees if they discuss their wages. I had a business for a number of years. I do not know what the language is, but I would like to discuss that with you. I just know that when employees talk about how much everyone makes, it can cause a huge firestorm and a whole lot of problems. I would like to talk to you about this and come up with some language that works.

Assemblywoman Benitez-Thompson:

Thank you, Assemblywoman Dooling, I look forward to that.

Chairman Ellison:

Are there any other comments? [There were none.] Please give your closing remarks, Assemblywoman Benitez-Thompson.

Assemblywoman Benitez-Thompson:

Thank you so much for hearing this bill. For me, this is an important issue. I think that we are at a point in the state of Nevada's history with such strong leadership coming from all different types of individuals of all different races and colors and genders that we can certainly give our public policy more teeth against discriminatory practices.

Chairman Ellison:

Thank you. We will close the hearing on A.B. 304 and open the hearing on Assembly Bill 353.

Assembly Bill 353: Revises provisions governing public purchasing and contracting. (BDR 27-920)

Assemblywoman Jill Dickman, Assembly District No. 31:

Thank you, Mr. Chairman and members of the Committee, for the opportunity to present this bill. Assembly Bill 353 removes certain no-bid contract exemptions currently in statute. Removing these exemptions will benefit the state by reducing the contract costs that are gained through a competitive bidding process. Without the requirement to compete for contracts, there is little incentive for suppliers to keep costs down. A recent article in the

Las Vegas Sun ([Exhibit H](#)) reported that on 2,305 occasions in the past four years, the state bypassed the usual bidding process when awarding contracts to private companies for equipment, supplies, and services. The article noted that the no-bid deals totaled \$1.7 billion, representing about 27 percent of the state's total number of contracts in the past four years. That is a very significant amount of contracting not open to competition.

Not only will this bill lower costs for goods and services purchased by the state, I also see this as an opportunity to improve transparency in the government's contracting system. Finally, by eliminating the provisions for no-bid contracts, we may be able to stimulate business growth by allowing more companies to compete for state contracts. I think there are many Nevada companies, especially small businesses, that would like to bid on some of these contracts.

If you look at the bill, section 1 removes the exemptions from competitive contracting by local governments for contracts over \$50,000, including sole source contracts, professional services, maintenance of equipment, perishable goods, insurance, and computer hardware and software to name a few. Section 2 of this bill applies to state contracting and requires that any contract for services over \$100,000 must be completed through the competitive bidding process. Section 3 applies to state contracts involving independent contractors. Again, the bill requires a competitive bidding process for any such contract over \$100,000.

That concludes my remarks. I would like to thank you for the opportunity to present this bill. I would be happy to answer questions. I also have with me Mr. Burdish, who has some remarks.

Chairman Ellison:

Go ahead, Mr. Burdish.

Dan Burdish, Private Citizen, Las Vegas, Nevada:

Assemblywoman Dickman asked me to meet with some of the people who have concerns about this bill. After meeting with them, Assemblywoman Dickman, and the Legislative Counsel Bureau, we have realized that there are a few problems. The state purchasing statutes allow for lowest reasonable bid and the statutes on local government purchasing do not. One of the fixes we would like to make with this bill is to take the language in the statutes currently for the state for reasonable bids and allow that to go into the statutes for local government contracts where you have an actual definition of reasonable bids that the local entities can look at—not just the lowest bid, but the lowest reasonable bid. If you have, for example, an attorney who passed the bar two weeks ago versus someone who has been practicing in an area for 20 years,

that cannot be taken into consideration at the local level now, but we would like it to be as it is for state purchasing. We would like anything that is allowed under state contracting to be allowed for local government contracting as well.

There were a few other problems they had that we would be willing to look at working with the smaller counties. They say this will be an onerous burden on them. We are willing to discuss whether to specifically this session have this for the state, Washoe County, and Clark County and exempt the smaller counties where this could be an onerous burden on them and put it into an investigation during the interim so that we can work out a process where this could be fully implemented in the next session.

Chairman Ellison:

Your recommendation is that instead of having this bill passed, you would rather it be studied during the interim. Is that correct?

Assemblywoman Jill Dickman:

We would like the exclusion of the smaller counties to be considered by the interim committee. The other issues Mr. Burdish discussed we would like to address in an amendment.

Dan Burdish:

Our recommendation would be to accept the bill as is for the state, amend it so that the state provisions are also part of the local provisions, amend it to include only Clark County and Washoe County at this point, and to study the impact on the 15 smaller counties during the interim.

Chairman Ellison:

There is a state law that says that you cannot ask pricing for professional services, you can ask only for qualifications. Do you want to address that with this bill?

Dan Burdish:

Yes, we would like to amend into this bill the existing provisions of *Nevada Revised Statutes* (NRS) 333.350 to be added to NRS Chapter 332, which is the local government purchasing statute, as well as into NRS 333.340 and NRS 333.335.

Chairman Ellison:

Thank you. Are there any questions from the Committee?

Assemblyman Moore:

The Department of Administration has put a fiscal note on this bill. Does the Department know how many no-bid contracts are awarded every year and what the values of those contracts are?

Chairman Ellison:

Would you like to answer that question for the Department of Administration?

Dan Burdish:

I do not know the answer to that question. I believe the Department of Administration is here. They may be able to answer that question.

Chairman Ellison:

Thank you. We will ask them to testify soon.

Assemblyman Wheeler:

Have you calculated or estimated the savings for local governments if a competitive bid process is used for every contract over \$100,000?

Dan Burdish:

No, since we do not have any idea, except for what was in the *Las Vegas Sun*, and that does not give specifics as far as the contracts and what the actual bids were.

Assemblyman Wheeler:

I am wondering if the savings would be comparable to the fiscal notes.

Dan Burdish:

I have no idea since I do not know what the existing contracts are or who the bidders are.

Chairman Ellison:

Is there any other discussion?

Assemblywoman Neal:

I understand what you are trying to do with striking out the sole source contracts language. Do you have any specific examples, such as in relationship to the professional services, where there were persons who wanted to bid, but were somehow ineligible? I dealt with sole source contracts a lot last session in another bill where there was sole-sourcing and the possibility of fraud or predatory contracting. Would you be willing to carve out certain professional services? You had a couple of letters from engineers where they say that the procurement process is different and would come under a different set of rules.

Dan Burdish:

No one has contacted Assemblywoman Dickman or myself about this. If there are separate rules for professional engineers, we could look at that. Is this on building projects?

Assemblywoman Neal:

There are two letters, one from Douglas County Public Works ([Exhibit I](#)) and one from Round Hill General Improvement District ([Exhibit J](#)), which both reference the issue of engineering. I do not know if you have seen them.

Dan Burdish:

My apologies, I was told about this yesterday, and I did not see those letters yesterday.

Chairman Ellison:

Thank you. Is there any other discussion? [There was none.] Does anyone wish to testify in favor of A.B. 353? [There was no one.] Would anyone like to testify in opposition to A.B. 353?

Wayne Carlson, Executive Director, Nevada Public Agency Insurance Pool and Public Agency Compensation Trust:

We deal with mostly the smaller rural governments. Even if they are removed from this, I would still like to explain the issues. We do have some small governments that are located within Clark County and Washoe County that, depending on how the bill is amended, could still be affected. It is a significant problem.

I will first address the professional services aspect. We contract with numerous professional services to provide support to our members because of the programs and training we do. We have a grant to a nonprofit organization to provide human resource consultation and training to support our local government members. That is a form of professional service, but it is with a nonprofit organization, and when we did that, we tried to look at other alternatives and found that the nonprofit approach was the best.

We also contract with numerous attorneys to defend lawsuits and handle workers' compensation appeals. We do not know if those attorney deals are going to be over \$50,000 when the case starts. They are assigned case by case. We have preselected through a process qualified attorneys that can handle these cases because they vary widely. They require different types of expertise. In those cases, we do monitor their performance. They are not without oversight and control over the fees they charge. We contract for safety services. We contract for eLearning and things like that which all would fall

under some of these professional services. We use a process to find them, but when you go into a contract with an eLearning vendor, for example, having to do that process every year, which is what this bill would call for, makes it very difficult.

On the insurance piece, we negotiate and get proposals from numerous insurers. We work with Lloyd's of London on the property program; that is a marketplace in and of itself. We met with over a dozen of them, and when we go to negotiate we have about eight different reinsurers who work with us. The problem we have with this bill is that you would have to have the local governments' numbers also involved in the request for proposals (RFP) process while we do that on their behalf, and we are a single organization.

Assemblyman Wheeler:

Mr. Carlson, you used the example of an attorney. I think I can understand that. However, I want to clarify that a little bit. First of all, if there is a \$50,000 fee, it would be in this camp anyway, but I understand that you are saying you do not know what that fee is going to be in the end and this may make it difficult. Do you not know what the hourly rate is before you enter into a contract? Would the bid not actually be on the hourly rate and would you not have in your bid that they must meet certain qualifications so that you know that you are getting the right attorney?

Wayne Carlson:

We do know the hourly rate. In fact, we set a rate that the attorneys have to work from. However, we do not know the cost of that particular case. If it is just a \$50,000 threshold, and we estimated the case would cost \$25,000 to defend, but the case takes a turn or is more difficult to defend, what do we do when we reach that threshold? Do we go to bid at the time that we are in the middle of a case with that attorney because the fees are getting close to \$50,000? It makes it very difficult. I do not think it is practical to do that when you are defending lawsuits.

Assemblyman Wheeler:

You are saying \$50,000, but I see \$100,000.

Wayne Carlson:

As I understood from the presenter's testimony, it is \$50,000 for local governments and \$100,000 for the state. However, even if it is \$100,000, the issue still remains because we do have some cases that cost more than \$100,000 to defend.

Assemblyman Wheeler:

I am sure there are, but I was wondering why you could not bid it in the beginning to say that they must have certain qualifications and that you are looking for a certain hourly rate so that the county can save some money on the attorney's fees. I know attorney's fees can be ridiculous. I have had to defend a couple of cases myself. To me, your argument does not make that much sense, but thank you.

Joan Hall, President, Nevada Rural Hospital Partners and Liability Cooperative of Nevada:

Seven of Nevada's 14 rural hospitals are district hospitals and would be affected by this. We are pleased with the addition of the proposed amendment, but that still includes Boulder City, and Boulder City Hospital is a rural critical access hospital. That causes us some concern.

Competitive bidding may get the best pricing, but in health care, we are looking for the best quality. If we have to go to bid for professional services to cover an emergency room in the rural communities, I am not sure how many people would actually bid on that. It is all actually built upon relationships that we have and credentialing and quality assurance measures we have put in place. Anesthesiology is another professional service we would have to bid for, as well as biomedical engineering. All of those, as I said, impact patient care.

From a hospital operational stance, we are required by the Centers for Medicare and Medicaid Services to do cost reporting annually as well as auditing functions. Certified public accountants (CPA) can do those, but there are many nuances in the law for small critical access hospitals. There are not a lot of people that know how to do that, so you need to hire specific CPA firms. With the mandate of electronic health records, the software part causes me a lot of grief. There are thousands of software vendors who provide electronic health record systems, but none of them integrate. If you start with system A and now you need to add new components for lab tests, x-rays, or whatever it is and you have to go to bid, you might get a cheaper component, but it would not integrate. Then you would have to pay the interface costs, which are about \$30,000. I do not think you are saving any money.

I have heard from the proponents of the bill that if you write your RFP correctly, you will get what you want. However, that seems to be circumventing the whole system.

We have the same issues as Mr. Carlson about insurance. The Liability Cooperative of Nevada (LiCON) is a self-insured liability pool providing malpractice insurance for rural hospitals and doctors for the past 25 years.

It has been very successful and very cost-effective. We negotiate for our reinsurer for the attachment part above what we self-insure. Not many people originally wanted to do anything for rural hospitals. We are few; we have limited numbers. They do not know our risk. It has actually been through negotiations and relationships we have built that they are willing to reinsure us, and these are national companies. If we have to go to bid, we are concerned about that.

We are also concerned about the defense attorney panel, as Mr. Carlson mentioned. Yes, we also limit attorney's hourly fees, but sometimes, especially with medical malpractice, you can say it can only go to \$50,000 or \$100,000, and it will go above that.

Assemblywoman Neal:

Ultimately, there are some problems in terms of some contracts that have certain risk and nuances for which people need to have a specific skill set. I can understand the argument in terms of having to re-bid every year. Is there a way to work with the bill sponsor? At the end of the day, you know she is trying to open the door for private businesses. Public contracts and public rewards are typically the best avenue to go down because private employers do not necessarily have the same level of public dollars or access so that new companies can try to get their feet wet in the public domain. Is there a way to work with the terms to make it more reasonable for contracts that require a specific skill set? Maybe it could be a three-year renewal, so that you at least know there is an opportunity to open the door and potentially competitively bid for something that is reasonable and works with the needs of what you do. Ultimately, the bill, although it has issues, is trying to allow or give access to individuals who may not have an opportunity. Some of the sole source contracts go for four years or five years, depending. That is a long period of time where that door is closed and businesses cannot walk through it.

Joan Hall:

I think, with regard to professional services, at least from a rural hospital's perspective, if we could find those new emergency room doctors and anesthesiologists, we are open to that. I think that competitive bidding actually harms that because you are in that system. If we could get those young doctors, those J-1 Visa doctors, any of those people, we would be thrilled to have them. This bill actually stops us from being able to do that, in my opinion.

Wayne Carlson:

From the insurance contract standpoint, the markets are annual. They generally do not do multiyear contracts, so we would have to do it every year. That is a very complex, long-term process. We start our renewal data gathering in

November so that we can submit it to market in March. We submit it to numerous markets. We use that process. However, the bill creates for the members—and we have about 125 local government members of all different sizes—the obligation to also put out a bid for the very same product that they own in the risk-sharing pool. They are our owners, and we are working on their behalf to get competitive quotes from all around. They would have to complete that process every year. We would have to use it in order to respond to their RFP. It is very complex and it would be very expensive for little result because we are already going to the markets and getting those kinds of things done as it is. We maintain a competitive posture. When members have gone out on their own and gotten alternative quotes, then they have a comparison. They are free to do that. However, the local governments actually own us in the same manner that LiCON is self-insured and the owners are the local governments.

Assemblywoman Neal:

I understand that. Are you willing to work with the sponsor to carve out exemptions for the specialties? It can be problematic if they go out for competitive bidding because it is so expensive that there are no cost-savings related to those industries. You can carve it out but also open the door. Do you see a light in the tunnel for this? There were a lot of strike-outs. Do you see any of them that are minor and not so risk-intensive or cost-intensive that those who want to engage could get their feet wet?

Joan Hall:

We have tried to work with the sponsor, and I think that both of us would be willing to meet with her again to look at not only amending the effects on small rural agencies but also on interlocals.

Wayne Carlson:

We are willing to talk about it. The complexities are probably not understood because most people do not understand how complex the procurement of insurance products for a local government pool is, especially ones like us with schools, cities, counties, towns, special districts, and other quasi-governmental agencies. We were formed in 1985. I had the legislation passed, and we formed in 1987 to start doing that self-insured program for the benefit of our members, and it has served them well for 27 years. Mike Rebaleati is here, and he is the chairman of one of our pools and is on the board of both pools. He can add his comments about that process as it affects individual members as well as the board.

The bill is trying to solve a problem that does not exist because we are looking for alternatives. For example, in our workers' compensation program there is only one licensed managed care organization in the state. That is the sole source, so if I have to go out to bid every year for the same thing from the

same organization, likewise with our reinsurance markets and Lloyd's of London, they value a long-term relationship. We get a better deal because of a long-term relationship even though it is an annual process. If we are having to go to bid each year, they are going to walk away. There are not that many entities interested in writing governmental risk. I can tell you on the workers' compensation side in particular, because of the heart and lung exposure, there are only two, maybe three, reinsurers that are willing to write it at very, very high attachments. We have to self-fund that. Going to bid every year is a waste of time. That is the cost.

Michael Rebaleati, representing Nevada Public Agency Insurance Pool and Public Agency Compensation Trust:

I retired recently from Eureka County. I spent a long time in a very small county. We rely on sole source just for the simple fact that we cannot find other professional services, and when we do find them it is very expensive to pay them to come from Las Vegas or Reno just to service a copy machine. There are problems with local governments, but we have always wanted to have an open door. If there is a way to open the door to more competitors to find a better price, I do not know of any entity that would not be in favor of that. We would really have to work on some of the language so that it is doable, so that you are not trained to repeat yourself every single year and creating extra costs unnecessarily. I agree with everything that has been said previously, so I do not want to repeat that. I will answer any questions that you have.

Chairman Ellison:

I think that is important and was one of the discussions at the beginning. There are a lot of rural areas that are happy to get what they can sometimes, and they have to keep their fingers crossed when they do get them. Sometimes we do not have those options. I think we can work a lot of this out. One of the things I would like the Committee to consider is that this bill is going to have to go to the Assembly Committee on Ways and Means because of the fiscal note. It is an exempt bill, so it will have to go out. Thank you. Is there any other discussion? [There was none.]

Ernest E. Adler, representing Nevada Rural Housing Authority:

I had a previous bill on the Local Government Purchasing Act, Assembly Bill 428. A lot of these things have unintended consequences. For instance, currently the Nevada Rural Housing Authority (NRHA) is trying to finance a senior citizen housing project in Winnemucca through tax credits. That tax credit financing plan has six professionals consulting on this because it is very complex. If we had to bid out all six contracts, I really do not know how they would do it. It would almost be impossible because you have banking

professionals, bond counsel, and someone who just goes through the process. Our checklist is about three single-spaced pages with different things we need to do to conform with the tax credits to get this housing project financed. I really do not know how this would work if that all had to be bid out. I just do not see how we could bid out each one of those components. Typically, if you are doing tax credit financing for housing projects in rural counties, you use the same team on each project because they have worked together and know how to close out deals together. If you had to bid this out and bring in new people on the team because someone was a lower-bid bond counsel than someone else, it might totally disrupt the ability to close these on time. I just want to point that out as a possible problem.

Chairman Ellison:

I think we just fixed one problem with purchasing for rural housing. We are trying to fix it on the other end. We have to make sure the bills work together.

Assemblyman Wheeler:

Something struck me when you said you have the same team of six professionals that you use. How did you pick them? Are they friends of the commissioners?

Ernie Adler:

The lead person is from Reno and is the only one in Reno who does these types of financing projects. He really does know how to do these projects efficiently. Some of the bond counsel have been picked over the years because they specialize in this type of financing for low-income housing. Investment banks are chosen based on who has the best interest rates. That one is pretty much competitively bid. One of the safeguards we have is that all of these contracts have to go in front of the NRHA Board of Commissioners in front of a public meeting and the contracts are available for the public to inspect, so if there are some outrageous fees being charged, everyone will know about them.

Assemblyman Wheeler:

You said that the housing finance consultant from Reno is the only one who does this. He would win the bid no matter what because he is the only one.

Ernie Adler:

Yes, because he is the only one around.

Chairman Ellison:

Thank you. Is there any other discussion? [There was none.] Is anyone else wishing to testify in opposition?

Patty Mamola, Private Citizen, Las Vegas, Nevada:

I am a licensed professional engineer in the state of Nevada. I am also the immediate past president of the National Council of Examiners for Engineering and Surveying, an organization made up of all of the state boards, licensing boards for engineers and surveyors in the United States and its territories. I am the first woman to hold that position in the nearly 100 years of that organization. I am only the third Nevadan to hold that position. I am also a member of the State Board of Professional Engineers and Land Surveyors. I have served three terms, appointed by three different governors. I have served for two years as the chair.

However, today I am not speaking on behalf of the State Board of Professional Engineers and Land Surveyors. I am speaking on behalf of myself and the engineering profession. I have provided written comments ([Exhibit K](#)) that I will not read to you. I do have a couple of points I would like to emphasize. Competitive bidding or selecting professional engineers based on cost is not in the best interest of the public. In fact, it is potentially detrimental to the public's health, safety, and welfare. A project typically begins with an idea or a concept. The scope for that project may not have been completely fleshed out. Competitive bidding is based on cost and it drives out imagination, creativity, innovation, and collaboration. Design fees for professional engineers are just a small portion of the cost to deliver those projects—typically 8 to 10 percent of the cost of that project—yet the quality of the work performed by that professional can significantly impact the cost to construct and maintain that project. Delivering an engineering project can be looked at as a three-legged stool made up of quality, cost, and scope. If the cost is controlled and even the scope is controlled when the project is competitively bid, it affects the quality that is delivered.

I would suggest, because current NRS has provisions for selecting professional engineers based on qualifications, that we continue to select engineers based on qualifications. To bring a finer point to that, I would like to pose the question: If you were to have brain surgery, would you select your doctor based on cost or qualifications? Granted, that determination affects you personally-one person. However, the services of professional engineers not only affect one person but can have significant impacts to many people. That concludes my testimony, thank you.

Chairman Ellison:

Thank you very much. Ma'am, please go ahead.

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

This bill significantly impacts various facets of local government procurement. With few exceptions, the local governments would be required to competitively bid every good or service when the estimated values are over \$50,000. This would mean that the competitive solicitation such as an invitation to bid or RFP would be required to procure everything from basic software to architectural and engineering design services. [Ms. Jones continued to read from prepared testimony ([Exhibit L](#)).]

The provisions of NRS 332.115 have been crafted since 1975, over 40 years, when it was first enacted. There is a reason for each of the exceptions described in NRS 332.115. As that section states, these are things that by their nature are not adaptable to award by competitive bidding, meaning the low responsive and responsible bid. For instance: How can you craft a competitive bid document for an item that is provided by a sole source? The local government goes through a methodical process to determine if the item meets this strict requirement. It is typically used for equipment and parts only available directly from the manufacturer or only from one authorized distributor and no other alternate item can be used. This could also include specialized equipment designed or engineered for a specific purpose such as certain equipment used at the city's wastewater pollution control plant. Major suppliers who are in a monopoly scenario may refuse to undertake the expense of responding to formal solicitations. As a result, the local government would not realize any value through the competitive process, but would incur significant cost and time to complete the formal solicitation process.

Would it be in the best interest of the taxpayers to accept the low bid for professional services such as lawyers and especially, I agree, with architects and engineers? We already have a state law, NRS Chapters 623 and 625, which prohibits us from accepting a bid as a low bid for architects and engineering. We need to obtain the best value based on the qualifications of the doctors, lawyers, and other professional services offered.

In addition, would it be in the best interest of the taxpayers to purchase computer software from a low bidder or determine the products are the most cost-effective for local governments to obtain the technology needed for their requirements? I will assure you that the City of Las Vegas scrutinizes competitive bidding exception procurement requests to ensure the process is used judiciously and in accordance with city policy. In addition, requests are approved by the Purchasing Contracts Manager prior to the initiation of the contracting process. The use of these exceptions must also be justified to the local government public officials. My recommendation is that the

competitive bidding exceptions continue to be managed by agencies in accordance with the existing agency policy and continue to give those agencies the fiduciary responsibility for their decisions.

In closing, I would implore that you take opposition to this bill. I will answer any questions. Thank you.

Chairman Ellison:

Are there any questions? [There were none.] Thank you.

Lisa Foster, representing Boulder City:

I do not have anything to add to what has already been said. I would just like to reiterate what you heard from Joan Hall representing the rural hospitals that if there is an amendment to exempt the rural areas, that is typically done by county, and Boulder City could be added to that, as is done many times by mentioning cities in Clark County and Washoe County that fall below the 25,000 population threshold. We would request that if there is an amendment for the rural areas, that it be done by population of city as well. We would participate if it does go to the interim committee as has been suggested, or however else it is handled. Boulder City would like to be included in that exemption.

Chairman Ellison:

What is the population of Boulder City?

Lisa Foster:

It is 16,000 people. I think Mesquite is about the same. They are the only two cities in those two counties that are not larger, urban areas.

Chairman Ellison:

What was the cap in the bill?

Lisa Foster:

I think they discussed exempting rural counties.

Chairman Ellison:

I think that would fall under rural counties as well.

Lisa Foster:

Boulder City is in Clark County. If we can add the exemption for cities under 25,000 people in Clark County and Washoe County, then Boulder City and its hospital would be included as well.

Chairman Ellison:

Thank you. Go ahead, Mr. Fontaine.

Jeff Fontaine, Executive Director, Nevada Association of Counties:

I would just like to add some information about how cost enters into selection of a professional, particularly in my experience with engineering consultants on projects. Typically, the agency would have their project concept in mind. They would set a budget for that project, including the professional engineering services and other services. Then they would issue an RFP to those consultants who are on a prequalification list, which is based upon their abilities and qualifications, as you would imagine. Those that respond are reviewed by a panel, or more than one panel. They look at the qualification of that particular consultant; they look at their experience and the approach that engineering consultant would take in terms of designing that project. You heard a lot of this from Ms. Mamola. Once the selection is made for the professional, then the agency would negotiate the costs of the services. If the cost is not within their budget or they feel that it is not adequate, they would move on to the next design professional who responded and qualified for possible selection. That is the process. With regard to sole source, you have heard a number of reasons why that is important for the counties. I would just add that, ultimately, any contract is approved by the board of county commissioners and is based on what is in the best interest of their county and their constituents.

Chairman Ellison:

Thank you.

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

Mr. Fontaine laid out for you some of the differences between what RFPs are being issued for as well as bid. For professional services this becomes very difficult for local governments because a bid means that you have a dollar amount that is submitted by those businesses for a specific scope of work, product, or service that needs to be provided. There is a dollar amount that comes in with those bids. When you have an RFP, there is a scope of work, but not to the level of detail because you want to open it up and see what those proposals look like from those businesses.

I will speak specifically for information technology projects. When we want to replace financial systems, business development, or license systems, the systems we are trying to replace are most likely 20 years old or more. There is new technology that has come out over that 20-year period. There is new functionality that has come out with those types of systems. We, as local government, will not know how to put out a bid to specify exactly what we want out of those systems. The intent is to put out a proposal, which is still

a competitive process, to ask for proposals from companies to show us what functionalities or new technologies are out there. As Mr. Fontaine mentioned, it is competitive in the fact that we ask for all of these proposals, we review them, there is a panel. Once it is decided what is in the best interest of the county as well as what is within our budget, those contracts then go before the board for approval. I just want to put on the record that it will be difficult for us to get a hard dollar value for some of those types of bids.

It would be difficult for a sole source. It would be onerous on the businesses. Sole source businesses would have to go through the complexities of filling out a bid and submitting that, expending the time and money that it takes to submit a bid despite knowing that they are the only companies that provide those specific services.

In addition, this does allow for, if we go out for RFPs, those smaller, disadvantaged businesses—your veteran- or women-owned, or minority-owned businesses—because they are not having to compete with the larger businesses when you have a bid and compare the pricing.

Those are some of the things I want to put on the record. I do want to thank the sponsor for taking the time to meet with me to discuss our concerns. I am very confused about some of the amendments that are being proposed. I do not know what is being proposed or if this will help. I would like to understand what those amendments are.

Chairman Ellison:

Are there any questions from the Committee? [There were none.] Please go ahead.

Lisa A. Gianoli, representing Washoe County:

Many of our concerns have already been voiced. With respect to the software issue in particular, I can think back on an issue when we went through an exhaustive process to select an enterprise-wide resource system. We ended up with a company and we will be with them in future implementations. For instance, we do a utility billing program. Three years from now, we are not going to be able to go out and use anyone but that software company that we are integrating with. We do go out and look at implementers who can do that for us, who actually put the system in and design it for us. However, we are in the game with that company and hopefully it is a significant investment. It is a long process. I just want that on the record to understand that there are some complexities here that we cannot really get around.

Chairman Ellison:

There is going to be a lot of that where it is built into long-term contracts. Is there any other discussion? [There was none.] Thank you. Is anyone else wishing to testify in opposition?

**Joyce A. Humphrey, Manager, Purchasing and Materials Management Division,
Reno-Tahoe Airport Authority:**

I agree with everything that has been said here in opposition today. We have some special issues at the airport that a lot of other government entities do not have. One of them is sole source procurements. For example, I would like to tell you that we use a thermoplastic surface airfield marking where heat is applied and it is put down on the runways and taxiways. There are reflective markings that are required to let the pilots know where they are when they are landing and other things. That material is available from a single source which is approved by the Federal Aviation Administration and listed in advisory circulars. It would be a waste of time and money for us to go out for bid for a product that is available from a single source. We have many examples of that.

Most of the systems we have installed in the airport have been competitively bid. For example, our chillers and boilers; jet bridges; parking revenue control system; noise and operations monitoring system; access control and management system, which ensures that people do not get onto the airfield; the crash trucks we use in the event that there is some type of accident at the airport; and our inline baggage handling system that handles the security of all the bags that go on aircraft were all competitively bid. These are very expensive systems. If we need to buy repair parts from them, we have to buy them from the manufacturers to ensure compatibility and to ensure that the warranties are maintained on these systems. Most of them are under extended-service contracts so the work is performed by service providers. If we use service providers other than the contracted vendors, we violate the terms of our support agreements and that makes systemwide support difficult or almost impossible to achieve. We must acquire the parts from the proprietary vendors.

I agree with every comment regarding computer software, so I will not go into that. As far as the financial impact of state filing, we would also have an unfunded mandate financial impact in that it would increase our workload by at least 50 percent, costing us from \$250,000 to \$300,000 in full-time equivalents we would need to be able to bid everything that we have to at the airport, resulting in significant time delays for procurement and also substantial manpower requirements to help us support the procurement process. I would be happy to entertain any questions.

Chairman Ellison:

Are there any questions from the Committee? [There were none.]

Andrea Sullivan, CPSM, CPM, Director, Procurement and Contracts, Purchasing Department, Washoe County School District; and representing the Nevada Public Purchasing Study Commission:

The Nevada Public Purchasing Study Commission is composed of public purchasing professionals across the state. Everyone has made most of my points already. We are very concerned about this bill as far as taking these exemptions away from us. They do exist for a reason. Over time it has become obvious that certain things are not adaptable to competitive bidding: hardware, software, professional services, and sole sources. By way of example for the school district, we have, over time, bid certain things like our public address systems and our heating, ventilation, and air conditioning controls. We bid those a long time ago and then we put all of that equipment into all of our buildings. We have over 100 buildings that have these systems in them. Now we have to maintain them, we have to repair them, we have to hold an inventory of parts to do that. If we have to go out each year and bid and be exposed to a new manufacturer and have to buy monitoring equipment, and inventory supplies, we now have to train all of our maintenance people on different software systems, monitoring systems, and PA systems. It would become difficult to manage.

We too would have a fiscal impact for this bill. We estimate a 33 percent increase in the procurement staff, which is about a \$200,000 cost. We would also have to increase other staff because we would have to train more staff on more types of systems in order to maintain them throughout our large district. With that, I will entertain any questions you have.

Chairman Ellison:

I know there are specialty items that you cannot integrate with other parts and equipment.

Adam Mayberry, Manager, Community Relations, City of Sparks:

We appreciate hearing this bill. We appreciate meeting with Assemblywoman Dickman to express our concerns. We do oppose this bill. All of the reasons have been stated by the other presenters, so I will just provide additional examples. The City of Sparks operates the region's sewage treatment facility. There are a lot of chemicals and specific equipment that can only come from sole source providers. There is a fiscal note for the city as well. We would have to increase our procurement staff were this to become law. Thank you.

Chairman Ellison:

Is there any discussion? [There was none.]

Mike Cathcart, Business Operations Manager, Finance Department, City of Henderson:

I believe all of our concerns have been voiced as well. The software issue is a huge one for us. That has been discussed by many of the other speakers. I also want to mention that, to my knowledge, we were not solicited for a fiscal note on this bill. However, if asked, we would be filing a fiscal note. We believe it would require an increase in purchasing staff. We really have not looked at the long-term impacts. If we were to have to buy a software that was the lowest bid, how many thousands of hours may we have to spend in modifying pieces of that software to make sure that it was doing the job it needs to do? There could be ongoing fiscal impacts in the long term as well.

Chairman Ellison:

We would be happy to deal with that in the Assembly Committee on Ways and Means because that is where this needs to go. I believe there is a lot of merit to what they are trying to do with this bill, we just need to work through the details. Is there anyone else wishing to testify in opposition to the bill?

Scott Gilles, Legislative Relations Program Manager, Office of the City Manager, City of Reno:

The City of Reno opposes this bill for many of the same reasons the other local governments have expressed. We are concerned particularly with how it would impact the purchasing of special equipment and software.

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

We are opposed to this bill for all of the reasons that have been stated. I would also like to echo Ms. Foster's comments that, should the Committee have the appetite to put a population cap on the bill, there are two cities and one town in Clark County whose populations are under 16,000. In Washoe County there is one city whose population is under 100,000, and a general improvement district whose population is under 9,000. We are opposed to this bill.

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

I am a registered civil engineer in the state of Nevada. I did provide written testimony ([Exhibit I](#)) that really focused on the issue of professional services as it relates to engineers and surveyors, as well as architects. The concerns of Douglas County have been voiced. I support the previous testimony. I would conclude it with the fact that lowest bid does not mean the lowest cost. In most cases we believe that the proposed legislation will place a financial burden on many public bodies. The selection process for professional service

contractors was reviewed. We go through a similar, very expensive process. At the conclusion of that process, we are constrained by budgets, and we are also trying to save money where we can. Again, lowest bid does not mean lowest cost. We do have a financial or fiduciary responsibility to negotiate a fair, competitive pricing with the preferred contractor based on current market conditions.

Chairman Ellison:

Are there any questions from the Committee? [There were none.]

Daniel Rotter, P.E., Engineering Manager, Carson City Public Works Department:

I am also a registered civil engineer in Nevada and California. I used to work for Mr. Ruschmeyer as an engineer in the private sector. I have the same sentiments that have already been expressed regarding engineers and land surveyors. It creates some problems there. The one thing I would like to mention on the operations side is that the water and sewer systems that serve this building use a lot of the software, hardware, and controllers that are proprietary. Our people are trained on it. When they come in at two in the morning to fix a traffic controller, a lot of that is really specific. I think this could be worked out in the details about how this works and goes forward. However, I think all of the sentiments that you have heard address our concerns as well.

Mary Walker, representing Carson City, Douglas County, Lyon County, and Storey County:

We want to first thank Assemblywoman Dickman and Mr. Burdish for spending a lot of time to talk to us about this issue. We do think that the study and review of this type of concern is valuable. We have no problems if you want to study that issue in the rurals. I have given my commitment to Assemblywoman Dickman and Mr. Burdish that I would work with them during the interim to look at those issues. You might want to consider doing that on a statewide basis because of all of the complexities involved in all of these different things.

Our major concern is that we believe there will be unintended consequences in that while we would be trying to save money—which is what everyone wants to do—in the end it may cost the taxpayers more. It comes down to staff. For example, in Lyon County, because of all of the budget cuts and layoffs, the staff level is the same as it was in 1998. We have the same staffing today as we had 17 years ago. We have people who are leaving the county because of the workload because they are working two and three jobs. If you add in all of these additional procurements, we do not have the staff to do all of these different things. We do not have the money to hire the people to do it.

We were laying off police officers and sheriff's officers just a year and a half ago. That is of concern for us.

The other thing that happens when you have such a small staffing level, particularly in the rurals, is you are already trying to get all of your projects out. However, now, if you have all of these additional things you have to do, the whole system is going to be gummed up. It is going to take longer. When you go out for procurement, it is going to take three to six months to do a bid. Sometimes from the bid to the actual award, we are talking about a long time. We are very concerned about that. Again, we do appreciate the sponsors for meeting with us.

Chairman Ellison:

Thank you. Are there any questions? [There were none.]

Craig M. Stevens, Director, Intergovernmental Relations, Government Affairs, Community & Government Relations, Clark County School District:

For all of the reasons stated previously, we do oppose this bill. We are concerned specifically with the testimony of Washoe County School District and the staffing concerns as well. The last thing we want to do is have to hire more administrators when there are so many more teachers that need to be hired.

Kathy Flanagan, Assistant Management Analyst, Southern Nevada Water Authority and the Las Vegas Valley Water District:

We oppose this bill for the same reasons the other local governments have already stated.

Chairman Ellison:

Is anyone signed in as neutral to the bill? We would like to see the Purchasing Division of the Department of Administration here as well. Mr. Smith, did you hear the question that was asked by Assemblyman Moore during the beginning of the hearing? Assemblyman Moore, please go ahead.

Assemblyman Moore:

Thank you. The Department of Administration has put a fiscal note on this bill. Do we know how many no-bid contracts are awarded every year, and what the values of those contracts are?

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

We signed in as neutral because it was our intent to be informative and answer questions. We will start with that one first. There are several carve-outs in regulation under professional services: a registered engineer, an architect, an expert witness, the service of an attorney, and the service of an accountant.

Those are carved out so that if a state agency wants to do a contract for those professional services, they check the box and move immediately to negotiations.

I want to be sure that everyone understands that the lack of a formal solicitation process does not mean that agencies do not go through numerous individual solicitation processes on their own in the selection. I want to make sure everyone understands that when we say we are not going through a formal solicitation process, it is not two people working things out on the back of a bar napkin down at Adele's Restaurant and Lounge. There is a lot of thought that goes into this and getting the information out to receive these proposals.

I have no way of knowing how many contracts the state issues at that level because they do not go through our office. They immediately go through the State Board of Examiner's process, which is something else I would like to explain, in a little bit.

I can tell you, though, that item number 6 of the list that I mentioned says, "any other professional service deemed not adaptive to competitive selection as determined by the chief." Those are the special ones that go through our office. I can tell you that in the last five years we have systematically and intentionally reduced the number of those from 231 approvals in 2010 to 128 approvals in 2011, 127 approvals in 2012, 84 approvals in 2013, 74 approvals last year, and we are on pace to do 64 approvals this year. We have a document ([Exhibit M](#)) of which we are very proud. There are several questions here that ferret out the ability of an agency to be considered for the waiver. I will assure you that any agency head that may be sitting behind me knows these things are not doled out easily. They are ferreted. They are researched. They are transparent; we post them on our website when we approve them.

Please keep in mind: Any contract is ultimately approved by the Governor, the Secretary of State, and the Attorney General, who operate as the State Board of Examiners. Each document is included in their packet. The press and the public can look at it, scrutinize it, and say that they do not agree with it. Vendors can protest it and say that they saw it online, they do that service, and want the contract put out to bid. I just want to assure you that today's process, at least at the state level under these professional service exemptions, is taken extremely seriously.

A lightbulb went off when I sat down here, and I would like to add that I believe that our fiscal note is probably considerably low. While our office issues 2,500 purchase orders annually, we actually complete 60 to 75 RFP projects

each year. Based on the figure from last year of 70 waiver approvals, half of which were over \$100,000—the threshold that is contained in this bill—we would need four additional procurement staff, about a 50 percent workload increase, because we would have to do RFP projects through these professional services. We never took into account the attorney, the registered architect, the engineer, the expert witnesses, those that would not need to come through our office at the \$100,000 level. We can deal with that at Ways and Means. Again, we never took that into account because we currently do not deal with those.

Assemblyman Moore:

Could you please give us a list of the contracts so the Committee can review them?

Greg Smith:

Are you asking for a list of the ones that we have contracted?

Assemblyman Moore:

Yes.

Gregg Smith:

Yes, I can do that. One thing we can certainly provide is the waiver form. We should be able to do this relatively easily because we have produced a lot of this information for the individual who wrote the article for the *Las Vegas Sun*.

Assemblyman Moore:

Thank you very much.

Chairman Ellison:

You said the light bulb went off when you sat down at the table. Did you get a purchase order on that bulb, sir?

Greg Smith:

Not knowing how many go through those already five exemptions that we do not even see in our office, I will give you an example. The State Public Works Division issues a number of contracts to engineers and architects on July 1 of every year. They might have a half-million dollars listed on the contract. Please keep in mind that is a "not to exceed" amount. They might give those contracts to 20 or 30 different architects, not knowing where the business is going to go. It does not mean that each architect or engineer is going to get a half-million dollars from the state. That number is captured in the system and reflects in a newspaper article that would make it seem like 25 or 30 architects are getting a half-million dollars from the state each, when in fact, maybe only

3 or 4 got any business off of it and the others were just on a managed retainer. I think those kinds of concerns inflate the figures to make them look a little more alarming than they actually are.

Chairman Ellison:

Thank you.

Kimberlee Tarter, Deputy Administrator, Purchasing Division, Department of Administration:

I would just add, with respect to some of the contracts that Mr. Smith just mentioned, we do not have a means of getting that information and ascertaining what the impact would be to our organization because when you look at those five services Mr. Smith mentioned, particularly along the lines of the attorneys, the Office of the Attorney General enters into a very large number of contracts for expert witnesses. This would now be wrapped up into that and have to go through the competitive selection process in addition to the attorneys they contract with, the hearings division, and all of the attorneys they hire that oversee their administrative hearing. I think that is casting a very broad net over areas where we do not have a means to gather data and give an accurate impact.

Greg Smith:

While the term "sole source" is used traditionally interchangeably just as "Kleenex" and "tissue" are, believe it or not, at the state level the actual sole source approvals probably amount to 5 or 10 percent of contracts. It is very rare when we can really ascertain that it is that business and that business only with which we can do business. Most of these waivers are in the professional service categories that you have heard people mention in testimony. I will tell you that I have not only had the pleasure of serving here as your purchasing administrator, but also as the president of the National Association of State Procurement Officials and a longtime chairman of the Western States Contracting Alliance. I have regional and national knowledge of this, and I will tell you that professional services in some form—it is a little different in every state—are carved out almost uniformly across the country. There may be some caps, some may have some more. They talked about the language in NRS Chapter 332 and that the locals have a longer list of carve-outs than we do at the state, so there are differences there. However, across the board, professional services waiver exemptions are considered an acceptable form of public procurement when done correctly and not abused.

One of the questions we have on this form ([Exhibit M](#)) is: What efforts were made or conducted to substantiate there is no competition for this service or good and to ensure the price for this purchase is fair and reasonable? I can

assure you that we go to great lengths in assessing that we do not just take something. Several times a month I get involved in helping negotiate the price that goes in there. With one hat, I am here to represent that we love the competitive bidding and solicitation processes. That is what we do. If this bill passes as written, you actually take some responsibility off of my shoulders in approving these waivers, and it goes to a competitive bid. However, I am also here to represent the process of running government, and I know how cumbersome it is on its best day, as well it should be when you are expending the public's dollars. Regarding procurement professionals working with agencies, I can assure you that there is not a single person in state government that frivolously looks at what they are paying for any service or good. They all take it extremely seriously, as we should.

Chairman Ellison:

Thank you. Are there any questions from the Committee?

Assemblywoman Spiegel:

Thank you for helping to clarify things for us. As I think about the intent of this bill, which I believe is to help open opportunities for additional businesses that do not currently have an opportunity, I was wondering if there is any way to increase the pool of individuals who can be considered and have a mechanism to make them aware of opportunities so that when they are looking for professional service, they can submit a proposal. There are new businesses moving to Nevada every day; there are new businesses starting, professionals who have just graduated from school, or professionals who have been in the field for years but have decided to go out on their own, and they do not know how to start taking advantage of some of these opportunities.

Greg Smith:

I am particularly proud, at least at the state level, of our office's efforts in outreach. I can assure you that there is a vendor fair—in fact there is one next Wednesday in Clark County at Brady Industries that our office will be attending along with a number of the individuals who have already testified. There are probably monthly and bimonthly vendor fairs in different portions of the state, particularly managed by the procurement outreach program of the Governor's Office of Economic Development (GOED). They usually set it up, but the rest of us participate. We all go and have booths where vendors are able to come around. There is very little cost if there is any cost. Vendors are able to meet, exchange cards, and ask questions about how they can get involved. As a former business owner in this state for about 20 years, I strongly believe that vendors have a responsibility to not just open their doors and hope the cash falls in the cash register, but to get out there and meet who they are trying to sell to.

However, on our side of the table, we realize that government can be an incredible maze. Where do I start and who do I meet? I will assure you that not only do we attend each of these vendor fairs, I personally entertain three to five different people per week who call and ask to meet with me to tell me what they are selling. I met with a fellow from a company called Nevada Staffing yesterday. All of our buyers are under instruction that that is part of the job. When someone gets off of the elevator and they want to exchange business cards, they sit down for 15 minutes to understand what the person is doing. They show the person the kinds of contracts we have. In many cases, I think, a lot of business people think we buy a lot of things that we do not. There is also value in letting them know that is not something we buy. We take particular pride in doing that, at least at the state level.

Kimberlee Tarter:

I would like to follow up on that. There are a couple of other things we do. One of them, tying back to the procurement outreach program of GOED, is we work very closely with their director and work to support a bill that came out of last session from Assemblywoman Bustamante Adams [Assembly Bill No. 151 of the 77th Session]. It is an emerging small business program. As part of that we not only met but exceeded our goals last session. We work with small businesses. There are tiers set up. It is created to help educate these small business on how to do business with the state and then grow them so that they are awarded a contract for the next level. I personally work with the outreach program and lead classes talking to vendors on how to do business, explain the documents to them, to take some of the scariness out of what is a very bureaucratic process and cut to the chase of what they need to focus on.

The second piece is that we have a vendor database that is free. Any vendor that is interested in doing business with the state can register. We query that when we do our solicitations, but it is also public and available to all of the local governments. They can query it and look at any section. If they are trying to find a listing for engineers or accountants or any other area in which they are issuing a solicitation, they can go right into that vendor database. It has all of the contact information they need. Again, it is free for the vendor community; it is free for the local governments and state agencies. Those are two other ways we are working with the vendor population to reach out to them and assist them in doing business.

Assemblywoman Neal:

If you are interested at the GOED level, Lyndee Cichon, Director, Procurement Technical Assistance Center, does the federal procurement and trainings. She has a hard time trying to get her flyers and information out, which helps them become part of the State Administrative Manual and different things.

People do not necessarily know that process and the step up, but GOED has a person who specifically tries to help with federal procurement.

Chairman Ellison:

Thank you. Please meet with the bill sponsor as well to answer some of their questions. Will the bill sponsor please return to the table?

Assemblywoman Dickman:

While I am not surprised by all of this opposition, I do find it somewhat worrisome. However, I understand it because no one wants their applecart upset. It also makes me wonder if we do not really need these reforms. I also understand why in January, Pennsylvania Governor Tom Wolf issued that executive order banning no-bid contracts on law firms, citing a need for more transparency in their state. In the private sector, we do this all the time because we have to be profitable if we want to stay in business. Our company does a lot of business with municipalities in California, and we have to do lengthy, detailed RFPs. We have to have drawings, we have to submit our specs and the costs. We often give our proprietary information in order to win a bid.

I hope we will be able to work with those who have opposition and can come up with a great bill that will save this state some money. Thank you for your time.

Chairman Ellison:

I think we just need to get the nuts and bolts sorted out. It looks like there will be another fiscal note added, so you will need to talk to them about that. I think there is a lot of merit to this bill. We will now close the hearing on A.B. 353. Would the Committee like to suspend the rules so that we can refer this bill to the Assembly Committee on Ways and Means?

ASSEMBLYMAN WHEELER MOVED TO SUSPEND THE RULES.

ASSEMBLYMAN SILBERKRAUS SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYWOMAN WOODBURY WAS ABSENT FOR THE VOTE.)

Chairman Ellison:

Is there a motion to refer this bill to Ways and Means without recommendation?

ASSEMBLYMAN WHEELER MADE A MOTION TO REFER
ASSEMBLY BILL 353 TO THE ASSEMBLY COMMITTEE ON
WAYS AND MEANS WITHOUT RECOMMENDATION.

ASSEMBLYMAN MOORE SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYWOMAN WOODBURY WAS
ABSENT FOR THE VOTE.)

Chairman Ellison:

Is anyone wishing to make public comment? [There was no one.] We will now
recess [at 10:27 a.m.].

[The Committee reconvened and adjourned at 8:09 a.m. on April 9, 2015.]

[([Exhibit N](#)), ([Exhibit O](#)), ([Exhibit P](#)), ([Exhibit Q](#)), ([Exhibit R](#)), ([Exhibit S](#)),
([Exhibit T](#)), and ([Exhibit U](#)) were submitted but not mentioned during the
meeting.]

RESPECTFULLY SUBMITTED:

Aubrie Bates
Committee Secretary

APPROVED BY:

Assemblyman John Ellison, Chairman

DATE: _____

EXHIBITS

Committee Name: Assembly Committee on Government Affairs

Date: April 8, 2015

Time of Meeting: 8:05 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 25	C	Jered McDonald, Committee Policy Analyst	Work Session Document
A.B. 106	D	Jered McDonald, Committee Policy Analyst	Work Session Document
A.B. 445	E	Jered McDonald, Committee Policy Analyst	Work Session Document
A.B. 304	F	Assemblywoman Teresa Benitez-Thompson	Institute for Women's Policy Research Gender Wage Gap: 2014 Fact Sheet
A.B. 304	G	Assemblywoman Teresa Benitez-Thompson	Institute for Women's Policy Research Gender Wage Gap by Occupation: 2013 Fact Sheet
A.B. 353	H	Assemblywoman Jill Dickman	Las Vegas Sun Article
A.B. 353	I	Carl Ruschmeyer, Douglas County Public Works	Position Statement
A.B. 353	J	A. Gregory Reed, Round Hill General Improvement District	Position Statement
A.B. 353	K	Patty Mamola, Private Citizen, Las Vegas, Nevada	Written Testimony
A.B. 353	L	Yolanda C. Jones, City of Las Vegas	Prepared Testimony
A.B. 353	M	Greg Smith, Division of Purchasing, Department of Administration	Solicitation Waiver Justification and Request Form
A.B. 304	N	Carrie Hughes, Department of Administration	Prepared Testimony
A.B. 304	O	Kareen Masters, Department of Health and Human Services	Proposed Amendment

A.B. 353	P	Lisa Foster, representing Boulder City	Position Statement
A.B. 353	Q	Joyce A. Humphrey, Reno- Tahoe Airport Authority	Position Statement
A.B. 353	R	Louis Mendiola, Humboldt General Hospital	Position Statement
A.B. 353	S	Mary Walker, representing Carson City, Douglas County, Lyon County, and Storey County	Proposed Amendment
A.B. 353	T	Stephen Balkenbush, Liability Cooperative of Nevada	E-mail
A.B. 353	U	Gary E. Di Grazia, representing City of West Wendover	E-mail