

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

**Seventy-Eighth Session
May 31, 2015**

The Senate Committee on Government Affairs was called to order by Chair Pete Goicoechea at 1:31 p.m. on Sunday, May 31, 2015, in Room 2135 of the Legislative Building, Carson City, 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:

Assemblywoman Irene Bustamante Adams, Assembly District No. 42
Assemblywoman Marilyn Kirkpatrick, Assembly District No. 1

STAFF MEMBERS PRESENT:

Jennifer Ruedy, Policy Analyst
Heidi Chlarson, Counsel
Carol Stonefield, Managing Principal Policy Analyst, Research Division
Nate Hauger, Committee Secretary

OTHERS PRESENT:

Richard Daly, Laborers Union 169
Brian Reeder, Nevada Chapter of Associated General Contractors
Mary Walker, Carson City; Douglas County; Lyon County; Storey County
Steve Walker, Truckee Meadows Water Authority
Deonne Contine, Director, Department of Taxation

Chair Goicoechea:

I will open the meeting on Assembly Bill (A.B.) 135.

ASSEMBLY BILL 135 (2nd Reprint): Revises provisions relating to schedules for the retention and disposal of official state records. (BDR 19-547)

Assemblywoman Irene Bustamante Adams (Assembly District No. 42):

Assembly Bill 135 is a recommendation from the Sunset Subcommittee of the Legislative Commission which concerns retention and disposal of official State records. Retention and disposal of official State records were reviewed by the Sunset Subcommittee in 2014.

The Subcommittee consists of members of the Secretary of State's Office, the Attorney General, Director of the Department of Administration, State Library and Archives Administrator, Administrator of the Division of Enterprise Information Technology Services in the Department of Administration and one representative of the general public. The Subcommittee identifies which records are official, reviews the schedules that determine when official State records must be retained, and when they must be disposed of and the means of disposal. Some records contain confidential information and cannot be simply thrown away, they must be shredded or burned.

During our review of this entity, we learned that among public employees there seems to be a lack of awareness concerning the preservation of official State records. We also learned the only statutory consequences for stealing, damaging or destroying official State records is to charge the offending employee with a Category C felony, which includes imprisonment and a fine. As a result, altering or destroying official State records through negligent or any intentional action usually has no consequences.

This bill would provide training opportunities to State employees and a range of statutory consequences for improperly disposing of official State records. Our wish is to establish a range of options available to a supervisor when the loss of an official State record occurs. To be fair to State employees, the Subcommittee also proposes an educational program to raise awareness regarding the responsibility for official State records. Assembly Bill 135 will give agencies options to help them preserve the official State records.

Carol Stonefield (Managing Principal Policy Analyst, Research Division):

I was the committee policy analyst for the Sunset Subcommittee.

Chair Goicoechea:

I will close the hearing on A.B. 135 and begin the hearing on A.B. 332.

ASSEMBLY BILL 332 (2nd Reprint): Makes various changes concerning government purchasing and bidding. (BDR 28-256)

Richard Daly (Laborers Union 169):

I support A.B. 332. It has to do with public bodies on public works and the purchase of construction materials and whether sales tax applies to those materials. In the *United States v. New Mexico* decision, the U.S. Supreme Court ruled on the case of when a contractor on a federal job says "I am purchasing this construction material, I am then supplying it to the federal government, therefore when I pay taxes, you are taxing the federal government and you cannot tax the federal government." The U.S. Supreme Court said unless the contractor purchasing the material supplying it to the federal government is a constituent part of the government, the sales tax applies to that purchase. For a long time that is how we operated. That case was heard in 1982, and in 1985, the Legislature passed two bills to address that issue on the constituent part so sales tax would apply to construction materials purchased by contractors for use on public works. Some public agencies are saying we will buy the construction materials and not pay the sales tax, which was causing the loss of revenue.

This bill covers all public bodies in the State on all public works, which is the reason for the definition change of a public work regarding universities. In discussions with the university, some of the concern about changing that definition was addressed by the provision the works are being overseen by the State Public Works Board. The State Public Works Board and the University support this bill. Under this bill, the State Public Works Board will always be the building official, but it will only manage construction projects if 25 percent or more of the cost of the project is appropriated by the State or federal government.

Section 1 says a public body cannot enter into a contract for a public work whereby it purchases the construction materials or has the contract to purchase materials and sends the bill to you to avoid the sales tax. If a public body enters into a contract, it would be void and there would be a penalty if it did not pay its taxes. A public body can enter into a contract if the contractor is a constituent part of the government agency.

Assemblywoman Marilyn Kirkpatrick (Assembly District No. 1):

This bill addresses the sales tax and clarifies it. The bill would only apply to construction. During the last year, we have been following the sales tax numbers. The Department of Taxation, the Governor's Office and I learned that there were some entities that were not paying the sales tax on the materials which seemed to be the legislative intent based on the court cases and historical applications of the law. This bill would clarify that sales taxes must be paid on materials purchased within the construction industry. There is an amendment to this bill, Proposed Amendment 7783 ([Exhibit C](#)). This amendment broadens the necessary qualifications for a public works director.

Chair Goicoechea:

In section 1, subsection 7, paragraph (b) of the bill, it says if a public body enters into a contract in which it is going to acquire materials, whether sole source items or specialty items that pertain to a project, the public body is required to provide a list to the Department of Taxation that it sought for the exemption. If the public body is willing to do that, it seems like it can enter into a contract and do almost anything.

Assemblywoman Kirkpatrick:

That is correct. The reason is so we can keep track of what the items are. We understand there are many specialized items that public entities use. This bill is consistent with other language in statute. It would allow the Department of Taxation to track the numbers so we do not expect a different amount of sales tax revenue than we receive. Several government entities expressed a concern that they order special materials and we did not want to force them to stop, we just want to make sure they notify the Department of Taxation.

Chair Goicoechea:

If you have a public works contract, you can waive the sales tax on any related components as long as you notify the Department of Taxation that you acquired special materials.

Assemblywoman Kirkpatrick:

The bill addresses the specialized materials because that allows local governments the flexibility they need to justify an exemption in the Department of Taxation.

Chair Goicoechea:

Section 1, subsection 7, paragraph (b) talks about specialized components, but the language is broad because it says intended for several years.

Assemblywoman Kirkpatrick:

We were trying to be fair with the language.

Chair Goicoechea:

As long as these are self-performing items the government bodies use in their normal work, they would be sales tax-exempt. For instance, if a paint crew buys 5 gallons of paint, that would be exempt from sales tax. If a local government is putting in a 10-mile pipeline, and it uses a sole source line valve, even if there were 1,000 valves being used, the local government could buy them without paying sales tax. However, I do not expect the tax exemption to extend to the 10 miles of pipe.

Mr. Daly:

I agree with you. Specialized items have to be used on a public work to be sales tax-exempt. Washoe County was building a park, and it needed to buy bark chips, but the County hired a contractor to build it. The County could not buy the chips without paying sales tax, but the contractor is supposed to buy the product and supply it to the County. Now that the park is built and the County has to maintain the park, any materials the County buys are not being used on a construction project, so it is not a public work and an exemption would not apply. The County could buy that stuff under its normal operations as long as it does so under government purchasing regulations.

Chair Goicoechea:

Suppose an entity is building a ballpark. The red clay being used for the infield is a specialty item, and it is expensive. The entity might be able to purchase it because it would have some leftover clay to patch the infield. I am not talking about sod, that is easily accessible, but red clay can be hard to come by.

Assemblywoman Kirkpatrick:

Governor Brian Sandoval and I were trying to address shortfalls we were seeing. When Mr. Daly was an Assemblyman, I gave him the task of working through this, and I wanted to have him help me follow it all the way through. In leadership, we tend to give people things to work on in the interim so they can move forward. The Governor's Office—which proposed this bill—testified that

this was an issue they wanted to clarify with the Department of Taxation. In the Proposed Amendment 7783, the Department of Administration asked me to clarify what is needed in order to be a public works director. The definition has always been narrow. The proposed amendment is a friendly amendment and it would broaden the definition of a public works director.

Chair Goicoechea:

The deputy administrator of the State Public Works Division is a State position. We will not require this of people in rural areas who work in public works.

Assemblywoman Kirkpatrick:

No, this is just a State position and it broadens the definition.

Senator Hardy:

The Department of Taxation is the one you go to. Is there an appeals process if you do not agree with the Department's decision?

Assemblywoman Kirkpatrick:

There has always been a standard appeals process. People can also appeal to the Tax Commission.

Senator Hardy:

There is a mechanism included.

Brian Reeder (Nevada Chapter of Associated General Contractors):

We support this bill. Construction projects are unique in that large amounts of materials are purchased all at one time and add up to millions of dollars. The tax revenue from those purchases goes into schools, other services and the General Fund.

Mary Walker (Carson City; Douglas County; Lyon County; Storey County):

We are opposed to A.B. 332. The rural counties use the mechanism when they have construction projects. Rural counties do not have much money for construction. One way rural counties stretch that money is by purchasing construction material. That way they save 7 percent or 8 percent on sales tax and 10 percent to 15 percent markup from the contractors. It takes a lot of staff work for counties to do the purchasing. There were several projects that could not have been completed if the county had not bought the materials and

saved that money because the bids from contractors were higher than the budget. We proposed an amendment ([Exhibit D](#)).

This bill takes tax dollars that rural counties use for construction projects. If the counties use tax revenue to pay taxes, it undermines what we want to achieve in service to the public.

Regarding enterprise funds, they are often used for sewer and water projects. Citizens pay sewer fees every month. If they now have to pay sales tax on the purchase of the construction materials, those citizens are paying sales tax to the citizens paying into the General Fund—and they are all the same taxpayers. Enterprise funds do not receive sales tax dollars while the General Fund does.

Steve Walker (Truckee Meadows Water Authority):

I proposed an amendment ([Exhibit D](#)). My proposed amendment would take quasi-governments that do not receive sales tax distribution and enterprise funds out of the intent of the bill. A ratepayer and a taxpayer are the same. The taxes would be passed onto the ratepayer, and it is stealing from Peter to pay Paul.

Senator Atkinson:

Are you speaking to your amendment?

Mr. Walker:

Yes.

Senator Atkinson:

If this committee or the sponsor of the bill accepted the amendment, would you support the bill? It looks like your amendment would take you out of the bill.

Mr. Walker:

If my amendment is accepted, we will support the bill.

Senator Atkinson:

Are you neutral on the bill? Does your amendment exclude you from the bill?

Mr. Walker:

If you accept this amendment, it would exclude the Truckee Meadows Water Authority from collecting sales tax on construction material.

Senator Atkinson:

There is a nexus between the gas tax and what is distributed. From your estimation, if we passed the bill without the amendment exempting the Truckee Meadows Water Authority, would the Truckee Meadows Water Authority lose money for construction?

Ms. Walker:

Yes, we would lose money. The sales tax per county is in the 7 percent to 8 percent range depending on the county. This bill would make it more difficult for the counties to purchase goods; they would have to hire contractors to purchase the goods, so the total cost would be increased by 19 percent to 21 percent. That could make it impossible for some rural counties to do public works projects.

Senator Atkinson:

Do you express the same concern when we take money out of the State Highway Fund which receives money from gas taxes?

Ms. Walker:

When I have discussed this with Legislators, one of my questions was, if the State had the ability to save 20 percent on construction materials for highway construction projects, why would we not do that? If the State would save 19 percent to 21 percent on construction materials for the University of Nevada, Las Vegas, Medical Center, why would we not do that?

Senator Parks:

When I worked for the Regional Transportation Commission, it bought all the fuel for the bus fleet, although the bus fleet was operated by a private contractor. Would this bill change it so the contractor would have to buy the fuel for the buses and would the Regional Transportation Commission be in violation of some statute? The reason the Regional Transportation Commission bought the fuel was that it was exempt from having to pay fuel taxes.

Deonne Contine (Director, Department of Taxation):

With respect to Senator Hardy's question about the appeal process, all decisions made by the Department of Taxation can be appealed to the Nevada Tax Commission, and there is judicial review after that. From an administrative perspective, in Nevada, construction contractors are the consumers of tangible personal property, so they pay sales tax when they purchase property. That is

an easy rule for everybody to follow. Over the last few years, we have seen some situations where contractors enter into some agreements with local governments whereby the contractors say to the governments, you purchase these items. It creates different rules and has the most significant impact on smaller communities that do not have sophisticated counsel or advisors to tell them how the rules operate. I like the one-rule system because then I do not have conflicting things coming before me and questions being asked where there are two different ways it is being done.

Senator Atkinson:

You said sometimes there are two different sets of rules that need to be followed. Does that apply to Mr. Walker's proposed amendment?

Ms. Contine:

I have not looked at that proposed amendment. As an administrator, from my perspective, construction contractors are the consumers, and they pay the taxes when they purchase items. It creates different situations when other things are going on in the construction context.

Senator Lipparelli:

Is there any other mechanism that the public body is restricted from in tax law that says it can avail itself of this tax-free status, or is this the hole we are trying to plug? Is there anything else that would stop the public body from using that authority?

Ms. Contine:

There is caselaw that says the tax exemption provision does not apply to contractors of governments unless they are constituent parts of those governments. There is a lack of clarity, but this clarifies it in the context of construction contracts.

Senator Hardy:

Can you have a doctorate degree in civil engineering or another area, and not simply a master's, and still qualify for the provisions on page 2, section 2.6, subsection 6 of the proposed amendment, [Exhibit C](#)?

Ms. Contine:

Probably.

Chair Goicoechea:

Do you have a problem with the exemption for sole source items and specialty items that would be purchased on a job by the public entity, even though it would be part of a contract? If Humboldt County bought a CAT scan machine, which can cost \$7 million or more, the County would have to notify you that it purchased that unit and the sales tax was waived. Humboldt County might purchase a \$1,000 valve that is electronically controlled for a water system, and there are 100 valves in place, but they are sole source items. The county would say it purchased 150 valves because it wanted 50 replacements on hand and those would be tax-exempt, but the contractor would install them and those would be tax-exempt pieces. Would you have a problem with that?

Ms. Contine:

From an administrative perspective, what I have the most trouble with is when the contractors ask the local governments to enter into these agreements in an attempt to use the exemption when the contractors are doing a construction project. There were advisories sent to local governments from the Department of Taxation saying, if you are personally purchasing something, you are an exempt entity and would not pay sales tax. Some contractors are attempting to purchase materials through local governments in order to take advantage of the tax exemption. The provision in the bill requiring an itemized list of purchased materials is good.

Chair Goicoechea:

Suppose you are building 10 miles of road with hot mix which costs upwards of \$180 a ton. If the government entity bought the hot mix and we are running 30- or 35-ton loads, the sales tax would be huge. If the government entity asked for a waiver on that, would you consider it? That would be a lot to ask for and a lot of tax revenue we would be giving up if the waiver were granted. It costs about \$1 million a mile to build that road, so the sales tax could be \$60,000 to \$80,000 a mile.

Ms. Contine:

The exemption is for specialty items, so when local governments make requests, I have analysis done on whether the material qualifies as special and seek advice from the Attorney General's Office.

Chair Goicoechea:

Hot mix is not a specialty item, but it is expensive.

Assemblywoman Kirkpatrick:

To Senator Parks' question, the exemption only applies to construction contracts. The State benefits from sales tax. The 2 percent portion goes to schools. The sales tax goes into the transportation fund. The 2 percent that the State gets from the sales tax benefits all counties, cities and agencies in the State. I compromised with this bill and broadened the language to ensure people could continue to function the way they want to when it comes to sole sources, taking into the fact that rural counties probably do not have many resources to purchase materials from. Making sure there is only one rule on the books will make the process more efficient. The Department of Taxation will collect data about the effect of this legislation if it passes and we can analyze it.

Chair Goicoechea:

We are talking about the total sales tax, and you are talking about the 2 percent.

Assemblywoman Kirkpatrick:

We only get the 2 percent if we collect the total sales tax. If we do not collect any sales taxes, we do not get anything.

Chair Goicoechea:

Is that the compromise on this bill?

Assemblywoman Kirkpatrick:

No. I would kill my bill if it were.

Chair Goicoechea:

I want to make sure the State receives the 2 percent.

Assemblywoman Kirkpatrick:

I am happy to kill my bill and focus on lawsuits instead. When we start compromising for 2 percent here and 2 percent there, everybody loses. We have tried to protect local governments when we give things away on abatements. It is good policy to collect sales tax which went to a vote of the people and came before the Legislature twice and the Supreme Court has ruled on it. It is unfortunate that we cannot agree with some of the rural counties. Exempting all GIDs is a new concern to me.

Chair Goicoechea:

I talked about hot mix earlier. Do you think hot mix should qualify as a specialty item and be exempted from the sales tax?

Assemblywoman Kirkpatrick:

Different local governments use different specialized materials. This bill would allow the Department of Taxation to decide what is specialized. There has to be accountability. We cannot say that all materials are specialty items.

Chair Goicoechea:

I agree. Nuts, bolts and nails should not be tax-exempt.

Senator Atkinson:

Which proposed amendment are we talking about?

Chair Goicoechea:

It is up to the Committee. Proposed Amendment 7783 is germane. I think we are all on board with it, and it changes the deputy administrator of Public Works. I share Ms. Contine's concerns about exempting enterprise funds.

Senator Atkinson:

I like Proposed Amendment 7783.

Chair Goicoechea:

The hearing on A.B. 332 is closed. I entertain a motion on A.B. 135.

SENATOR ATKINSON MOVED TO DO PASS A.B. 135.

SENATOR HARDY SECONDED THE MOTION.

Senator Parks:

I have concerns with the provision for reprimand or more severe disciplinary action against an employee. It seems open-ended.

Heidi Chlarson (Counsel):

The type of discipline allowed would depend on the type of employee. If it were a classified employee, the disciplinary action taken could be different from that for a nonclassified employee. There is a structure for discipline for classified employees, and that structure does not exist for nonclassified employees. This

provision would apply to any employee who engaged in the specified misconduct.

Senator Parks:

I am more concerned about somebody who is a member of a commission who is pursuing an action against an employee.

Chair Goicoechea:

If there is an abuse we can fix it next Session.

Senator Hardy:

Does *Nevada Revised Statutes* (NRS) 338 or NRS 339 have any provisions for limits on susceptibility to being charged?

Ms. Chlarson:

Nevada Revised Statutes 339 addresses public records and has no relation to public employees.

Chair Goicoechea:

Is there a chapter in NRS that deals with reprimands and when an employee can be terminated?

Ms. Chlarson:

I will need to do more research.

THE MOTION CARRIED UNANIMOUSLY.

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Chair Goicoechea:

This meeting is adjourned at 2:28 p.m.

RESPECTFULLY SUBMITTED:

Nate Hauger,
Committee Secretary

APPROVED BY:

Senator Pete Goicoechea, Chair

DATE: _____

EXHIBIT SUMMARY				
Bill	Exhibit / # of pages		Witness / Entity	Description
	A	1		Agenda
	B	1		Attendance Roster
A.B. 332	C	3	Assemblywoman Marilyn Kirkpatrick	Proposed Amendment 7783
A.B. 332	D	1	Steve Walker	Proposed Amendment