MINUTES OF THE
SENATE COMMITTEE ON GOVERNMENT AFFAIRS

Seventy-Eighth Session
May 13, 2015

The Senate Committee on Government Affairs was called to order by Chair Pete Goicoechea at 1:37 p.m. on Wednesday, May 13, 2015, in Room 2135 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Pete Goicoechea, Chair
Senator Joe P. Hardy, Vice Chair
Senator Mark A. Lipparelli
Senator David R. Parks
Senator Kelvin Atkinson

GUEST LEGISLATORS PRESENT:

Assemblyman Tyrone Thompson, Assembly District No. 17

STAFF MEMBERS PRESENT:

Jennifer Ruedy, Policy Analyst
Heidi Chlarson, Counsel
Suzanne Efford, Committee Secretary

OTHERS PRESENT:

Terry Rubald, Chief Deputy Director, Local Government Services, Department of Taxation
Josh Hicks, National Public Finance Guarantee Corporation
Ron Dreher, Peace Officers Research Association of Nevada; Washoe County Public Attorneys' Association; Washoe School Principals' Association
Ernie Adler, Pyramid Lake Paiute Tribe
Bob Maddox
Michael Hillerby, American Institute of Architects

Warren Hardy, Associated Builders and Contractors of Nevada
Andy Belanger, Las Vegas Valley Water District; Southern Nevada Water Authority
Yolanda King, Chief Financial Officer, Department of Finance, Clark County

Chair Goicoechea:
We will open the hearing on Assembly Bill (A.B.) 54.

ASSEMBLY BILL 54 (1st Reprint): Revises provisions relating to local governments existing in a severe financial emergency. (BDR 31-308)

Terry Rubald (Chief Deputy Director, Local Government Services, Department of Taxation):
I have submitted written testimony explaining A.B. 54 (Exhibit C). The majority of the bill updates laws regarding technical financial assistance and severe financial emergency, including the processes used to determine that a local government is in severe financial emergency, what happens during severe financial emergency and how to get out of it.

Severe financial emergency means a local government is close to financial insolvency. It cannot continue to pay its bills. Since no State law grants a local government the ability to seek chapter 9 bankruptcy protection, severe financial emergency laws provide a process for the State to take over the financial management of the local government that is similar to a state of receivership. If the State is unable to make the local government solvent within 3 years, the next step is possible dissolution of the local government if approved by the voters. If the voters do not approve dissolution, property tax rates will be raised to a maximum of $5 per $100 of assessed valuation.

A condition of severe financial emergency has been declared four times since 1995 and included a hospital district, a school district, a city and a county. The school district and the county survived to see better days, but the city lost its charter and became a town under the authority of Nye County, and the hospital was sold to private interests.

Pages 8 and 9 of the bill, amending *Nevada Revised Statute* (NRS) 354.685, contain a list of 27 conditions that indicate a local government is in financial distress. The financial distress experienced by a local government is a matter of degree. Some indicators are more serious or occur more frequently than others.

Perhaps a local government is late with reports because the person filling out the forms does not know what to do or how to prepare a budget. The remedy is additional training by the Department of Taxation. On the other hand, insufficient cash to meet payroll is serious. That is why there are different levels of assistance. The Department provides technical financial assistance if the degree of financial distress is less severe. If the degree of financial distress is so severe that the local government is in danger of becoming insolvent, the Department can go through the process of declaring the entity to be in severe financial emergency and make financial decisions until it gets back on its feet.

Section 6, page 6 of the bill introduces the concept of a fiscal watch if the Department determines that one or more conditions leading to severe financial emergency are present. A fiscal watch is monitoring the local government. It begins with a written notice from the Department to the local government, the Committee on Local Government Finance (CLGF) and the Nevada Tax Commission. A fiscal watch continues until the Executive Director of the Department determines the conditions no longer exist. A local government may request technical assistance if it is placed on the fiscal watch list.

By amending NRS 35.675 in this way, the Department can advise the CLGF, the Tax Commission and the local government that one or more of the conditions present need to be addressed without going directly to severe financial emergency. It is important to call attention to conditions early so the local government can fix the problem itself and have a heightened awareness with CLGF and the Tax Commission that something is amiss and may need further attention. In addition, once the local government is on the fiscal watch list, it can request technical financial assistance. Technical financial assistance is defined in section 2, subsection 9 of A.B. 54 as assistance with developing budgets, reviewing contracts, analyzing cost allocations, debt management, feasibility analyses and revenue forecasting.

Senator Lipparelli:
Does any one of the conditions allow the Department of Taxation to put a local government on the watch list?

Ms. Rubald:
The 27 conditions allow the Department to recommend to the CLGF that the local government with the condition be taken to severe financial emergency. We

are proposing that some of those conditions are not as serious and should not lead to severe financial emergency.

Senator Lipparelli:
Does this give you a degree of flexibility?

Ms. Rubald:
Yes. This is a lower level.

Section 7, page 7 of the bill provides that CLGF, upon receiving a recommendation from the Department that one or more of the triggering conditions are present, will conduct hearings to determine whether a severe financial emergency exists.

Section 7, page 9 adds two more conditions that may indicate severe financial emergency. First, the ending fund balance of the general fund is less than 4 percent and, second, the local government has failed to pay federal unemployment tax.

Section 7, subsection 3 on page 9 allows the local government to request a hearing to decide whether a severe financial emergency exists before the Department makes that determination if a majority of the local government's governing body concludes that litigation or threatened litigation will result in severe financial emergency. Although it appears as new language, it actually incorporates NRS 354.686 language proposed for repeal on page 25 of the bill. Law allows the local government to submit a request to the Tax Commission to take over its management. The Tax Commission "shall" order the Department to take over, no questions asked.

Instead of the Tax Commission immediately ordering the Department to take over the local government upon receiving such a request, this language introduces more process by allowing a hearing or hearings to take place first before going straight to severe financial emergency. The language requiring immediate takeover is omitted. The idea is to provide a hearing to let all parties associated with the litigation provide information and evidence to the CLGF to determine if severe financial emergency is the best solution.

The balance of section 7 on pages 9 and 10 of the bill clarifies procedures and due process necessary prior to declaring severe financial emergency. The CLGF

determines whether a recommendation should be made to the Tax Commission and provides notice of its findings. The process begins by requiring the local government to submit an action plan. That is in section 7, subsection 5. The CLGF reviews the plan, provides its feedback and could decide to just monitor the situation and conduct additional hearings to review the financial operations of the local government. If CLGF ultimately recommends severe financial emergency, it then notifies the Tax Commission. Once the Tax Commission receives the notice and recommendations from CLGF, it will hold a hearing at which CLGF will recommend a course of action to mitigate the financial conditions causing the severe financial emergency.

Section 7, subsection 9 introduces the notion that local governments contiguous to a city being considered for severe financial emergency should also be notified and given an opportunity to be heard because they might be asked to provide some services during the emergency or thereafter.

Section 8, starting at page 11 of the bill, amends NRS 354.695, which lists the powers and responsibilities of the Department after severe financial emergency is declared and the Department is ordered to take over management of the local government.

Section 9 starting on page 13 of the bill amends NRS 354.705, which deals with the total revenue and expenditures needed to perform the basic functions of the local government and the process for declaring severe financial emergency.

Some of the requested language in sections 8 and 9 of the bill comes as a result of Department experiences during previous financial emergencies—especially in White Pine County when severe financial emergency was declared in 2005. The Department was in White Pine County from 2005 until 2009 when the County was released from severe financial emergency.

In June 2005, White Pine County officials told the CLGF and the Department that severe financial emergency was eminent and would include stopping payment on all liabilities except payroll. The general fund at that time had a negative ending fund balance. The accounting system was in shambles and the required accounting reports had not been filed. The Department found that the County met half a dozen of the triggers in the list of conditions.

After going through the hearing process, the Tax Commission ordered the Department to take over. The Department immediately ordered a limited scope audit and imposed a number of financial control procedures. For the long term, when things are that serious, only two things improve the conditions of the local government, expense mitigation and revenue enhancement. The Department had to rightsize the County's budget in order to balance revenues and expenses.

Section 8, page 11, addresses the powers and duties of the Department. Many of the powers and duties deal with expense mitigation. Section 8, subsection 1, paragraph (g) permits the Department to negotiate and approve all future collective bargaining agreements and other employee contracts, except for those issues that go to arbitration. In addition, if the severe financial emergency exists, the Department can open and renegotiate in good faith any existing collective bargaining agreements or other employment contracts. The language in section 8, subsection 1, paragraphs (g) and (h) is the result of working with employee unions and other interested parties to obtain consensus language.

In White Pine County where payroll expenses represent 85 percent of the total expenditures, expense mitigation was difficult because the Department can only negotiate and approve future collective bargaining contracts. The Department had to wait more than a year until the contracts expired before it could renegotiate contracts with the unions instead of immediately working with them for short- and long-term solutions.

The language in section 8, subsection 1, paragraph (h) gives the Department the authority to reopen, if necessary, those contracts for additional, new or supplementary negotiations during the period of severe financial emergency so it can work on solutions immediately.

Section 8, subsection 1, paragraph (k) provides the Department can meet with creditors of the local government to formulate a debt liquidation plan. The language specifies a debt liquidation program could include the extension of bond payments and reduction in interest rates by exchanging existing bonds for new bonds. This language is a compromise as a result of working with interested debt holders and bond insurers. Section 8, subsection 5 clarifies that if a financial manager is appointed, that person is responsible to the Department rather than the local government.

One of the first things done in White Pine County was to prepare a plan for expense mitigation and revenue enhancement.

Section 9, subsection 1 requires the Department to prepare a plan of expense mitigation and revenue enhancement that is reviewed by CLGF. The plan has to include the expenditures necessary to perform basic functions, with priority given to public safety and the maintenance of roads and highways. That is why the definition of "basic function" is in section 2, subsection 1.

In its White Pine County experience, the Department had to prioritize what was most important to keep county functions going. The definition of "basic function" will help local governments and the Department understand what functions are necessary to support.

Section 9, subsection 2 states that if expense mitigation is not enough and additional revenue is needed, the plan must be adopted by the Tax Commission. If the Tax Commission revises the plan, the revisions must be approved by the panel members from CLGF.

In the Department's White Pine County experience, the County needed improved cash flow immediately, and raising property taxes would have taken a long time to implement because they are levied annually. This emergency took place in 2005. Even if the Department had requested an increase in property taxes, they could not be collected until the next time the County Commissioners levied the tax and the Tax Commission approved the levy, which would have been a year away.

To fix that problem, section 9, subsection 5 permits the levy of additional property tax at the next quarterly payment due date even if the taxes previously imposed have been partially or fully paid. That helps address cash flow problems in a timely manner.

Ultimately, the Department did not raise property taxes in White Pine County as allowed in NRS 354.705. The provision in section 9, subsection 2, paragraph (a) of the bill allows the tax rate to increase to a maximum of $4.50 during severe financial emergency.

At the time, a tax rate increase was subject to abatement so most of the revenue generated by the increase would be abated. The Department sought

other solutions. This problem is corrected in section 15 on page 22 of the bill that does not permit a property tax rate increase for severe financial emergency to be subject to abatement.

Section 11, page 16 provides a 2-year period rather than a 1-year period to repay any amounts loaned from the Severe Financial Emergency Fund.

In the White Pine County experience, the loan from the Severe Financial Emergency Fund was helpful for immediate cash flow purposes, but the 1-year time period meant that the Department had to be strict about putting aside monies immediately for repayment. It takes time to put all the elements of expense mitigation and revenue enhancement into place. A 2-year time period helps in repaying the loan.

Senator Parks:
I am impressed with this bill and your fantastic presentation. This is a great bill.

Chair Goicoechea:
In section 9 you mentioned "with priority given to public safety." To me, public safety is police protection, health and welfare. White Pine County does not have a municipal water company or sewer system. That is held by the City of Ely. If it had been in the reverse, infrastructure has to have a place there too. Why are health and welfare, public safety and maintenance of roads and highways not included in the bill?

Ms. Rubald:
That certainly would be appropriate. Some entities are not involved in public safety at all in that context other than a specialized general improvement district. The context of that was about counties, but certainly, health and welfare is also important.

Chair Goicoechea:
Some county jurisdictions are in charge of their waterworks and sewer systems. Experience teaches us what must be done.

Josh Hicks (National Public Finance Guarantee Corporation):
National Public Finance Guarantee Corporation supports A.B. 54 and has submitted written testimony from Barbara Flickinger for the record (Exhibit D).

We worked on this bill when it first came out to address many of our concerns. National Public Finance Guarantee Corporation is a bond insurance company. It provides bond insurance in 20 different Nevada municipalities, cities, counties, school districts, water districts and the State. That bond insurance, like any other insurance, makes a bond less risky and allows bonds to be issued with better rates.

This bill provides substantial tools for the Department of Taxation to deal with local government financial situations. It expands the Department's powers in a good, reasonable way and requires consensus with creditors to deal with problems and come together at the table to work them out.

This bill is a better way to deal with financial emergencies and distress than municipal bankruptcy. It has no effect on interest rates or borrowing. Studies have shown that a municipal bankruptcy on the books can cause interest rates to go up 7 basis points because bankruptcy is a way to avoid debts rather than managing them or dealing with creditors.

Senator Hardy:
The letter from Barbara Flickinger, Exhibit D, says, "It is clear to us that AB 54, in contrast to SB 475, offers clear benefits ... ." You do not like Senate Bill (S.B.) 475, but you do like A.B. 54.

SENATE BILL 475: Authorizes a county or city to file a petition in bankruptcy under certain circumstances. (BDR 31-1021)

Mr. Hicks:
Yes, that is correct. We like A.B. 54 but not S.B. 475.

Ron Dreher (Peace Officers Research Association of Nevada; Washoe County Public Attorneys' Association; Washoe School Principals' Association):
We support A.B. 54. We like the bill as it is and would like your support.

Ernie Adler (Pyramid Lake Paiute Tribe):
We have concerns with this bill in section 14, subsection 2, page 22 because it provides for the liquidation of a judgment. If an entity has a federal court judgment against it, the Tax Commission is not in a position to liquidate that judgment. That must be done by the federal courts. A federal court judge would have an interesting response upon learning that the Nevada

Tax Commission was modifying his or her judgment. That would cause pushback.

If you retain this section, maybe something like mediation or getting the parties together to reduce the judgment would be better. No one wants to see a governmental entity go out of business, especially the creditors.

Chair Goicoechea:
The bill says " ... formulate a program for the liquidation of the debt owed by the local government ... ." You are expanding that by saying this might be a federal debt or adjudicated by a federal court.

Mr. Adler:
My concern is that a commission is modifying a federal court judgment.

Chair Goicoechea:
That would only be the case if there were a federal court judgment.

Heidi Chlarson (Counsel):
I agree with the Chair's assessment of this section. It does not specifically mention federal court judgments. If that violates federal law, this does not give the Department of Taxation authority to do that. I defer to the Department on the intent of this section. This would not be interpreted to authorize the Department of Taxation to violate federal law in any way.

Chair Goicoechea:
If it were a case filed in federal bankruptcy court, that is where it is.

Bob Maddox:
I am here on behalf of 1,200 citizens of the City of Fernley who are victims of the flood on January 5, 2008. I have a proposed amendment (Exhibit E) that I have reviewed with Ms. Rubald. It is my understanding that she and the Department of Taxation are not opposed to the amendment.

Our proposed amendment, Exhibit E, deals with section 7, subsection 3 of the bill that says a governing body of the local government entity can make a decision at a hearing to declare an extreme financial emergency because of threatened litigation. This proposed amendment requests that plaintiffs who

have a claim or judgment against a local government entity be given notice that the local government is seeking a stay of enforcement of a judgment.

Our amendment changes NRS 354.685. In section 7, subsection 3, we made changes to subsection 3—which we identify as paragraph (a)—and added paragraphs (b) and (c), Exhibit E. The language in the amended subsection 3, paragraph (b) says that before the governing body of the local government entity declares an extreme financial emergency because of litigation, it must give the claimant in the litigation 21 days' notice to allow the claimant an opportunity to discuss that with the government entity.

Under subsection 3, paragraph (c), if the government entity has already taken that step and the CLGF or Tax Commission is going to have a hearing, the plaintiffs or claimants must be given as much notice as possible. If the Commission or CLGF gives short notice to the local government, the local government must notify the plaintiffs or claimants within 24 hours of its receipt of the notice of the hearing.

It is a matter of fairness that if a local government is going to get out from under a claim or a judgment by using this process, the claimants have notice so they can participate in the discussions from that point forward.

Senator Hardy:
Is the CLGF conducting this hearing? Is it an open meeting with agendas so someone knows what is going to happen?

Mr. Maddox:
Yes. The first step is that the CLGF will conduct a hearing after the local government has made the determination that it wishes to seek protection because of an extreme financial emergency. These entities have to comply with the Open Meeting Law, and one could say we get notice that way. We have to know about it and keep track of it. If the government entity is using this process, it is only fair that we are notified.

Senator Hardy:
Obviously, it owes you money in some way so someone keeps watch on the Internet for agendas.

Mr. Maddox:
Yes. We could monitor all the agendas, but all we ask is that the local government entity tells us if this is what it proposes to do. That gives 21 days' notice before the local government entity decides to conduct a meeting in order to determine that it has an extreme financial emergency because of litigation. If it complies with the Open Meeting Law, an agenda has to be posted, but we would have to keep track of everything. It cannot be difficult to send us the agenda because we are the claimants and have either a claim or judgment against the local government.

Senator Hardy:
Sometimes it could be construed as a violation of the Open Meeting Law to say what you are going to do before you say what you are going to do.

Mr. Maddox:
If the agenda has a resolution for consideration to determine that the local government entity has an extreme financial emergency, we ask that we be told.

Senator Hardy:
Similarly, I am on a list for some people's electronic versions of their agendas because I indicated I would like to know.

Mr. Maddox:
Yes.

Senator Hardy:
That is not soon enough for what you want.

Mr. Maddox:
We are asking that they send it to us to let us know what is happening.

Senator Lipparelli:
Is there something magical about 21 days?

Mr. Maddox:
No, there is nothing magical about 21 days. It is an arbitrary number we put in the amendment to give us time.

Senator Lipparelli:
I want to square severe financial emergency with a 21-day notice and why a regular public notice is not sufficient.

Mr. Maddox:
We will take what we can get.

Senator Lipparelli:
I was not negotiating. I want to understand why you picked 21 days.

Mr. Maddox:
It would give us time to prepare. There might be something we need to demonstrate to the local government entity to show it is not in a severe financial emergency. That takes some effort. That is why we put in 21 days.

Senator Hardy:
Therefore, the creditor can be generous in working with the debtor by renegotiating the deal so you do not have an axe hanging over your head.

Mr. Maddox:
Yes, that is correct. Many things might take place once we get notice of this. Perhaps, we can salvage both the local government entity's status and our claim by negotiation.

Senator Hardy:
Is there any advantage to the local government to hide the ball so that the entities to whom it owes money cannot sue? If the local government is sued before it has given notice or before it declares an emergency, it is in worse condition after that than it was before.

Mr. Maddox:
I am sure you know people play many games. We do not want to see that happen. If we get notice and can keep an eye on it, then we can avoid the gamesmanship that affects us negatively.

Senator Parks:
I understand plaintiff or claimant in litigation. Will an entity know of oncoming or proposed litigation?

Mr. Adler:
It will know because an attorney has sent it a letter claiming compensation for something. Many times that is on file with the public entity.

Chair Goicoechea:
My concern is "notify us." Who is us? There is no way of really knowing the potential litigants. In that case, if the local government fails to notify a litigant in this 21-day period, it is in trouble.

As I look at the bill, the local body will have posted an agenda because it has to make that determination first. Then it makes the request to the CLGF that posts an agenda and delves into the possibility of a threat of litigation causing severe financial emergency.

You are better off going this way than being noticed 21 days prior. That is the real exposure. Who is us, every creditor? Is it a problem if one is missed?

Mr. Adler:
I do some bankruptcy cases.

Chair Goicoechea:
We are not dealing with bankruptcy.

Mr. Adler:
In bankruptcy, notices are sent to all creditors.

Chair Goicoechea:
Once you are on the list as a creditor, you get notice of all proceedings. We are only talking about determining litigation or a threat of litigation. It is not a bankruptcy case.

I am concerned about this language that says written notice must be provided at least 21 days in advance. Even in a bankruptcy case, that is not guaranteed. This is stringent for where you are headed.

Mr. Maddox:
The 21 days is something we picked. The real question is does the local government entity have to give notice to all 1,200 flood victims? The answer is no, because they are all represented by one group of attorneys.

The notice is given to the attorneys on behalf of the claimants. It is the same with threatened litigation. Ninety-nine percent of the time, threatened litigation is through an attorney acting on behalf of the claimant. This notice is not such a big problem.

Chair Goicoechea:
I agree in a litigation case, but you are talking about proposed litigation. In your case, you are suing everybody. So who gets notices and who does not? It gets sticky. I like the original language. You are noticed through the public process. I understand what you mean, but it might be too much to ask the CLGF to reachout and plug all of these holes.

Mr. Maddox:
The CLGF does not do the noticing in this proposed amendment, Exhibit E. The burden is on the local government entity seeking the protection.

Ms. Rubald:
Mr. Adler had a question on page 22 about the process for liquidation of the debt. Page 12, line 12 of the bill provides for the meeting with debt holders and creditors to negotiate in good faith and formulate a debt liquidation program. That language mirrors the language wherein we treat all debt holders the same as those that have a judgment against the local entity.

We do not have any issues with Mr. Maddox's proposed amendment, Exhibit E. We do not have issues with paragraphs (a) and (b) if it is desired to have the local government provide notice for its own meetings while it is deciding to go to severe financial emergency.

There are two ways to get into severe financial emergency; one is if the Department finds one or more of those conditions, and the other is if the local government asks for it. Our original intent was to introduce a hearing process to determine if it is appropriate to go into severe financial emergency.

With the proposed amendment, Exhibit E, a further burden placed on the local government to give notice is fine with us. I am glad to hear that under paragraph (c), the burden to notice thousands of litigants who may or may not be represented will not fall on the CLGF. I am not sure how the CLGF will know who those people are.

The proposed amendment requires the local government to give notice once it knows when the CLGF hearing will be held. If paragraphs (a) and (b) of section 7, subsection 3, Exhibit E, are adopted, the litigants will know that the local government is moving forward. Would it not be up to them to get on the interested parties list of the CLGF to know when the hearing will occur? There is a complete process and a centralized place for all of these kinds of meetings in addition to the Department's Website and the specialized interested parties list. There is plenty of opportunity to get the word out on that.

I appreciate your support of the bill.

Chair Goicoechea:
The proposed amendment, Exhibit E, puts additional exposure on the local government to notice the litigants. Do you agree?

Ms. Rubald:
Yes, it does.

Chair Goicoechea:
Local governments could miss someone, and they might not want to include some because it may go badly. I am concerned about putting in another requirement. If the local government fails to notice, that is another burden.

I will close the hearing on A.B. 54 and move into the work session with Senate Bill 475.

Jennifer Ruedy (Policy Analyst):
I will explain S.B. 475 from the work session document (Exhibit F).

Chair Goicoechea:
It is appropriate to have the bankruptcy bill, S.B. 475, come behind A.B. 54, the severe financial emergency bill. I am not sure if the language in S.B. 475 fits together with the language in A.B. 54. I prefer that section 1, subsection 1, paragraph (a) of A.B. 475 gives the CLGF many opportunities to determine if declaring a severe financial emergency is not going to work. After a hearing conducted pursuant to this section finds that the financial emergency is unlikely to cease in 3 years, this bill refers to the Nevada Tax Commission, whereas A.B. 54 refers to the Committee on Local Government Finance. One hearing is

not enough time to determine if a financial emergency exists. Because this is a waivered bill, we do not have to vote it out today.

Senator Hardy:
I am reading Proposed Amendment 7141 to S.B. 475, Exhibit F, which says, " ... a county or city may file a petition ... ." One of Ms. Rubald's points was that this is one way to do it. "May" gets it there, but A.B. 54 is cleaner in its approach. I do not have strong feelings about processing S.B. 475 now.

Chair Goicoechea:
This is a waived bill. I am concerned about acting on S.B. 475 until we see if A.B. 54 passes. I am going to pull S.B. 475 from the work session.

The next bill in the work session is A.B. 162.

ASSEMBLY BILL 162 (1st Reprint): Revises provisions governing the use of portable event recording devices by law enforcement. (BDR 23-443)

Ms. Ruedy:
The summary of A.B. 162 is contained in the work session document (Exhibit G).

This is the permissive version of S.B. 111.

SENATE BILL 111 (1st Reprint): Provides for the use of portable event recording devices by peace officers. (BDR 23-618)

Chair Goicoechea:
Assembly Bill 162 has no proposed amendments. It is enabling language only.

SENATOR HARDY MOVED TO DO PASS A.B. 162.

SENATOR ATKINSON SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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Chair Goicoechea:
The next bill in the work session is A.B. 163.

ASSEMBLY BILL 163 (1st Reprint): Provides for the creation of rangeland fire protection associations. (BDR 42-43)

Ms. Ruedy:
The summary of A.B. 163 is contained in the work session document (Exhibit H).

Proposed Amendment 7207, Exhibit H on page 8, states, "The provisions of this act do not require a person to be a member of a rangeland fire protection association in order to protect his or her property from a rangeland fire." At the request of the State Department of Conservation and Natural Resources, the effective date of the bill is amended to "Upon passage and approval for the purposes of adopting regulations ... ." If an emergency regulation has not been adopted prior to that, the effective date is January 1, 2016; otherwise, it would be the effective date of the emergency regulation.

Chair Goicoechea:
This bill is a good start. Someone will do more work on it next Session.

SENATOR HARDY MOVED TO AMEND AND DO PASS AS AMENDED A.B. 163 WITH PROPOSED AMENDMENT 7207.

SENATOR LIPPARELLI SECONDED THE MOTION.

Senator Hardy:
Because of the drought, what happens this summer? Are we looking at regulations that take a long time? What happens before regulations are adopted?

Ms. Chlarson:
The new language in section 10, page 8 of Proposed Amendment 7207, Exhibit H, is intended to cover all the bases. Depending on when the act is enrolled, there could be an option for a temporary regulation. There could also be another option. If Governor Brian Sandoval approves an emergency regulation, the agency could go through the standard permanent regulation process. If any of the regulations—emergency, temporary or permanent—are

adopted, the bill would become effective on that date. If no regulations are adopted, then it would become effective on January 1, 2016. Kay Scherer, Deputy Director, State Department of Conservation and Natural Resources, indicated that the Department is using one of the ways of adopting regulations to get this effective as soon as possible.

Senator Hardy:
The bottom line is that the Governor can adopt temporary regulations now, knowing that there is a drought, the grass is growing with recent rains and a wildfire is in the making.

Ms. Chlarson:
Regulations can be adopted as soon as the legislation takes effect. If it is signed by the Governor or enrolled without his signature, then yes, depending on the day, emergency regulations could take effect. The agency could also submit a temporary regulation depending on the date.

Senator Hardy:
Do I have to wait for it to burn, or can I do it before it starts burning?

Ms. Chlarson:
The agency can start working on that process now.

Senator Hardy:
That means the agency can actually start the process now to do an emergency regulation so when it burns, we already have cooperation.

Ms. Chlarson:
Yes.

Chair Goicoechea:
The State Forester Firewarden and Humboldt County hope to be online by July 1, which will be a little late, but they can get those inspections and training done with or without regulations.

THE MOTION CARRIED UNANIMOUSLY.

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Chair Goicoechea:
Assembly Bill 170 is the next bill in the work session.

ASSEMBLY BILL 170 (1st Reprint): Revises provisions governing general obligations. (BDR 30-917)

Ms. Ruedy:
The summary of A.B. 170 is in the work session document (Exhibit I).

Committee staff was advised that the Legal Division, bond counsel and sponsors Assemblywoman Jill Dickman and Assemblyman Jim Wheeler agreed to the language on page 2 of Proposed Amendment 7224, Exhibit I, which says " ... to ...," then "reject" is stricken, " ... hold an election on ... ."

SENATOR PARKS MOVED TO AMEND AND DO PASS AS AMENDED A.B. 170 WITH PROPOSED AMENDMENT 7224.

SENATOR HARDY SECONDED THE MOTION.

Senator Atkinson:
What does "hold an election on" mean and by whom?

Ms. Chlarson:
The provisions starting on page 2, line 14 of Proposed Amendment 7224, Exhibit I, provide that, under certain circumstances, the governing body of a municipality can issue bonds without approval from the voters if the governing body votes by two-thirds to approve that. A process in statute stops the bond issuance if a filed petition is signed by not less than 5 percent of the registered voters of the municipality. The petition stops the governing body from issuing the bonds without an election. The changes clarify that if such a petition is filed, the governing body is required to hold an election to obtain voter approval to issue the bonds. If the petition is signed by a certain number of voters, then that will require the question to be placed on the ballot.

Senator Atkinson:
On page 2, lines 34 and 35, Exhibit I, where "hold and election on" replaces "reject," if this occurs as written, it has to go to the voters before enactment.

Ms. Chlarson:
That is how it works anyway. Since we were adding new language, we want to make it clear that the petition triggers an election to approve the issuance of bonds. That was always the intent of this bill. Bond counsel, the Legal Division and bill sponsors so no unintended consequences occur based on the new language of the bill that amends statute.

Senator Atkinson:
That is why I am confused. If it is existing, why was it not in the initial bill? That looks like a major change to me. If it existed, how is it being added?

Ms. Chlarson:
The statute does not say specifically that a petition caused an election. However, that is how the process has always worked. Because of the new language in Proposed Amendment 7224, Exhibit I, to the current version of the bill, it is important to make it clear going forward that those language changes are not a new interpretation. The language in Proposed Amendment 7224 does not change the intent. It makes some clarifying changes to avoid unintended consequences going forward.

Senator Hardy:
In today's world of electronic notices, when the bill talks of notices in the newspaper once each week for three consecutive weeks and how big the notice must be, are we recognizing that only a small percentage of people get newspapers. Can we include Websites or emails or is it understood?

Ms. Chlarson:
It is talking about notice of a public hearing. Notice of a public hearing still has to meet the agenda posting requirements of the Open Meeting Law. Most public bodies post online and provide notice via electronic email to anyone who has signed up for those. An additional notice must be published several times in the newspaper 10 days before the hearing. It does not replace the normal notice under the Open Meeting Law.

Senator Parks:
This is in the legal notice section of the newspaper. Normally, if someone wants a display ad, different wording is used for the more prominent style of publication. I read this to be a standard column-wide legal notice.

THE MOTION CARRIED UNANIMOUSLY.

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Chair Goicoechea:
The next bill in the work session is A.B. 172.

ASSEMBLY BILL 172 (1st Reprint): Revises provisions relating to public works. (BDR 28-565)

Ms. Ruedy:
I will read the summary of A.B. 172 from the work session document (Exhibit J).

Chair Goicoechea:
Since the hearing, we have a request to amend this bill to make it compatible with S.B. 108 on the $500,000 threshold.

SENATE BILL 108 (1st Reprint): Revises provisions relating to public works projects. (BDR 28-598)

SENATOR HARDY MOVED TO AMEND AND DO PASS AS AMENDED A.B. 172 WITH THE INCREASE IN THE THRESHOLD FROM $100,000 TO $500,000.

SENATOR LIPPARELLI SECONDED THE MOTION.

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Senator Atkinson:
Is the threshold going from $100,000 to $500,000?

Chair Goicoechea:
The bill is set at a $350,000 threshold. It is going from $350,000 to $500,000.

Senator Atkinson:
Why are we doing that? Who made the request?

Chair Goicoechea:
The request was made to match S.B. 108. The bill's sponsor is fine with that.

Senator Atkinson:
Did the bill's sponsor make the request?

Chair Goicoechea:
Yes, I have it here. It would take it from the $100,000 to a $500,000 threshold, including the inflation factor and the 5 percent to 7.5 percent bidder preference for a contractor.

THE MOTION CARRIED. (SENATORS ATKINSON AND PARKS VOTED NO.)

* * * * *

Chair Goicoechea:
The next bill in the work session is A.B. 363.

ASSEMBLY BILL 363 (1st Reprint): Provides an optional benefit to the surviving spouse or survivor beneficiary of certain deceased members of the Public Employees' Retirement System. (BDR 23-1056)

Ms. Ruedy:
I will read the summary of A.B 363 from the work session document (Exhibit K).

This was a provision in the more comprehensive Public Employees' Retirement System (PERS) reform bill, S.B. 406, that was heard previously in this Committee. The effective date of S.B. 406 is July 1.

SENATE BILL 406 (1st Reprint): Revises provisions relating to public retirement systems. (BDR 23-1049)

Ms. Chlarson:
That was the concern with Assemblyman Glenn E. Trowbridge's bill that the Committee moved on Monday. We made the effective dates consistent so no additional class of retirees would be created. The provisions of A.B. 363 apply to existing as well as future members; in that sense, it does not create a new class.

It is a prerogative of the Committee to change the effective date to July 1. By making it effective upon passage and approval, if a tragic circumstance occurs

before July 1 but after the effective date, it would capture any member killed in the line of duty in that time.

Chair Goicoechea:
It makes sense to change the effective date to July 1. We will be out of here or S.B. 406 will be dead by then.

Senator Atkinson:
I agree with making the dates consistent. The PERS staff members would like that for their records and how they do what they do. I could support that.

> SENATOR ATKINSON MOVED TO AMEND AND DO PASS AS AMENDED A.B. 363 WITH PROPOSED AMENDMENT 7208 AND TO CHANGE THE EFFECTIVE DATE.
>
> SENATOR PARKS SECONDED THE MOTION.
>
> THE MOTION CARRIED UNANIMOUSLY.

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Chair Goicoechea:
The next bill in the work session is A.B. 364.

ASSEMBLY BILL 364 (1st Reprint): Revises provisions relating to the state business portal. (BDR 7-696)

Ms. Ruedy:
I will read the summary of A.B. 364 from the work session document (Exhibit L).

Pages 8 and 9 of Proposed Amendment 7111, Exhibit L, clarify—NRS 244 in counties and NRS 255 in cities—that a license, permit or certificate to practice a profession or occupation as provided in this bill does not include a general business license issued by a board of county commissioners or a city council.

Page 15 of Proposed Amendment 7111, Exhibit L, retains several statutes proposed for repeal.

Proposed Amendment 7111, Exhibit L, does not consider changing the effective date to July 1 to be consistent with S.B. 59 that makes similar revisions to the business portal. Senate Bill 59 was sponsored by the Secretary of State to make some of the same changes as A.B. 364.

Senate Bill 59 is pending in the Assembly. It was amended and passed out by the Assembly Committee on Judiciary on May 8.

SENATE BILL 59 (1st Reprint): Revises provisions relating to the state business portal. (BDR 7-448)

Assemblyman Tyrone Thompson (Assembly District No. 17):
We are agreeable to the amendments and to make July 1 the effective date of this bill to be consistent with S.B. 59.

SENATOR ATKINSON MOVED TO AMEND AND DO PASS AS AMENDED A.B. 364 WITH PROPOSED AMENDMENT 7111 AND TO CHANGE THE EFFECTIVE DATE TO JULY 1.

SENATOR PARKS SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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Chair Goicoechea:
The next bill in the work session is A.B. 106.

ASSEMBLY BILL 106 (1st Reprint): Revises provisions related to public works. (BDR 28-244)

Ms. Ruedy:
I will read the summary of A.B. 106 from the work session document (Exhibit M).

Chair Goicoechea:
This is the only proposed amendment on this bill, Exhibit M. Design professionals say there is no way to insure against this type of liability. It becomes an issue at that point because only the big players can play if they

have this liability. The smaller design professionals cannot get insurance for it and therefore have a problem bidding these projects. We wanted to find some middle-ground language, but we are not seeing any.

Senator Hardy:
I have had the same conundrum figuring this out. I went back to the medical liability model with some kind of cap. At what point does a small design professional become liable, partly liable, partly coverable or partly available to participate in the defense of an alleged negligence lawsuit of any kind. I asked if anyone knows anything about someone who has done something like that; so far, I have come up with nothing. It appears that the medical liability model might work in this situation.

Chair Goicoechea:
Mr. Hillerby, would a cap amount work on a contract over a certain amount where the exposure is greater?

Michael Hillerby (American Institute of Architects):
It is an interesting notion. I do not know that I can answer. Our firms vary in size. Unlike contractors whose licenses dictate the size of the project, this is about the design professional's experience and if the professional can meet the requirements of the public agency awarding the contract. It does not mean that small firms do not do large projects with greater exposure. As we heard in prior testimony, the suits in California that uncouple the indemnification from the duty to defend resulted in large numbers.

I do not know how to do that in a way that provides comfort for the government entities and the design professionals. There is not necessarily an easy correlation between the size of the projects and the size of the firms. They could be at risk for much money.

Senator Hardy:
If we put a cap on what an A.B. 106 design professional is responsible for monetarily, instead of being responsible for $500,000, he or she would be responsible for $100,000, or insurance that would cover the ultimate risk of $250,000. An insurance policy could be written for that to allow the design professional to find coverage under a product I do not even know exists. Has anyone ever done anything along the lines of medical liability?

Mr. Hillerby:
Senator Hardy, you are asking good questions that I am not sure I can answer. We know from many years of working with insurance brokers and defense counsel that no insurance provides this coverage.

The American Institute of Architects (AIA) has said that these provisions do not exist in the private contracts they sign. If a cap is put into contracts, the firm must self-insure for that number. Regardless of the firm's size, if the cap were $100,000 or $200,000, it would be self-insuring. In some ways, professionals are doing that now because they do not have insurance coverage.

In most cases, defense counsel can work with the public body. The design professional is made aware of the claim and files with his or her insurance company that helps with the defense. We are able to keep the duty-to-defend provision from being enacted, leaving the design professional without insurance. It is our understanding from defense counsel that counsel has been successful in keeping that from happening. To some extent, there is always that risk, and now we know how real it is because of the court cases in California.

You are asking design professionals to self-insure, and I have no way of knowing how the insurance market would respond to the idea of putting a cap on that. Would insurers be able to create a new product? Would you be forced to go to the bond or surety markets and negotiate with them if there is some way to do that? What is the cost?

I apologize that I do not have answers. Those are some questions in response to your questions that need answers. In the time remaining, I do not know how we get those answers.

Chair Goicoechea:
I need clarification on the record. I understand that a design professional works for a percentage of the project.

Mr. Hillerby:
I can only speak for the architects. That is typical. The range is set on public works projects. They know the range as a percentage of the total cost.

Chair Goicoechea:
In the event that something goes wrong, does the public entity and/or the contractor sue the design professional?

Mr. Hillerby:
Deputy District Attorney Lee Thomson from Clark County testified that because of the nature of the contracts, any lawsuit on a public works project would be between the general contractor and the owner. The owner alerts the design professional of the claim. The design professional files a claim with his or her own insurance that would begin to pay for the design professional's defense. Obviously, the deductible and other costs are paid by the design professional. If that were typical with public works projects, it would not involve a direct lawsuit between the contractor and the design professional.

In speaking with defense counsel representing design professionals, that is often the case with cost overruns. Through change orders, the contractor makes up for the costs that did not get into the bid process because of competitive bidding. Then that becomes a dispute between the owner, the general contractor and, because of the change orders, the design professional. At some point, there may be a situation where a number of parties are involved and cross-claims are made.

Chair Goicoechea:
As a former county commissioner, I understand how it works. The public entity can sue the design professional.

Mr. Hillerby:
Absolutely. It certainly is not in our interests as clients of local governments. For design professionals who are members of the AIA, that is not the kind of relationship to have with important customers, but that is an option. If making the design professionals aware of the claim and bringing their own insurance in to help with their defense does not work that out, the local government has the option to make claims directly against the design professionals—especially when they are not being responsive or participating in solving the issue.

Chair Goicoechea:
I am struggling with that because the contract can require design professionals to insure for something for which they cannot purchase insurance.

Mr. Hillerby:
We have heard repeatedly from defense counsel and insurance brokers that insurance is not available. Insurance carriers do not provide duty-to-defend coverage for the professional liability piece. The AIA members do not see these provisions in private contracts. It is not a risk they face. It is in the public contracts in Nevada. That is not necessarily the case everywhere, but that is what the AIA members have told us. That was testimony from the insurance broker who has represented a number of design professionals around the State. They cannot find that product.

Chair Goicoechea:
I needed to get that on the record.

Senator Hardy:
Is the insurance available for private projects but not for public projects?

Mr. Hillerby:
No, private projects do not include the duty-to-defend provision requiring professional liability in the contracts. It is not about the availability of insurance. It is not a contractual provision faced in the private sector.

Senator Hardy:
Does anything about sovereign immunity keep the public entity safer than a private person?

Mr. Hillerby:
I do not know the answer to that.

Senator Parks:
Passage of this bill would not let design professionals off the hook. They would still have liability.

Mr. Hillerby:
It would depend on the nature of the claim. Any time a claim is made, the design professional, in our members' insurance contracts, are required to alert the insurer that a claim has been made so the insurer can start the process of preparing a defense. Then, through either a settlement or a court decision, the liability is assessed. It does not change the liability, it changes question of when expenses begin to be paid up front.

The unfortunate part about being in business, whether as a government or as a design professional, is claims will be made and expenses are involved in defending them even if found innocent. There is no answer to solve that.

Chair Goicoechea:
This bill prohibits the public body from requiring the duty-to-defend provision in the contract. I agree with that. However, it puts an additional burden on the public body regarding the expenses incurred in suing the contractor and the design professional. Negligence or intentional misconduct still has that exposure. The public body has to sue for it. Without the bill, the duty-to-defend provision is written into the contract automatically.

Mr. Hillerby:
You have hit the crux of the issue for design professionals and local government—those cases where the duty-to-defend provision kicks in at the beginning, expenses are incurred, but ultimately, no liability is found on the part of the design professional. The local government has paid defense costs but cannot recoup them because the design professional is not liable.

That is not an ideal situation for them. The design professionals spend money defending themselves, filing claims, dealing with the deductible and other costs involved, plus changes to their rates.

Both sides incur costs. That is not an ideal situation for either party. Each party covers its own costs of defense until a settlement or a finding of fact is made.

Chair Goicoechea:
At that point, could a judge adjudicate those damages?

Mr. Hillerby:
Yes. A settlement, a jury or a judge can award attorney's costs and fees to the local government.

Senator Hardy:
We are here because of the $500,000 award in California where the design professional was not at fault.

Mr. Hillerby:
That is correct. We spoke about two cases in California.

SENATOR LIPPARELLI MOVED TO DO PASS A.B. 106.

SENATOR HARDY SECONDED THE MOTION.

Senator Atkinson:
Are we accepting A.B. 106 without the amendment?

Chair Goicoechea:
The bill's sponsor is treating this as an unfriendly amendment.

THE MOTION CARRIED UNANIMOUSLY.

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Chair Goicoechea:
We will move on to A.B. 159, the last bill in the work session.

ASSEMBLY BILL 159: Makes various changes to provisions governing public works. (BDR 28-936)

Ms. Ruedy:
The summary of A.B. 159 is contained in the work session document (Exhibit N).

Chair Goicoechea:
I am not going to rehear this bill, but there are some issues and we do not have an amendment.

I want to make sure we understand the bill's sponsor's request to not require a project labor agreement (PLA) when a job is bid. The opponents of the bill say that a PLA agreement is beneficial on some jobs to avoid a work stoppage or controversy.

Does anything in this bill prohibit the public agency from asking the apparent low bidder—the contractor has not yet been awarded the job—for a PLA on a particular project because it cannot afford a work stoppage? Can that be done?

Warren Hardy (Associated Builders and Contractors of Nevada):
The scenario you spoke of is permitted by A.B. 159. The bill says that as a condition of bidding a project, the contract cannot mandate a PLA.

Other jurisdictions with similar legislation use PLAs regularly when a very specialized contractor believes a PLA is necessary to prevent a work stoppage. Those are placed in their bids voluntarily. They submit to the public body that this is something they want to use in the project. It is accepted as part of their bid. This bill does not prohibit that.

Nothing in this bill prohibits the governing body from coming forward after the bid is awarded and negotiating a PLA wherein the contractor has a role.

The members of the Associated Builders and Contractors of Nevada do not have problems with PLAs. The law that mandates PLAs is the issue because contractors cannot use their own workers. It is not our intent to stop them.

In section 3, subsection 4, we have provided an exemption for health and safety issues. We are looking at specific situations such as the Southern Nevada Water Authority (SNWA) Intake No. 3 where a labor shortage is problematic. Those are specialized, narrow projects when that is considered. The SNWA can make that finding and continue forward to mandate a PLA. This bill is not intended to stop PLAs agreed upon by the owner and the contractor who is the apparent winner of—or awarded—the project.

Senator Hardy:
Under the Chair's scenario, after the contract has been awarded and the contractor is accepted, then the entity determines it wants a PLA on the project. Is that going to change the cost of the project?

Mr. Hardy:
It might change the cost. Proponents of PLAs tell us they do not increase costs. A change order could be done if they want to do that.

Senator Hardy:
It would require a renegotiation, a change order or some other agreement that may or may not increase the cost.

Mr. Hardy:
Potentially. I suppose that a preference to negotiate a PLA with the ultimate bidder could be put in the bid documents.

Senator Hardy:
That makes sense because it is not fair for the entity to decide it wants a PLA after the fact and the contractor determines it will increase costs already bid. I understand if the entity says it will do a change order to allow that to happen. That is fair.

Mr. Hardy:
Nothing in the bill would prohibit the public body from indicating intent to negotiate a PLA on the project. The point is we want our contractors to be a party to that negotiation. We do not want a contract that we had no part in negotiating mandated upon us when it limits our ability to use our own workers.

Senator Hardy:
After you have agreed to a bid, you do not feel it is unfair to say, by the way, we are going to change the goal posts?

Mr. Hardy:
That happens on projects from time to time. The scope and other things change. This bill does not prohibit the public body from negotiating a PLA on a project. We want our contractors to be a party to that negotiation.

Chair Goicoechea:
Bid language can state the preference for a PLA will be in the contract. You do not have to take the low bidder; you can take the best reasonable bid.

Andy Belanger (Las Vegas Valley Water District; Southern Nevada Water Authority):
Are you saying that you could make a preference toward PLAs a condition of the bid? The bill does not allow that. You cannot say we are going to give additional preference to PLAs.

The SNWA only uses PLAs on time-sensitive, major projects intended to be built for the community's water supply. Assembly Bill 159 jeopardizes that because the PLA after the fact is voluntary. You are rolling the dice with the community's water supply if you are saying you may or may not have a PLA on

a low lake pumping station that is critical for the community's future. Such a project is under a tight schedule for construction.

I understand what Mr. Hardy said. Nevertheless, you cannot put a preference in to give more points or to do something else on the front end because that is prohibited in this bill.

Mr. Hardy:
If my comments were interpreted to mean you could provide a preference, that is not the case. That would be discriminatory under the terms of the bill, but an indication that you wish to negotiate a PLA might not be.

We are sensitive to what Mr. Belanger pointed out. Section 3, subsection 4 of the bill allows a finding of a public health concern, and PLA use can continue.

Because the bill says that under any circumstances, labor unrest cannot be used as a reason for the exemption, we offered an amendment that say labor unrest can be used but not as the sole reason for the exemption. That was rejected by the SNWA.

Senator Atkinson:
Your attempt at an amendment or an agreement with SNWA this afternoon met rejection. This is not quite soup to me. Am I getting word that if the bill goes through, it will prevent PLAs?

Mr. Hardy:
This bill prohibits the mandated use of PLAs as part of the bid process. It does not prohibit PLAs. Under similar provisions in other jurisdictions such as Virginia, major road projects use PLAs all the time. The contractor for a specialized project who determines a PLA is needed brings them forward as a part of the bid. That is acceptable.

Senator Atkinson:
You answered my question in two different ways. Does the bill in this form prevent PLAs?

Mr. Hardy:
No. In this form, it does not prevent PLAs.

Senator Atkinson:
It does not. I am hearing differently from our staff.

Mr. Hardy:
Assembly Bill 159 prohibits mandated PLAs.

Senator Atkinson:
No one is going to do it if it is not mandated. I was under the impression when we heard this bill that a concerted effort would work toward an agreement. That has not happened. I am not sure why it comes to this in the work session. There has not been an attempt to have an agreement, so we are going to pass it anyway in this horrible form. I am not sure where we are headed or why. We can send the parties back to work out something. I expressed concerns in the first hearing on this bill. I have not heard from anyone. I am not sure how the process may continue. Some things need to be worked out.

Chair Goicoechea:
I have been working on this bill for a week to 10 days. We had threshold language at $20 million to $60 million. If we add a threshold, put it on projects over a certain amount. Someone wanted a $10 million threshold. Someone else was at $30 million. That did not make any sense to me.

We worked on language about what qualified for an exemption barring a penalty if you entered into a PLA. We were reaching for some language that said a PLA cannot be required, but if the public body wanted a PLA, it could bring one forward. The public body could require it as a provision in the document. However, that becomes sticky whether it is a mandate. It is negotiated after the bid award. If the contractor was told the public body wants a PLA on this contract, the contractor could decide not to take the project. Then the public body goes to the next reasonable best bidder. Does that make sense?

Senator Atkinson:
Not really. Where is the threshold?

Chair Goicoechea:
There were no proposed amendments. We have been working on this.

Mr. Hardy:
It is important to clarify that we have been working on this since the hearing in this Committee. We learned that the SNWA wanted an amendment on the Friday before the bill passed the Assembly. It was on the third reading in the Assembly before we were approached with a specific amendment. That is why we committed to work on it in the Senate.

We worked and both agreed on a threshold for SNWA, but the Chair was uncomfortable with having a different threshold for SNWA. We do not necessarily disagree with that from a policy perspective. We have continued to have conversations until this afternoon. We thought we had an agreement on a bill broadening the exemption portion that would address Clark County's concerns in some degree. We learned this afternoon that was not acceptable to SNWA.

Section 3, subsection 4 provides an exemption for a public finding of a health and safety reason such as described by Mr. Belanger. All the public entity has to do is hold a hearing and demonstrate a public safety and health reason. That is possible under the scenario provided by Mr. Belanger. The exemption is sufficient. It has been sufficient in other states. Project labor agreements are used regularly in other states under this same provision.

Yolanda King (Chief Financial Officer, Department of Finance, Clark County):
When we heard this bill, I proposed an amendment because I was compromising and recognizing that the Chair did not want different exemptions in the bill. The Chair wanted to have a blanket that would apply to everyone.

Costs may change if a PLA is requested after a bid is presented and bids have been opened. Putting a construction project out for bid and then deciding a PLA is needed after bids have been submitted might appear as circumventing the bid process. That could change costs, and you may or may not have the lowest bidder. Contractors submit their bids based on the scope of work on the project that may or may not include a PLA.

For Clark County and the Department of Aviation, we do PLAs because of time-sensitive projects. For example, if we have a PLA on a runway at the McCarran International Airport, it is important for us to get the project completed faster so the runway is not down. It can be used sooner under a PLA than under a bid process. That is the concern with us. It is not necessarily

that it would be a public safety issue; it is more of a time safety issue with us. That is the reason we prefer and like to use PLAs. We do not use them often. In the last 12 or 13 years, we have had 23 PLA projects, but we would like to use them when time is sensitive in getting projects completed.

Chair Goicoechea:
Section 3, subsection 4 requires a public hearing to determine that the exemption is needed to avert the eminent threat to public health or safety. The McCarran International Airport is huge. Runways cannot have holes in them. That becomes an issue of public safety.

Is there a way to tighten this up so you are comfortable with the language? You stated that few projects use the PLA. Even with SNWA, PLAs are used only on major projects. We looked at both of these to determine how to get the language right or how to arrive at a threshold.

I was uncomfortable with saying the Airport Authority can have $20 million; SNWA wants $60 million, and the next time we come back, two other bodies will want an exemption for $40 million and another for $70 million. If you are adding a threshold, let us set an amount. This is what we have been struggling with since we heard the bill.

Senator Atkinson:
Ms. King, you said that the airport rarely uses PLAs. Is it your understanding that this bill prohibits using PLAs?

Ms. King:
That is our understanding. The PLAs would be prohibited. Exemptions are allowed for public safety purposes and when you can use them. Other than that, that is my understanding.

Senator Atkinson:
That is the way I read it. I have not consulted with Ms. King. We are doing a huge injustice. What you said earlier about doing it after the bid is a huge issue. You are going to have this game being played after the bid is open. I agree with you. I do not know that threshold number. It does not seem like they do either. It is an issue, and I hope that we have some pause.

Senator Lipparelli:
I would like to ask Legal Counsel because we have heard it stated emphatically the opposite by various people. On the one side, people say that the bill would prohibit the use of PLAs; on the other side, we have heard testimony that it does not do that. In fact, it allows the public body to enter into a PLA. Does Legal Counsel have the answer to that so we can clarify it for the record?

Ms. Chlarson:
The bill does not provide a blanket prohibition on PLAs. However, it does prohibit the award of a contract being contingent on entering into a PLA. It also prohibits a public body from putting in an advertisement or solicitation for bids that a PLA is required. The bill prohibits giving any type of preference to a bidder who says he or she is willing to enter into a PLA.

As explained in section 3, subsection 4, provisions of the bill do not apply in limited circumstances if there is a finding of an eminent threat to the public health or safety.

The issue is that it is changing, to a degree, when PLAs can be used. It is a subject of debate and discussion about how much it is limited in the real world.

Senator Lipparelli:
The bill does not allow the public body to mandate it, but if the two parties want to enter into a PLA, they are free to do so.

Ms. Chlarson:
The two parties being the contractor and the union are free to enter into a PLA.

Senator Atkinson:
Those are clarifying remarks from my colleague, but some people still perceive that as prohibiting because doing it after the fact causes huge questions.

Mr. Hardy, you mentioned other states that operate it this way. Do you have those numbers and the states?

Mr. Hardy:
I can provide that information. I was told that a number of states do it. I am specifically aware of Virginia.

Senator Atkinson:
Told that by whom?

Mr. Hardy:
Our national council told me that.

Senator Atkinson:
Are there more states than Virginia?

Mr. Hardy:
Correct. I will get that information to you. Under the provisions of this bill, public bodies can put anything except the PLAs in bid documents. Contractors have much to lose if they are late on the project or have delays. They can put every provision of PLAs in the bid documents if they want to. Ms. King is concerned about delays. The County can enhance liquidated damages and other things in the project to account for that.

This is what happens in other jurisdictions, and based on experience, this is what will happen here. When the contractor bids the project, he or she will determine if it is a complex project that cannot afford a labor stoppage. In that case, the contractor will propose a PLA as part of the bid. The contractor is permitted to do that. That makes sense to the contractor because that is what is done in other states. The contractor has a great deal to lose. If the contracts are enhanced to give contractors even more to lose, they will turn to PLAs in places where it makes sense. The market should drive that.

Mr. Belanger:
It takes that decision, based on local issues, away from elected officials. The low lake level pumping station for Lake Mead is a 5-year project—1 year to design and 5 years to construct. It is a critical project based on the declining lake level over the last several years that will continue to decline. Is it an eminent threat to public health or safety? You could make the argument that it is, but it is also 5 years away. We have to start working on it now. Those are the questions and concerns we have expressed with the bill. We have worked with Mr. Hardy. It was not until last Friday that we realized we did not have a deal on the $60 million threshold. We do not care about the threshold number. If it is consistent with the County and it makes it easier to process the bill, we are fine with that too. We want to ensure we can use PLAs sparingly on projects where it makes sense to use them.

Mr. Hardy:
I have already said that this exemption in section 3, subsection 4 is designed specifically for the project about which Mr. Belanger spoke. If that project does not qualify under that provision, I will eat a bug.

Chair Goicoechea:
That might not be painful enough. Clark County requested a $20 million threshold, and we have heard mention of $50 million or $60 million. Ms. King, is that acceptable to you, or is that too large?

Ms. King:
I am willing to increase that threshold if we can go to $30 million. Sixty million dollars might be too high, but I am willing to compromise and increase the threshold. Looking at some of the prior runway projects, we would have been able to construct them under the $30 million threshold. My main concern is that we can do infield projects at the airport under that threshold. I am agreeable to increasing the threshold. Sixty million dollars may be too much.

Chair Goicoechea:
The other question is the language. Can we clarify the language to make sure that everyone is comfortable about an exemption for that through the hearing process? I am looking for one or the other because that is where we are. It is sticky otherwise.

Mr. Hardy:
We have worked hard on this, and we are willing to continue to work on it if that is what it takes. We offered language to broaden section 3, subsection 4 that was not acceptable. It provides additional protection not only for the SNWA but also for Clark County.

I ask the Committee to stay focused on the policy question. Should we have a provision in law that allows a contract to put Nevada workers out of work? I have offered that amendment for 20 years. Let us use all of our own workers. Do not limit us to seven of our own workers on an alternating basis and we will sign these projects all day long. That is the policy question here. As long as the project is worth more than $20 million, is it okay, to tell Nevada workers they do not get to work? That is not fair.

Senator Atkinson:
Mr. Hardy, that goes too far. People are not out of work because you employ many people. You are asking the Committee to consider something that you perceive puts your sector out of work, but then the other side will say it puts their people out of work. We play this game all day long; you and I know both sides can argue that.

I am not sure about the threshold, and I am happy that Clark County has offered a compromise. I still do not know where the SNWA is on that. I hope that you can send them back to work on this bill. I do not know what to do, but I offer my office for discussions. I know that in this form, the bill does not work.

Chair Goicoechea:
I appreciate your offer to help. We have been working on it. We will bring this back for a work session on Friday. We are against the wall.

I would like to take up A.B. 54 that we heard earlier today.

SENATOR PARKS MOVED TO DO PASS A.B. 54.

SENATOR HARDY SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

* * * * *

Chair Goicoechea:
This meeting of the Senate Committee on Government Affairs is adjourned at 3:50 p.m.

RESPECTFULLY SUBMITTED:

Suzanne Efford,
Committee Secretary

APPROVED BY:

Senator Pete Goicoechea, Chair

DATE:

EXHIBIT SUMMARY				
Bill	**Exhibit / # of pages**		**Witness / Entity**	**Description**
	A	1		Agenda
	B	3		Attendance Roster
A.B. 54	C	5	Terry Rubald / Department of Taxation	Written Testimony
A.B. 54	D	2	Josh Hicks / National Public Finance Guarantee Corporation	Written Testimony from Barbara Flickinger
A.B. 54	E	1	Bob Maddox	Proposed Amendment
A.B. 475	F	3	Jennifer Ruedy	Work Session Document
A.B. 162	G	1	Jennifer Ruedy	Work Session Document
A.B. 163	H	9	Jennifer Ruedy	Work Session Document
A.B. 170	I	5	Jennifer Ruedy	Work Session Document
A.B. 172	J	1	Jennifer Ruedy	Work Session Document
A.B. 363	K	5	Jennifer Ruedy	Work Session Document
A.B. 364	L	17	Jennifer Ruedy	Work Session Document
A.B. 106	M	2	Jennifer Ruedy	Work Session Document
A.B. 159	N	1	Jennifer Ruedy	Work Session Document