

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

**Seventy-Ninth Session
June 2, 2017**

The Committee on Government Affairs was called to order by Chairman Edgar Flores at 9:04 a.m. on Friday, June 2, 2017, in Room 4100 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4404B of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/App/NELIS/REL/79th2017.

COMMITTEE MEMBERS PRESENT:

Assemblyman Edgar Flores, Chairman
Assemblywoman Dina Neal, Vice Chairman
Assemblywoman Shannon Bilbray-Axelrod
Assemblyman Chris Brooks
Assemblyman Richard Carrillo
Assemblyman Skip Daly
Assemblyman John Ellison
Assemblywoman Amber Joiner
Assemblyman Al Kramer
Assemblyman Jim Marchant
Assemblyman Richard McArthur
Assemblyman William McCurdy II
Assemblywoman Daniele Monroe-Moreno
Assemblywoman Melissa Woodbury

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Senator Nicole J. Cannizzaro, Senate District No. 6
Senator Joyce Woodhouse, Senate District No. 5



STAFF MEMBERS PRESENT:

Jered McDonald, Committee Policy Analyst
Jim Penrose, Committee Counsel
Carol Myers, Committee Secretary
Cheryl Williams, Committee Assistant

OTHERS PRESENT:

Sean Stewart, Chief Executive Officer, Nevada Contractors Association
David Frommer, Executive Director and University Architect, Planning and Construction, University of Nevada, Las Vegas
Luis F. Valera, Vice President, Government Affairs and Diversity Initiatives, University of Nevada, Las Vegas
James A. Barrett, Jr., President, JABarrett Company, Las Vegas, Nevada
Danny L. Thompson, representing Laborers International Union of North America, Local 872, AFL-CIO
Fran Almaraz, Political Director, International Brotherhood of Teamsters, Local 14, Local 631, and Local 986; and representing American Federation of State, County and Municipal Employees, Local 4041, AFL-CIO
Nick Vassiliadis, representing the Southwest Regional Council of Carpenters
Craig Madole, Chief Executive Officer, Nevada Chapter, Associated General Contractors of America, Inc.
Marc Markwell, Chief Financial Officer/Secretary, Sierra Nevada Construction, Inc., Sparks, Nevada
Justin Ivory, President, A-1 Steel, Inc., Sparks, Nevada
Chris Barrett, Vice President, Business Development and External Affairs, Q&D Group Invesco, LLC, Sparks, Nevada
William H. Stanley, Executive Secretary-Treasurer, Southern Nevada Building and Construction Trades Council, AFL-CIO
Todd Koch, President, Building and Construction Trades Council of Northern Nevada, AFL-CIO
Ken Mercurio, President and Chief Executive Officer, Diversified Demolition Company, Sparks, Nevada
Greg Esposito, Government Affairs Director, Plumbers, Pipefitters & Service Technicians, Local 525
Kevin Ranft, Labor Representative, American Federation of State, County and Municipal Employees, Local 4041, AFL-CIO
Carter Bundy, Political Action Representative, American Federation of State, County and Municipal Employees, AFL-CIO
Priscilla Maloney, Government Affairs Retiree Chapter, American Federation of State, County and Municipal Employees, Local 4041, AFL-CIO
Michael Sean Giurlani, President, Nevada State Law Enforcement Officers' Association; and Member, Nevada Law Enforcement Coalition

Richard P. McCann, Executive Director, Nevada Association of Public Safety Officers; and Member, Nevada Law Enforcement Coalition
Ronald P. Dreher, Government Affairs Director, Peace Officers Research Association of Nevada; and representing Nevada Law Enforcement Coalition
Scott A. Edwards, President, Southern Nevada Conference of Police and Sheriffs; and President, Las Vegas Peace Officers Association
Dena Schmidt, Deputy Director, Department of Health and Human Services

Chairman Flores:

[Roll was called. Committee rules and protocol were explained.] We will take the agenda items in order. In the interest of time, I request that you refrain from repeating testimony during support, opposition, and neutral positions. Testimony will be limited to two minutes in order to keep things moving. I will open the hearing for Senate Bill 317 (2nd Reprint).

Senate Bill 317 (2nd Reprint): Revises provisions relating to preferences in bidding for certain contracts for businesses based in this State. (BDR 28-936)

Senator Nicole J. Cannizzaro, Senate District No. 6:

I am pleased to present Senate Bill 317 (2nd Reprint) to this Committee. As amended, the bill revises current bidding preferences for public works contracts and for efforts to increase the number of those contracts awarded to Nevada-based businesses. There were several amendments added in the Senate. Rather than go through each of those individually, I will go through the bill in its second reprint.

I want to tell the Committee a little bit about how this particular bill came to my attention. During the course of my conversations with some construction worker friends of mine who have been out of work for quite some time, and despite being on the out-of-work list, were not finding themselves with jobs. I was of the mind that Nevada was spending a lot of money and public dollars on public works. Since the economy was improving, I assumed that would have an impact on their ability to go back to work. I was told that happens, but sometimes public works projects are done by out-of-state businesses. I certainly do not think Nevada is a place where we do not want to encourage out-of-state business to come and prosper, but as a legislature, we also have to be concerned with whether or not those public works projects are resulting in jobs for Nevada workers. What S.B. 317 (R2) is striving to do is ensure we are creating jobs with public dollars for Nevadans. That is an important component of the conversation around ensuring our constituents can be employed. I started having conversations about some of the ways we could potentially increase the number of contracts that are going to Nevada-based businesses.

Currently, in *Nevada Revised Statutes* (NRS) Chapter 338, there is a bidding preference for Nevada-based businesses. In fact, Nevada has a long history of providing a bidder preference for public works contracts to those Nevada-based businesses. In 1985, the Nevada Legislature enacted Senate Bill 204 of the 63rd Session, which required a public body to give a preference to a bidder domiciled in the state over a bidder domiciled in another state. This preference has been amended numerous times.

In response to the Great Recession—which hit Nevada's construction sector particularly hard, with over 60 percent of all construction jobs in the state eliminated from June 2006 through December 2010—former Assemblywoman Kirkpatrick sponsored Assembly Bill 144 of the 76th Session. That bill was referred to as "Nevada Jobs First." After no fewer than 15 hearings in different committees that session, it was passed with only one nay vote in both houses.

Assembly Bill 144 of the 76th Session added five criteria that must be met to qualify for the 5 percent bidding preference on state and local public works projects to ensure the preference was indeed being used by Nevada-based businesses. By way of background, that is how we have come to know the bidding preference in Nevada.

Senate Bill 317 (2nd Reprint) revises some of those provisions and the existing bidding preference for public works projects. It increases the existing bidding preference from 5 percent to 7 percent on projects of \$250,000 or more during the period of July 1, 2018 through June 30, 2021. Effective July 1, 2021, the bidding preference will revert back to 5 percent. This allows three years to monitor the impact of the percentage increase. This bill would only apply to projects that are bid after July 1, 2018.

The reason for the time frames included in the bill is because after having many conversations with a number of stakeholders, there were concerns voiced that if we did increase the bidding preference, it may have an adverse impact on contracts that are procured by Nevada-based businesses out of state. My intent with this legislation is to increase the bidding preference with a sunset in order to look at what is actually happening. I do think there is a good chance the 7 percent is not going to have an adverse impact, but will bring those public works projects to Nevada-based businesses. I think this is a compromise that allows us to increase the bidding preference and to monitor how it performs. If the 7 percent bidding preference is working and if it has gotten Nevadans back to work, we can continue with the 7 percent bidding preference.

Senate Bill 317 (2nd Reprint) also requires a contractor, applicant, or design-build team that received a bidding preference and was awarded a contract for a public work to submit, upon substantial completion of the project, an affidavit from a certified public accountant. The certified public accountant will confirm if the entity complies with the existing requirements for the duration of the public work. Those requirements are: at least 50 percent of all workers employed on the public work will hold a valid Nevada driver's license or identification card; all vehicles used primarily for the public work will either be registered in this state or partially apportioned to this state; at least 50 percent of all design professionals working on the public work will hold a valid Nevada driver's license or identification card; and certain records will be maintained and made available for inspection within the state. Those are the requirements for what constitutes a Nevada-based business under NRS Chapter 338. The purpose of the affidavit is to ensure and monitor that when these contracts are awarded, if it is based on a bidder preference, the particular project was in compliance with what was agreed to.

As a condition of maintaining eligibility to receive a bidding preference, a contractor shall annually submit to the Nevada State Contractors' Board an affidavit from a certified public accountant indicating the contractor has paid all applicable sales, use, and governmental services taxes. If a contractor willfully and intentionally fails to submit the required annual affidavit, the contractor is not eligible for such a bidding preference for a five-year period. This ensures that when we are awarding contracts based on a bidding preference, and if that bidding preference was abused, we are able to note those particular individuals and not award those contracts to them in the future.

A second amendment that was added in the Senate corrects an unintended consequence of Assembly Bill 332 of the 78th Session, which restricted the fundraising options for the Nevada System of Higher Education (NSHE) for certain public works. As many of you know, I am a product of both the University of Nevada, Reno (UNR) and also the University of Nevada, Las Vegas (UNLV). I am pretty passionate about our higher education system. When we think about how we can continue to grow and build, part of that is the ability for these institutions to fundraise and build projects on the campuses.

Specifically, section 10.5, subsection 16, paragraph (b) of this bill provides that a building for the Nevada System of Higher Education is a public work only if "25 percent or more of the costs of the building as a whole are paid from money appropriated by this State or from federal money." This means if a project for an NSHE campus is financed 75 percent or more through private donations, those private donors who have given the money to the universities or to NSHE for specific projects, would be able to pick their design-build team. I did have some brief conversations before walking into this room this morning, and I want to be crystal clear about my intent in this bill. I think there may be some tweaks that may be needed for language, but I would certainly defer to legal counsel to assist with that dialogue. The purpose of the amendment in the Senate was to ensure that NSHE could still engage in substantial fundraising for some of these projects and be able to pick their design-build team.

Senate Bill 317 (2nd Reprint) still includes the transparency aspect, and NSHE would have to disclose the individuals who are part of the project. It would exempt them from the bidding process for picking the design-build team. However, this bill is not intended to remove those projects from prevailing wage or to remove NSHE from the requirement to pay sales and use tax on all material. That is the intent of this legislation. When we were reading through the amendments, that was absolutely the language we believed was in this bill. Some of the conversations I have had this morning with stakeholders indicate we may need some clarification and continue to work on the language. I would certainly ask legal counsel for an opinion as well. I thought this bill was doing that, and I just want to ensure that is the case and we are not exempting those projects from NSHE, even though they would not be a public work under this bill. We are not exempting them from prevailing wage or paying tax on materials.

Section 10.3 of the bill requires NSHE to disclose to the State Public Works Division, Department of Administration, the name of each contractor or design professional selected to provide design and construction work on a building financed using less than 25 percent public money within 30 days after entering into a contract for such work.

Section 12.5 of the bill provides that certain restrictions on a public body purchasing or supplying construction materials or goods for a public work also apply to any contract for construction work of NSHE, even if the construction work does not qualify as a public work.

As I noted earlier, S.B. 317 (R2) is effective upon passage and approval for the purposes of adopting regulations and other preparatory tasks, and is effective July 1, 2018, for all other purposes.

I strongly ask for your support in this legislation. I know when we talk about bidding preferences, that is something we want to take very seriously. That is the reason why this bill is drafted in the form before you today. I think it is incumbent upon us to ensure Nevada-based businesses are getting the first crack at state contracts, especially when we are awarding public dollars for these projects and trying to say to our hardworking constituents that we are trying to protect those jobs. That is our focus. I think S.B. 317 (R2) moves us in the right direction. I am happy to stand for any questions.

Assemblyman Daly:

In your testimony, you mentioned trying to fix an unintended consequence of A.B. 332 of the 78th Session. I will also ask this for those who are here to speak in support who told you this. I can tell you that is untrue. It was not an unintended consequence. Do you believe the processes we have for state purchasing, local government purchasing, and competitive bidding are sound public policy?

Senator Cannizzaro:

Yes, I absolutely do think it is sound public policy. I believe I can guess what part of the bill you may be referring to. I would not put my name on a bill that talked about bidding preferences for public works or that process if I did not think it was sound public policy. To that end, I also do not believe it is smart to say if we have individuals who are willing to give high-dollar donations to our system of higher education to help finance some works that are on those particular campuses, that they should not have some control over the design of those particular projects. What is different about this bill is I am specifically not saying that what we are trying to do is exempt those works from prevailing wage or other tax issues.

Assemblyman Daly:

Are you saying you believe publicly bidding projects in a competitive process is sound public policy for all public bodies? Does NSHE meet the definition of a public body?

Senator Cannizzaro:

I believe under the current definition, NSHE is included in that definition. What S.B. 317 (R2) does is to say that for certain instances, if a donor contributes 75 percent or more for a public works project, that design-build team can be chosen without the public bidding preferences. When we speak in sweeping terms, I could say to you that absolutely publicly bidding projects is sound public policy. I absolutely agree with that. I also agree that we cannot create policy in a way in which they are absolute. I think there are some instances where that might not be the best way to ensure we are doing other things that are equally important.

Assemblyman Daly:

Thank you for an explanation on a question I did not ask. I will not ask you the question, I will tell you, because I already know the answer. You believe in public bidding. The universities are public bodies. The buildings being built are on public property, owned by the state, and built for public purposes with public money. You may say there is a donor, but they may be collecting fees and various things. It is never 100 percent. I talked to the people who brought this language to you, and I believe they misled you and did not tell you the entire story. The reason that language was taken out of A.B. 332 of the 78th Session is because part of NSHE was evading the taxes. We needed to change the language because they are a public body bidding public works, the same as every other public agency in the state. The Nevada System of Higher Education is not special.

I offered NSHE a way that would have solved the problem on high-dollar donations on high-dollar projects with a limited number of contributors. They told me that was too restrictive. What they were really doing at a project at the university a couple of years ago was acting like they were following the public bidding process. Then they deviated, and another contractor who came in second or was not selected felt they were damaged and sued the university. Do you know what their answer was? Because of that language you just put in this bill, they said they were not a public work and were not subject to the bidding laws like every other public body building a public work with public dollars.

This policy is bad. In fact, it exempts NSHE from the very bidding preference provisions you are trying to put into the rule. The provisions for prompt pay for subcontractors, requirement to bid, et cetera, are being exempted.

The other issue that is happening at the university in southern Nevada, which we did not know they were doing but have been doing for a long time, is they would put out a proposal once a year and receive ten respondents. Then they thought they would get three quotes and give it to the next contractor. We have some of those provisions for small contracts. If the project is under \$100,000, that process can be done now. For the Department of Transportation, it is under \$250,000. We wanted to expedite their process. The Nevada System of Higher Education was doing that for million-dollar and five million-dollar jobs. They want to continue doing that because they think they are special. What I am saying is they are not special. They are a public body doing public works and they need to publicly bid it the same as everyone else. The process is supposed to be open to all contractors

in this state. Everyone is supposed to have the same opportunities to bid on these public jobs under the same conditions. This bill will not allow that to happen. Let me explain to you what is going on. You have been misled by the people behind you who are going to testify.

Chairman Flores:

I appreciate that, Assemblyman Daly. We will allow the people who brought this language forth and the people Senator Cannizzaro has been working with to address that specific comment. Whether or not you have been misled is for us to determine. This is a conversation we should have with the stakeholders and not necessarily with you, Senator.

Are there any other questions from members on the bill?

Assemblywoman Neal:

My question refers to section 12.7, subsection 9. It says, "The provisions of this section apply to any contract for construction work of the Nevada System of Higher Education even if the construction work does not qualify as a public work" Please explain the meaning of that language.

Senator Cannizzaro:

I would like to take a step back. Part of S.B. 317 (R2) does allow NSHE—in a situation where the financing of a particular project is only financed 25 percent or less by public dollars and 75 percent or more is being financed by private donors—to be able to select the design-build team. Ordinarily, NSHE would be subject to having to put the project out to bid. This would allow for those donors to select their own design-build team. My intent with this bill is not to exempt those projects from prevailing wage, from the payment of sales tax, or the payment of other related materials taxes. I do not know if the Legal Division has some additional language, but I believe that language is intended to ensure that even though they would not be considered a public body for public works under the definition that is now being changed in S.B. 317 (R2), they would still be subject to the litany of other things that apply to public works contracts.

Chairman Flores:

Specifically to that, I am going to let our legal counsel, Mr. Penrose, respond.

Assemblywoman Neal:

Before you do that, I did ask the Legal Division already.

Chairman Flores:

Do you already have the answer?

Assemblywoman Neal:

Yes.

Chairman Flores:

We need to take control of the Committee. If you already know the answer to your questions and just want to get it on the record, that is fair. We are not here to beat up the Senator, so we need to stop that now. That is not how we are going to move forward. We need to be fair. If you have a question about something that is not clear, ask that question. If you are clear on something, you can state your position, what you think, the information you have, and ask for verification.

Jim Penrose, Committee Counsel:

It is my understanding that the practice that NRS 338.1423 was intended to deal with is the situation where a public body that was exempt from the payment of sales taxes was taking advantage of its tax exempt status and purchasing all the materials used on a public work project and not paying the sales taxes on them, thereby depriving the state and local governments of those revenues. The determination was made that for the vast majority of public bodies, that could continue to be done, but only if the sales taxes were paid under the terms of the contract. That is the existing language in NRS 338.1423, section 12.7, subsection 2, paragraph (a). The effect of the amendment as I read it will extend and make it explicit that those provisions are equally applicable to any NSHE project, regardless of the percentage of that project that is funded with state and federal revenues. I do not believe it has any effect beyond that. That would be my assessment.

Assemblywoman Neal:

My next question refers to section 11, subsection 5, which states, "In addition to any other remedy or penalty provided by law, a public body may recover, by civil action" What is "in addition to any other remedy or penalty" capturing?

Senator Cannizzaro:

Senate Bill 317 (2nd Reprint) requires Nevada-based businesses that receive a public works contract as a result of a bidding preference to comply with certain affidavit requirements. There are provisions within S.B. 317 (R2) that if the Nevada-based businesses do not comply with those affidavit requirements, they would be precluded from bidding for a five-year period on other public works projects. That language is to note there may be some additional areas where they would be subject to other penalties, mainly with the addition of the language in S.B. 317 (R2).

Assemblywoman Bilbray-Axelrod:

Thank you for bringing this bill. I happen to think it is a good bill, and when I was campaigning, I talked to people who expressed the same issue. I know the concern that my colleague has with NSHE. I believe something that came up was perhaps limiting the amount of donors. For example, 75 percent of the project would have to be split by two donors. As someone who has a background in development, I know that can be very troublesome. When you are trying to get to a dollar amount, you do not care if it is 50 people or one individual who donates. Am I correct in thinking that is the language we are trying to get to? I can see that as being problematic.

Senator Cannizzaro:

You are correct. That was something I had conversations about. Once we start talking in those terms, we start to hamstring the ability to fundraise. I am sure everyone in this Committee is familiar with the trials and tribulations of fundraising. Whether one person donates a large amount or ten people get together to donate the same amount, I do not think that allows us to accomplish the goal. That was not something that was included in the language.

Assemblyman Ellison:

Section 12, subsection 2, paragraph (b) changes the 5 percent bidding preference to 7 percent. Are you looking at the other things that go into play, such as a veteran's home business or other groups? Would those groups get the additional 2 percent also?

Senator Cannizzaro:

That is correct. Currently, in statute it is a 5 percent bidding preference. What S.B. 317 (R2) does is increases that to 7 percent with a sunset in order to have ample time to determine the impact. I will also note that I think the original bill was an increase to 10 percent, but we settled on 7 percent. I know there are some folks who will testify who are still a little uncomfortable with that percentage. I think the sunset provision will certainly help in that regard.

Chairman Flores:

At this point, I will invite the stakeholders who have worked on this language to please come to the table. I ask that everyone be respectful, but I do expect the stakeholders to answer all the questions the Committee may have. After the introductions, we will open the hearing for questions from the Committee. [Each person introduced themselves.]

Assemblyman Daly:

Do you believe in public competitive bidding allowing all contractors to have an opportunity to bid on public works projects?

Sean Stewart, Chief Executive Officer, Nevada Contractors Association:

I do believe that competitive bidding is a good thing, but I also believe that we have to take into consideration the funding sources when we are discussing that.

Assemblyman Daly:

Do you believe NSHE is a public body?

Sean Stewart:

Yes, I do believe NSHE is a public body.

Assemblyman Daly:

Do you believe the buildings that NSHE builds on state projects for public purpose are public works?

Sean Stewart:

Yes, Assemblyman Daly, they are public buildings.

Assemblyman Daly:

Do you believe that when a public building is financed in whole or in part from public money, there should be a public bidding process, which is sound state policy for the reasons already mentioned, to ensure everyone has an equal opportunity under the same provisions? Do you believe whether it is financed in whole or in part, it is a public work for a public purpose by a public body, so it should be publicly bid?

Sean Stewart:

I believe they are public buildings. I believe prevailing wage should be paid. I believe taxes should be paid. However, I believe there should be some leniency for exceptions when we are dealing with private funds that are donated to these projects.

Assemblyman Daly:

Is that only for NSHE? Is that because NSHE is special? How is NSHE special? People donate to K-12 schools, the airport authority, and other types of public entities. Tell me why NSHE is special.

Sean Stewart:

I am not aware of any project in Nevada where more than 75 percent of the project was funded by private money. If there is one, I would love to discuss it with you. I am not aware of any donation of that size that would warrant a conversation like we have had today.

Chairman Flores:

Is there anyone else at the table who would like to delineate the differences between the questions posed by Assemblyman Daly concerning the bill? If someone could provide examples, that would be helpful.

Senator Cannizzaro:

Chairman Flores, I have a work session in the Senate Committee on Commerce and Labor. I need to run downstairs, but I will be right back.

Chairman Flores:

That is not a problem.

David Frommer, Executive Director and University Architect, Planning and Construction, University of Nevada, Las Vegas:

In the past, prior to 2015 and the change in statute, we delivered projects that were fully funded by private funds. As an example, our last two projects were 100 percent donor funds for the UNLV basketball practice facility and the UNLV baseball clubhouse. Those were projects that were important to the campus, successful in outcome, and again, were funded 100 percent by donor funds.

Assemblywoman Neal:

In section 12.7, subsection 9, the way the exemption is worded, it would cost the government all the revenue from the sales tax. Is that the intent?

David Frommer:

No, that is not the intent. The projects UNLV would deliver with these donor sources would be subject to prevailing wage, all the sales and use taxes, and there would be disclosure requirements that are written in the bill for disclosing the names of the vendors selected to the Public Works Division within 30 days of being contracted.

Assemblyman Daly:

Because the university was against making the change in the definition of a public work when this Legislature passed A.B. 332 of the 78th Session to take care of the tax issue because there were public agencies—not just the universities—that were purchasing materials themselves for use on projects and evading the sales tax, part of the tradeoff was the university would no longer be under the State Public Works Board within the Department of Administration and NRS 341 for the purpose of overseeing and designing. This was being argued for a long time. The Public Works Division still does the inspection and still issues the certificate of occupancy, but the university now has the freedom to do its own work in those other areas. That was the exchange. Now, the university is saying it does not want to bid public jobs the same way as every other public body in the state. Again, I am still waiting for someone to tell me why NSHE is special.

The universities can still do their fundraising. The proponents of this measure said they wanted to change this language. I offered a solution then, but it was turned down. I do not know why you would be surprised or could not answer the question in my office when I asked why you think you are special and why you should not have to bid the same as every other agency. I want to have that answer. You think about it and come back with the answer.

Fundraising is not about the money. If the answer is throwing away all the principles and sound public policy in order to get the money, then say that. However, I do not think you can justify that. That is what I am saying, and that is my beef on this issue. The other things about the bidding preference and going to 7 percent, we may be able to live with that. However, this particular language and what we did in 2013 was not an unintended consequence. It was intended to make sure the universities bid jobs the same as every other public body. I do not want that to be a misnomer. I do not want that to be a misguided thought. I am certainly sad you conveyed that to the Senator.

Sean Stewart:

We worked in the interim with Assemblywoman Kirkpatrick, who was the Speaker at that time, and ran this bill. We chatted with her on this issue. In southern Nevada, where we deal with the construction, we lost the ability to deliver projects without complaints, with buy-in from the unions, and paying prevailing wage. It is a program we had done in the past

for a long time. Under that bill, that system went away. When that was realized, we met with Assemblywoman Kirkpatrick and talked about our issues. She did say it was an unintended consequence. I think anyone could call her if there is a question on that. It is not misleading in any way. That is what happened. In fact, we have added language to this bill at her request to make sure once the selection is made, there is public notification. We have been working with former Assemblywoman Kirkpatrick on this issue. It is something that has affected southern Nevada and it is something that we need. It has been done successfully in the past without issue. I think you will hear from supporters today who support the program.

We are not, in any way, trying to circumvent the payment of taxes or the payment of prevailing wage. There is a delivery method that works for us, and has worked in the past, when we are dealing with private funds.

**Luis F. Valera, Vice President, Government Affairs and Diversity Initiatives,
University of Nevada, Las Vegas:**

I would like to echo those comments. We have had conversations and have worked with former Assemblywoman Kirkpatrick, and that was exactly what was conveyed to us.

Assemblyman Brooks:

I know a couple of my fellow Committee members asked this question, and I cannot discern from here why it would not be this way, but regardless of where the funds came from, this would still be a public work with sales tax paid on all materials. Is that correct?

Sean Stewart:

Yes. The intent of this bill is to pay all taxes and prevailing wage on any project for NSHE, no matter what the funding source or the amount.

Assemblyman Brooks:

All this bill does is change the contract delivery method or how the design-build team is selected based on the fact that 75 percent or more came from private funding for one project. Is that also correct?

Sean Stewart:

Yes. That is the intent of this bill, and the only intent of this bill.

Assemblyman Daly:

I want to follow up on Assemblyman Brooks' question. You are saying what the intent of this bill is with public donors and private money. However, that is not what the words say. I offered you an explanation or a way to fix that. The words say that if 25 percent or more of the project is not appropriated from the state or federal money, NSHE is exempt from publicly bidding a job. I do not care if the money came from student fees or donations. The capital improvement project judge was just voted out after saying he had no money. Every project you build now is not going to be 25 percent appropriated. All of your projects, by the language of this bill, will be exempt from bidding. Is that true or not? It is.

Sean Stewart:

I believe that is exactly what Assemblyman Brooks asked and what we answered. This does have to do with the bidding of the project. It has nothing to do with prevailing wage or sales tax paid.

Assemblyman Daly:

That was not my question, nor was it Assemblyman Brooks' question. Assemblyman Brooks' question was regarding the delivery method and private funds. All of your projects, regardless of the funding unless 25 percent or more is appropriated by the state, are exempt from competitive bidding under the state policy. That is what the language says. Tell me a scenario where the language does not say that.

Sean Stewart:

I do not have a response to that.

Assemblyman Brooks:

You did answer my question. Thank you very much.

Chairman Flores:

Are there any further questions from the Committee? [There were none.] I will open the hearing for those wishing to speak in support of S.B. 317 (R2). As I previously mentioned, but I reiterate now, all those wishing to speak in support, opposition, or neutral will be limited to two minutes.

James A. Barrett, Jr., President, JABarrett Company, Las Vegas, Nevada:

I have been a resident of Nevada for over 40 years in Reno and Las Vegas. My company is a business advisory management consulting firm. I formed the business after 25 years as a senior financial executive of Marnell Companies, which is a premier design-build, private enterprise company. In my role, I was responsible for raising many millions of dollars for private and public institutions to build real estate building projects.

I am here today to support S.B. 317 (R2), and specifically, the language pertaining to the ability for the project to have a delivery method selecting the design-build team by the donors. The idea is that we would be able to comply with prevailing wage and pay all the applicable sales taxes and other taxes. The benefit of this approach is to give the donors of potentially millions of dollars for needed projects throughout our institutions of higher learning a comfort level that the quality of the product will be delivered.

Specifically, the two projects Mr. Frommer referred to came from experienced developers and longtime citizen supporters in Nevada. The donors were very comfortable with the deployment of the dollars after the selection of the design-build team. This is not an aspersion to the public works delivery method; it is a comfort level based on years of experience that they have. I feel if we do not provide for this, we will put a chilling effect on donations for projects in the future. I do not need to remind you all of the gap in capital we have in Nevada for institutions of higher learning and the various building projects. I cannot

quantify that chilling effect for you now, but I can tell you the appeal of the delivery method and being able to select the design-build team versus not being able to will give great pause to many people in further contributions for the development of projects in the higher institutions.

As a supporter of all higher education institutions in Nevada, and a proud Nevadan, I encourage you and respectfully request you support S.B. 317 (R2).

Danny L. Thompson, representing Laborers International Union of North America, Local 872, AFL-CIO:

We are in support of this bill. In regard to Assemblyman Daly's questions, he is right. However, we feel in the case of universities and higher education, most of the projects are done because there is the ability to raise money from private sources. If the Legislature had the money to pay for all of the things we have done, there would not be a question. However, I think because there is a need that cannot be met, or has not been met by the Legislature, NSHE has had to seek money from private donations, which they have been very successful in doing. On behalf of the Laborers International Union of North America, Local 872, I think that is what sets this provision apart from a normal public works project.

Fran Almaraz, Political Director, International Brotherhood of Teamsters, Local 14, Local 631, and Local 986; and representing American Federation of State, County and Municipal Employees, Local 4041, AFL-CIO:

I think the one thing in this bill that was perhaps downplayed a little bit is there are provisions that say 50 percent of the workers must have a Nevada driver's license to prove they live in our state in order to work on these projects. In southern Nevada, the construction industry is still down. We have a lot of construction workers unemployed. Whether they are union or nonunion, these projects put people to work, and 50 percent of the employees must be Nevadans. I hope you consider that when you vote on this bill.

Nick Vassiliadis, representing Southwest Regional Council of Carpenters:

I am here to echo the comments from my friends from Local 872 and the Teamsters. The Nevada System of Higher Education has a way to raise money and find funds in manners that other projects cannot. That is what makes this different, and that is what makes this special. We believe in prevailing wage, and we believe in paying taxes on all the goods and materials. The sponsor of the bill worked diligently to make sure that would happen, even in these specific, special circumstances. We support this measure.

Chairman Flores:

Is there anyone else wishing to testify in support of S.B. 317 (R2)? [There was no one.] Is there anyone wishing to testify in opposition to the bill?

Craig Madole, Chief Executive Officer, Nevada Chapter, Associated General Contractors of America, Inc.:

I would first like to thank Senator Cannizzaro for working with us on this issue. She has been nothing but gracious and listened to us probably more times than we deserved. Our concern is still on the policy of the bill, moving from a 5 percent bidder preference to 7 percent. According to the National Associated General Contractors of America's database, only three states in the nation have bidder preferences of 5 percent, those states being Nevada, Wyoming, and New Mexico. Arizona's bidder preference law was found unconstitutional in their Supreme Court. We are fearful that by increasing this bidder preference, that is a potential unintended consequence of the bill.

Additionally, Idaho, Arizona, Utah, and California all have reciprocal bidder preference laws on their books. During the recession in 2007, the State Public Works Board authorized their capital improvement projects (CIP) budget of \$715 million. By 2011, that CIP authorization was \$41 million. That required contractors, in northern Nevada particularly, to change their business models and pursue work in other states. Due to that, if these reciprocal bidder preferences were enacted, it would put these same Nevada contractors employing Nevadans at a competitive disadvantage in the states where they still perform work. If Senate Bill 546 were to have passed last night, which unfortunately it did not, that bill would have only brought the CIP budget for state public works back to 19 percent of the 2007 investment. All of these things have forced Nevada contractors to go out of state.

I see four unintended consequences with this bill. The first is it further disadvantages new businesses in Nevada from starting because they do not have this bidder preference for the first five years. The second is Nevada contractors would not be able to pursue work out of state. I am also concerned that there is a potential violation of the commerce clause and the equal protection clause of the *U.S. Constitution*. I would be happy to answer any questions. [Also submitted was ([Exhibit C](#)).]

Marc Markwell, Chief Financial Officer/Secretary, Sierra Nevada Construction, Inc., Sparks, Nevada:

Sierra Nevada Construction, Inc. is a heavy highway road contractor based out of Sparks, Nevada. During the recession, our firm was forced to look outside of Nevada, not just to survive, but also to ensure many of our employees had jobs. Due to the lack of continuing investment in Nevada's infrastructure, which Mr. Madole referenced, our firm went from approximately 370 employees down to 170 employees between 2007 and 2010.

One of the ways we were able to keep employing the men and women of our company was to pursue work in California. By volume, California accounted for anywhere from 25 percent to 50 percent of our work during the recession. In order to survive, we pursued work at Lake Tahoe and throughout northern California. Many times, we were awarded contracts within a percent or less of the award.

Nevada's existing bidder preference has worked well, and we have actually received jobs because of the bidder preference. One of the things that works the best is that California has not instituted a reciprocal bidder preference law as retaliation against Nevada's bidder preference. Our firm now enjoys significant work in California. Currently, we are working in Hallelujah Junction, and last year, we worked in Portola. We provided a lot of jobs in California for our Nevada employees over the last few years.

We are fearful that increasing the bidder preference will have two unintended consequences, one of which is California enacting the dormant reciprocal bidder preference against Nevada-based contractors. This would damage us and many other contractors in northern Nevada. We are very close to the California border, as you know, so many contractors do go into California quite a bit. We have become very reliant on this work to keep our employees working.

The second unintended consequence is the increase of public works projects to the state. By way of example, if we raise the bidder preference to 7 percent, that is an additional 2 percent that could make the difference on a \$100 million high school job that could cost the state another \$2 million. For those reasons, we request we leave the current bidder preference in the law as it stands.

Justin Ivory, President, A-1 Steel, Inc., Sparks, Nevada:

A-1 Steel, Inc. is a small steel contractor in northern Nevada. I would certainly like to thank the bill sponsor. I think the intent is noble in what she is trying to do with this bill. Unfortunately, there are a couple of unintended consequences that should be looked at a little more closely. One of those is if the 7 percent increase passes, and if it ends up being challenged in court, one of two things is going to happen. Either it is going to be allowed, which will embolden other states to raise their bidder preference and hurt Nevada contractors working out of state, or it is going to be shot down and we could actually lose the 5 percent we already have.

I would like to mention that with bidder preference in Nevada currently, a contractor could be a native Nevadan, work as an estimator for a general contractor for 20 years doing mostly public works jobs, and then start his own company as a general contractor, but would not get bidder preference. Many small general contractors are looking to the state as a fair owner that gives competitive bidding. This is something that the contractors do not even roll out the drawings and look at because they start out with a bidder preference that the competitors do not get. To increase it from 5 percent to 7 percent causes more contractors to not even worry about looking at those jobs.

Chris Barrett, Vice President, Development and External Affairs, Q&D Group Invesco, LLC, Sparks, Nevada:

I have submitted testimony to your secretary ([Exhibit D](#)). I will summarize my remarks so I am not taking your time in being redundant. We are here to be part of your record opposing S.B. 317 (R2), specifically related to the bidder preference.

Our business was formed in 1964. For the first four years of business, our projects were within 60 miles of Reno. Through that work, we were fortunate to have employed over 1,200 employees. Due to the recession, we went down to 200 employees. That forced us to change our business model to look outside Nevada. Fortunately, the 5 percent bidder preference has helped our company grow and employ Nevada families and Nevada subcontractors. Specifically related to the bidder preference, we would like to maintain the 5 percent.

William H. Stanley, Executive Secretary-Treasurer, Southern Nevada Building and Construction Trades Council, AFL-CIO:

I testified in favor of this bill in the Senate. I am in favor of almost the entire bill. The floor amendment that was added a couple of days ago has led us to question some of the elements of this bill; specifically, those parts of the bill that will now change the definition of public works. The Nevada System of Higher Education will no longer be considered a public work if 25 percent or more of the funds come from entities other than the state or federal government. That is an issue to us. However, I appreciate the Senator reaching out to those of us in the building trades in both the north and south this morning and having a conversation with us about what she believes her intent is. We have some concerns about how that was formulated in the bill itself.

I am not an attorney, but I can tell you we believe there is a better fix by adding an exemption to the bidder requirements in NRS Chapter 338. We had talked about this some time ago where we had entertained this proposition from those who were seeking this exemption from the Senator. We believe a better way, without changing the definition of public works, is to simply insert an exception for those types of projects—where large donors are participating in the project—from the exemption for bidding requirements that they are trying to get away from so they can select the contractor of their choice. We do not disagree with that; we just think there is a better way to skin that cat. We think changing the definition is the wrong approach.

Todd Koch, President, Building and Construction Trades Council of Northern Nevada, AFL-CIO:

In the interest of time, I will just say ditto to the comments of Mr. Stanley.

Ken Mercurio, President and Chief Executive Officer, Diversified Demolition Company, Sparks, Nevada:

I want to speak from personal experience. I have possessed a Nevada contractor's license since 1992. In 2010, due to a business deal, I had to create a new entity. In fact, with the new employment identification number, it started the process of not having the bidder preference for a period of five years. That made it very difficult to compete in the public sector. I could only imagine if it were seven years, it would almost be impossible.

Greg Esposito, Government Affairs Director, Plumbers, Pipefitters & Service Technicians, Local 525:

We liked the bill when it came out and how it was first written. We support bidder preference. There is nothing more disheartening than to drive on to a construction site and see a bunch of out-of-state plates and out-of-state workers when there are so many people in Nevada who are still looking for work. We support the bill with its original intent, but cannot support the bill as it is currently written with the amendment for NSHE. It is not fair. It is not fair to the contractors we work with. A fair bidding process on public works projects is a policy we have always supported and the state should stick to. The original intent of the bill was great but, unfortunately, the amendment makes it less palatable.

Assemblyman Daly:

I know two of you represent trades that are primarily subcontractors. I know Mr. Mercurio sometimes works as a prime contractor, but mostly as a subcontractor. With this exemption as written from the public bidding processes, those processes that are going to be exempt also include the portions about the anti-bid shopping for subcontractors. When NSHE had this exemption before—in addition to exempting themselves or trying to evade the taxes—they used the process for how they chose the general contractor and how the general contractor chose the subcontractors. Bid shopping would not be allowed on any other public job. Has that been your experience and understanding of the way this would actually work in regard to subcontracting? Basically, it would be a private job, but it is not a private job. Have you experienced that?

Todd Koch:

It has been our experience in the past that the university in our jurisdiction has been somewhat tone deaf to hiring local contractors and, therefore, local workers. We certainly do not want to see any legislation that would make that situation worse. We would like to see something that changes that situation for the better. We have seen situations in bidding processes, like construction manager at risk (CMAR), that did cause quite a bit of shopping for subcontractor bids. Obviously, that has been our objection this whole session. We do appreciate working with the sponsor of this bill, and I will continue to do so. I have heard it said many times this morning that this would not affect prevailing wage. That was one of our concerns and one of the reasons why we came to the table this morning. It has been said to us by the Senator that it was not her intent. We certainly hope the simple words of this bill do not mean we would lose prevailing wage. I hope I answered your question.

Assemblyman Daly:

Nevertheless, there are no bid shopping protections with this language as written. Is that your understanding?

William Stanley:

That is correct. The prompt pay statutes and all the other issues in NRS Chapter 338 that we are so concerned about, and that we and this body have worked so hard over the last ten years to fix—for contractors and others—goes away. I appreciate the folks from NSHE. Four members of my family and I graduated from UNLV. My youngest daughter is a senior at UNR, so I am very much bought into the university system and I appreciate what they have done. We need to be clear. The Mendenhall Center basketball facility at UNLV was a lease buyback. The parking garage that was recently built was a lease buyback. The baseball stadium was a lease buyback. Prevailing wage did not apply to any of that work. They escaped all of that through the CMAR delivery method. We need to make sure we are really talking about the same issue. We are talking about public works projects where a tremendous amount of money was raised and the donor wants to select the design and construction teams. We are okay with that, but put it in the right section of NRS Chapter 338 that eliminates the bidding requirement but all the prompt pay statutes, the bid shopping requirements, the prevailing wage statutes, et cetera, remain.

How about the section in NRS Chapter 338 that gives a bidder preference for veterans who are disabled. That goes away if we accept the language the way it is drafted. Those are issues that we worked on in this Legislature term after term, session after session to include. We fixed it in 2015 with the language, and with one swipe, we are going to take it all away. I do not think that is where we should go.

Assemblywoman Bilbray-Axelrod:

Can you expand on the veteran's preference that would go away?

William Stanley:

In NRS 338.1384 is the "veteran with a service-connected disability" preference. If we take these types of projects and no longer call them public works, the rest of NRS Chapter 338 does not apply under this limited scenario where NSHE has raised over 75 percent of the funds. It is no longer considered a public works project. That is what the bill currently says, which was the amendment from a couple of nights ago. The rest of the language in NRS Chapter 338 does not apply if it is not a public works project. That is my understanding.

Assemblywoman Bilbray-Axelrod:

Could I get our legal counsel to weigh in on that?

Jim Penrose:

That appears to be a correct reading of the statute.

Assemblyman Carrillo:

Mr. Stanley, you mentioned in your testimony that you were good with the bill and the amendments until the last amendment was introduced. I am trying to understand the reasoning for why that amendment was put forth. I know the bill went through the Senate Committee on Finance and had an amendment for the bidder preference. I am trying to understand the part you feel in the last amendment is the disheartening part that caused you to be opposed to the bill after being in support.

William Stanley:

I want to be crystal clear. I agree with the intent of this policy. We think how it was drafted does not accomplish the goal, or at least we are concerned it does not accomplish the goal. We want to work with the sponsor of the bill to make sure the language that goes into this bill accomplishes the donor issue. We believe it is a good issue. We believe we should do that. How we get there is where we have concerns. We have concerns with changing the definition of what a public work is. We need to put it in the bidding preference. I believe there is an easier and more direct way of doing this. We want to work with the bill sponsor to accomplish this goal.

Assemblyman Carrillo:

Do you feel working with the bill sponsor on that particular issue would get you there?

William Stanley:

Absolutely. We like the concept; we just want to make sure we get it right.

Assemblyman Brooks:

Did you submit an amendment that has specific language addressing your very specific concerns?

William Stanley:

No. This happened last night at 11:30 p.m. We talked with the Senator this morning. Our intention is to do that. We had conversations several weeks ago with the entities that asked the Senator for this amendment and suggested these types of fixes. That was rejected.

Assemblyman Brooks:

You specifically suggested language that would address the concerns you have yet still allow them to change the bidding preference portion, and they rejected those proposed amendments. Is that what you are saying?

William Stanley:

Yes.

Assemblyman Daly:

Several of the parties from NSHE talked to the building trades and the building trades talked to me. I then talked to NSHE. As I said, we offered a different solution from going back to the old language and exempting NSHE from all the public bidding. We have addressed the

large donor issue and the number of donors on larger projects. They said no. I did not know they were going to go to Senator Cannizzaro and ask her to put this in her bill. There were discussions on how to fix them, but they did not like the suggestions. They do not want to have to publicly bid, and they want to be able to pick their own contractors and get around all of the public policy that has been put in place for every other public body in the state. Do not misunderstand. Efforts were made with the parties, especially NSHE, to address this issue, and they were rejected. They want to have everything.

Chairman Flores:

Is there anyone else wishing to testify in opposition? [There was no one.] Is there anyone wishing to testify in the neutral position? [There was no one.] Are there any closing remarks from the sponsor?

Senator Cannizzaro:

I appreciate the Committee taking the time to listen and vet this piece of legislation that I strongly believe is a good piece of legislation. I know I missed some of the testimony presented, but I want to clarify for the record that there was an amendment to NRS 338.075 from the last session. That statute now reads that even though an NSHE project is not defined as a public work, they are still subject to prevailing wage. Assemblywoman Neal and I had a brief conversation about additional language that is included in S.B. 317 (R2) that talks about how we are not intending to exempt those projects.

For projects that are primarily funded through private donations, which I think is an aspect that is being missed, there is a reason why I agreed to put this language into the bill. I think there is a difference that has been ignored between public works projects that are funded 100 percent with public dollars and projects for large buildings in the NSHE institutions funded by private donors. I think that is where there is a distinction and that is why I think we cannot just be making this policy without that consideration. We want to encourage this fundraising to continue with our NSHE institutions. I feel that distinction got lost in the mix.

This bill is not in any way, shape, or form trying to do away with prevailing wage or having contractors pay sales tax on materials. I do want to make that very clear for the record. I do know there were some concerns made about the bidder preference as well. I have had conversations, especially with the northern contractors, about their concerns, and I understand those concerns. I have also mentioned that, if after two years the bidder preference of 7 percent is creating substantial problems for northern contractors, I will be happy to put forth a bill next session to take down the bidder preference. My intention is not to run Nevada contractors out of business. That is the exact opposite of this bill. I think this bill takes great steps in the right direction to ensure Nevada businesses have the first crack at public contracts. That is good policy and is something we should be promoting.

I think there was an indication that some projects were currently not being built with prevailing wage for some NSHE institutions. I would be happy to get further clarification from NSHE for this Committee to talk about those because I do think there was a change in the statutes with respect to prevailing wage that occurred prior. On the whole, this bill is

trying to do something that is really good and something we should be doing. I am certainly happy to follow up with anyone about the language in this bill. I will note, I have never seen an actual amendment for this bill. This is the bill with the amendments that were placed in the Senate. I am certainly happy to continue talking with individuals, but I think the one thing that has been lost in the conversation somewhat today is this bill is trying to create jobs for Nevadans and trying to ensure that our NSHE institutions can continue to fundraise and do what they do best in educating our students.

I can offer any clarification the Committee may need from other individuals who are with me today, and I would be happy to provide any additional information the Committee may need.

Assemblywoman Neal:

I understand where you are going, but the question I have not been able to have answered for myself is, just because private dollars are being used, the building itself is still being created for public benefit. It is still being used for the public. If the benefit at the end is the public benefit, which is what we all derive a use from, why do we need to change the nexus of how it is built and by whom to make sure we continue to get fundraising dollars? It seems somewhat selfish. It sounds like donors are giving money only if they can use their own people to do what they want to do and not make it a public bid. If those donors really want to serve the public benefit and the public good, then why would they not do it anyway? If donors really want to enhance the institution itself and build more buildings to provide more benefits to the students who will use those facilities, then why not just do it for nonselfish reasons and give the money to NSHE so NSHE can have those buildings for the public benefit? That is the part I am missing. I understand NSHE will not get the money or will have less interest in fundraising because it is the donor's money. It is still a public benefit. It is for the students. There is nothing that changes regarding that. I find that interesting.

I understand where you are going, and I am not criticizing your opinion or the manner in which you chose. I am tired of folks saying they really want to help the public and the institutions that serve our state, but want to do it their way and skip the process that other entities have had to walk through because it is their money. That is how I interpret it.

David Frommer:

I appreciate your sentiment and the notion of the statements you brought forth. I think what we see in terms of engaging our donors is when people legitimately want to support a UNLV program, a group of students, or an effort, and are willing to contribute a significant amount of money—\$5 million, \$10 million, or more in many instances—there is a desire by those donors, who generally have very strong business and development acumen, to have a team they have confidence and experience with in delivering the project. The donors want to get the most value for their dollars, and they come with confidence in some of the folks they have experience with in putting a team together. The donors want to help. They do not

provide that funding for any reason other than to help the university. However, they also want to make sure and have confidence that their contributions will go as far as possible and they have confidence that the team on the project is able to deliver and bring maximum value.

Assemblywoman Neal:

It sounds like what you are saying is that all of the entities or public groups that have done public bidding do not bring that same level of confidence or that the government is picking teams that do not bring value, that do not do cost benefit, and that do not save us money. You are saying this private donor can pick their team and trust that team, but the government has a tendency to pick teams that are not trustworthy. When you threw that comparison out there, it makes it sound like the government is wasting money.

Chairman Flores:

Could you highlight a scenario where donors were going to give a multimillion-dollar donation, but because of the way the law is written now, changed their minds?

David Frommer:

Assemblywoman Neal, I understand where you are coming from. Ninety-nine percent of the work we have done went through the public procurement process, which is how we select and engage our vendors. We are very robust. We have state requirements and NSHE requirements for competitive selection, and we have UNLV requirements that align. Even though there may be some view that it looks like a donor does not have confidence in that process, I do not believe that is their intent or perspective or that they believe the public process is not one that is good for the public. I think the donors are saying they are putting their personal resources behind a program that they have personal confidence, faith, and interest in, and want to make sure they are getting maximum value with a team they have confidence, trust, and experience with. They want that team to be a part of the process because they have that level of confidence, trust, and experience. That is a different perspective.

Related to projects we have underway or in the pipeline, we do have a UNLV football facility for training and academic support that has had some significant gifts. Under the current statute, if the donors came forth and had a team they wanted to be a part of the project, we could not deliver that project. That is how the project is proceeding at this time. We do have an issue there.

Assemblywoman Neal:

We had a bill in the special session [[Senate Bill 1 of the 30th Special Session](#)]. If the stadium did not move forward, UNLV was going to get their own stadium with private funds and donated monies. This would be a scenario where if this bill applied, this would fall out of a public bidding and would potentially be a private donor project where the donors would have their own team build it. Could that be applied in that scenario?

David Frommer:

I do not have the specifics in front of me for S.B. 1 of the 30th Special Session. There were provisions in that bill for university fundraising and funds other than state funds or the room tax revenue funds. I believe there were a host of other provisions in that bill that were very specific to the construction of that stadium in terms of local participation, preferences, and other aspects because it was a significant mega-project, both on a percentage basis and a dollar basis. It was a significant public investment. I cannot say with certainty because I did not review S.B. 1 of the 30th Special Session as part of my testimony. I do not believe the intent was that if the state were financing \$200 million or \$300 million of public money in that project and if a donor financed \$200 million, they could use their own vendors. I believe that bill required competition and local participation regardless of any other factors. That is my understanding at least.

Chairman Flores:

I think on both sides of this conversation we have people who we have worked with very closely in the past and people we consider allies and friends. Understand, the Committee is in a strange and difficult situation because of that. I ask that you work with the members. Ultimately, we have to decide on the policy and no one should take offense whether we go one way or the other. It is a policy discussion this Committee has to recognize and decide upon. If the numbers are no, that is the way the Committee will go. If the numbers are yes, we will go in that direction. Do not come to me and ask me to move the bill forward or kill the bill. What I ask that you do is work every single member of this Committee and give them the respect they deserve. If you have the numbers, the bill moves. If you do not have the numbers, it does not move. We are going to do it that way out of respect for both sides and the amount of work everyone has been doing.

Assemblyman Daly:

Senator Cannizzaro, I spoke with the people from NSHE and other people who talked to you. I know you said you did not see an amendment. Did they tell you they had talked to me and that I told them we had these very issues that were brought up today? Did they communicate with you so you then could have communicated with me if there was an issue, or did they leave that part out?

Senator Cannizzaro:

I knew there were concerns about this particular policy piece, which is obviously something this Committee has to decide. I have not seen specific language, which is what I wanted to address because I thought the testimony seemed as though someone had handed me specific amendment language that was an alternative to what is in the bill. That did not happen, so I want to clarify the record in that regard. We have not seen any specific language. I did have conversations with individuals this morning. If there is something unclear about this bill, I am happy to work on that language. During the conversation about this particular issue, everyone was on board with the idea that if there were private dollars being financed of 75 percent or more for a project, there should be some indication that the selection of the

design team would not have to go through the bidding process. I have been very adamant that the projects should still be subject to prevailing wage, sales tax, and things of that nature. There did not seem to be any problem with those issues. There are some issues with the language, and I want to clarify that I have not seen any alternative language.

Assemblyman Daly:

I did not know the individuals were going to you or that this language would be in the bill until I read it. I was wondering if they had communicated to you that I had issues and that I had told them no to this exact language so you could then discuss it with me. That did not happen. I am curious if they told you, or if they just told you what they felt you needed to know. I am trying to determine the credibility of the individuals pushing this bill.

Chairman Flores:

I will close the hearing on Senate Bill 317 (2nd Reprint). I will open the hearing for Senate Bill 478 (1st Reprint).

Senate Bill 478 (1st Reprint): Revises provisions relating to certain disciplinary action against state employees. (BDR 23-1043)

Senator Joyce Woodhouse, Senate District No. 5:

I am here today to briefly introduce Senate Bill 478 (1st Reprint). This bill addresses the use of an impartial fact-finding investigation in decisions relating to a state employee's involuntary demotion, dismissal, or suspension. After my brief statement, I would like to turn my time over to representatives from the American Federation of State, County and Municipal Employees (AFSCME) and the International Brotherhood of Teamsters, who will provide additional information regarding the bill.

When any employer receives a complaint from an employee about workplace discrimination, some sort of unfair treatment, or another matter that involves alleged violations of law or policy, the employer has a duty to investigate. As you know, public sector employees— individuals employed by municipal, state, and federal governments—typically have broader rights than private sector employees. However, these rights vary by jurisdiction and are largely dependent on whether the public employee group participates in some sort of collective bargaining.

A public agency's obligation to investigate improper workplace behavior is typically no different from a private corporation's obligation. The duty to investigate can arise from direct employee complaints or any number of seemingly innocuous events, including employee venting, gossip, anonymous complaints, or casual remarks. It is extremely important that our state employees have the proper due process in place when responding to certain workplace allegations. Clearly defined roles in workplace investigations help avoid departmental and perhaps political rivalries and biases. In all instances, investigations should strive for neutrality, objectivity, and impartiality. This can sometimes be difficult, especially given certain political inclinations and alliances, but it is what our state employees deserve, and it is something we must strive to achieve for them.

Finally, in addition to fairness in employee investigations, each employee who is the subject of an investigation deserves to have proper notice of the investigation and have copies of any documents or orders that could lead to his or her dismissal or demotion. Senate Bill 478 (1st Reprint) was requested to address these issues of fairness in employee investigations.

To give you some context, existing law requires an appointing authority—which is usually an official with the legal authority to appoint positions or a person to whom authority has been delegated, such as an agency head or division chief—to take certain actions when dismissing, involuntarily demoting, or suspending a permanent, classified employee in state service or when conducting an internal administrative investigation, which may result in a dismissal, demotion, or suspension. Senate Bill 478 (1st Reprint) requires the appointing authority to provide an employee with notice within 30 days after the appointing authority becomes aware, or reasonably should have become aware, of allegations against an employee, and requires the appointing authority to provide such notice of those allegations before commencing any part of the internal investigation into those allegations. When reviewing any allegations concerning an employee, the appointing authority is currently required to complete an internal administrative investigation and make a determination whether to dismiss, involuntarily demote, or suspend an employee within 90 days after providing the employee with notice of those allegations. The law does allow the appointing authority to obtain an extension of time beyond the 90 days from the division administrator for showing good cause for the delay. Senate Bill 478 (1st Reprint) would prohibit an appointing authority from making such a dismissal, demotion, or suspension based on allegations if the investigation into those allegations does not result in a determination regarding disciplinary action within the 90-day time frame.

I would note that, currently, a permanent employee may appeal a dismissal, demotion, or suspension in a hearing before a hearing officer of the Personnel Commission of the Department of Administration. If the employee requests such a hearing, the bill requires the appointing authority of the employee to produce and allow the employee or his or her representative to inspect or receive a copy of any document or evidence related to the internal investigation that was leading to that employee's involuntary demotion, dismissal, or suspension within five days after a request is made by the employee or his or her representative to receive such documents or evidence.

That concludes my remarks. I thank you for your consideration and, hopefully, your support of Senate Bill 478 (1st Reprint). As I mentioned, I have friends here from AFSCME and the International Brotherhood of Teamsters to testify in support of this bill. Currently, the Senate Committee on Finance is in recess until I can get back. Chairman Flores, I would like to be excused in order to get back downstairs. These gentlemen can answer any questions because they are far more involved in this process than I am.

Chairman Flores:

Thank you, Senator, for that presentation. Are there any questions from the Committee? [There were none.]

Assemblywoman Neal:

I was reading *Nevada Revised Statutes* (NRS) 284.387. I am trying to understand the language in section 2, subsection 1, paragraph (a) regarding the 30 days of becoming "... aware, or reasonably should have become aware" What were the situations? When I was reading the existing law, it seemed to give protections. When Senator Woodhouse was talking about the right to appeal, the current law gives a 90-day period after the employee was noticed of the allegations for judicial review. What was happening?

Kevin Ranft, Labor Representative, American Federation of State, County and Municipal Employees, Local 4041, AFL-CIO:

Regarding the actual change within 30 days, the state agencies are not consistent when it comes to providing the employee information regarding the investigation based off allegations the agency received. Sometimes, it would take 20 days or 30 days for the agency to notify the employee that he or she is under investigation, and sometimes it could take up to a year to a year and a half. Just recently, I had a case where an agency held onto some allegations for a year and a half and then decided to discuss it with the employee through official notice of investigation. Unfortunately, in those cases, those employees typically do not recall a year-and-a-half-old incident. This changes that aspect. It gives the agency 30 days, which we feel is fair and consistent with measures we have seen across the nation.

Assemblywoman Neal:

Why did the agency hold onto the information? Was the agency not sure it was factual? Was it investigated? Was it rumor?

Kevin Ranft:

Unfortunately, we do not know the answer to that question. We asked, but they gave us very generic reasons. During the investigation, the agency is trying to fact find. Ultimately, we are there to assist the employee. We get the questions based off the allegations. We answer those questions, and the investigation is concluded. We move forward and wait for the adjudication and findings of that investigation. The reasons the agencies do that are very inconsistent. It could be because of caseload, or they may have just forgotten about it.

Carter Bundy, Political Action Representative, American Federation of State, County and Municipal Employees, AFL-CIO:

I want to alert you that there is an amendment ([Exhibit E](#)) to this bill. We had actually drafted this amendment in response to Senator Kieckhefer's concerns. The language in section 2, subsection 1, paragraph (a) of the first reprint in front of you says, "The notice must be provided before any part of the investigation begins" Senator Kieckhefer correctly pointed out that would effectively limit the ability of the employer to make discreet inquiries for two reasons: first, to find out what really happened to even give notice of what the allegations might be; and secondly, to do some part of the investigation before the employee knows about it.

Obviously, we want employees to know about any bad behavior as quickly as possible so they can correct it. However, we thought we had addressed Senator Kieckhefer's concern by deleting ". . . before any part of the investigation begins" In other words, the amendment would delete that requirement and make it a 30-day requirement or before the employee is asked any questions. We thought that was a fair compromise, and we ended up getting some strong bipartisan support in the Senate. Unfortunately, that part of the amendment did not make it into the first reprint.

Chairman Flores:

Are there any questions specific to the amendment? [There were none.] Is there anyone here wishing to testify in support of S.B. 478 (R1)? As a reminder, testimony will be limited to two minutes.

Priscilla Maloney, Government Affairs Retiree Chapter, American Federation of State, County and Municipal Employees, Local 4041, AFL-CIO:

The AFSCME retirees are in support of this bill as amended. To Assemblywoman Neal's questions, when I was on staff at AFSCME as a labor representative between 2011 and 2013, I had many fruitful and productive conversations with what is now the Division of Human Resource Management within the Department of Administration. Human Resource Management publishes the *State of Nevada Employee Handbook*, which is a 220-page document available online that employees can look at. What they told me was the handbook is supposed to encompass what is in the *Nevada Administrative Code* (NAC) and NRS Chapter 284. However, the agencies are responsible for following the dictates of NRS Chapter 284 and NAC. Sometimes, that just does not happen.

I, too, have been in the position as a labor representative of having an employee being investigated with a document in his personnel file from a year prior. The employee had never been aware of it. There was really no recourse, at that point, to do anything about it as a practical matter. This is a bill that seems to address that issue and tighten the procedures.

Michael Sean Giurlani, President, Nevada State Law Enforcement Officers' Association; and Member, Nevada Law Enforcement Coalition:

We support this bill and ask for your support.

Fran Almaraz, representing American Federation of State, County and Municipal Employees, Local 4041, AFL-CIO:

I want to clarify that I am here representing AFSCME on this bill. On behalf of AFSCME, I would like to say that many state employees have had to wait several months to find out they had committed an infraction. Sometimes, the infractions are very small. Many of these employees are also not given on-the-job training in ethics and other matters that relate to state employees. These employees are not really aware they are committing an infraction. This bill is to clear that up so employees know what they are doing wrong in a short amount of time in order to address the issue before it becomes a suspension. Thank you for your time, and I hope you will support this bill.

**Richard P. McCann, Executive Director, Nevada Association of Public Safety Officers;
and Member, Nevada Law Enforcement Coalition:**

We are in support of S.B. 478 (R1). I would like to tell you that, in the Senate, this bill obtained some bipartisan support, which we are very pleased about. We urge your consideration and your support of the bill.

**Ronald P. Dreher, Government Affairs Director, Peace Officers Research Association
of Nevada; and representing Nevada Law Enforcement Coalition:**

This is a due process bill for state employees, and it is an enhancement of what they currently have. I have represented several correctional officers in the past, and what Mr. Ranft put on the record is true. One employee went nearly 12 months without ever finding out there were charges levied against him with an ongoing investigation. We ask for your support of this enhancement to the due process rights for state employees.

**Scott A. Edwards, President, Southern Nevada Conference of Police and Sheriffs;
and President, Las Vegas Peace Officers Association:**

I will register a ditto for those testifying before me.

Chairman Flores:

Is there anyone else wishing to testify in support of S.B. 478 (R1)? [There was no one.] Is there anyone wishing to testify in opposition to the bill? [There was no one.] Is there anyone wishing to testify in the neutral position?

Dena Schmidt, Deputy Director, Department of Health and Human Services:

I realize this is a policy committee, but for the record, we were not able to remove the fiscal note. However, with the amendment and the reprint, our fiscal notes for the whole department have been removed.

Chairman Flores:

Are there any questions from the members?

Assemblyman Ellison:

This bill has gone through the Senate Committee on Finance. Have all the fiscal notes been removed?

Kevin Ranft:

Yes. All the fiscal notes were removed during the Senate Committee on Finance hearing. Most of the fiscal notes were from the Department of Health and Human Resources and the Division of Human Resource Management. We appreciate those fiscal notes being removed. The amendment resolved many of the concerns identified by the fiscal notes and other agencies.

Chairman Flores:

I will close the hearing on S.B. 478 (R1). Is there anyone here for public comment? [There was no one.] I will entertain a motion to amend and do pass S.B. 478 (R1) with the proposed amendment. I will understand if any member feels they need additional time to speak to the stakeholders.

ASSEMBLYWOMAN MONROE-MORENO MADE A MOTION TO
AMEND AND DO PASS SENATE BILL 478 (1ST REPRINT).

ASSEMBLYWOMAN BILBRAY-AXELROD SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

Assemblywoman Monroe-Moreno will take the floor statement. This meeting is in recess until the call of the Chair [at 11:00 a.m.].

[The Committee reconvened behind the bar of the Assembly at 5:15 p.m.]

I would like to call the Assembly Committee on Government Affairs back to order. I will open the work session on Senate Bill 500 (1st Reprint).

Senate Bill 500 (1st Reprint): Revises provisions relating to the Housing Division of the Department of Business and Industry. (BDR 18-909)

Jered McDonald, Committee Policy Analyst:

Senate Bill 500 (1st Reprint) revises provisions relating to the Housing Division of the Department of Business and Industry. The bill is sponsored by the Senate Committee on Government Affairs on behalf of the Office of Finance, Office of the Governor. The bill consolidates the functions of the Manufactured Housing Division and the Housing Division within the Department of Business and Industry. The bill also creates the Account for Housing Inspection and Compliance and an Affordable Housing Advocate position within the Housing Division. The bill authorizes the Housing Division to expend Real Property Transfer Tax revenues of up to \$75,000 annually, in addition to the money received by the Division, to supplement the monthly rent paid by an eligible person for the manufactured home lot upon which their manufactured home is located. Finally, the bill retains in statute the fees paid by the manufactured homeowners and the eligibility requirements for the monthly rental assistance ([Exhibit F](#)). There were no amendments to this bill.

Chairman Flores:

I will entertain a motion to do pass Senate Bill 500 (1st Reprint).

ASSEMBLYMAN KRAMER MADE A MOTION TO DO PASS
SENATE BILL 500 (1ST REPRINT).

ASSEMBLYMAN ELLISON SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMAN CARRILLO WAS ABSENT
FOR THE VOTE.)

Assemblyman Kramer will take the floor statement. Having no further business, this meeting
is adjourned [at 5:17 p.m.].

RESPECTFULLY SUBMITTED:

Carol Myers
Recording Secretary

Lori McCleary
Transcribing Secretary

APPROVED BY:

Assemblyman Edgar Flores, Chairman

DATE: _____

EXHIBITS

[Exhibit A](#) is the Agenda.

[Exhibit B](#) is the Attendance Roster.

[Exhibit C](#) is a letter dated June 1, 2017, in opposition to Senate Bill 317 (2nd Reprint) to Craig Madole, Chief Executive Officer, Nevada Chapter, Associated General Contractors of America, authored by Michael Geney, President and Chief Executive Officer, Geney/Gassiot, Inc.

[Exhibit D](#) is a letter dated June 2, 2017, in opposition to Senate Bill 317 (2nd Reprint) to Chairman Flores, from Chris Barrett, Vice President, Business Development and External Affairs, Q&D Construction, Inc., Sparks, Nevada.

[Exhibit E](#) is a proposed amendment to Senate Bill 478 (1st Reprint) submitted by Fran Almaraz, representing American Federation of State, County and Municipal Employees, Local 4041, AFL-CIO.

[Exhibit F](#) is the Work Session Document for Senate Bill 500 (1st Reprint), presented by Jered McDonald, Committee Policy Analyst, Research Division, Legislative Counsel Bureau.