MINUTES OF THE
SENATE COMMITTEE ON GOVERNMENT AFFAIRS

Seventy-Eighth Session
April 29, 2015

The Senate Committee on Government Affairs was called to order by Chair Pete Goicoechea at 1:30 p.m. on Wednesday, April 29, 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:

Assemblywoman Jill Dickman, Assembly District No. 31
Assemblyman Jim Wheeler, Assembly District No. 39

STAFF MEMBERS PRESENT:

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

OTHERS PRESENT:

Dave Prather, Deputy Administrator, Division of Forestry, State Department of Conservation and Natural Resources
Bob Roper, State Forester Firewarden, Division of Forestry, State Department of Conservation and Natural Resources
Rusty McAllister, Professional Firefighters of Nevada
Mary Walker, Carson City; Douglas County; Lyon County; Storey County
Janine Hansen, Nevada Families for Freedom

Thomas Starret
Jeff Fontaine, Nevada Association of Counties
Michael Hillerby, American Institute of Architects
Russell Rowe, American Council of Engineering Companies of Nevada
Christine Drage
James Duddlesten, President, G.C. Wallace, Inc.
Bill Valent, American Insurance and Investment Corp
Ruedy Edgington
Steve Walker, Douglas County; Lyon County; Storey County; Carson City; Truckee Meadows Water Authority
Douglas Ritchie, Chief Civil Deputy District Attorney, Office of the District Attorney, Douglas County
John Terry, P.E., Assistant Director, Engineering, Chief Engineer, Nevada Department of Transportation
David Bruketta, Utility Manager, Public Works Department, Carson City
Wes Henderson, Nevada League of Cities and Municipalities
Lee Thomson, Chief Deputy District Attorney, Clark County
Ted Olivas, City of Las Vegas
Joni Eastley, Assistant County Manager, Nye County
Donald L. Cavallo, Public Administrator, Washoe County
Michael Rebaleati, Nevada Public Agency Insurance Pool; Public Agency Compensation Trust
Brian Hardy, Nevada Public Agency Insurance Pool; Public Agency Compensation Trust
Linda Bromell

Chair Goicoechea:
I will open the hearing on Assembly Bill (A.B.) 34.

ASSEMBLY BILL 34 (1st Reprint): Makes various changes to provisions governing certain fire protection districts and fire safety. (BDR 42-369)

Dave Prather (Deputy Administrator, Division of Forestry, State Department of Conservation and Natural Resources):
Pursuant to a decision from the 2011 Session, all-risk services—historically provided by the Division of Forestry (NDF) through *Nevada Revised Statutes* (NRS) 473, Fire Protection Districts Receiving Federal Aid—are to be transitioned from the State to the counties by the close of State fiscal year 2015. The NDF believes that all such transitions will be successfully completed

by that time, allowing the repeal of statutes related to the NRS 473 fire districts. However, chapter 473 of NRS contains some pertinent duties of the State Forester Firewarden related to fire safety.

Assembly Bill 34 moves four duties to NRS 472, which outline the responsibilities of the State Forester Firewarden. These duties are addressed in sections 2 through 5 of the bill. Section 2 retains the State Forester Firewarden's ability to restrict activities that create a high risk of fire on jurisdictional lands. Section 3 moves language addressing liability for damages caused by fires that are unlawfully or negligently set to NRS 472. Section 4 retains statutory language establishing liability for the cost of suppression of fires unlawfully or negligently set. Section 5 moves the State Forester Firewarden's ability to issue—and the circumstances under which to issue—burning permits to NRS 472.

The bill is amended because the Assembly Committee on Government Affairs wanted to clarify the intent of the language in section 4, subsection 2 and section 8.5, subsection 2 regarding liability for fires caused by accidents. The NDF does not object to these amendments.

Sections 6 through 10 of the bill eliminate references to NRS 473 and other chapters of NRS. As a result of eliminating NRS 473 fire protection districts in Elko, Washoe, Clark and Storey Counties, sections 11 through 13 provide for the transfer of land and property back to those fire protection districts.

Chair Goicoechea:
You are relocating statute. However, because you brought it before us, the intent of the bill in section 5, as it relates to section 4, gives me angst. Section 5 implies that if a person is on his or her land, someone else's land or public land and performing a prohibited activity, such as using a cutting torch, which could be in the course of his or her normal business, the person has to obtain written authorization to perform that activity from the State Forester Firewarden. If a fire starts accidentally while performing this activity and the person does not have written permission, my concern is that this would put an additional burden or more exposure or liability for the cost of the fire on that person.

Bob Roper (State Forester Firewarden, Division of Forestry, State Department of Conservation and Natural Resources):
The Assembly Committee on Government Affairs wanted clarification on fires caused accidentally versus an unavoidable accident and potential liability for the cost of the fire. The intent is that if a reasonable and prudent person exercises due care under the normal course of action and has not violated a known regulation, no one is liable if a fire occurs accidentally or strictly by an unavoidable accident, such as a downed power line.

Once the State Forester Firewarden issues a fire ban or a high-fire hazard declaration, section 5 of A.B. 34 requires the person doing the work on the property to obtain written permission from the State Forester Firewarden. At that time, regulations are reviewed to ensure the person follows them. If the person does not follow the regulations and a fire occurs, liability could be associated with the costs of fighting the fire.

Chair Goicoechea:
I am going to use the example of a farmer burning weeds in a ditch, which is a normal course of business for a farmer; however, a ban on fires has been declared. In order to follow regulations, the farmer has to obtain written permission from the State Forester Firewarden. Suddenly, the fire gets away from the farmer. The language in section 3, subsection 3 makes it clear that the farmer is responsible for the fire. It was not intentional. Is that negligence because the farmer was not supposed to do it and did not have written permission?

That concerns me because the cost of a fire can go from burning the weeds in a ditch to many millions of dollars. This language and the changes in the fire districts put all of our citizens at risk because a fire could get away from them and they would be liable.

Senator Hardy:
Section 5, subsection 3, line 18, page 4 of the bill states, "This section does not prevent the issuance of an annual permit to any public utility covering its usual and emergency operation and maintenance work." Could that include an annual permit for a farmer or rancher instead of requiring a permit every time that person does something?

Mr. Roper:
Yes, the bill could be amended to include agricultural purposes with the intent that my agents educate the rancher or utility company on the safe practices that must be followed.

Senator Hardy:
We could amend this bill for an annual or biannual permit. How many times do people need to hear they must have an axe, shovel and water with them? Is this something you want to do annually or is it something a farmer understands?

Mr. Roper:
In a generic sense, we could allow an annual permit. Part of the written permit would be my agent reviewing the safe practices that ranchers or agricultural users shall follow. In addition, even though they have the annual permit, they have to notify the local fire authority to ensure it knows what work is to be done.

Senator Hardy:
If someone is out in the middle of someplace else with no cell service and something breaks that he or she has to fix, it would be difficult to notify the fire authority. Is that what you would require?

Mr. Roper:
For prudent safe practices, if a rancher is going out and knows what type of work he or she will be doing, the local fire authority can be notified of that.

Senator Hardy:
So this is not a call before you dig, this is a call before you burn.

Mr. Roper:
You could say that.

Heidi Chlarson (Counsel):
Sections 3, 4 and 5 of this bill provide that someone is not negligent just because he or she has written permission obtained pursuant to section 5.

Section 5 provides that certain activities are crimes. Section 5, subsection 1, line 40 on page 3 says, " ... it is unlawful for any person, firm, association,

corporation or agency to burn, or cause to be burned … .“ That language provides a criminal penalty if provisions of section 5 are violated.

Sections 3 and 4 provide certain liability in cases where someone willfully or negligently causes a fire. A court would consider whether someone violated a statute in determining negligence. However, just because someone complies with statute and obtains a permit—as described in section 5 or if the bill is further amended to create a new annual permit for farmers or ranchers—the way this is written would not entirely protect the permit holder from negligence.

The analysis would not just be if the person had a permit or complied with statute. In addition to complying with statute, there would be a separate determination as to negligence or if the fire was caused willfully, regardless of whether there is a permit or written permission.

Chair Goicoechea:
Would you look at section 5, subsection 4, which says, “This section does not prevent the building of necessary controlled small camp and branding fires if caution is taken … “ ? Then the next the sentence says, “In any case where the fire escapes and does injury to the property of another, the escape and injury are prima facie evidence of a violation of this section.” Does that mean you are automatically on the hook if you have a fire that gets away from you?

Ms. Chlarson:
If you have a controlled small campfire or a branding fire that gets away from you, yes; the fact that it got away from you would establish that you violated the provisions of section 5.

Chair Goicoechea:
No matter what precautions you took.

Ms. Chlarson:
Right, there would not be a need to find whether you were willful or negligent. You have violated the statute because the fire got away from you.

Chair Goicoechea:
I will not belabor it anymore, but I do not like what it implies.

Senator Lipparelli:
What does this bill do that you do not already have authority to do? Is there authority in the law that holds someone who is negligent accountable for a fire?

Chair Goicoechea:
The big change here is that we go from NRS 473, all-risk protection, to no longer having the protection of the NDF. Is that correct?

Mr. Roper:
The original intent of the bill and amendment was the clarification of the removal of NRS 473 fire districts and the transfer of those assets to the new NRS 474 fire protection districts.

Senator Lipparelli:
I am sorry, but to me you are speaking code.

Mr. Roper:
The NDF had the all-risk fire departments historically included. Those are the NRS 473 fire organizations. Two years ago, the Legislature went through a process of eliminating the NRS 473 fire districts. Each of those counties can now elect to form an NRS 474 general fire protection district. That was the intent of this bill. This cleanup language transfers the assets from the State back to the counties. Additional feedback about liability in the Assembly Committee on Government Affairs hearing is where that part came into the bill.

Senator Lipparelli:
Is this language in the law today, is this new language altogether or is it a little bit of both?

Mr. Prather:
Nevada Revised Statutes 473 related almost exclusively to fire protection districts; however, powers associated with the State Forester Firewarden in NRS 473 must remain; otherwise, we could have deleted NRS 473 entirely.

Senator Lipparelli:
What I am reading in this bill already existed somewhere else in the statutes?

Mr. Prather:
No, that is why we want to save those few sections.

Senator Lipparelli:
Let us go brick by brick then. This bill language is all new language that we want to introduce. Are we moving language in sections 2, 3, 4 and 5 of the bill from an existing statute and relocating it in NRS 472?

Mr. Prather:
Correct.

Senator Lipparelli:
As we read it here, are we modifying it as we are doing it?

Mr. Prather:
Correct. The amendment is modifying that language before it is moved.

Senator Hardy:
Are we liable in the same way under NRS 474 as under NRS 473?

Mr. Prather:
That is correct if this bill passes.

Senator Hardy:
We are liable negligently or inadvertently. We will still be liable as before except we changed from the State to a county to do it.

Mr. Prather:
Correct.

Senator Lipparelli:
Is the term "unavoidable accident" defined, or has it been tested in the law? Is that a common usage? I do not know what it means.

Ms. Chlarson:
That language is not in NRS 473. It was added in the Assembly Committee on Government Affairs as an amendment. For purposes of this bill, because the language is not in NRS 473, it would not have been tested because it has not been in statute before. The bill proponents are correct in that much of what this bill does is in NRS 473; however, NRS 473 only applies to certain types of fire protection districts. Repealing that and putting it back into NRS 472 broadens

the scope of the applicability of this language. The language "unavoidable accident" is new to the statute.

Senator Lipparelli:
Section 8.5, subsection 2 starts with "If it is determined that the fire or other emergency which threatens human life was the result of an unavoidable accident ... ." Who makes the determination?

Ms. Chlarson:
The State Forester Firewarden makes the determination.

Chair Goicoechea:
With these changes, there is additional exposure. I am hoping we hear from county representatives. A number of them have signed on to the transition, but there is significant exposure to them and their citizens.

Rusty McAllister (Professional Firefighters of Nevada):
We are in support of the bill. The only question we had was on page 3, section 4, lines 29 through 32 when it talks about " ... This charge constitutes a debt of the person, firm, association or agency charged and is collectible by the federal, state or county agency incurring such expenses ... ." That language was transferred from NRS 473. Since it removes the boundary limitation, is it possible to add "municipal" to "federal, state or county"? If a fire burns onto municipal property, municipalities want reimbursement also.

Chair Goicoechea:
In the past, NRS 473 afforded protection through the State agency, but that is no longer the case. No one will argue that.

Senator Hardy:
Who is responsible for kids playing with matches in the city? They do not have a shovel, axe or gallon of water to put out the fire.

Mr. McAllister:
The State Forester Firewarden would be better able to answer that.

Senator Hardy:
Nevertheless, you are in the city and you want to include cities in the bill.

Mr. McAllister:
No. We are saying that if someone starts a fire on State land that moves through the fire protection districts and burns into the city, the city should be able to seek assistance.

Chair Goicoechea:
A utility company could be held liable also. If someone deemed the power lines were too loose, slapped together in the wind and started a fire, this is significant exposure.

We will close the hearing on A.B. 34 and open the hearing on A.B. 170.

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

Assemblywoman Jill Dickman (Assembly District No. 31):
Assembly Bill 170 seeks to increase the accountability of local elected officials when incurring debt, improve citizen awareness and give citizens a greater say in how taxes are spent.

Municipalities are required to submit a proposal to issue or incur debt to the voters of the city at a special or general election. However, municipalities can bypass the voters with a two-thirds vote of the members of the governing body of the municipality. The voters of a municipality maintain the right to reject a proposal if at least 5 percent of the registered voters of the municipality submit a petition.

While the citizens maintain the right to overrule local elected officials, more needs to be done to engage citizens and increase public awareness regarding the use of public funds.

Assembly Bill 170 makes a few changes to statute to encourage local governments to provide the public with the information they need to make their voices heard and to limit the ability of local government to take on too much debt.

Regarding the use of public funds, bill provisions clarify that a general obligation issued or incurred by a municipality or school district must be used only for the stated purpose for which the general obligation was originally issued or incurred.

If a local government is raising funds for a specific project, those funds should be used on that project and nothing else.

The bill requires local governing bodies to provide better notice to the public by publishing a notification of the intent to issue or incur a general obligation at least three times, once a week for three consecutive weeks in a newspaper of general circulation. The notification must include a description of the manner by which the registered voters of the municipality may petition the governing body to reject the issuance of the obligation. By notifying the public of its rights, local governments can be certain they represent the will of the people.

Assembly Bill 170 will result in prudent use of the public's money and prevent local governments from overextending themselves when incurring debt.

Mary Walker (Carson City; Douglas County; Lyon County; Storey County):
Assembly Bill 170 provides for more transparency with additional noticing and clarifies that a general obligation bond can only be used for the original purpose of the bond.

This is a good government bill. We were able to iron out the problems with the original bill.

Assemblyman Jim Wheeler (Assembly District No. 39):
The bill started out stronger and was more restrictive on what the counties could do on a bond rollover. Assemblywoman Dickman worked with the counties and others to get the bill to where it is now. It is not as strong as I wanted, but it is something that we all agreed on that we could get out of the Assembly. It needs to be done. The idea is to make sure that the counties let the people know what they are doing and give people an opportunity to vote on a bond rollover instead of having each county government do it.

Senator Hardy:
Is it already in statute that a proposal to incur a general obligation must be submitted to a city council, a county commission or a school district at least once, put on the Website and then published in the newspaper for 3 successive weeks?

Ms. Walker:
In order to issue bonds, there must be an ordinance that requires two hearings and one notice must be published in a newspaper. This bill expands that notification to once a week for 3 weeks.

Senator Hardy:
And on the Website?

Ms. Walker:
This bill requires notification on the Website.

Senator Lipparelli:
In section 1, subsection 1, line 3, we use the term, " ... only for the stated purpose ... ." Is that common nomenclature as in the bond indentures? Are we particular enough there, or are we creating a new interpretation with the words "stated purpose?"

Ms. Walker:
The term "stated purpose" is a typical term in bond usage. John Swendseid, bond counsel, reviewed and concurred with the language. Whenever we have done bonds, the money was spent in accordance with the bond covenants. According to Mr. Swendseid, under statute once you have issued the bond and have the money, there is a mechanism by which the bond can be reissued for another purpose using certain legal parameters. This bill eliminates that mechanism. The original bond covenants, which will remain, state the purpose of the bond.

Senator Hardy:
This does not stop you from reissuing a bond. It allows you to reissue the bond if you have a new stated purpose and the people understand that.

Ms. Walker:
You could pay off the bond or reissue another bond. It takes approximately 6 months to issue a bond. To reissue a bond for another purpose does not happen often because it has to be done within 6 months. This bill clarifies that you cannot use the bond for a purpose other than what is stated in the bond covenants. You would not want to do that because bondholders could come after you.

Senator Parks:
When I saw the bill, I was confused because I have had experience with issuing bonds, bond ordinances and bond covenants. They are all strict on where and how you can issue a bond. Therefore, if you are doing highway projects, you have to identify the specific project. If you were to refund the bonds to get a lower interest rate or whatever, normally the ordinance would follow it.

Are local governments turning around and using funds for a purpose other than that initially stated? My experience has been that sometimes funds are left over from the sale of a bond when a project comes in under the budget. We would always tend to use the remainder of the funds for one of the other projects for which we initially sold the bonds.

Ms. Walker:
You are correct. I have had the same experience. Mr. Swendseid testified in the Assembly Committee on Government Affairs that there is a legal mechanism by which a bond issued for a certain purpose can be repurposed. I am not sure what that is. I did not know you could do that. This bill clarifies that regardless of when the bond is issued, the funds have to be spent in accordance with the stated purpose in the bond covenants.

Senator Parks:
I concur with you entirely. The stated purpose is good for that reason.

Since we are in an age where newspapers are having less and less relevance, I lean toward using the Internet and putting disclosures and notices on the local government's Website.

Chair Goicoechea:
I agree. Boilerplate language is surfacing that talks about the publication as well as posting on the Website and Internet.

Assemblyman Wheeler:
The genesis of the bill was the result of a county that tried to issue a bond that was turned down twice by the voters. The county then repurposed a bond and went ahead and did the project anyway.

Chair Goicoechea:
I assume the other change to the bill is that 5 percent of the registered voters can present a petition to the governing board of a county within 90 days after notification of the intent to issue a bond. Is that in law now?

Ms. Walker:
Yes, it is. We are not changing that.

Janine Hansen (Nevada Families for Freedom):
We support this bill. It is reasonable, protects taxpayers and voters, and provides more information. It is a good step forward in informing the people in the county and for transparency.

Thomas Starret:
I support A.B. 170. The presentations by Assemblyman Wheeler, Assemblywoman Dickman and Ms. Walker on behalf of the counties were confident and impressive. They covered many of my intended comments.

The bill before you bears little resemblance to its original iteration. Compromises have been made. We had hoped for a more thorough bill, but that was not to be.

All of the letters and newspapers have been in favor of this bill. The public sent those letters at their expense.

The opposition was primarily from the well-funded county. Nevertheless, what is left of this bill is worthy, and I appreciated the comments by this Committee concerning the Internet.

These things have been agreed upon, and I applaud Ms. Walker for keeping her word in both hearings. It is my understanding that this bill has passed the Assembly unanimously.

Let me reemphasize one additional point because it is important. Assemblywoman Dickman hit it tangentially. After the most recent elections, some people have lamented on the low turnout. However, when government embraces the people and makes them feel that they are part of the process and their interests are taken to heart, they will become less apathetic. I submit that

this bill, even in its amended state, takes a tiny baby step toward involving the people. If it does, then everyone wins.

Jeff Fontaine (Nevada Association of Counties):
We are agree to the language in the bill. It is workable.

Chair Goicoechea:
We will close the hearing on A.B. 170 and open the hearing on A.B. 106.

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

Michael Hillerby (American Institute of Architects):
We support A.B. 106. This bill deals with contracts between a design professional and a public body, a state or local government entity, specific to public works. *Nevada Revised Statute* 338.155 has provisions that are required to be a part of the contract.

This bill hinges on two things, indemnification and the duty to defend. Indemnification is the idea that when someone is at fault, he or she is required to pay his or her proportionate share of the expenses. State law requires a design professional, if found liable by a trier of fact—often through a settlement process—to pay his or her proportionate share if there is an allegation of a design defect and professional negligence.

That is the idea of indemnification regarding insurance. Design professionals carry insurance for that indemnification under professional liability. Design professionals also carry general liability insurance.

The second piece of that is a duty to defend. A duty to defend is an up-front obligation to pay for the defense when a claim is made against a design professional. Public bodies ask design professionals to do that by contract because it is allowed under statute and it is standard practice. When a claim for a design defect is made, the duty to defend obligation is tendered to the design professional. He or she is required to start paying for the defense of that public body from Day 1, even before any finding of negligence is made. This bill makes changes to that.

We have worked to make changes to this statute since 2005. It has become much more critical in the last couple of years because of two cases in California, *UDC-Universal L.P. v. CH2M Hill* and *Crawford v. Weather Shield Manufacturing, Inc.*, where the existence of the indemnification and the duty to defend in a contract were separated by courts. The courts found that the duty to defend could kick in immediately. In both of those cases, the defendant, the design professional, was ultimately exonerated and found not to be at fault; however, the judge awarded $131,000 in defense costs in one case, and in the other, the *CH2M Hill* case, $550,000 in defense costs.

This bill deals with that. It leaves in existing language and strengthens it on indemnification so design professionals are required to pay their portion. It separates the idea of the duty to defend for general liability from professional liability and sets an equal playing field so the design professionals are not at risk for court costs that could potentially bankrupt them.

Russell Rowe (American Council of Engineering Companies of Nevada):
We addressed this issue in 2005 and again in 2009. The ultimate goal is to avoid paying attorney's fees and costs when design professionals are not liable. In 2005, in an effort to reach that goal, we ensured that when we are held liable by a trier of fact that we would be required, as a matter of law, to pay attorney's fees. We took the discretion away from the courts and made it mandatory upon an adjudication of liability that we would pay the attorney's fees and costs of the public entity in proportion to our liability. We determined that would cover it because you will either be held liable or the case settles, which most cases do. The insurance company is there, and we all agree on the settlement. As part of our indemnification and its responsibility under our policy, the insurance company will pay.

We are not covered if we are not liable. We were hoping that after 2005, public entities would no longer need to put a defense obligation in contracts. Unfortunately, that has not been the case. While contracts are negotiable, we have been unsuccessful in getting public entities to agree to remove this provision. We cannot purchase insurance to cover it; therefore, engineering and architectural firms would have to cover the defense costs out of pocket if the obligation is enforced upon them.

Most engineering and architectural firms are small businesses and do not have the capital to do that. That outcome would affect everyone because the firms

would go out of business and the public entity would not be covered. We crafted that provision in 2005 to make sure they are covered in all instances in which they are liable or they settled.

In a California case decided in 2010, *UDC-Universal L.P. v. CH2M Hill*, the court held that because the engineer signed a contract containing a duty to defend, even though the engineer was not held liable for the underlying claim, the duty to defend was separate from the engineer's indemnity and liability. The engineer had to pay $500,000 in attorney's fees.

This has raised the stakes on this issue that we thought we could manage. We were hoping that case would be overturned on appeal but it was not. It went to the California Supreme Court, which declined to hear it. Therefore, it is now law, precedent and a big problem for the design community because we cannot afford to be the insurance policy for public entities in their defense obligations.

Our indemnification policies are still there. They will kick in if we are liable or if we settle, but we are not covered if we are not liable.

Senator Parks:
If a judge or jury finds a design professional guilty, is there still a mechanism to reimburse the public body a proportional share of the obligation or liability?

Mr. Rowe:
Yes, we made that a mandatory requirement in statute in 2005. Prior to that, it was at the discretion of the court to provide assurance of coverage.

Mr. Hillerby:
Once the claim is filed, we would be providing our own defense as the design professional. The public entity would be defending itself. In many cases, it is essentially the same claim. We are going to be served at the same time. Having our defense paid by our insurer lowers the costs for the government entity because in many cases, it is the same claim. Both sides pay their own costs and at the end, if there is liability for the design professional, we reimburse our portion of the costs incurred by the government entity.

The problem is if we are ultimately exonerated, because of the California cases being cited in case filings in Nevada, we could be found possibly liable for a $500,000 legal bill.

Local governments have proposed an amendment (Exhibit C) which is new to us. It is concerning because not only does it undo what we are doing in the bill, but deleting the indemnification language could leave us liable for the entire judgment that would have no bearing on our proportional level of fault. Not only would it undo what is in the bill, but it would also cause more damage.

Mr. Rowe:
Public entities are concerned about the level of cooperation from design professionals if a claim arises. This is important to us. Public entities are our clients. This is difficult because it is an issue between our clients and us. We will always cooperate with them on these cases. We understand the cases are sometimes complex, and the public entity needs its design professional to be there to work through that. I want to make it clear that the duty to defend speaks only to attorney's fees and costs; it does not speak to the level of cooperation or anything of that nature. We are talking about covering attorney's fees and costs with respect to the duty to defend. We will be at the table with our client working through these issues.

Christine Drage:
I am an attorney representing design professionals. I am in favor of A.B. 106. I echo what Mr. Rowe and Mr. Hillerby said. The process for addressing claims regarding plans, specifications and design services does not change. The process for cooperating when a public entity sends a letter to a design professional saying something is wrong with your plans does not change because of these amendments. The process is the same. The design professional immediately turns that letter, lawsuit or claim over to the insurance company, and a team is assembled that includes defense lawyers to address those issues and begin the cooperation process. The only thing that shifts is the exposure and the payment of the public entity's legal fees. It shifts to the end once liability has been established through settlement or otherwise. It is mutually beneficial.

James Duddlesten (President, G.C. Wallace, Inc.):
This bill is important to us. If we were pulled into a catastrophic lawsuit and forced to pay not only our own defense costs but also the costs of the public agency, that could bankrupt a company of our size, especially with what we incurred during the Great Recession. It is important to have this protection, allow us to do business as normal and avoid the concerns and the possibility of being forced out of business.

Bill Valent (American Insurance and Investment Corp):
We represent architects and engineers throughout Nevada. We are an independent insurance company, so through direct access or through brokers we can access every professional liability carrier. No carrier will offer the defense provision for our insured's client. One of my duties is contract review. I always recommend that the defense requirement be stricken from a contract because such insurance is not available.

Nevada is not a collection of *CH2M Hill*[s] with respect to the design community. It is a collection of small business people, and a catastrophic defense could put any one of them out of business.

Ruedy Edgington:
I am in favor of this bill. It is a matter of risk and mitigation for us because the engineering community cannot control or anticipate it, and we cannot insure it.

Steve Walker (Douglas County; Lyon County; Storey County; Carson City; Truckee Meadows Water Authority):
Douglas, Lyon and Storey Counties and Truckee Meadows Water Authority oppose A.B. 106.

Douglas Ritchie (Chief Civil Deputy District Attorney, Office of the District Attorney, Douglas County):
We oppose A.B. 106. I am in an interesting position. Before I entered public service, I was in private practice representing general contractors and design professionals. I understand the frustrations and the challenges they face.

It is daunting when someone is hit with legal fees in excess of $500,000 and then adjudicated not liable. There was no negligence and you did the job properly. The issue of the ability of someone to bring a lawsuit without factual basis is a tort reform question.

I appreciate that the design professionals the public agencies hire to do a professional job are willing to pay to indemnify the public agency if they are found to be negligent. The public agencies would love to be in that same position. They will pay if they did something wrong; however, they do not want to have to pay to defend a claim, whether frivolous or meritorious. We are facing that issue. Who should pay to defend a claim when it is first made? The complaint has been filed, and we do not know if there is any factual or legal

basis for the claim. We do not know if it is frivolous. It may have a basis. However, someone has to step up and defend the claim in court.

Two parties at arm's length negotiated the terms of the contract. Historically, it is true that public agencies have required their design professionals to not only indemnify but also to step up and defend their work if it has been challenged. That makes sense to me.

If someone claims that the design professional's work product is defective or deficient, who is better able to defend, the design professional who produced that work product or the public agency that hired the professional to do that work?

When we talk about public agencies, we are really talking about taxpayers. Who is going to foot the legal bill? Who is going to be in court making the arguments that the claims do not have a basis and the claimant is not entitled to the relief he or she is requesting?

Assembly Bill 106 proposes to shift that burden from the design professional to the public entity. That would increase the cost for our public agencies because the amendment will not prevent design professionals from incurring defense costs. As they have indicated, if a claim is made against both the public agency and the design professional, they both incur costs. If either of them is adjudicated liable, then they will pay.

How is the public good served by having two different entities incurring their own legal fees to defend the same claim? Let us be clear. Public agencies' liability is vicarious, respondeat superior. The public agency's liability is to the same extent as if the design professional did something wrong. If we are in court defending the claim, the argument the county makes is the same as the design professional's argument. The county has to look to the design professional to say he or she is not negligent. Here is our standard, and we met that standard. The county relies on the design professional to defend his or her work.

Senator Lipparelli:
As you stated in your testimony, if I understand it, the bill talks about the change to the contract between the government entity and the design professional. I hear you making a case about ultimate liability. You said that you

do not want the duty to defend to be a compulsory element in the contract between the design professional and the public entity. The question of liability is still there. It talks about asking the design professional to do something for which they cannot get coverage. Can you address that piece of it?

Mr. Ritchie:
You are correct. This issue is about who bears the burden of defending the claims. Liability has not been established yet. I wish that public agencies could tell the court to determine if it is liable, because it will not pay an attorney to defend it until it knows that. That is what the design professionals are asking.

The law allows the two parties to negotiate. It is true that public agencies historically requested that the design professional defend his or her work if it is challenged. There are many issues brought up about the separation. One of the fundamental misconceptions is that the design professional will somehow not incur these attorney's fees. They will not have to defend.

A public agency can tender a defense, the design professional can hire an attorney and that attorney will defend both the public agency and the design professional. The arguments are the same. The standards were followed and there is no negligence.

If A.B. 106 is adopted, public agencies will no longer be able to tender that defense. The public agency will be sued and, on its face, there is an allegation that the design professional was negligent. The public agency will then be compelled to file a third-party complaint bringing in the design professional because it does not know if this is true but it has been claimed that the design professional's work is defective. The design professional is negligent. Instead of tendering a defense and working with the design professional to defend it, the public agency will be suing its design professional. Their relationship is adversarial as it defends the claim.

There was a question regarding lack of cooperation. Statutorily, there is no requirement the design professional must cooperate in the defense. If the public agency has been sued and not the design professional, there is no duty to cooperate in that defense. If the public agency has sued the design professional, there may be a question of how much it may share because they are now adversarial.

The claim that the process does not change because of the bill is not true. There is a tender of defense, and the public agency works with the design professional to defend the claim. The process will change if the duty to defend is eliminated because there will be a lawsuit and a counterclaim. Two parties will incur legal fees for the same claim of negligence.

Senator Lipparelli:
When design professionals are liable for error and omissions, they have insurance for that; therefore, they can participate in their own defense. Public entities are compelling them, through contract, to have exposure to something for which they cannot insure. Design professionals still have liability if a claim is made wherein there is a design flaw, but they are not liable if no such claim arises.

Mr. Ritchie:
I am not an expert on insurance, but Lloyds of London will insure almost anything. I do not know if it is true that they cannot get insurance when a claim is made. As soon as the public agency sues the design professional, errors and omissions insurance kicks in.

Senator Lipparelli:
You sue the design professional when you have a reasonable basis to make such a claim. You would not sue the design professional just because you want to get lawyer's fees.

The claim made is not the public entity's issue because it wants to make sure other parties are brought in when there is an underlying design flaw. However, if the public entity's maintenance issue is the reason for the claim, there may not be a claim against the design professional. Design professionals are exempting themselves from being brought in the moment the suit is filed. This should not be a compulsory part of the contract. When there is no liability, is there a means for the design professional to recover the costs of the defense?

Mr. Ritchie:
When a claim of negligence is made, the public agency will not know if the allegations are true. A claim that the work is negligent will trigger the errors and omissions coverage for most design professionals.

When I looked at A.B. 106, I considered this the full employment act for attorneys, because instead of one legal team defending both design professional and the public agency, two teams will defend the same claims.

If a claim arises from something unrelated in the professional liability context to what the design professional did, then it would be difficult for the public agency to assert a claim against that design professional. For example, a claim that a contractor used the wrong concrete mix that caused a bridge to collapse was not design, it was construction. It would be difficult for a public agency to sue or to bring in a design professional.

There are cases, which probably would be covered under general liability, in which the design professional is, for example, at a meeting and runs over a worker. That is a tort claim, damage to a person or property. That is different from professional negligence.

If this bill is adopted, it will require public agencies to sue their design professionals in order to get insurance coverage. There has to be a better way to handle this than requiring two parties that should have a joint interest to become adversarial. It cannot serve public policy to have attorneys billing for the same claim.

Senator Hardy:
What is the better way?

Mr. Ritchie:
It has been said several times that these kinds of claims are usually settled. If you look at the language of the bill, the public agency is only able to receive indemnification if it is adjudicated liable by a trier of fact. With a settlement, there is never adjudication by a trier of fact. This is great for attorneys because they have to litigate this to the end. You cannot settle this.

The language in the bill can be more narrowly drafted to exclude the requirement that the design professional defend the public agency for work unrelated to the design professional's scope of work. The language in the bill does not do that. It is too broad.

Senator Hardy:
It has been my experience with attorneys that it is part of the legal ethic to name everybody in a claim. If the attorney does not name everybody then he or she did not cast a wide enough net and is doing something wrong. How many times is the design professional not named when something goes wrong with a public project?

Mr. Ritchie:
In my experience, attorneys will name everybody possibly related to the claim.

Senator Hardy:
You said there is no duty to cooperate. If a suit is filed that names everybody and the design professionals do not have insurance policies that allow them to defend everybody, then they say I do not have that, but I do have a policy that defends me. Therefore, they do not mind if someone sues them because at least they are covered and do not have to go bankrupt because they do not have enough money to defend the world.

Which baby are we going to split? Are we going to share liability or defense? Someone added "allegedly" in the amendment to this bill, Exhibit C. I love the word allegedly because you can do that to anybody, anytime. The attorney will say that you allegedly did something, so that covers everybody. There is never a "non" in the word "allegedly" for persons you sue

I understand what you, the county and the design professionals are saying. I recognize the unfairness on both sides. That is why I ask, what is the better way? Maybe that is a simple question for a complicated answer.

Mr. Ritchie:
The better practice is to identify the problem which is that design professionals are required to defend a work product with which they had nothing to do. If language limits the design professionals' immunity from the duty to defend to just that action, most public agencies would be okay with that. Some other contractor whose work has been alleged to be negligent would be requested to defend or indemnify the public agency.

Senator Hardy:
How many design professionals were let off the hook by a public agency instead of taking advantage of the design professional's ability to defend? Do

we have any statistics on how benign those public agencies were to let off the design professionals because they were nice guys and knew the design professionals had nothing to do with the claim?

Mr. Ritchie:
I have no idea. As an attorney, you have to have a reasonable basis, both factually and in the law, to bring that kind of claim.

Mr. Fontaine:
I have been a registered professional engineer for 30 years. I was with an agency that employed many engineering and architectural consultants, so I am sympathetic to this issue and appreciate the conundrum. However, we are still opposed to this bill for all of the reasons stated so far.

It would be helpful to examine in more detail the case that Mr. Rowe cited as the reason why this has become a critical issue for design professionals. We agree that in the case of *CH2M Hill*, it should not have been required to pay defense costs for a client when it was not alleged to be negligent. We are not talking about that. The problem is that it had to pay the defense costs.

We are concerned about how broad this legislation reaches. Assembly Bill 106 prohibits a governmental entity from requiring a consultant to defend when there is an allegation of negligence on the part of the consultant. If that is the concern, why not draft legislation that addresses the ruling in California, with which we do not agree, instead of shifting the risk to governmental entities.

So, who pays? The engineering consultants and architects are saying they cannot get insurance to cover that defense; neither can local governments. Local governments hire design engineers and consultants to do work for them because either they do not have the resources to do the work themselves or they do not have the expertise.

If A.B. 106 passes, the local governments are required to defend themselves. They will have to hire not only legal counsel, because many of the smaller counties do not have the resources in the district attorney's office to defend these cases, but technical experts.

Who foots the bill to pay the defense costs up front? This proposed legislation goes too far. From my experience in working in this field for many years, there

is no statutory requirement for cooperation once a lawsuit is filed. It creates a potentially adversarial relationship between the parties named in the lawsuit. When a lawsuit names both the design engineer and the local government, it does not necessarily mean that there will be a level of cooperation. The local governments and the design professionals will defend themselves only.

John Terry, P.E. (Assistant Director, Engineering, Chief Engineer, Nevada Department of Transportation):
The Nevada Department of Transportation (NDOT) is opposed to A.B. 106. Design professionals are required to defend the public agency in lawsuits from their work product on a project. We see no reason to change NRS 338. The use of the duty to defend is standard practice in the industry and included in all NDOT service provider agreements.

I have been the chief engineer and an engineer in Nevada for over 30 years. Design professionals can and should defend NDOT in lawsuits because of their work. The language changed in the Assembly Committee on Government Affairs still does not address our issues.

On the engineer's side of this, when talking about defending these lawsuits, we get designs from engineers who seal their plans. That seal is from them individually as professional engineers as well as from their firm. If NDOT has to defend these lawsuits, not only would it not have access to the lawyers that the design professionals should provide to defend their work, we would not have access to the engineers who designed and placed their seal on the work. The NDOT would have to defend itself. The NDOT might be better able to defend itself than a local county or city because it is larger and has its own engineers; however, the engineer of record should be the one defending the claims against his or her work.

Senator Hardy:
If you hire an engineer for a public entity, how does he or she acquire sovereign immunity in order to only be liable for so much?

Mr. Terry:
I do not know.

David Bruketta (Utility Manager, Public Works Department, Carson City):
Carson City is opposed to the bill.

Wes Henderson (Nevada League of Cities and Municipalities):
We too are opposed to A.B. 106. I had several conversations with Mr. Hillerby to understand the bill. Our concern is that local government would be responsible for defending the design professional. Mr. Hillerby has assured me that is not the case, but I do not read that assurance in the bill language.

Ms. Walker:
During the Assembly Committee on Government Affairs work session when this bill was passed out of Committee, Mr. Rowe stated that if the Committee passed the bill, the proponents would work with the opposition in the Senate to resolve the Assembly Committee's concerns. I am hopeful that the proponents will work with us on an amendment to alleviate our concerns as was represented in the Assembly.

Chair Goicoechea:
How did it come out of the Assembly with a vote of 42 to 0 with this much opposition?

Lee Thomson (Chief Deputy District Attorney, Clark County):
Clark County also opposed A.B. 106. There are cases in which a contractor or some other third party sues a public entity and alleges that the basis of that liability is a design error or omission. This is a policy decision. Should the design professionals or their insurers pay for the defense of that case or should the taxpayers? This is about that. It is not a matter of oh, well, you are going to be there defending it anyway.

A question was asked about the situation in which only the county or city is sued and the design professional is not named. Actually, that is a common occurrence. I have been responsible for defending cases for the county on construction claims for 30 years. In the majority of those construction claims, the design professional is not named.

The design professional cannot be named under the Economic Loss Doctrine when contractors are suing. They do not have a privity of contract with the design professional, so they sue the owner, the county. That is why we have a situation in which we need the design professional's assistance, but the design professional is not a named party in the case.

In spite of the claims from the people who testified today, I cannot emphasize enough that there will be cooperation. This bill flat out eliminates any duty of defense. That includes not only attorney's fees and costs but also the costs of discovery, presentation, witnesses, availability of documents and overall expertise.

Senator Hardy:
If the design professional is not named in the lawsuit, but his or her help is needed to defend the lawsuit, why should the design professional pay for the defense if he or she is not named in the lawsuit?

Mr. Thomson:
The first case I represented was against G.C. Wallace, Inc., for a design bust at McCarren International Airport. That was the entire issue before the arbitrator.

Senator Hardy:
If the design professional is not named in the lawsuit, why should he or she pay for the defense of the lawsuit?

Mr. Thomson:
The allegation is because of an error or omission by the design professional. Under the Economic Loss Doctrine set forth by the Nevada Supreme Court, the contractor cannot legally name the design professional, so it names the county and the county has to defend it.

It is necessary that the Committee consider how serious and costly it is to prepare a defense. I have had good and bad experiences in which there has been an absolute refusal to participate in the defense or a demand for additional money. To be on the hook for an error or omission claim and then have to pay the design professional to defend his or her error or omission claim is double wounding taxpayers.

Senator Hardy:
If the entity is sued because the contractor cannot sue the design professional, and the entity then requires the cooperation of the design professional, from where does "alleged" come? Does it come from the contractor or from the public entity?

Mr. Thomson:
In any case when a complaint is filed, the allegation is stated in the complaint. It is what is claimed to have occurred; until there is a decision by a trier of fact, it remains an allegation. It is an allegation by the contractor or by a third party of error or omission by the design professional.

Senator Hardy:
The contractor cannot sue the design professional; however, the contractor can allege that the design professional is the problem and sue the public entity.

Mr. Thompson:
That is correct. Through the doctrine of respondeat superior, since the public agency hired the design professional as its agent, it is responsible to the contractor for the design granted by the design professional.

This is a singular imposition on public works projects. There is no such restriction in the private sector on this type of arrangement. I do not see why this Legislature should make a difference between the private and public sector on this issue.

This issue poses a problem for small firms. Statute says that if the design professional's insurance company refuses to defend, then the public agency is already in this situation. This gives a free pass not only to some of the small local firms, but also to national and international firms that have more than enough money to take care of these problems. It is not fair to ask a small county with its limited budget to bear the costs when it may have hired an international or national firm to take care of that. This results in more litigation because we will have no choice but to file claims against the design professionals.

Ted Olivas (City of Las Vegas):
We oppose A.B. 106. In its current form, NRS 338.155 is good policy. We have debated these provisions for close to 15 years. This section of NRS does several things: if the public body wants to be named as an additional insured in its insurance policy, it can ask its insurer to do that, and it has to pay. That makes perfect sense; the public body cannot require the design professional to defend and indemnify it for its negligence; the public body may require the design professional to defend and indemnify the public body for the design professional's negligence, errors, omissions or misconduct. This is fair,

reasonable and well thought out public policy. It is a cost of doing business and a cost that public agencies bear.

If this bill is good public policy, why should we not be on the hook to defend everyone whom we do business with for his or her negligence? The answer is because it is not good public policy. It is not good for the taxpayer. Collectively, we do billions of dollars in construction across the State that requires millions of dollars of design professional contracts. I have a list of over 100 of the City of Las Vegas design professional contracts with insurance requirements that they defend the City. Our insurance consultant stated they are all compliant.

We should not fix a section of the NRS that is not broken. It has worked for many years.

Chair Goicoechea:
We have some work to do on the legal issues in A.B. 106.

Mr. Hillerby:
I am confused by the confusion. We are not asking anyone else to defend us. No one else will defend us. We defend ourselves now and in the future and pay the costs of our defense.

The public entities are correct; they may be defending a claim made against them, but they are not defending us. If we do not bother to put up our defense, we are going to be in trouble. We will defend ourselves whether the law is changed or not. We are doing that now. The question is how the costs of a defense are distributed among the parties depending upon a finding of negligence.

We will be happy to work with others to determine if we can do anything to resolve their concerns.

Chair Goicoechea:
I would appreciate it if you can find a middle ground. The key point that concerns me is the fact that a claim might be settled and there would never be a trier of fact to determine who is liable.

Mr. Hillerby:
That is standard practice. The law references trier of fact, but a settlement means the parties have voluntarily settled. That means we would pay our share of a settlement. If the language in this chapter is limited to a trier of fact in public entity cases, a settlement means that the parties have voluntarily agreed on how to split up the liability and the costs.

Chair Goicoechea:
If the opponents concur with that, we will be fine.

I will close the hearing on A.B. 106 and open the hearing on A.B. 293.

ASSEMBLY BILL 293 (1st Reprint): Revises provisions relating to public administrators. (BDR 20-168)

Joni Eastley (Assistant County Manager, Nye County):
Nye County requested A.B. 293. There have been several friendly amendments to the bill.

Section 1 of the bill requires a deputy public administrator to be a qualified elector of the county; to be 21 years of age or older; not have been convicted of a felony for which his or her civil rights have not been restored by a court of competent jurisdiction; and not have been found liable in a civil action involving fraud, misrepresentation, material omission, misappropriation, theft or conversion. A public administrator is held to those standards. We would like the deputies who are appointed by the public administrator, in our case the elected official, to be held to those same standards.

Section 2 of the bill authorizes a board of county commissioners, in a county whose population is less than 100,000—we agreed with that amendment—to require by ordinance that public administrators not take any property belonging to decedent outside the county for sale without the prior notification of the board of county commissioners.

Statute authorizes a board of county commissioners to investigate any complaint received by the board against the public administrator. Unfortunately, the law does not give counties the authority to act on results of the investigation.

Section 3 of the bill would authorize the board to take any appropriate action it deems necessary to resolve a complaint that has been investigated.

Section 3 authorizes the board in a county whose population is less than 100,000 to require, by ordinance, a public administrator to submit an independent audit report to the board of county commissioners on an annual basis. The report covers the records and office of the public administrator.

Senator Lipparelli:
Section 2, subsection 3 requires a notification before transporting any property outside the county. What is that addressing?

Ms. Eastley:
We received numerous complaints in the past about public administrators removing decedents' property from the county, selling it in other counties and even transporting it across state lines for sale. Some of the complaints that I received came from law enforcement.

Chair Goicoechea:
A public administrator is not elected in all counties but can be.

Ms. Eastley:
That is correct. The public administrator is elected in Nye County.

Chair Goicoechea:
The public administrator can be appointed. I understand this kind of jurisdiction and authority over someone who is appointed by the board; however, it gets gray when the public administrator is elected.

Senator Lipparelli:
Perhaps I do not have a grasp of the public administrator's obligations or responsibilities vis-à-vis section 3. Does that relate to where the public administrator can get the most value for something? Why are we restricting it?

Donald L. Cavallo (Public Administrator, Washoe County):
A friendly amendment put this change in the bill. It gives the board of county commissioners in counties with a population of less than 100,000 the authority to request a public administrator to either notify or obtain approval from the board of county commissioners. The public administrator may do one or the

other. In this instance, I met with the district attorney of Storey County, who is also the ex officio public administrator. The district attorney has concerns about this section because no storage is available in Storey County to store property of the deceased. Storey County is considering obtaining a storage unit in Washoe County to store the property of the deceased. The problem is the administrator could not transport the property out of the county.

I just had a large estate with many weapons in Washoe County. I am considering moving some of those weapons to a large auction house in Texas for liquidation and to get the best value for them.

Much of the transportation out of the county would be in the best interest of the estate to get the most dollars generated in a larger venue.

Ms. Eastley:
I appreciate the amendment offered by Mr. Cavallo that places a population cap on this and makes the language enabling. A board of county commissioners could adopt this section by ordinance if it is in the county's best interest.

Chair Goicoechea:
We have to clarify which amendments are whose and where they are. The bill does have a population cap of 100,000. Are you speaking about the amended bill that came from the Assembly?

Ms. Eastley:
I am speaking about the amended bill from the Assembly with proposed amendments from the Nevada Public Agency Insurance Pool and Public Agency Compensation Trust (POOL/PACT), and I wanted to offer Mr. Cavallo's friendly amendment in section 1.5.

Michael Rebaleati (Nevada Public Agency Insurance Pool; Public Agency Compensation Trust):
The amendments before us in red (Exhibit D) are not included in the first reprint. These amendments were left out during the hearing in the Assembly Committee on Government Affairs; however, we agreed to approach them in the Senate.

Chair Goicoechea:
I want to be certain that this is the only amendment we have, Exhibit D.

Brian Hardy (Nevada Public Agency Insurance Pool; Public Agency Compensation Trust):
I will explain the proposed amendment, Exhibit D, in my written testimony (Exhibit E).

Chair Goicoechea:
The Committee has not had the time to read the amendment thoroughly. Legal counsel said that it is germane but it will take some time to determine where and how to incorporate it into the bill.

Mr. Cavallo:
When this came out of the Assembly, I made the comment that I would be happy to work with POOL/PACT. They attempted to contact me, and I was unable to get back with them. I will work with Mr. Hardy directly and legal counsel to iron this out.

I have concerns with the first part of the amendment regarding the public administrator not being a policymaker. In my county, I am an elected official. I set policy and procedures for my office. The board of county commissioners only oversees my budget. I have concerns with that verbiage.

Chair Goicoechea:
There is a county population cap of 100,000 in the bill.

Mr. Cavallo:
We have an anomaly because in Clark and Washoe Counties, public administrators are funded by the general funds, and any revenues go back to each county's general fund. Five district attorneys serve as ex officio public administrators. The Carson City clerk/recorder is an ex officio public administrator. In the rest of the counties, public administrators are elected or appointed to those positions if there is a vacancy.

Chair Goicoechea:
Other than Clark and Washoe Counties, those counties have populations less than 100,000. The population cap is already in the bill.

Mr. Cavallo:
I understand. That was an earlier amendment.

Chair Goicoechea:
We have more work to do on it.

Mr. Cavallo:
It will not be difficult. We would like to have a good bill for the benefit of the smaller counties without handcuffing the larger counties.

Chair Goicoechea:
We know there is an issue. I represent Nye County. Some other areas have exposure even though they have not had any problems yet.

Linda Bromell:
I support A.B. 293; however, I have some concerns. I have submitted my written testimony (Exhibit F).

Mr. Fontaine:
The Nevada Association of Counties supports A.B. 293.

Senator Parks:
I support A.B. 293. Dating back to the 1970s, Clark County has seen some horrific problems with public administrators. As I understand it, sections 1 and 1.5 of the bill apply to all counties and are not restricted to the distinction between county populations. In sections 2 and 3, I do not see a reason to limit this to counties with populations less than 100,000.

Chair Goicoechea:
Your concern is to make sure that at least sections 1 and 1.5 apply to all counties.

Senator Parks:
Yes. Someone made a comment about slapping handcuffs on public administrators. I do not have a problem with that.

Chair Goicoechea:
As you start working through and redrafting the bill, make sure that Clark and Washoe Counties can protect their constituents and the smaller rural counties have more flexibility.

I will close the hearing on A.B. 293 and adjourn the meeting of the Senate Committee on Government Affairs at 3:37 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	6		Attendance Roster
A.B.106	C	1	Douglas County; Carson City; Lyon County; Clark County; Truckee Meadows Water Authority	Proposed Amendment
A.B. 293	D	1	Michael Rebaleati / Nevada Public Agency Insurance Pool; Public Agency Compensation Trust	Proposed Amendment
A.B. 293	E	2	Brian Hardy / Nevada Public Agency Insurance Pool; Public Agency Compensation Trust	Written Testimony
A.B. 293	F	3	Linda Bromell	Written Testimony