

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

**Eightieth Session
February 21, 2019**

The Committee on Government Affairs was called to order by Chair Edgar Flores at 8:35 a.m. on Thursday, February 21, 2019, in Room 4100 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4406 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/80th2019.

COMMITTEE MEMBERS PRESENT:

Assemblyman Edgar Flores, Chair
Assemblyman William McCurdy II, Vice Chair
Assemblyman Alex Assefa
Assemblywoman Shannon Bilbray-Axelrod
Assemblyman Richard Carrillo
Assemblywoman Bea Duran
Assemblyman John Ellison
Assemblywoman Michelle Gorelow
Assemblyman Gregory T. Hafen II
Assemblywoman Melissa Hardy
Assemblyman Glen Leavitt
Assemblywoman Susie Martinez
Assemblywoman Connie Munk

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

None

STAFF MEMBERS PRESENT:

Jered McDonald, Committee Policy Analyst
Asher Killian, Committee Counsel



Mark Peckham, Committee Secretary
Trinity Thom, Committee Assistant

OTHERS PRESENT:

Ward Patrick, Administrator, State Public Works Division, Department of Administration
Kyle Dalpe, Interim Executive Director of Legislative Affairs, Nevada System of Higher Education
Luis F. Valera, Vice President for Government Affairs and Compliance, University of Nevada, Las Vegas
Jack Robb, Deputy Director, Department of Wildlife
Mark Goulart, Business Manager, Office of the Military
Jeffrey Haag, Administrator, Purchasing Division, Department of Administration
Jim Haining, Co-Chair, Nevada Public Purchasing Study Commission
Kevin Doty, General Counsel, Purchasing Division, Department of Administration
Sharon Hauht, Purchasing Manager, Las Vegas Metropolitan Police Department
Adleen B. Stidhum, Purchasing Manager, Purchasing and Contracts Division, Department of Administrative Services, Clark County; Member, Nevada Public Purchasing Study Commission
Mike Cathcart, Business Operations Manager, City of Henderson
Omar Saucedo, representing Las Vegas Valley Water District; and Southern Nevada Water Authority
Wes Henderson, Executive Director, Nevada League of Cities and Municipalities
David Clyde, Associate General Counsel, Regional Transportation Commission of Southern Nevada
Matthew Walker, representing Reno-Tahoe Airport Authority
Alexis Motarex, representing Nevada Chapter of Associated General Contractors
Brian Reeder, representing Nevada Contractors Association

Chair Flores:

[Roll was called; Committee rules were explained.] We have two bills that are going to be heard this morning. We will take them in the order listed in the agenda. With that, I would like to open up the hearing on Assembly Bill 56.

Assembly Bill 56: Revises provisions governing the administration of state public works. (BDR 28-185)

Ward Patrick, Administrator, State Public Works Division, Department of Administration:

We are pleased to introduce Assembly Bill 56 today. This is a modification to *Nevada Revised Statutes* Chapter 341 on the operation of the Division of Public Works as well as the State Public Works Board itself. Assembly Bill 56 revises NRS Chapter 341 in three ways (Exhibit C).

First, NRS 341.083 requires the Board to provide its recommended capital improvements for the next biennium to the Governor by October 1 of even-numbered years. Section 2 of Assembly Bill 56 requires that the Board include projects for deferred maintenance in their recommendation to the Governor. The proposed language ensures that the Board present the state's deferred maintenance needs as part of the capital improvements projects (CIP) for the Governor's consideration.

Second, in NRS 341.1405 the Legislature declares that the Public Works Division must perform all planning, maintenance, and construction of buildings upon property of the state. However, at the request of a state agency and under appropriate circumstances, NRS 341.119 allows the Public Works Administrator to delegate that authority to other state agencies.

Section 3 of the bill adds language specifying under what circumstances the Administrator must delegate the authority. The criteria listed in section 3 are the criteria that have historically been considered in decisions on whether to delegate the authority. Assembly Bill 56 codifies that criteria. Assembly Bill 56 also provides for an appeal to the State Public Works Board in the event the agency believes the Administrator wrongfully denied the agency's delegation request. The reason this is important is the proposed language clarifies exactly when delegation of authority is appropriate and allows for consistent application of the law.

The third and last area addressed by Assembly Bill 56 pertains to certain exempt agency projects. Under NRS 341.141 certain types of projects performed by the Department of Transportation, the Division of State Parks within the State Department of Conservation and Natural Resources, and the Department of Wildlife are exempt from using Public Works' services.

Section 4 of Assembly Bill 56 clarifies that State Parks and Department of Wildlife projects are exempt and expands their exemption from allowing construction of buildings less than 1,000 square feet to allowing exemptions for construction of buildings up to 3,000 square feet. Section 4 also adds an exemption for certain Nevada National Guard projects. Assembly Bill 56 exempts the National Guard projects for nonstructural remodeling or repair of buildings and improvements for the National Guard that are estimated to cost less than \$200,000. The prior language was a bit confusing, so this cleans up the language. An exemption for buildings less than 1,000 square feet would be impractical, and so we are promoting the 3,000-square-foot limit at this time. That ends my introduction.

Assemblywoman Bilbray-Axelrod:

I am not entirely sure I understand the necessity of this bill, so please explain what would happen if this bill is not passed.

Ward Patrick:

There are various components to the bill: delegation of authority is one, another is the updated maintenance reporting requirements, and then finally, increasing the exemptions. So there are three components to the bill. As to why this is necessary, looking at the historical investment in maintenance of state-owned buildings, we would say that the CIP this session is proposing

\$150 million worth of maintenance. In the prior session it was about \$114 million worth of maintenance, and in the decade before that it averaged only \$44 million, each of these being per biennium. There has been a backlog increase over time. Our Board has been the driving force behind that item, where we have always used our prioritization of projects to try to take care of the buildings that we have, and we are trying to step that up a notch to make sure there is a culture of taking care of our existing buildings and decreasing the amount of deferred maintenance. So codifying language about informing the Governor of deferred maintenance needs is part of creating a culture of taking care of our buildings first.

Regarding the delegation of authority, sometimes delegation of authority by the Administrator might be considered person-specific, as opposed to the officeholder. This would allow some intervention of our board in that process to make sure it is handled in a consistent manner over time, no matter who is in this position of Administrator.

Finally, we see the exemptions for the various agencies being increased. This allows them to be more nimble and be able to respond to their own needs. They are available here to respond to that as well.

If the Legislature does not approve the bill and the Governor does not sign it into law, the ramifications are these: the agencies will be less nimble, the agencies will be subject to varying levels of administration by the Administrator regarding delegation of authority, and potentially the communication of the backlog of deferred maintenance needs would not be as high level as it would be if this bill were passed.

Assemblyman Ellison:

I understand where you are going and what you are trying to do, but how are you going to do this through budgeting? Is this going to go through you, or is this going to go through individual departments? If the National Guard has something under 3,000 square feet, is that going to go into their own budget that you will oversee, or is that going to be in your own budget?

Ward Patrick:

The National Guard receives largely federal funding on various projects. That would continue to happen. Those projects would be administered by the Guard. Keep in mind that the State Public Works Division is also the building official for the state, and that activity is not part of what is being exempted, only the planning, design, and construction. We would see that these items being exempted would not be part of the capital improvement program; those would be within the agencies' budgets. I would also point out that there is a certain amount of the bonding—say there is \$200 million in the existing bonding for the 2019 Legislative Session, of which the Public Works Division and the CIP has \$186 million, so part of that other \$14 million is for water resources and it affects some of these agencies, so that is already a process that has been happening through the years as well as one-shots for the various agencies. It is how they get some of the money they would be using to exercise this increase in authority.

Assemblyman Ellison:

Does that include campuses?

Ward Patrick:

The university systems have a series of their own funding mechanisms, so this bill does not adjust their current exemptions.

Assemblyman Carrillo:

My question is on section 3, subsection 2. You have a change from "may" to "shall." Could you give me an example of why it is not working now? What do you expect to get out of changing that word?

Ward Patrick:

Currently the rules that we use are not codified, so there is a large level of judgment being made by the Administrator. Now we are codifying these rules, and we are saying we "shall" use these rules in order to make the decisions. Over time these rules have been developed and used, and so now we are codifying them. We "shall" use these rules instead of any others. Certain agencies believe that the interpretation of this ebbs and flows, and the goal of these codified rules as well as the board and appeals process would make that a more even keel in how it is applied.

Assemblyman Carrillo:

In section 4, subsection 1, it talks about "Do not affect the safety or change structural elements of the building." Give me an example of why you need to put that language in there.

Ward Patrick:

We would see this request for codified language as baby steps, and so this is just a part of that. The exemptions would not be included if there were life safety issues or if there are structural issues. Those projects under \$200,000 would not be exempted.

Assemblyman Leavitt:

I am assuming you delegate projects now, so this would just be putting a system in writing in place. What is your process now? Are you running into roadblocks when you are delegating these projects to other agencies? Can you give me an example of some of the projects you are delegating and the process you go through and where this codified language is necessary?

Ward Patrick:

The State Public Works Board history includes the fact that our role as a building official has been evolving over the last 20 years, and also these exemptions have been more closely adhered to over time as well. There is a bringing in of the various agencies that need exemptions or need to get delegation of authority. I point out the Department of Transportation is very much following all these rules and applying for delegations of authority which are largely being granted. They have a substantial architectural division. They have licensed architects and engineers involved in the building, the vertical construction as we would say. Public Works manages vertical construction and the Department of Transportation (NDOT) manages

horizontal construction. The building official as well as the current language requires NDOT to come through Public Works for their buildings. Those delegations of authority are applied for and granted pretty much across the board because they have a large contingent of architects and engineers familiar with vertical construction. That is an example where we have had success in delegation of authority. Regarding why it is necessary, some of the agencies that have lesser capacities than the Department of Transportation have been denied delegation of authority, and we just want to have an even playing field on the way those are administered.

Assemblyman Leavitt:

I guess what I do not understand is why, if the process is in place, it depends on the size of the agency whether they get approved or denied. If you have a process in place, what is the criteria for getting approved or denied? If an agency is so small that they do not have the required expertise to do it, that is probably why they are getting denied and this will not do anything to affect that. I am just trying to understand. You have a process in place—you just told me where your current process is successful—and I do not understand the reason it is not successful. Could you just elaborate on that?

Ward Patrick:

I apologize for saying a small agency, but certainly less capacity with fewer licensed architects and engineers with experience administering construction and remodeling of buildings. This particular section is put in to create an appeals process so there is oversight that would be codified instead of an informal oversight by the administration or the Executive Branch.

Assemblyman Hafen:

There is a proposed amendment by Mark Goulart ([Exhibit D](#)). Did you have a chance to look at that or have any feedback on those proposed amendments?

Ward Patrick:

We have been working with the Nevada National Guard, with Mark Goulart, on this item. We have not seen the specific language for revision, but we believe it is a friendly amendment. We believe it is very simple and are working to agree with that. There are only a couple of word changes regarding the limit to be raised from \$200,000 to \$250,000 and adding the word "grounds" to "buildings and grounds." In the process of working with them, we would prefer to use the words "improvements" instead of "grounds," which would offer broader authority for them on their nonbuilding parts of work over which they would have authority.

Assemblyman Carrillo:

Regarding the delegation language in the bill, who will be the building official in the bill? Will it be the State Public Works Division or will that be delegated to someone else?

Ward Patrick:

The building official responsibilities will be maintained by the Deputy Administrator of the Compliance and Code Enforcement Section of the State Public Works Division.

Chair Flores:

Members, does anyone else have any questions? [There were none.] Before we go to support, opposition, or neutral questions, I think it would be helpful if you could send the entire Committee an email: Here is what is happening now, pick a project and use it as an example, break it down as to how the law sits today, and then explain how this bill will correct whatever you see as wrong with that process. A very specific example would help us wrap our head around exactly how this works now and how it will look tomorrow once we pass this. I would like to invite those wishing to speak in support to please come up.

[([Exhibit E](#)) was prepared by Ward Patrick in response to Chair Flores' request and is included as a follow-up exhibit.]

Kyle Dalpe, Interim Executive Director of Legislative Affairs, Nevada System of Higher Education:

I am here with the Nevada System of Higher Education (NSHE). We want to support this bill. We appreciate the bill's focus on deferred maintenance which includes all state buildings, including those on Nevada System of Higher Education campuses. As it emerges in this plan that is being developed, we hope that NSHE facilities will be considered in the planning process. Also, the efficiencies within can only help deferred maintenance issues come more to the forefront as we move forward in maintaining our state buildings, including the ones in NSHE.

Luis F. Valera, Vice President for Government Affairs and Compliance, University of Nevada, Las Vegas:

I am with the University of Nevada, Las Vegas. We are also in support of this bill. We are willing to work with the authors on some friendly amendments.

Jack Robb, Deputy Director, Department of Wildlife:

The Department of Wildlife has some unique situations, and we support this bill. We have fish hatcheries in very remote locations. We have unique criteria, and we also have a couple of professional engineers on staff. We have worked well with the Public Works Division in the past. They have given us delegation of authority, but I believe this bill streamlines the process and allows us to be more efficient in what we do, without pulling them away from what they do to go out to these remote areas. We are in support of this amendment.

Mark Goulart, Business Manager, Office of the Military:

I am the business manager of the Office of the Military, and to my left is my supervisor, the Director of Installations and Environment [Clayton Chappell]. We support this bill. To clarify, we concur with the administer of State Public Works in the amendment language to strike through "grounds" and change to "improvements." If I could give a little background, I think it will help clear up some of the questions I was hearing. Just to clarify, we are not looking to do any major construction with this bill. As you can see, the dollar threshold there is limited to \$250,000, so what we are looking to do are improvements that would be common for a staff like ours. We have project managers, two of whom came from State Public Works, one of whom did all of the statewide paving maintenance. To give an example of the delegation,

I heard a lot of questions about that: a past administrator denied us delegation for a paving project even though we had the project manager who used to work for them and did statewide paving. There is no appeals process, so we could not do anything but say thanks and move on. We do have experience, we have certified engineers, and we are looking to hire an architect as well. We are looking at things like fencing, flooring, paving, striping, and basic tasks that our staff is more than capable of handling at our level.

Chair Flores:

Is there anyone else wishing to speak in support? [There was no one.] I would like to move over to speakers in opposition. [There were none.] Is there anyone here wishing to speak in the neutral position? [There was no one.] Please come back up if you have any closing remarks.

Ward Patrick:

Thank you for your consideration of this bill. We believe it is important to streamline state government in regard to planning, construction, and design of building modifications and new buildings. Thank you.

Chair Flores:

I am going to go ahead and close out the hearing on A.B. 56. Next, I would like to open up the hearing on Assembly Bill 86.

Assembly Bill 86: Revises provisions relating to governmental purchasing. (BDR 27-182)

Jeffrey Haag, Administrator, Purchasing Division, Department of Administration:

With me this morning I am pleased to introduce Kevin Doty. Kevin is our procurement and contracting general counsel. I believe down south we have Jim Haining. Jim is the chairman of the Nevada Public Purchasing Study Commission (NPPSC), and they will be providing testimony and answering questions with us this morning.

Thank you for the opportunity to provide testimony on Assembly Bill 86. This bill proposes changes to *Nevada Revised Statutes* (NRS) Chapters 332 and 333, the state's goods and services contract procurement statutes. As we begin to walk you through the proposed changes, it is important to look at NRS Chapters 332 and 333 separately. Although you will see similarities in the language, it is important to know that Chapter 332 governs local government procurement, while Chapter 333 governs state government procurement processes. Over the past year, procurement and contracting professionals across state and local government have worked together to ensure Nevada's procurement code was modern, fair, competitive, and ensured transparency. The Purchasing Division, working with the Nevada Public Purchasing Study Commission—and if you are not familiar with that commission, it was codified in law back in the 1970s—is a group of local government procurement and contracting professionals in our largest cities and counties who meet quarterly to discuss procurement and contracting initiatives. Through this commission we were able to achieve statewide participation in this process. I think it was really a fantastic exercise of good government, not only in the process that we followed but in the product we are delivering before you today. As we discussed in

our Division overview two weeks ago, procurement teams across the state are lean and constantly striving for efficiencies. Having a modern and efficient procurement law is essential to our ability to serve our customers.

I would like to briefly walk through each section of the changes of the bill, and then open it up at the end of Chapter 332 for questions. Next, we will walk through the Chapter 333 revisions and then be available for questions there.

Sections 1 through 24 comprise the revisions of NRS Chapter 332, which was initially codified in law in 1975. The revisions before you are intended to refresh the law to ensure competition and best value for the local government entities, provide efficiencies for procurement staff, and move some subsections of the statute to their own sections. As part of this bill, the NPPSC is proposing an amendment to update a few areas of the bill. Before I launch into the sections, let me just provide some additional clarification. It is important as we walk through this to understand the provisions of the law that we are going to discuss only impact goods and services procurement; they do not impact the procurement of construction, which is authorized under NRS Chapters 338 and 341, nor does it impact the procurement or contracting of projects on roadways, which is governed under NRS Chapter 408. This applies specifically to goods and services.

Section 1 is an introduction to the bill, and it amends Chapter 332 of the NRS by changing, throughout the bill, the word "bid" to "response" or "solicitation," the word "bidder" to "responding offeror," and "request for bids" to "solicitations." This will clarify the use of other means of procurement, solicitations other than just bids.

Section 2 moves language concerning the retention schedule by which we keep solicitations. It moves it up in the section of statute.

Section 3 states the minimum requirements which must be included in the solicitation.

Section 4 moves existing language for recycled product preferences from NRS 332.065 and places it in a new section.

Section 5 allows the award on contracts between \$50,000 and \$100,000 to be based on price, best value, or lowest responsive and responsible responding offer.

Section 6 officially designates a metropolitan police department as a local government entity.

Section 7 adds or updates definitions for "best value," "online solicitations," "responding offer," and "solicitation."

Section 8 updates the requirements to advertise a solicitation.

Section 9 clarifies the use of online systems for solicitations and allows the use of online systems if there is no cost to the supplier to submit a response.

Section 10 updates wording for conforming changes.

Section 11 increases the advertising threshold to \$100,000 and revises the criteria of awarding a contract to include best value, total cost of ownership, as well as criteria currently defined in statute.

Sections 12 and 13 update wording for conforming changes.

Section 14 updates the contract assignment language for assignments due to full acquisition of a company and their contracts.

Section 15 updates wording for conforming changes.

Section 16 clarifies the definition of a few exemptions from competitive solicitations, specifically around technology contracts, certain forensic equipment and supplies, and medical equipment services and supplies.

Sections 17 through 19 update wording for conforming changes.

Section 20 authorizes the disposal of personal property by donation to another government entity or nonprofit organization.

Section 21 updates language currently authorizing local government to join or use contracts of other government agencies or a cooperative purchasing organization.

And lastly, sections 22 through 24 update wording for conforming changes.

With that, Chair Flores, I would like to pause for questions from the Committee. Jim Haining, who is the chair of the NPPSC, is available in Las Vegas to address Chapter 332 specifically.

Assemblyman McCurdy:

Let us take another look at section 5. First, I would like you to walk the Committee through your current process and how you notify individuals about an opportunity to bid on a contract. I noticed in section 5, subsection 1, paragraph (b), it says "May" which means, as you know, you may or may not. First, walk us through the current process and then let the Committee know why you chose "may" instead of "shall."

Jim Haining, Co-Chair, Nevada Public Purchasing Study Commission:

I am the co-chair of the Nevada Public Purchasing Study Commission, representing the southern Nevada local governments. Our current process is anything over \$50,000 we advertise and we put out for formal solicitation. We are asking in this section to move that advertising threshold to \$100,000. We are planning to do an amendment to our current language. There are a few changes we found that need to be made that everybody on the study commission agrees to. One of them is to change paragraph (b) to "shall" advertise the contract in a manner prescribed in NRS 332.045, excluding anything that is in NRS 332.115, which is

the competitive bidding exception language as well as the joinder language in NRS 332.195. So we are going to amend paragraph (b) to make it "shall" as opposed to "may."

Assemblyman Leavitt:

I like the fact that you are cleaning this up because I believe there is a lot of confusion in the purchasing process. You have seven years after the contract execution that you have to keep the records; is there a reason the duration is so long? It seems like a hassle for these agencies to hang onto these records for so long. Even though we are in the digital age, server space is just as much of an issue as closet space these days. I wondered if there was a reason it was seven years versus three or four or five? When we are going through these contracts and potentially disqualifying bidders, the definition of "responsive and responsible" gets really squishy, and I think it would behoove us to define those.

Jeffrey Haag:

I will address the retention schedules. I know it is addressed in Chapter 332, and I will allow Mr. Haining to chime in on that, but we have the same retention schedules on the state side of procurement as well for these types of documents. I agree it is long. I am pained by the number of boxes we have in our offices that hold these documents. We have experienced the increase in costs as we have increased our server space as we have begun to store these electronically. I certainly appreciate your concerns. However, what I will say is that we are often going back six or seven years to respond to public records requests, to review those historical documents in preparation for a similar or maybe even the same project. We find that having that historical reference is actually pretty valuable to us in state procurement. Also, as we look to serve our constituents in the community who are interested in our process as well, they are often asking us to go back to a seven-year period or greater. Unfortunately, we have purged them in that time.

Assemblyman Assefa:

In section 7, subsection 2, you define what "best value" means. I am just wondering if you take into consideration or prioritize Nevada businesses or minority-owned businesses?

Jim Haining:

We do not currently have that language or those preferences in any of our code. While we do prefer to do business with Nevada-owned businesses or diverse businesses, when we are looking at this we are looking at what our overall best value for that product or service is and their adherence to our specifications or requirements.

Assemblyman Carrillo:

My question is regarding section 9, subsection 4(b). Does reverse auction bidding exist in any other section of the NRS?

Jim Haining:

It does not exist in any other section of the NRS. We want to add this because this is a form of solicitation that has been done in the private sector and in other states for the last 20-plus years. We are currently using it at my agency for the purchase of computers and computer

equipment like monitors. It is working very well, and we are getting much better pricing using it, because the suppliers have more than one single shot to put in a low bid. They can put in a bid, then they can put in a second or a third or a fourth bid, depending on how things are going in that reverse auction.

Assemblyman Carrillo:

What is the thought process for including it in this language but not in NRS Chapter 333?

Jeffrey Haag:

In NRS Chapter 333, we have—do not quote me on the exact language—the ability to exercise any common procurement practice that is readily known within industry. Encompassed within that is the reverse auction piece, so we did not feel that it needed to be specifically identified. We feel that NRS Chapter 333 provides the authority today to exercise that procurement strategy if we feel it is in the best interest of the state. I would agree with Mr. Haining in the application of that reverse auction. It is fairly narrow in that it drives value to the state when we are procuring common commodities with very streamlined specifications that are, dare I say, globally manufactured. Creating an environment where industry can compete in real time with full transparency as to what their competitors are proposing on that particular opportunity, to Mr. Haining's point, is incredibly advantageous to the state from a cost perspective, but I would specify that the application is fairly narrow.

Assemblyman Carrillo:

How can we use it if it is not in law? How do small businesses compete with this?

Jim Haining:

One of the reasons we are adding it in is that in the local government sector some of the entities are under Dillon's Rule and some are under home rule. Depending upon that, their legal departments have different opinions on whether they can use this or not. We wanted to put this into statute so there is full clarity over whether they have the ability to do reverse auctions or not. As to the ability of small business to participate, we have found that small business can participate with large businesses equally in reverse auctions, as they can with our regular bidding or solicitation process. In fact, they often outcompete with some of those large businesses. This would give them a better advantage because they could see where they are ranking during the auction process, as opposed to when they only have one shot at giving their bid number.

Chair Flores:

I think what would be helpful to the members is if you could use a hypothetical to explain how the auction works. If X amount of people are applying, how does the website work, how much time do people have, what appears on the website? That would be very helpful.

Jim Haining:

Many of you have probably attended a regular auction where you are bidding up in price or you have participated on eBay in an auction where you are bidding your price up and whoever bids the highest wins. In a reverse auction, they are bidding the price down. Whoever bids

the lowest price wins. A reverse auction usually runs for about 15 to 30 minutes, the time frame that it is open. We run ours for about 15 minutes—that is the opening amount of time—we usually do not get any action until the last five minutes when people start putting their bids in. We have the ability to set the time frame so that, once someone puts a bid in, it will extend the auction past the end time—for example, one minute—and that would give other bidders the opportunity to go in and submit other bids. It will continue going until you have a full minute or whatever time limit we choose to put their new bid in. We do blind auctions so they do not see who the other bidders are; they do not see the other bidders' prices. They see their ranking in comparison to the other bidders that are out there, so if I saw my ranking as No. 2, I could go in and attempt to put in a lower bid to see if I could become No. 1. The lowest bidder would see that they are No. 1 in the ranking. That is how a reverse auction works.

Chair Flores:

I think that put it into perspective. Thank you for that.

Assemblywoman Bilbray-Axelrod:

I will be staying in section 9. Please clarify this for me; what I am reading here is that the solicitation cannot be exclusively online, which I am happy about, until I see "if there is any cost to. . . ." If there is no cost associated, can it be exclusively online?

Jim Haining:

Today we are using online solicitations. We do our bidding and our requests for proposals (RFPs) online. In fact, we have a website that 25 entities in the state are using called the Nevada Government eMarketplace (NGEM). All the entities are paying their own subscriptions; it costs the suppliers nothing to use. We have been using that for the past four years, and it has been working very well. We wanted to put language in here to ensure that we are never going to charge our suppliers to do business with us through online solicitations. That was why that wording is in there now. Today, because we do not have this language in statute, if we are making an online bid or solicitation, for example, we have to also accept manual responses. We would like to have it that if we do an online bid and it costs nothing for the suppliers to participate, then we can make it so it is exclusive so we do not have to take manual responses. They are able to get all their bid documents, all their drawings, the specifications, online. Before, they would have to come by our offices to pick this stuff up or to pick up a CD containing all these documents; now, they can pull all this stuff up online. Today we are receiving absolutely wonderful support from the suppliers. In fact, the suppliers say, "Why are these other agencies not using it?" and I say, "I do not know; you need to go give them a little prodding," but it has been wonderful. The suppliers like it and we like it. It has really removed a lot of our administrative costs to do bids and other forms of solicitations. That is why we are trying to fix this language.

Assemblywoman Bilbray-Axelrod:

How many manual bids are you receiving?

Jim Haining:

At my agency, we have received two in the last two years. When we get them it can often cause problems; and the suppliers do not submit these manual bids on the most current bid form, which can cause their bids to be rejected because they did not acknowledge addendums and other changes we might have made throughout the bidding process. If they do it online, they are required to submit things at the most current specification and acknowledge they have received all the addendums. It makes it easier for them to not make mistakes that we have found they often make during a manual bid process.

Assemblyman Ellison:

I am looking at section 11, and if you go down to page 10, there are two references in here that you could probably clear up really quickly. Paragraph (f) strikes "Quality of utility and services," but the main thing is go down to subsection 3, where you crossed out "The government body or its authorized representative: Shall give preference to recycled products" You took all that out, so now in your bid processing are you putting that in as an option like paper and stuff? We are supposed to be recycling, but now you have taken that language out of there. Can you refer to that? That is mostly subsection 3, at line 31.

Jim Haining:

Assemblyman, that is a very good question. Regarding subsection 2, paragraph (f), we are going to, through our amendment, put that language back in. It was stricken by mistake. As to section 3, that language is just being moved out of this section, into a section all by itself where it talks about using recycled products. We are not striking this language from NRS Chapter 332; we are just moving it to its own stand-alone section. It is actually in section 4. We will still be able to give a preference to the use of recycled products.

Assemblyman Ellison:

It seems like you would leave it in both sections—I do not know; I am not writing the bill. I can understand where you are putting it back in. I want to make sure it is in there. Every one of these desks has a recycle bin. We are trying to recycle a lot of these papers, and we want to make sure that we do reuse instead of these going to the dumps.

Chair Flores:

We do have members who will be asking a second question, but I wanted to make sure I gave anyone who has not asked a question a chance to go before they do, but I do not see anyone giving me a nod.

Assemblyman Carrillo:

I have been looking through NRS Chapter 333 to see where it says that State Purchasing can use common purchasing methods that are not specified in law. Could you give me an example where that would be?

Kevin Doty, General Counsel, Purchasing Division, Department of Administration:

This is in NRS 333.162, subsection 1(d), that states "The administrator may designate the method of obtaining a contract, including: (d) Any other accepted method of purchasing that complies with the provisions of this chapter."

Assemblyman Assefa:

In section 7, you are talking about online solicitation. I am just wondering if you have a method of authenticating these online responses. Is there a way for you to know if somebody is setting up multiple accounts and gaming the system?

Jim Haining:

In the NGEM system, yes, we can see if people have multiple accounts, and we can see who is submitting, who has viewed the solicitation, and who has bid prior to the close date. Once it closes, we are able to open it up and see exactly what their bid is. It is a sealed bids type of system.

Assemblywoman Bilbray-Axelrod:

When my colleagues have asked you a question two times now you have referenced that that part is being taken out of the bill. If you are taking stuff out of the bill, could you clarify what sections those will be?

Jim Haining:

We have a proposed amendment that we are working on that is going to clarify language. We missed a few sections where "bidder" did not get changed; we want to change that to "responding offeror." Where it still mentions the word "bid" we are changing that to "solicitation." There are a few other clarifications we are going to make, and we are going to propose tweaking a couple of other things to clarify a couple of areas. We are also moving language that ended up in the wrong section to where it belongs. For instance, the total cost of ownership is at the very bottom of section 11. We are actually going to put that up higher under section 11, subsection 2, as part of the criteria on how we can determine the lowest responsive and responsible bidder. It is mostly just some wording changes and just a couple of clarifications. We are not taking anything major out of this proposed bill. We are just doing some clarification tweaks that all of us have reviewed and agreed on.

Assemblywoman Bilbray-Axelrod:

When do you anticipate having that amendment available?

Jim Haining:

We are hoping that we can have that available within the next week. We have all the changes; we need to put it in a form that is correct for amendments to the bill.

Chair Flores:

I do not think we have any other questions. I will put on the record my concern with the language of reverse auctions. I understand that we want to get the cheapest price possible, but I think as a state and as a country we have also implemented a lot of rules to make sure we

level the playing field, that everyone can have an opportunity at it and we are not creating a system where the good old boys win every single time. I appreciate that you cannot see the bid. I understand that you cannot see the amount. However, we are still creating this race-to-the-bottom structure. It concerns me. I think it has always been problematic, and I am worried about the impact it could potentially have on small businesses and that we are not leveling the playing field by doing that. This is something you can educate me on, but it is my initial knee-jerk reaction anytime I see something like this. Individuals astute in this world and who work within it can hopefully guide me and demonstrate if this is not what it is. Go ahead and continue with your presentation, please.

Jeffrey Haag:

Thank you for those comments. I look forward to those conversations. Before I jump into the Chapter 333 revisions, I failed to address the back half of Assemblyman Leavitt's question as it relates to definitions on responsive and responsible bidders. I agree with his comment. As you have heard, we are working on an amendment; we would love to engage with you and understand your perspective better and see how we can incorporate that as we move through the process.

Moving on to the revisions of state purchasing, amendments to NRS Chapter 333 begin in section 25. *Nevada Revised Statutes* Chapter 333 was codified into law in 1951. We have not been able to find over that time a comprehensive review and refresh of these statutes, and that is exactly what we are intending to do with A.B. 86. Section 25 seeks to clarify language regarding joining contracts with other governmental entities. Section 28 further defines common methods of procurement. I am sure you are all familiar with requests for qualifications and requests for information. These are procurement strategies that we are using today; we are just looking to specifically identify those in law.

Section 30 allows the Office of the State Chief Information Officer to participate in the evaluation committee for technology projects with an estimated cost of \$100,000 or more. The intent of this is to ensure awareness, prevent redundancy, and allow for shared resources across the technology space within government. Section 30 allows for specific criteria based on the specific scope of work to be levied in a respective solicitation. All of those criteria must be disclosed prior to the solicitation being advertised.

Sections 31 and 32 define local businesses in a consistent manner across the chapter and expand disabled veteran-owned business preferences to include services.

Section 35 ensures proper insurance is included based on the determination and recommendation of the State Risk Manager.

Section 36 seeks to define the appeal process and establish a defined time period for a determination of an appeal.

Section 37 allows the State Purchasing Administrator to authorize state agencies to procure items directly if they are not available under a state purchasing contract. Those agencies that receive delegated authority must follow the provisions of this chapter.

Section 39 removes outdated language related to the issuance of bulletins. Information is now posted on the Division's website and on the state's new e-procurement system NevadaEPro.

Before I open it up for questions, I will let you know, Chair Flores and members of the Committee, that we are working on an amendment for Chapter 333 specifically. It is in response to this month's State Board of Examiners (BOE) meeting, and it relates specifically to the dollar amount for the clerk of the board approvals that go before the BOE as informational items. The members of the BOE have asked us to evaluate that threshold, and we are working with the Governor's Office of Finance and expect to have something to this body within the week. With that, I look forward to answering any questions you have.

Assemblyman Leavitt:

Maybe you can clarify this: in section 35 we are talking about "Is approved by the Purchasing Division or Office of the Attorney General." [Page 26, lines 18-19.] Is that the current practice, or are these agencies able to determine the qualifications of the insurance on their own without going through that extra step? It seems as if it would alter the process quite a bit if they then have to go forward and get an additional approval from an office that is 300 miles away.

I will go ahead and get my second question out so you can answer them both. In section 36, you struck out "(b) The notice of award has been posted in at least three public buildings, including, the location" Is there no posting required at that point? I am not necessarily against that because I think it is a little redundant to post it in a bunch of buildings where no one looks at it ever, so maybe you can clarify if you are changing that or just striking it out completely?

Kevin Doty:

As far as getting the approval of the Office of the Attorney General, that is already required. Contracts need to be signed by the deputy attorney general representing the agency. This is something that is currently set forth in our *State Administrative Manual*, and we wanted to put it in statute to make sure it was complied with every time, along with the insurance requirement, legal oversight, and making sure risk management recommendations are critical to protecting the state in every contract.

As to your second question, yes, the posting requirement goes back to the initial state purchasing act in 1951 when apparently the best way to communicate with the public was to write something on a piece of paper and post it on a bulletin board. With our electronic procurement system now, all bidders automatically receive emails, even those who are not registered as bidders—members of the public can go onto our system and see everything that has been posted there. This posting requirement in three public buildings seems like a pointless killing of trees.

Assemblyman Leavitt:

I just have to say, maybe we can make this practice with all other postings too, because I think it is a little ridiculous that we post in four buildings that we are having a public meeting and I doubt anyone looks to the building next door if we are having a public meeting.

Chair Flores:

Members, are there any additional questions? [There were none.] We will take those wishing to speak in support.

Sharon Hauht, Purchasing Manager, Las Vegas Metropolitan Police Department:

I am the purchasing manager for the Las Vegas Metropolitan Police Department. I am in support of this bill, and I have seen the draft recommendations for the amendment for sections 1 through 24 and support those as well.

Adleen B. Stidhum, Purchasing Manager, Purchasing and Contracts Division, Department of Administrative Services, Clark County; Member, Nevada Public Purchasing Study Commission:

I am a member of the Nevada Public Purchasing Study Commission. I support the bill as well as the opposed amendments. I am also purchasing manager for Clark County.

Mike Cathcart, Business Operations Manager, City of Henderson:

I am here representing the City of Henderson. We were part of the public purchasing working group that developed the pieces of this bill for NRS Chapter 332. We are in full support of modernizing our purchasing processes and increasing our efficiency.

Omar Saucedo, representing Las Vegas Valley Water District; and Southern Nevada Water Authority:

I am testifying today on behalf of the Las Vegas Valley Water District and Southern Nevada Water Authority. First, I want to thank the state procurement officers across the state for the many hours they put in working on this bill. We are here today because of their efforts. Also, the Las Vegas Valley Water District appreciates the modernization of this statute which has not been updated since 1975 and the flexibility that these changes will provide procurement throughout the state.

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

I am the executive director of the Nevada League of Cities and Municipalities. We support this bill and would like to thank the Purchasing Division and Mr. Haag for bringing this measure forward and for their collaboration with local purchasing officials. They came and made a presentation about this bill to our board of directors, and we would like to thank them for that. We do support this bill.

David Clyde, Associate General Counsel, Regional Transportation Commission of Southern Nevada:

I am here representing the Regional Transportation Commission (RTC) of Southern Nevada. I would also like to thank the commission for their work on this bill. The RTC is in support of

modernizing our procurement statutes. We believe this would be helpful as it relates to the RTC and our efforts associated with smart communities and bringing in new technologies and testing them. We are in support of this bill.

Matthew Walker, representing Reno-Tahoe Airport Authority:

I am testifying today on behalf of the Reno-Tahoe Airport Authority. I will just offer a "me too," and we appreciate all the engagement and conversation from the Committee today.

Chair Flores:

Is there anyone else wishing to speak in support? [There was no one.] Is there anyone wishing to speak in opposition?

Alexis Motarex, representing Nevada Chapter of Associated General Contractors:

I am here representing the Nevada Chapter of the Associated General Contractors (AGC). We are here today in opposition to two portions of A.B. 86, sections 9 and 11, reverse auction bidding and best value, respectively. Many of our members supply goods and materials to public agencies at all levels and feel that these delivery methods have no place in the awarding of public contracts. The Nevada AGC is unilaterally opposed to reverse auction bidding. We have long worked to ensure that every bid process is fair and equitable. Reverse auction bidding is akin to bid shopping, something else to which the AGC is unilaterally opposed. Online reverse auction bidding places small businesses at a distinct disadvantage as they are unable to cut their margins to the same degree as larger companies to secure a contract.

Historically, bids are submitted based upon actual cost delivery markup. They are sealed, delivered to the awarding body, opened, and awarded based on price. A reverse auction is conducted online with every vendor seeing their competitors' ranking in real time. They must then make the decision in a very condensed period of time of whether or not they can attempt to beat that and submit a lower bid. Especially in times of economic distress, the advantage a large company with more volume and buying power has cannot be overstated. This will decimate smaller companies in the state, thus limiting competition, and in all likelihood in the cost savings as prices will begin to go up as competition is eliminated in the market. Our members value healthy competition but also understand that a robust industry that cultivates small businesses is essential to keeping your community strong. It should not be the practice of public bodies to force Nevada businesses to use this purchasing method to disadvantage and put at risk small businesses.

Additionally, it is our belief that best value is too subjective to be the deciding factor when awarding contracts for state and local purchasing. Best value allows opinion to be the factor in making a determination rather than two simple facts: did the prospective vendor meet the specifications of the RFP? And at what cost to the public body? Best value lacks transparency and is rife with the potential for corruption and sweetheart deals. For the process to be open and fair at all, best value should not be a factor in the procurement of goods and materials. The AGC respectfully asks that should you process A.B. 86, you do so after amending out sections 9 and 11.

Brian Reeder, representing Nevada Contractors Association:

I am here on behalf of the Nevada Contractors Association. We represent more than 600 general contractors, subcontractors, suppliers, and professional members, primarily in southern Nevada. We have the same concerns expressed very well by Ms. Motarex. Just to speak briefly on section 9 in relation to reverse auctions, I think the Chair stated it very well, it is sort of a race to the bottom. It creates a structure that allows vendors to beat each other up until it is the very cheapest price, but maybe not the best price, maybe not in the best interest of the state. When we are thinking about asphalt, for example, and our members sell asphalt, the supplier with the most asphalt is going to win in the reverse auction scenario so that is going to block out the small businesses. In a good economy this might be okay because there is a lot of work to go around. In a bad economy those small businesses are going to disappear, and when the economy ramps back up, the prices are going to be higher. So we do not think this will have the effect that it might seem to have on its face. In fact, it will have the opposite effect. We are opposed for those reasons.

Chair Flores:

I do not believe we have any questions, but I do ask that you work with the bill's sponsor to see if you can find some middle ground. It appears to me that you are comfortable with everything else in the bill outside of those two sections, is that correct?

Brian Reeder:

Apart from sections 9 and 11, we are neutral on the bill.

Chair Flores:

Is there anyone else here to speak in opposition? [There was no one.] Is there anyone here to speak in the neutral position? [There was no one.] If the presenters would come back up and present any closing remarks.

Jeffrey Haag:

Thank you to this body for hearing A.B. 86. Having the opportunity to present it is greatly appreciated. I would like to take this opportunity, if I could, sir, to thank my colleagues in public procurement who spent a lot of time and energy on this bill. It was really a great exercise, and I am grateful for their attention to this. I am also appreciative of meeting yesterday afternoon with those in opposition. We absolutely look forward to continuing the dialog with them and this body to make sure that we are providing the clarification that you asked for and we are putting forward a bill that meets the collective interests.

Chair Flores:

Just as a final remark: I know you have several proposed amendments which you mentioned. If you could, try to be as detailed as possible when you provide that to the Committee since we will not have this vetting process like we are having now. While you are meeting with those in opposition and with stakeholders, if you could please invite Assemblyman Carrillo to those meetings, we would appreciate it. That way he can update the Committee about what is going on.

I am going to go ahead and close out the hearing on Assembly Bill 86. Is there anyone here for public comment? [There was not.] [The meeting adjourned at 9:57 a.m.]

RESPECTFULLY SUBMITTED:

Mark Peckham
Committee Secretary

APPROVED BY:

Assemblyman Edgar Flores, Chair

DATE: _____

EXHIBITS

[Exhibit A](#) is the Agenda.

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

[Exhibit C](#) is a document titled "Assembly Bill 56," dated February 21, 2019, prepared and presented by Ward Patrick, Administrator, State Public Works Division, Department of Administration.

[Exhibit D](#) is a proposed amendment to Assembly Bill 56, dated February 20, 2019, submitted by Mark Goulart, Business Manager, Office of the Military.

[Exhibit E](#) is a document titled "Follow-up Assembly Bill 56 (Heard February 21, 2019)," dated February 25, 2019, submitted by Ward Patrick, Administrator, State Public Works Division, Department of Administration.