MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON GOVERNMENT AFFAIRS

Seventy-Third Session
May 12, 2005

The Committee on Government Affairs was called to order at 8:15 a.m., on Thursday, May 12, 2005. Chairman David Parks presided in Room 3143 of the Legislative Building, Carson City, Nevada. Exhibit A is the Agenda. All exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Mr. David Parks, Chairman
Ms. Peggy Pierce, Vice Chairwoman
Mr. Kelvin Atkinson
Mr. Chad Christensen
Mr. Jerry D. Claborn
Mr. Pete Goicoechea
Mr. Tom Grady
Mr. Joe Hardy
Mrs. Marilyn Kirkpatrick
Mr. Bob McCleary
Mr. Harvey J. Munford
Ms. Bonnie Parnell
Mr. Scott Sibley

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Assemblyman John Marvel, Assembly District No. 32, Humboldt (part), Lander (part), and Washoe (part)
Assemblywoman Chris Giunchigliani, Assembly District No. 9, Clark County
Senator Warren B. Hardy II, Clark County Senatorial District No. 12

STAFF MEMBERS PRESENT:

Paul Townsend, Legislative Auditor
Eileen O'Grady, Committee Counsel
Susan Scholley, Committee Policy Analyst
Michael Shafer, Committee Attaché

OTHERS PRESENT:

James Wadhams, Legislative Advocate, representing Nevada Rural Electric Association and Overton Power District No. 5
Carole Vilardo, President, Nevada Taxpayers Association
Renny Ashleman, Legislative Advocate, representing the City of Henderson, Nevada
Danny Thompson, Executive Secretary-Treasurer, Nevada State AFL-CIO
Mary Walker, Legislative Advocate, representing Carson City, Lyon County, and Douglas County, Nevada
Nancy Howard, Assistant Director, Nevada League of Cities and Municipalities
Linda Ritter, City Manager, City of Carson City, Nevada
Daniel Holler, County Manager, Douglas County, Nevada
Dan Musgrove, Director, Intergovernmental Relations, Office of the County Manager, Clark County, Nevada
Madelyn Shipman, Legislative Advocate, representing The Mills, Reno, Nevada
John Slaughter, Management Services Director, Office of the County Manager, Washoe County, Nevada
Nicole Lamboley, Legislative Relations Manager, Office of the City Manager, Reno, Nevada
Sabra Smith-Newby, Legislative Advocate, representing the City of Las Vegas, Nevada
Anne Loring, Legislative Advocate, representing the Washoe County School District
David Fraser, Executive Director, Nevada League of Cities and Municipalities
Michael Alastuey, Legislative Advocate, representing Clark County, Nevada; and Technical Advisor, Nevada Association of School Boards
Justine Chambers, Member, Nevada Public Purchasing Study Commission; and Contact Coordinator, Development Services Administration, City of Carson City, Nevada
James Keenan, Member, Nevada Public Purchasing Study Commission; and Purchasing Manager, Douglas County, Nevada
Gary Milliken, Legislative Advocate, representing the Associated General Contractors, Las Vegas Chapter
Paul McKenzie, Organizer, Operating Engineers Local Union No. 3, Reno, Nevada

David Kersh, Government Affairs Representative, Carpenters/Contractors Cooperation Committee, Inc., Reno, Nevada

Chairman Parks:
[Called meeting to order and roll called.] We'll open the hearing on S.B. 67.

Senate Bill 67 (1st Reprint): Establishes certain mechanisms to protect assets of local government under certain circumstances if local government is involved in litigation or threatened litigation. (BDR 31-880)

James Wadhams, Legislative Advocate, representing Nevada Rural Electric Association and Overton Power District No. 5:
This bill arose because of a problem that occurred several years ago. The Overton Power District had purchased power back when there was a lot of manipulation of that market, and the contract turned out to be an Enron-based contract. It was grossly overpriced. The effort to modify the contract because of the market manipulation ended up in a judicial proceeding.

The possibility arose that the broker could obtain a judgment in a court in another state and then execute on that judgment, as a judgment creditor, against the power district in the State of Nevada. Under existing law, there is no procedure for the power district to resist that judgment creditor. Had that played out, it could have allowed the judgment creditor to take over and eliminate the transmission of electricity to the 8,000 to 10,000 people who rely on the Overton Power District.

As this Committee is aware, the State Department of Taxation has some authority to step in and assist in the management of troubled local governments. This bill, in its original form, proposed to allow local governments to put themselves in a bankruptcy position, where the courts could sort out those debts. The Senate Committee on Government Affairs, after a lot of discussion with local governments, decided the Department of Taxation could assist in obtaining judicial protection against a judgment creditor who could execute on a judgment. That's what you see in this first reprint. The purpose of this bill is to protect local governments by using the existing structure of the Department of Taxation, but making sure the Department has the authority to access the courts if necessary.

The ultimate goal here is not bankruptcy or liquidation of local governments. They provide basic services that are essential. The point is that there be an

authority with judicial backing that can organize and, in an orderly fashion, deal with those debts. What could have happened is that the power company could have been literally shut down, and other creditors who had bonds and the like would have been precluded. The orderly management of debt is really the issue here. The Senate committee's amendment puts that in the hands of the Department of Taxation with a clear, additional ability to utilize the courts.

[James Wadhams, continued.] I hope that I didn't make that too complicated. The Legislative Counsel Bureau staff worked very diligently to try to craft this amendment. While it may not be a perfect solution, we think that it at least anticipates problems that could occur. We would recommend your favorable consideration.

Assemblyman Goicoechea:
Looking at the bill, I don't see any mechanism for the Department to capture or recover any of the costs they might incur.

James Wadhams:
I don't see that either, and I'll defer to someone who is familiar with what happened when the Department of Taxation took over in Ely or White Pine County. I suspect that there was some administrative offset. I don't have that answer.

Assemblyman Goicoechea:
I don't know either, but I think that once you're broke, it's hard to get blood out of a turnip.

James Wadhams:
I think that this is the key piece to this bill. It was pointed out that the Department of Taxation has this power, and White Pine County was the example. The subtlety there that presented itself was that an out-of-state judgment creditor could come in and rifle-shot through that process. The point here is to give that extra insulation, so the Department of Taxation can react to that possibility as well.

Assemblyman Grady:
There's already legislation where the Department of Taxation can come in, and it spells out what they can do. So, this is just expanding on their authority and how they would protect that local government. [Mr. Wadhams concurred.]

Assemblywoman Pierce:
How does this protect the local government from litigation in another state?

James Wadhams:
It doesn't protect them from litigation. Litigation is an American right, and it could take place. In the particular instance that spawned this concern, that litigation was taking place in the State of Idaho. The Idaho court appeared to be about ready to render a judgment, which raised the prospect of an execution of that judgment, basically, by a sheriff's sale on the courthouse steps. The notion of shutting off your electricity as a result of a sheriff's sale sends a shudder through the citizens.

This is really not a protection of the local government. I don't think the original legislation on the Department of Taxation was designed to protect local government. It's designed to protect the citizens who rely upon the services delivered by the local governments.

I think the specific answer to your question, to the extent there is one, is found on page 5, lines 3 through 9: "If a plaintiff is allowed by law to apply to a court for an order issuing a writ of attachment…" That's legal for "an execution on a judgment obtained by a foreign court." So, it makes it clear that the Department of Taxation can react to that circumstance as well. That really is the addition to the existing scheme.

Assemblywoman Pierce:
So, the Department of Taxation would adopt a program for liquidation of debts. Would they start a program for debt liquidation before another state could do that themselves?

James Wadhams:
That's an excellent question, because any particular local government will have a variety of debts just in the normal course of doing business. They might have some bond obligations, as well as some other kinds of debts. The purpose of the Department of Taxation being able to do this—and this may have been adopted ten or fifteen years ago—is to make sure that those debts are fairly managed, so that the services are not interrupted, and yet the creditors are fairly dealt with. It is similar to a reorganization in a bankruptcy, but in this case, the State Department of Taxation does it.

That is already in the law. As Mr. Goicoechea mentioned, that power was exercised half a dozen years ago when White Pine County fell into financial difficulty. They were not able to meet their debt obligations, so the Department of Taxation had to step in and assist in the orderly transition of those debts.

[James Wadhams, continued.] The problem that prompted this particular amendment is the additional issue—not just of the normal debts of the municipality, but of a debt that comes from a decision in an out-of-state court. The Department of Taxation has the clear authority, in their current responsibility, to manage that municipality. They can also react if they see the possibility of a judgment creditor coming from another state.

Assemblywoman Pierce:
Do other states have this power in their statutes?

James Wadhams:
I think it was represented in the Senate committee that other states have given certain elements of their state government the ability to protect and manage local governments. I couldn't answer that question, but I do think that those who testified in the Senate felt that utilizing this mechanism, which has been tried and tested in this state, was a better way to go than to allow the municipality to get into a federal court to reorganize their debt.

Carole Vilardo, President, Nevada Taxpayers Association:
We worked on the amendment and believe this is the best way to go. There was a concern because, the way the bill was written, if you allowed a bankruptcy, it was not only for this general improvement district (GID), but it would have been for all governments in the state, and that had some severe ramifications.

The severe economic hardship provision was put in initially because of the White Pine County School District. That process started in 1993, 1995, and then 1997. The process was used for Gabbs, so it is a very tried and true process. There was a concern that the way the original severe economic hardship provision was written, it actually did not allow a GID to go to it. This now ensures that all governments in the state of Nevada, including a GID, can use the provisions of this mechanism.

Assemblyman Grady:
Just for the record, NRS [*Nevada Revised Statutes*] 354.695.2 does tell how the Department may provide for reimbursement from the local government.

Chairman Parks:
I believe it's also on page 4, line 17: "The Department may provide for reimbursement from local government." Are there any further questions from the Committee? We'll go ahead and close the hearing on S.B. 67 and open the hearing on S.B. 426.

Senate Bill 426 (1st Reprint): Revises provisions relating to certain public contracts. (BDR 28-1032)

Assemblyman John Marvel, Assembly District No. 32, Humboldt (part), Lander (part), and Washoe (part):
Senate Bill 426 is the result of a very intensive audit, by our Audit Division, of the University and Community College System of Nevada (UCCSN). In their audit, they found some areas of concern as far as the definition of a public project, what we define as a public project, and how the money either comes from a private source for another grant or from the General Fund. Senator Hardy made some rather extensive amendments on the Senate side, which I think will be good for the bill.

Paul Townsend, Legislative Auditor:
Many of the issues that arose during our audit of the UCCSN capital construction projects and contracting and bidding procedures are addressed in S.B. 426. My handout (Exhibit B) deals with the cost-neutral provisions of the bill. I'd like to go to Section 1, which deals with the definition of a public work. One of our recommendations was that the University System request legislation to clarify the definition of a public work as it is contained in NRS 338.010, and we do support their effort to seek clarification.

We found that for large repairs or reconstruction, the law, as it is currently written, makes it difficult or even impossible to determine whether a project is a public work at the university. This is a critical determination, because laws addressing requirements for prevailing wage and competitive bidding are based on the fact that a job is a public works project. In the course of our audits, to ensure we did have the correct interpretation, we requested a legal opinion from the Legislative Counsel. The opinion stated that the source of funding for the costs of the building as a whole needs to be considered when determining if a job is a public work.

On page 4 of the bill, where the amendment comes in, you can see that the statute provides that a project for the UCCSN is a public work if 25 percent or more of the costs of the building as a whole are paid for from money appropriated by the State or from federal money. The difficulties are encountered from a practical standpoint when looking at large maintenance or energy retrofit projects at the University of Nevada, Reno (UNR), where many of the buildings are over 50 years old, and accounting records have not been accurately maintained to determine the cost of the building as a whole. This bill

clarifies that the cost of the project as a whole will determine whether it's a public work. It substitutes the word "project" for "building."

[Paul Townsend, continued.] In the case of our audit, we looked at energy retrofit projects that also could encompass multiple buildings. We saw projects covering many buildings, which made it even more difficult to determine whether they were public works. If this amended law had been in place, almost all the projects we looked at would have been considered public works, because they were funded entirely by appropriated monies through the utilities budget.

The remainder of the bill—Sections 3, 4, and 5—deals with cost neutrality. On the second page of the handout (Exhibit B), we've pointed out several situations where the cost of the project exceeded the savings generated from the projects. We found six examples where the annual savings was less than the annual loan payments. The most extreme example was under the University of Nevada, Las Vegas (UNLV) Thomas and Mack Center, where annual savings of $11,000 was achieved through the retrofit, but the loan payments amounted to $74,000. That indicates that not all the improvements that were made related to energy savings.

When this was presented to the Audit Subcommittee, they felt there would be a need for a statutory change to further clarify this and make sure that projects are cost-neutral. The language in the bill does incorporate existing language from NRS 333A.090, which says, "A cost savings must meet or exceed the total annual contract payments to be made over the life of the contract." Those are the sections of the bill that arose out of the audit.

Chairman Parks:
In your handout (Exhibit B), where you reference the various projects, the annual savings and the loan payments should have shown a positive cash flow, but they showed a negative cash flow. Is that the point you're trying to make?

Paul Townsend:
That's correct. The next page (of Exhibit B) shows all of the projects we looked at. If you look at the two columns on the right, you can see "payments" and "savings." In most of those, the savings will exceed the cost. Out of 22 projects, there were 6 where that was not the case.

Senator Warren B. Hardy II, Clark County Senatorial District No. 12:
With regard to the portion of the bill that Mr. Townsend just addressed, we spent considerable time on how we would be able to accomplish that higher standard, because currently, the law states that it's likely to justify the cost. This is a much more difficult standard, which we believe is appropriate. We

came away convinced that the methodology is in place to be able to achieve this level, but we spent quite a bit of time discussing that issue. To the extent that it's appropriate, I would endorse that portion of the bill.

[Senator Hardy, continued.] The portion of the bill that I put an amendment on, because it was a germane and appropriate statute, is on page 5, subsection 2(d)(4), where the new language reads, "Any document furnished by a public body." This is in response to some emerging technology with regard to the submission of bids. Currently, it's all done by paper, and it's tracked by paper. That sometimes creates a difficulty when you're trying to determine what the original bid was, if there's a dispute, and those kinds of things. You're relying on the bidder—who has access to all the information—to provide that if there's a dispute. There's no real way to tell if it's been altered.

This is a new electronic system called the BidLocker system that will allow the bids to be submitted electronically. It's still in complete control of the bidder. There's no proprietary information to be accessed by anybody but the bidder. It simply guarantees that the information is not altered, because it puts a timestamp on it. It's an emerging technology for bidding, and the law did not permit it.

There's no requirement that this bid method be used. This is just one of those cases where we need to respond to the technological world. There's a better way to skin this cat. This simply allows for the emerging technology—where bids can be submitted and stored electronically—as long as they guarantee that it does not affect the privacy of the bidder.

Assemblywoman Kirkpatrick:
I just want to clarify that you still will be able to have a paper trail if you're not in the technology state, right?

Senator Hardy:
There's no requirement that any entity utilize this. In addition, paper copies are easily made available. There are sometimes significant disputes about what the original bid said, and the bidder has complete control of those documents. Sometimes it's difficult to verify, and that's a problem for both the bidder and the owner, because it can lead to an awkward accusation.

Paper backups can still be used and maintained, should the owner not wish to utilize the system. This simply says they can utilize it. It was an emergent technology that was not provided for in the law, and this just provides for it.

Chairman Parks:
I know we get a lot of documents today in PDF [portable document format], and there's no ability to alter what comes through on that.

Renny Ashleman, Legislative Advocate, representing the City of Henderson, Nevada:
I'm a member of the State Public Works Board. I'm not here by any official action of the board. I noticed a problem in the part of the bill that talks about the cost savings. The bill, on page 10, prohibits a change order. This is a local government problem if it's going to cause the dollar value of the annual energy savings from a retrofit to be less than the total contract payments.

It seems to me you would want to make some exceptions. If you have a project almost entirely done, even if you're driving it over the economic value, you're better off finishing the project and getting back what you can from the energy savings than you are not finishing it. You could put in language saying "unless it's economically more feasible to finish the project," or you could have some other escape clause. I think you could run into trouble without doing that in some fashion, wherever language appears in the bill.

Assemblywoman Chris Giunchigliani, Assembly District No. 9, Clark County:
Senate Bill 426 is a very good and timely piece of legislation. Mr. Townsend and Mr. Marvel explained the issue about the audit, and I commend them for that.

We've always had the position that any building is a public building if it receives any public financing and, therefore, should be subject to NRS 338 prevailing wage open bidding process. The $100,000 has been the standard threshold for most construction. For some reason, UCCSN has had this 25 percent threshold, which I think allows for projects not to be properly bid and not to be subject to prevailing wage. So, I'm making a suggestion on page 4, for the Committee's consideration, that they be treated like everybody else, which is the $100,000 threshold for bidding purposes.

The second addition to the bill actually begins on page 9. Assembly Bill 304 of this session was actually sponsored by one of the Committee members, Dr. Hardy, and two or three other sponsors. It was referred by the Chairman of Ways and Means to the Ways and Means Committee, but unfortunately, staff had not exempted it. If a bill is not exempted before it's referred by the timeline, it dies.

I had said to Dr. Hardy that S.B. 426 might be a proper vehicle to bring this back. I believe it is an important piece of legislation that is germane, complements the intent regarding the performance bidding contracts, and

should go hand-in-glove with the other bill. That is why this is such a big amendment. I just picked up Dr. Hardy's bill, A.B. 304, which actually had been voted out of this Committee, sent to Ways and Means, and gotten lost in that mix.

Assemblyman Grady:
Does this mean that it goes back to the "cul-de-sac of death"?

Assemblywoman Giunchigliani:
I would hope not. I will do what I can to make sure that it doesn't get lost again.

Chairman Parks:
Perhaps we can prevail on the Vice Chair of Ways and Means to put it up at the top of her tracking list. I believe that A.B. 304 did pass out of our Committee unanimously. Ms. Giunchigliani, you did say this is just that bill in its entirety.

Assemblywoman Giunchigliani:
Yes. All I did was copy everything from A.B. 304 and overlay it into this bill.

Danny Thompson, Executive Secretary-Treasurer, Nevada State AFL-CIO:
We, too, support S.B. 426, and we further supported the previous bill that died in the "cul-de-sac of death," but if the Committee plans to go forward with that, we would like to propose an amendment to clarify the fact that projects financed using bonding or loans are subject to NRS 338. We have put this in almost every bill that has come out of this Committee, and we just ask that the language be added here as well. We did support the previous bill.

Mary Walker, Legislative Advocate, representing Carson City, Lyon County, and Douglas County, Nevada:
I just wanted to get clarification that the last amendment that Mr. Thompson stated was to include any bonding. That was passed out of your Committee in A.B. 552. I just want to go on record again opposing that. We use bonding, too; it's not only the State.

If you'll recall, the Labor Commissioner was here, and when they come in and do tax increment, there are IRS [U.S. Internal Revenue Service] provisions where they can come in and get tax-exempt financing. It's all just a paper trail. It has nothing to do with any taxpayers' dollars going towards the projects at all.

For as long as I can recall, prevailing wage has been in effect. When a private entity comes in and receives that tax exempt bonding and does not receive any

dollars from a taxing entity, it's all just a paper transaction. It has been determined by the State of Nevada that it is not subject to prevailing wage. If over $100,000 of tax dollars go into that private project, then it is subject to prevailing wage. However, if there is not one tax dollar that goes into that private project, then it should not be subject to prevailing wage, and the State of Nevada has never determined that to be so.

[Mary Walker, continued.] This affects, for example, nonprofit organizations that come in and use this type of tax-exempt financing, and it affects low-income housing projects. It affects a lot of hospitals; rural hospitals in particular use this financing tool. A lot of different utilities use this financing tool.

We feel that this bill would eliminate the ability to use this tool, because people aren't going to use it if they are only going to get a small break on their interest rates. The prevailing wage would far offset that. You won't get private companies coming in and applying for these types of things. We just wanted to state on record that we would still be opposed to an amendment to put that tax financing in there.

Chairman Parks:
I believe the illustration you used was a transfer station.

Mary Walker:
Yes, there was transportation to Douglas County and other areas up in Reno also. There are mini-hospitals. Sierra Pacific Power has used this for the Chalk Bluff water purification project. Those types of projects can use this, so it's basically for the public good.

Assemblyman Grady:
The majority of this money so far has gone into affordable housing projects, has it not?

Mary Walker:
I believe that's true for the State Industrial Bonds. For local government bonds, it's a mixture. Down south a lot of times, it's used for low-income housing projects, and this will, again, increase the cost of the low-income housing.

Assemblywoman Pierce:
Private money uses the bond rating in order to get a lower interest rate, right?

Mary Walker:
No, it doesn't. It doesn't use the bond rating at all. The IRS allows State or local governments to make a determination whether there is a private construction project that is a public good that can get tax-exempt financing.

Let's say Churchill Hospital received this tax-exempt financing. There is an application that Churchill Hospital can fill out that says, "Please, Churchill County, recognize us for tax-exempt financing under the IRS rules." The Churchill County Board will look at the application and decide that, yes, it meets the requirement or no, it doesn't. If it does meet the requirement, then the Board will give its blessing and make a determination that they can fall under the IRS tax-exempt financing.

That determination is then taken to the private bank. Let's say Churchill Hospital, which is privately owned, goes to a bank and says, "We have the determination per IRS for tax-exempt financing." The bank says, "Great!" I think they get a .5 percent or a 1.0 percent difference in the interest rates, so that's pretty significant. It's only a paper transaction. Churchill County doesn't put one dollar into the project.

We had a very big discussion about this in the Senate Government Affairs Committee. If they knew about this amendment, a large contingent of people would be here speaking against it. However, I think there's a difference when there's not one dollar that's put into the project. Again, low-income housing is private nonprofit corporations that are not getting tax money, but if they did get over $100,000 in public monies, that would be subject to prevailing wage.

Assemblywoman Pierce:
I think I asked what the basis is for the lower interest rate.

Mary Walker:
The basis is simply that the IRS says that any people who purchase this financing—say Bank of America gives the loan; it's tax-exempt financing—don't have to pay any income tax on the interest on that loan. Basically, the bank gets the break, and they can then pass that on to the nonprofit organization. That's how that works. There is no government guaranteeing the loans. We don't oversee the loans. All we do is a paper trail; we just say, "Yes, this is subject to IRS regulations, and it's tax exempt." There is no guarantor. They don't use the county's bond rating or anything like that.

Danny Thompson:
We have never had an experience with any low-income housing or any small project. These are all very large projects like hospitals, as the case in Reno.

They are paying prevailing wage because they are using this bonding mechanism. This is a loophole, and it is a problem where they use these bonding mechanisms to avoid paying it. There are those who pay it and those who don't. I would offer to work with Mary to see if we can't come to some solution.

Chairman Parks:
I appreciate that.

Nancy Howard, Assistant Director, Nevada League of Cities and Municipalities:
You just heard comments from Mary Walker, and we would concur with those. We were opposed to the original amendment that was rolled into A.B. 552, and we would be opposed to this as well.

Chairman Parks:
Does anyone else wish to speak on S.B. 426? Not seeing any, we'll close the hearing on S.B. 426 and open the hearing on S.B. 389.

Senate Bill 389 (1st Reprint): Provides for creation of tax increment areas by municipalities to defray costs of certain undertakings. (BDR 22-815)

Mary Walker, Legislative Advocate, representing Carson City, Douglas County, and Lyon County, Nevada:
For several years, the S.B. 557 Legislative Committee—the committee that studied the distribution among local government revenues and State and local taxes—has been looking at implementing tax increment financing in Nevada. In 2001, that Committee submitted S.B. 266 of the 71st Legislative Session, regarding implementing tax increment financing. However, in 2001, there were a few technical problems with the bill, and it was in such a crunch that there was no time for anyone to step forward and try to resolve some of those technical problems.

In the last few years, the 557 Committee was still interested in introducing a tax increment bill. However, because of staff time needed to put the bill together, it again was not actually voted on by the 557 Committee. I talked to Guy Hobbs, who was working on this and had developed the original bill in 2001. Because this is a very important economic development tool for the rural communities in particular, we offered to do the legwork, look at the problems that occurred in 2001—some of the smaller technical problems—and to work with Carole Vilardo to try and resolve some of those problems. We have done that for the past several months.

[Mary Walker, continued. Before you today is S.B. 389, with these technical problems resolved. Basically, it enables a local government to implement tax increment financing. It is similar to redevelopment, because redevelopment is based on tax increment financing, but there are several differences. First of all, S.B. 389 is very limited in scope. You can only use it for sewer, water, roads, or infrastructure types of things that a local government needs to provide in order to attract national retailers to our areas, particularly in the rurals. In the rurals, we have a lot of problems. We don't have the tax dollars available to pay for the roads that go to a particular development or the sewer and water lines. In the more urban communities, it's not as expensive because they have those services near a potential development. In the rural areas, it might be quite a distance to connect to a sewer or water or to have roads extended. So, it can be very costly in the rurals.

Dayton, in Lyon County, is a very good example of what this does. It allows for a particular smaller area to be developed for a particular project. Let's say a national retailer is going to establish their business in Lyon County. If they didn't have the necessary sewer, water, storm drainage, and road type of infrastructure to that development, they would typically request local government to provide that. If we cannot provide that, many times they will not come, because they can go to other areas and get that type of benefit from other local governments. However, in the rurals, we don't have the financing. We can't take the money away from the road maintenance funds because we need it for normal, everyday road maintenance, and to divert those funds would be difficult for us.

Let's say we have a 20- or 25-acre parcel that is going to be developed. With this, we would basically create a tax increment area for that one development. That's one of the key differences between this and redevelopment, because redevelopment could be your whole downtown. It could be a very large area of land, whereas here we're talking about doing it on a development-by-development basis.

So, you create this tax increment area. Then, once the building is built, there will be an increase in property taxes that are collected from that one development. Let's say that taxes are going to increase $250,000 a year, and we needed to provide sewer, water, and roads, and that's going to take a couple of million dollars. This extra $250,000 would, in tax increment, go to pay off bonds for sewer, water, and roads. In that way, we're not drawing from any of our other tax resources, but what is happening is the development is paying for itself.

[Mary Walker, continued.] What happens then as the increment grows? Let's say we get $250,000 in revenue, and the bonds are only $150,000. That other $100,000, per this bill, will go back to the entities that it would have gone to prior to the enactment of the tax increment district. There is a carve-off. As the bonds for those specific infrastructure improvements are either paid off or your increment grows higher than what your debt service is, that will be carved off. It will go back to the entities that would have normally received it.

The other difference between this and redevelopment—and I know you heard S.B. 306, the STAR [sales tax and revenue] bond legislation dealing with sales tax, just a couple of days ago—is that this bill, which deals with property tax, is basically restricted to sewer, water, flood control, and street-type projects. What also is very good about this is that this pertains not only to retail and expansion of your current or new economic development, but also to industrial development, which is also very important. You also don't have that finding of blight, whereas in redevelopment, you have the finding of blight.

In summary, S.B. 389 really is needed in rural Nevada in order for us to attract national retailers or good, solid businesses to our rural areas. The smaller jurisdictions don't have the tax dollars to put into these developments. Their infrastructure is a lot more costly simply because the connections may not be in the area, but are quite a bit farther away.

We have several rural self-sufficiency bills, and this is one of them. We have a couple of bills regarding economic development. We're trying to do more ourselves, trying to get more economic development, trying to go to our voters regarding having the same type of tax effort as in the urban communities. We would appreciate your support.

The schools have requested that they be held harmless in regard to when we do establish these tax increment areas. I have an amendment (Exhibit C), which would eliminate from the tax increment a 50-cent locally-generated school support property tax—enacted by NRS [*Nevada Revised Statutes*] 387.195—from Section 26. This is the portion of the school property tax that wouldn't be compensated by an increase in sales tax. We want to make sure that the schools are held harmless on this.

Assemblyman Goicoechea:
This would only pertain to new construction, so we wouldn't get caught up with A.B. 489 and the property tax cap.

Mary Walker:
Assembly Bill 489 and the trailer bill don't address some of the problems with the redevelopment tax increment. There is going to be another trailer bill, which John Swendseid and others are working on, which will pertain to redevelopment, as well as this tax increment. Some legislation does need to occur because A.B. 489, the way it is written, doesn't address how the money flows to a redevelopment or tax increment area. We will be addressing that in the trailer bill for A.B. 489.

Assemblyman Goicoechea:
It would almost seem to me that this tax increment area would work because it applies to new construction, where a redevelopment clearly wouldn't.

Assemblyman McCleary:
I always get concerned when I see bills like this because I'm afraid it is going to impact the schools, and it seems you're trying to mitigate that effect. You have a figure of 50 cents listed here for the school support portion. Does that ever fluctuate?

Mary Walker:
At this point, there's actually a 75-cent levy that has been there for many, many years. As I understand from the schools, 25 percent of it goes into the Distributive School Account (DSA), as well as 2 percent in sales tax. Then, 50 percent goes to the local schools for the local schools to fund their services out of. We believe that the 25-cent portion that goes into the Distributive School Fund will be offset because, as retail increases, there will be more revenue from sales tax. That will more than compensate for any loss you may have on the 25 cents. With the 50 cents, though, there's no offset on sales tax. The local school districts could be harmed. We want to take out the 50 cents to make sure that they are held harmless.

Assemblyman McCleary:
So, the 50 cents is to make sure the local school district isn't harmed by this. However, because of this, there might be a difference in what the state portion is. Is that correct?

Mary Walker:
Actually, because the 25-cent portion of the State also has an offset on sales tax—and whether it's going to be industrial jobs, more jobs, and higher paying jobs, or whether you're talking about actual retail with sales tax—we believe that there is going to be revenue generated from that. Otherwise, we would be doing this ourselves to generate additional revenues and would go into debt to do that. We believe that the schools and the State will lose that 25-cent

increment, but they would gain it in the sales tax, particularly when you're talking about things like Cabela's, or major retailers that are not in Nevada, that you may be able to attract here. So, we believe that that's going to hold the school's promise.

Assemblyman McCleary:
I have concerns with subsidizing to bring businesses into the community, which I know is a good thing. I don't know if it always pays for itself. We hear all the time that growth doesn't pay for itself. When it comes to supporting our schools, I want to be very careful before we proceed.

Assemblyman Goicoechea:
Give us an example. The 50 cents is locked. That's part of the property tax rate for school districts, and the 25 cents is part of the 75 cents that school districts get. Explain to me how that could go down. I'm missing that.

Mary Walker:
It doesn't go down. What happens in tax increment: for example, out in Lyon County they're trying to get this business. The total combined overlapping tax rate is $3.00, and that includes 75 cents for schools, it includes Lyon County, the State's 16 cents, any of the other locals or GIDs. Let's say that it was $3.00. This is how tax increment works now—let's say the assessed value was $1 million, and then after the business comes in, it's now $10 million. That went up by $9 million. The $1 million, which was the base, still goes toward anybody who was receiving that before. The increment is the $9 million. That $9 million in assessed value would then go to the $3.00, and that would go to redevelopment. We're saying that, instead of doing it the way redevelopment does, we will take the increment, the assessed value, times the $3.00—less the 50 cents for the school—so that increment would only get $2.50 tax rate, which would generate X amount of dollars. The other 50 cents would still go back to the schools.

Assemblyman Goicoechea:
I understand that. I'm curious why we would only take the 50-cent local. I know you're talking about the ability of the DSA on the State side to capture that through sales tax, but it might be clearer if you took the school rate or the 75 cents and excluded it so you avoid the confusion and you still have the $2.75 or whatever. Take the 75 cents off—the school rate out of it—and I'm sure education would definitely support that. It should still give you the ability, because it is typically local government that would really be gaining in this, and they also have the ability to fluctuate their rate, where education clearly is locked at 75 cents.

Assemblywoman Kirkpatrick:
I think it needs to be clear how long this infrastructure will take because there will be a deficit, and the State will have to make up the DSA funds for a while. I believe the infrastructure takes a minimum of 18 months, not counting the time required for the businesses to come in to generate the revenue. Also, any business person knows that for the first five years, you're not really making any money; you're just trying to have a level playing field. I think Mr. McCleary is correct that it would take a long time to make up the 75 cents.

The other thing I want to ask is, what trailer bill are you talking about? We've been working on a trailer bill. So, I'm wondering what you know that I don't know, when I'm on that Committee.

Mary Walker:
I'm also a member of the Committee on Local Government Finance. There are some technical issues regarding redevelopment and annexation that need to be addressed. John Swendseid, Department of Taxation, and Brenda Erdoes are working on that now, and it is basically to fix some technical problems that will occur in redevelopment and for annexations unless we rectify them. The reason why they're not in the trailer bill that you're seeing now is because it has taken up until now to find a solution that will actually work on our computer systems. We only have a couple of months to change those computer systems.

I think we do have a solution. It's going to the Committee on Local Government Finance tomorrow, and we'll be working with Brenda Erdoes and the Department of Taxation to bring that forward. There are some technical amendments that need to be made.

Assemblywoman Parnell:
I'm completely supportive of the effort in the rural counties to bring retail in and do something in terms of our business climate. I probably echo the comments of my two colleagues, though, with regard to the school district. I'm afraid that yesterday in Ways and Means they might have lost their hold harmless clause, and some of the districts with declining school populations are really going to take a hit on that. Even if we're looking at down the road, we can have an increase to the school districts. At this point in time, anything without a guarantee or anything where you would have a period of time where the revenue wasn't coming in could really affect the very communities that we would help with this legislation. If there's a way we can tweak that to protect the school districts, I think all of us would feel much more comfortable.

Mary Walker:
With the comments here, I would be very happy to go back and change that to 75 cents so that they are totally covered. We'll work with that. We want to support our schools; they are our very vital partners. So, we'll make that change and bring you a new amendment.

Assemblyman McCleary:
Since this is a conceptual amendment anyway, can't our staff do that for us?

Chairman Parks:
In looking at this, perhaps one example I've seen where this would work very well is out in Lovelock. The city decided to build an industrial park, presuming that, since they are right on I-80, they should be able to attract businesses that would want to relocate because of the availability of opportunities that are provided there. I know that they had a real slow start, and they've begun to take off, but this would be an opportunity for them to market their site using a financing program that would attract an interested party—a manufacturing program or whatever—who otherwise would decide to go elsewhere to relocate. This would be the incentive necessary to bring them to develop their situation.

Assemblyman Goicoechea:
Your remarks raise another question. I believe this only pertains to infrastructure, which is roads, water, and sewer, and I believe that in Lovelock those are in place, and they are industrial parks.

I know Ms. Ritter is very familiar with Elko County and its pay-as-you-go. Would that impact that in any way?

Linda Ritter, City Manager, City of Carson City, Nevada:
[Referred to written statements, Exhibit D.] That pay-as-you-go in Elko is a quasi-debt rate. So, I guess the bill could have an impact on that. One thing to note on this bill is that it is infrastructure-driven. It is specific to a project, so it wouldn't be like redevelopment that could take 30 years. It's something that could be done very, very quickly. We would hope that, by just opening up one business park and getting that increment there, you are going to see multiple companies locate. There was one project I was working on in Elko where this would have been a fantastic tool to make something happen, but the pay-as-you-go rate is included in the tax rate in the county, so it would affect that.

Assemblyman Goicoechea:
Right, but again, this is on new construction. I keep going there because if it's new to what you already had, it's not a loss.

Linda Ritter:
For 20 years before working here, I did work in Elko for both the County and the City. I also had the pleasure of serving on the S.B. 557 Technical Committee that worked on some of the original language looking at increment financing tools. This is a tool, and it's a really important tool for rural Nevada communities.

I dealt with economic development efforts quite a bit, and what we found was that economic development is a very competitive field throughout the country. Communities are vying for new companies coming in. Companies don't only look at the great quality of life that we have to offer and the overall tax environment. They have to look first at their bottom line. They're going to ask the question, "Does it pencil out?"

While our state does offer some incentives that can help, we need, in rural Nevada, a little bit more. Businesses are looking for what we used to call "plug and play" opportunities—a business park where they can come in, build a facility, and they're ready to go. They're not in the development business, and they don't want to be in the development business. So, in rural communities, they want that infrastructure in place.

Now, rural communities have property available, but getting that infrastructure extended is the challenge. If we would tell a developer or a company, "Yes, we want you here and we have 50 acres, but we want you, though, to extend the infrastructure: the water, the sewers, and the streets," they put that down on paper, and it no longer pencils out. We were not successful in getting some of these companies because of that.

Right now, the only tax increment financing options are through redevelopment. In many rural communities, redevelopment isn't the issue; it's new development and getting that development started. Senate Bill 389 is a critical tool for us, and I would encourage your support.

Daniel Holler, County Manager, Douglas County, Nevada:
There are two things that I would like to add to previous comments:

- On one hand, we don't have an amendment to protect the schools, but on the other hand, you don't lose what you don't have. If we're not successful in bringing the development in, the schools don't benefit from the vacant land to the extent that they do from the developed land. It's always a balancing act. The amendment, as proposed, is fine in terms of future impacts.

- As far as the infrastructure costs, we've worked with several companies. We worked with one company that manufactured a storage device for computer components and that was looking at locating in Douglas County. They were also looking at another site in Nevada, a site in California, and a site in China. It really is an issue of international competition.

[Daniel Holler, continued.] When they were told that we also wanted them to build $1 million worth of water line, they said, "Thank you. We'll talk to you later." They never did come back and talk to us. Having the competitive edge on some of those issues can become very challenging, especially when you have a site where the first company in will have to cover all of the costs. There's a way to manage the finance so that the first company isn't saddled with all of it.

Often, one success breeds another success. You may be aware of the coffee company that came into Douglas County. We actually had to work very diligently with them on the issue of how to pay for some of the infrastructure. It would have been ideal if the infrastructure had already been in place. When we talk to a company, one thing that sticks with them is the construction of water facilities, which ultimately benefits more than just them. We worked through that issue, and the coffee company located there very happily.

This legislation would give us that extra tool to work with businesses that come in. It is an additional tool that we can utilize. It most likely wouldn't be utilized in all cases, but it does allow us to do that and to be a little more sufficient. If you have one industry and that industry does poorly, everything does poorly—you've seen it in mining areas, gaming, or tourism. So how do we expand and diversify our economic base, especially in rural Nevada?

This is a critical issue and one we've been focused on for at least ten years. How do we take those steps to diversify our economy? I think we've been successful in some areas. Having these types of tools really does increase local government's ability to do that.

Assemblywoman Parnell:
Since we're speaking of schools, give me an example of the difference between the 50 cents and the 75 cents and the school support. If we kept it at 75, give an example of how that could have a negative effect on what you're trying to create.

Daniel Holler:
If you look at the tax increment district, you're going to look at the financing capability based on the property tax increment that's generated. In Douglas County, for example, the area is about $2.18 of tax increment. If you take 75 cents off of that, it reduces the increment that you're going to apply to that assessed value in terms of revenue growth. It impacts your bonding capability, your financial viability, and how you would work through it. Instead of generating $50,000, maybe you'll only generate $35,000 for debt payment. So, you're trying to balance that. As I said, I don't have a problem with the amendment as discussed, but that's the impact it would have. It reduces that revenue generation.

Assemblyman Grady:
I asked about a sunset on this, and Dan explained that the sunset is the part that says that when the bonds are paid off, this goes away. There is a sunset built into this.

Mary Walker:
When the 557 Committee originally started with this issue, it was statewide. The Senate and Carole Vilardo requested that we look at making it just for economic development in the rurals, which we did. Then folks from Washoe County and Clark County talked with Ms. Vilardo and asked if we could expand it back again. As I understand, she's okay with that. I just wanted it on the record that we do have a couple of friendly amendments coming your way.

Dan Musgrove, Director, Intergovernmental Relations, Office of the County Manager, Clark County, Nevada:
I do have an amendment (Exhibit E). I think there is something we need to do in the bill, and perhaps Ms. [Madelyn] Shipman will talk about it as well. We focused strictly on Section 16, but I see now that page 3 of the bill is where the population caps are addressed—when it talks about economic development—and my amendment does not reflect that.

Perhaps we could ask staff to remove any reference in the bill to any kind of population cap and just make it statewide. I think Ms. Vilardo will be guardedly neutral on this, versus okay. I don't want to put words in her mouth, but I think that's where she stands this point.

What we want to do is expand that infrastructure verbiage on page 3 that talks about drainage, sewer, and streets. I think our first amendment is pretty self-explanatory. We just want to allow for underpasses or overpasses for pedestrians and/or transit facilities improvements. In Clark County and Las Vegas, I think the more we do to make our city and our area more

pedestrian-friendly and more transit-friendly, the better off we are. This just gives us one more option to do that.

[Dan Musgrove, continued.] The second addition that we want relates to a power facility and associated appurtenances. We have two areas that we would like to redevelop, as well as just get new development. One is Apex, in the Las Vegas Valley. There's a burgeoning industrial complex there, and there are some issues with getting power out there. For folks wanting to come in with light industry or anything out there, as well as in our older areas, a big question is how to get power facilities out there.

We're looking at the Commercial Center areas, as well as the corridor around UNLV. We'll probably need some real retrofitting of existing power facilities there to allow for new companies, new business, and new growth in that area. We just want this tax increment to be an option as we look into expanding those areas.

Assemblyman Christensen:
Ms. Walker was talking about the 75 cents. Where does Clark County stand on that topic?

Dan Musgrove:
I listened to the testimony on both sides. I think Mr. Holler hit the nail on the head. Zero percent of zero is zero. Unless we're getting something new into these areas—there hasn't been any money generated for the schools before. So, I think anything you can do to help that will help the schools overall. I don't have a stand on this. I'm not sure I understand it well enough, other than just to say that I don't think it markedly detracts from it. Obviously, we want to make sure that the schools are protected. I think what we're trying to do is increase revenues in areas where we have flat revenues. We don't have a lot of assessed valuation growth anyway, so anything we can do to increase that in those areas is going to help the schools, because you're going to get new revenue generated in areas where perhaps there wasn't any.

Assemblyman Christensen:
When you do have additional information, would you share it with us? [Mr. Musgrove responded in the affirmative.] I'd be interested in your take on that.

Assemblyman McCleary:
Dan, could you give me the definition of what some power facility-associated appurtenances would be?

Dan Musgrove:
It's a term of art. It's all-inclusive in terms of all the things you might need to bring power to an area, such as overhead lines in that area. We want to get them underground, and that's not something the Nevada Power Company would do ordinarily. It's anything that goes along with generating or whatever you might need in terms of lines. For the stations that need to increase the power going into an area or get transmission lines out to an area that did not have them before, we need the flexibility to use this tool. We need it to make those facilities out there an attractive area for businesses to relocate where they might not ordinarily go.

Assemblyman McCleary:
So, it's something the power company would not ordinarily do, or they would do it and charge the business for it?

Dan Musgrove:
Absolutely. That's the key. That's not something that a local government could normally afford to do, so we're looking at something that would give us the ability to do those kinds of things.

Assemblyman Grady:
I guess the power issue raises a flag with me. The way I understand it, power facilities are centrally assessed, not locally assessed. If your power lines are going out into other counties, then those other counties receive income on a line-mile basis. Now, if you do this and you're affecting other counties, you're in a whole other realm of problems. Have you considered that?

Dan Musgrove:
No. Maybe I didn't explain it properly. Let me see if I can get an answer for you back. Basically, the best example I can think of would be, perhaps, the Commercial Center in unincorporated Clark County, where we're looking to do a redevelopment. There's existing power there right now, but because of its age, its kilowatt-generating abilities, and its inability to handle certain things, there's not much more that can be done without upgrading it. We're looking at being able to use the tax increment to retrofit the existing power facility.

Perhaps the example at Apex, in terms of actually getting power out there—there probably is power already out there. It's just a matter of upgrading it or getting it to a point where additional businesses can then use it and locate in that facility, where they normally would say, "It just doesn't work for us to have to absorb all of those costs on our own." That's how it was explained to me. Again, I'm not an expert in this area, and I will try to see if I can get a

better answer for you as it relates to centrally accessing and crossing county lines.

Assemblyman Goicoechea:
I think your choice of terms here is inappropriate. A power facility can be generation and/or transmission, and I clearly think that what you're talking about is electrical infrastructure. There's a big difference.

The first thing that went off in my mind was that we're going to use this tax increment district to build generation at Apex. I would have a problem with that. So, I think truly what you're talking about is electrical infrastructure and the ability in-house to put a substation in and supply power to those areas. I think "power facility" is a little too broad, and you could well end up in generation.

Madelyn Shipman, Legislative Advocate, representing The Mills:
I'm representing the private side of this bill. The Mills is a national corporation that has an ownership interest in hundreds, if not thousands, of shopping centers across the country. They've recently made some acquisitions, one of them being Meadowood Mall. In their process of acquiring shopping centers, they go in, analyze, and do a business analysis to determine what types of improvements, if any, may be necessary. Part of that analysis could be to sell the shopping center, or it could be to invest huge dollars in making new improvements to try to remain competitive.

Our amendments (Exhibit F) would do two things. They would include the potential for a Meadowood Mall link from a district to be done by Reno, if they so chose or if the opportunity even exists. I'm not going to suggest that we've gone so far in any planning to know whether or not it would be a viable approach, but it's a tool in a city's tool box.

Let me give you an example. There's been a project on the top of the RTC [Regional Transportation Commission of Washoe County] list for many years—fully designed, property already acquired, and awaiting federal funding or other funding sources—to do an actual onramp/offramp or combination that ultimately would access Meadowood Mall Way, but would also relieve all of that traffic congestion. The primary purpose of it was to relieve the congestion at the Virginia Street/McCarran Boulevard and Virginia Street/Kietzke Lane intersections. Without having had any discussions other than very cursory ones about this with RTC, this is a potential tool that could be used for a public improvement that goes well beyond benefiting just Meadowood Mall Way.

In the process of analyzing what to do with the shopping center—besides looking at new tenant bases and possibly new improvements that have already

been approved from a phased approach by the City of Reno—they would also be looking at some of these external improvements to keep the mall competitive in a region that is very fast-growing. Some very competitive types of shopping centers are coming to the region, too, whether you want to call them the STAR bond-type, like the Cabela's out by Boomtown; the Summit Sierra tourist-oriented; or the new business-oriented shopping center at the Mount Rose Highway and South Virginia Street.

[Madelyn Shipman, continued.] The amendments I'm proposing would simply expand this to include Washoe County, and I have no problem with it including, at their request, Clark County. I simply took the easy way by changing the population number. I also added more to the criteria for economic development in order to maintain the viability of existing commercial centers or areas.

Assemblywoman Parnell:
I'm looking at your new language, "maintain the viability of existing commercial centers." I don't see that as being substantially different from Section 16, subsection 4(a) of the bill, where it says, "Accommodate new businesses or the expansion or retention of businesses." Isn't it very similar to the whole concept of retention?

Madelyn Shipman:
Actually, I didn't originally add the language. I agree that you want to retain businesses, but I also wanted to make it clearer. I thought the new language made it clearer that economic development could also mean providing assistance in this manner if a city or county were to agree to provide for those additional public improvements that would make them competitive or continue their competitiveness.

Assemblyman Goicoechea:
These two amendments (Exhibit E and Exhibit F) raise some flags. We were talking about a tax increment area, and all of a sudden I see this being expanded to the point where, given Clark County's amendment, we start talking about transit facilities and improvements, and if it's five miles away and we're going to build a parking garage, and yet we're going to take this ten years of taxes off this particular facility that's five miles away. I can also see a real horserace between the counties and the cities over who is going to be able to incorporate this and who's going to get the tax.

I'm glad we got the school districts covered with their 75 cents, because I can see a real issue coming. In your particular amendments, these increment areas were going to bring new infrastructure to develop an area, and now we're going to go back and maintain an existing commercial center. To me, that's more of a

redevelopment type-language, and I don't see that in there. So, I do have concerns about the bill with your amendments. I'm sorry.

Madelyn Shipman:
I have two comments to make. One, if you know Washoe County at all, there won't be any fight between the county and the city, because all economic development occurs within the city. Our regional plan does not allow economic development in the unincorporated areas. This is not a fighting tool; this would just be a tool to be utilized.

With that said—and maybe that was a little facetious—I think the previous conversation with Assemblywoman Parnell makes clear that I just wanted to clarify what I felt was covered under the existing language. I suppose we could not do the amendment, but on the record, I would see that maintaining the viability of an existing—understand that you couldn't use a tax increment district, especially removing the 75 cents for schools, to do a whole lot of funding when you're talking about the difference between the existing tax base. You're not talking bare brown now. You're talking about Meadowood Mall, and you're talking about a new tenant structure to make it the new fashion mall of Reno. That would never lose its competitiveness.

When you do a new tenant base, you're going to have an increase in assessed valuation that would be available of some measure and in some form. I'm not even saying that this is something my client would be looking at. They just didn't want the tool to be lost to them if their business plan ended up making this a possible approach.

Assemblyman Hardy:
In your proposed amendment (Exhibit F), you talk about a population cap on page 3, Section 16. We've already heard testimony from Clark County about removing the population cap. Have the two of you had a chance to talk about that? If we remove the population cap completely, would that make yours comfortable still?

Madelyn Shipman:
I wasn't aware until this morning that Clark County had a proposed amendment. I have no problem for it being extended to Clark County. There's obviously going to be a change in the bill drafting, and it wouldn't fit into my amendment or his if you did that. It would require a difference in the bill drafting.

John Slaughter, Management Services Director, Office of the County Manager, Washoe County, Nevada:
I would just like to say that we support S.B. 389, and we agree with the amendments Ms. Shipman brought forward and the amendment Ms. Walker brought forward previously regarding the schools. I also agree with Ms. Shipman's assessment of economic development in Washoe County. By the provisions of our regional plan, that is centered in the two cities in Washoe County, Reno and Sparks.

Nicole Lamboley, Legislative Relations Manager, Office of the City Manager, Reno, Nevada:
Our City Council did support this bill in its original form. They did have concerns when it was amended so that Reno would not be included. We do support the amendments brought forth by Ms. Shipman and would be supportive of the bill if it was amended to be statewide as well.

Sabra Smith-Newby, Legislative Advocate, representing the City of Las Vegas, Nevada:
We also are in support of this bill and, in particular, the amendments offered in Section 16, subsections 2 and 4, to remove the population cap.

Anne Loring, Legislative Advocate, representing the Washoe County School District:
All of us support economic development for our state and for our communities. It's vital to all of us as we continue to grow. A major part of economic development is the quality of education that is available. In economic development terms, it translates to workforce development, which is important to all of us. There are a lot of bills this session that relate to that.

We appreciate Ms. Walker's amendments. We appreciate the discussion that you've had here today regarding the schools, and certainly there are folks in this school behind me who are far better at talking about 50 cents, 25 cents, and all of the details and intricacies of school finance in Nevada. I believe that the bottom line answer to Assemblyman McCleary's question earlier this morning is yes, that does indeed impact the state. In a very broad sense, all of the 75 cents and the funding for education is a statewide issue. It's your issue, and we are in partnership with you through the intricacies of the Nevada Plan with the 50 cents and the 75 cents. I'm not going to go further down there because if you had detailed questions, certainly the gentlemen behind me are the ones to address those.

Regarding the discussion about tax increment financing and the exchanges with the representatives from Douglas and Clark Counties, certainly one of the things

to consider is the issue, in tax increment financing, of going from zero or $1 million to $100 million or $10 million. That's the money part of tax increment financing and economic development, but economic development, if it includes in any way bringing new people into the community, we have found that there tends to be a direct relationship that translates into more need for services. Specifically, if those people have kids or intend to have kids, it translates into more needs for schools. That's why this is a fairly intricate issue that does involve school districts. So, we are supportive of the amendment, including your change to it today.

[Anne Loring, continued.] We do have one technical amendment that I was just talking with some folks about, and I will get the written version to you later today. It deals with page 11 of your bill. This is the section that relates to debt service, excluding the school district debt service from these calculations. At the very bottom of the page, subsection 3(a), in addition to paying principal and interest with our debt service, we have to fund reserve requirements. So, we'll provide you with a technical amendment that will just include funding the reserve requirement in that section on line 43 on page 11.

David Fraser, Executive Director, Nevada League of Cities and Municipalities:
About a decade ago, I accepted a position as the city manager for a small community in southwest Michigan. Just before I took that position, the Clark Equipment Company, which many of you may be familiar with—it's now been swallowed up by the Ingersoll-Rand Corporation—closed the doors of its primary manufacturing facility, which was in that community. The company moved its operation to North Carolina, taking with it 5,000 jobs, which had been the basis of the economy in that community. It really knocked the community for a loop economically when that occurred.

Shortly after that, I accepted the position of city manager there. Michigan had very good at broad tax increment financing (TIF) legislation, one of the things we were able to use to mitigate the loss of that employer. One of the things we weren't able to do was to replace anybody on that site, because there were environmental mediation issues involved. We were eventually able to address that with brownfield redevelopment.

In the meantime, we were able to create two tax increment finance districts, which we developed into industrial parks, and into which we were then able to attract several medium-size manufacturers. We were then able, in large measure, to replace those 5,000 jobs that were lost. In that case, we were using the increment on that property in order to develop that, so we didn't have the loss to the other entities, which is always a point of argument with TIF.

[David Fraser, continued.] We also were able to bring in the jobs, which is a huge component of the economic development of a community and has both direct and indirect impacts on the economy in terms of reemploying people in the community and bringing new people in. Then, you have peripheral economic benefits in other businesses that are able to operate in the community. I wanted to share that experience with you because in that circumstance, I'm not quite sure what the community could have done to recover from that loss, had they not had tax increment financing in their toolbox. Having said that, I would just like to say that the Nevada League of Cities strongly supports this legislation.

Michael Alastuey, Legislative Advocate, representing Clark County, Nevada; and Technical Advisor, Nevada Association of School Boards:
In my first capacity, I would like to address some of the discussion regarding population caps. When the bill was initially introduced on the Senate side, there was not any population consideration in any clause of the bill. That population cap was put in for the urbanized counties in an effort to clarify and reduce the scope of the kinds of projects to a level and description that might, in fact, gain passage in both Houses without consideration for possible intergovernmental competitions, such as Mr. Goicoechea outlined in some of his comments. In other words, for the urbanized counties, make it pioneering infrastructure, at least as an initial framework, then offer that continuing legislation for an amendment at a future session after it's been tried out on several projects.

I believe there was testimony and discussion earlier to the effect that Clark County's amendment specifically proposed to lift that population cap. In discussion with Mr. Musgrove, that turned out to be a misunderstanding, and the text of the amendment itself, as Mr. Musgrove circulated, does not do that. So, at this point, the population cap is still there for your consideration.

As to my role as a technical advisor for the School Boards Association, I very much appreciate the Committee's concerted attention to the full 75-cent rate, in terms of a carve-out, to make sure both the State side and the local side are kept whole. As to one line of questioning earlier regarding Elko's pay-as-you-go: as I would read the bill, anything that is prospectively approved would be carved out of the increment of preexisting pay-as-you go levies or overrides. I don't think it's clear that those particular levies are protected from the increment mechanism.

Carole Vilardo, President, Nevada Taxpayers Association:
There are a couple of things I think I need to clarify at this point. I did say to both Washoe County and Clark County representatives that I would not argue their case for removing the population cap. I said that I would rely on the wisdom of the Committee and how they saw the testimony, as to whether or

not they wanted to restrict this to the rural counties or expand it. That absolutely is your call.

[Carole Vilardo, continued.] I do, and the Association has, supported tax increment financing. Our hope has been that we would be able to develop an even better set of mechanisms for tax increment financing that would be very specific for different issues. That's why we had originally suggested the cap on the other side, because the local governments in the rural communities have not been as aggressive in using this, and maybe they would use it. Again, from my perspective, however you choose to deal with the population.

Mr. Musgrove was not aware that nobody had gotten me a copy of this amendment (Exhibit E), so I must now speak to the amendment. I do oppose part of it. I understand the need for the underpass and overpass for pedestrians. That has become a real safety issue, and a very expensive one.

I sat on the Transportation Infrastructure Committee that put the package that this Legislature received last year before a vote. Within that package that the voters of Clark County approved—which was an extension of property tax, as well as an increase in sales tax—there were the mass transit and, including in prior definitions, transit facilities. So I have a definite problem in also using increment financing at this point.

We're just into the beginnings of that funding mechanism that the Legislature gave that authority, based on what the voters wanted, to take care of roads, arterials, underpasses, overpasses—for vehicles, for the most part—for mass transit, and for facilities for operating. If you extend this to the larger counties, I would request that it be only for underpasses or overpasses for pedestrians, and I absolutely oppose the recommendation, in (f) of Clark County's amendment (Exhibit E), of a power facility or associated appurtenances.

I would at this point say that I don't believe there's enough time to fully explore this with all the parties that are involved. If there is a good reason for doing this, this is something that I would like to come back with for next session and add it as an inclusion, but that has been my concern. We keep dealing with tax increment financing on a piecemeal basis. It is an extremely viable tool. It is a very good tool, and we need to get to the point now where we recognize that there are different elements.

I have looked at different states, and there are some very good mechanisms and descriptions in place. The thing that I have found is that if you have multiple mechanisms for tax increment financing, if you do something for economic development, if you do it for redevelopment, or if you do it for infrastructure

financing, there are different conditions. There are different lengths of time that these districts are viable. There is even a case in one of the other states' laws where—and it's partially in this one right here—when you're dealing with infrastructure, because it's primarily bonding, you keep peeling back all of the levels so that you remove that increment and get the revenue back to everyone as soon as possible.

[Carole Vilardo, continued.] I think, given A.B. 489 as Mary described, with some of the constraints that were put on, that again becomes my concern, because I think we need to work in a relationship to that being around for a while, depending on whatever the Interim Committee decides. Just to reiterate, however you choose to handle population, I bow to your judgment. You've heard enough testimony. However, I would ask you not to consider transit facilities and improvements or power facilities and appurtenances if you process the bill, and I would expect you would.

Assemblyman McCleary:
I have to agree with your comments. This amendment that Clark County has given us (Exhibit E) wouldn't even be relevant if we decide not to expand this bill beyond the rules. Is that correct? [Ms. Vilardo responded in the affirmative.] My problem with expanding it to the bigger counties, particularly Clark County, is that the growth in Clark County is so out of control right now. Do we really need an incentive for further growth?

I have a conflict with that. As I campaigned last season, so many people complained to me about growth. When is it going to stop? When are we going to do something to control it? I'm having a problem with that portion of it.

Carole Vilardo:
I know there's a lot of discussion about growth, and part of the frustration with growth is that people can't get from point A to point B as quickly as possible and have not seen things done. That's why I think, from a taxpayer's perspective, tax increment financing can be a very valuable tool, because you're able to make some of the improvements without asking for additional taxes and do some of the things that would improve travel time and that would improve a blighted area. We're starting to have older areas down south, and one of the problems with those areas is the fact that you have higher crime. You have more fire calls to those areas because they are used by vagrants and homeless people.

The tax increment financing allows you to go in—that's part of the redevelopment tool—and get some of that cleaned up, which minimizes costs on the other side, and it doesn't cost the taxpayer a tax rate. It allows an

amenity that they would like to have, in defense of it. However, I want it used where it's really defined, and that's kind of what we've been trying to work to. I hope you won't consider it inappropriate, but I really do feel strongly about the financing mechanisms and the use of it.

Assemblyman McCleary:
The comments Ms. Vilardo made sound reasonable, but when Mr. Musgrove spoke, it didn't sound like he was talking about blighted areas and things like that. It sounded like he was talking about new development to me. Maybe I misunderstood him or took that wrong.

Chairman Parks:
Mr. Musgrove commented to an area that's in my district, adjacent to UNLV, and how it could function. Another good example is Commercial Center. The infrastructure in Commercial Center is deplorable. For anybody to go in and do anything in that particular area, they would have to bring in a total upgrade of all the utilities that service that area, including electricity, water, gas, and all the other appurtenances.

Just an observation on my part: I think everyone knows by now that I'm not a big fan of redevelopment districts, but I am a big supporter of TIF. I think it's incumbent on us that we get this right, because I know that some of the problems that I have with redevelopment districts were because we didn't quite get them right. I want to thank everyone for their input, and we'll close the hearing on S.B. 389. We have one more bill in front of us, and that is S.B. 467.

Senate Bill 467 (1st Reprint): Makes various changes to laws governing public works projects. (BDR 28-816)

Justine Chambers, Contact Coordinator, Development Services Administration, City of Carson City, Nevada; and Member, Nevada Public Purchasing Study Commission:
Thank you for hearing our NRS [*Nevada Revised Statutes*] 338 cleanup bill. Throughout the whole bill, we've made some changes, replacing "governing body" with "local government" in an effort to be more consistent in what we are doing. I'm sure we still missed a few. This bill is really long, and it's taken us several years to get it to the point where we would like it to be.

In the first section, we changed the authorized representative to include what we really do. It can actually be two or three people who perform this function, and currently, it says "and," so we wanted to clean that up. Going on to

page 5, we have redefined the number of required projects for a bidder to be prequalified through the prequalification process. Some projects may require one and some may require two, but on some projects, there's a possibility we want to see five previous projects that they've done work on.

[Justine Chambers, continued.] Going to page 13, we've added some language to make sure the contractors who are selected on our projects are properly licensed. On page 15, we've clarified the conditions for demanding data from a bidder. So, if you're evaluating their bid and for some reason you want to look at financial statements or any other information that would normally not be provided to us as a local government, this sets up the conditions where we can ask for that information. Below that, in Section 14, we've changed the definition of the subcontracts that are submitted at the time the contractors submit their bids. Currently, they attempt to submit all of them, but that doesn't always happen. Then they will have a protest on a bid because a subcontractor will hire another subcontractor who will hire another subcontractor, and the lower tier contractor may not be listed in the bid. There are protests, and it's really difficult to monitor that. We're asking that the first-tier subcontractor be the only one required to be submitted at the time of bid submission.

Going on to Section 20, this change, requiring arbitration instead of permitting arbitration, is due to a recent Supreme Court decision where the Court ruled that arbitration was not optional, but that it should be mandatory. Then, in Section 21, we have a lot of changes to the design/build process to make it simpler. Currently, it's not being used throughout the state, because making it work is so time-consuming.

James Keenan, Member, Nevada Public Purchasing Study Commission; and Purchasing Manager, Douglas County, Nevada:

There were two items where a number of individuals or industry groups had some concerns. Even though we may not agree with their concerns, they are legitimate concerns to them, so I thought we would just take a few minutes to address those specifically. On page 10, Section 7 is a procedure that allows local governments, if they do not receive bids the first time around, to resort an expedited process. There are two key points to this. The first is nothing more than a carryover from NRS 332, and this provision has been in there for quite some time. All we did was import it to NRS 338. Even though construction is different from supplies and services, the procurement procedures are rarely that much different. If you don't get bids, you don't get bids, regardless of what the material or construction was that you were trying to purchase. We're just being consistent with the two sections.

[James Keenan, continued.] Secondly, especially in public works, we have a procedure where, by the time we get ready to receive and open the bids, we shouldn't be surprised, but on occasion we are. During the bid process, we often have prebid meetings where the bidders can tell us, "You left out the electrical plans." We issue an addendum and extend the bid opening, and everyone knows what's happening. Bidders can call us if they have questions on the bid before the bid opening.

So, by the time it comes to the actual opening of the bids, usually we know whether we're going to get any bids or not, but on occasion we don't. If we do not receive any responsive, responsible bids and do not know why, the first thing we all do—if for no other reason than job security—is call some bidders and ask them why they didn't bid.

Depending on the reasons they did not bid, we may go back out. We may not go back out. This portion of the bill allows us—if we think we can get bids, but the industry has spoken and shown their disinterest—to give them a second bite of the apple. We publish a newspaper advertisement for seven days that says, "We didn't get any bids. Is anyone interested?" At the end of that seven-day period, if we got a bid in the mail, we'll try to do business with that individual if he is otherwise qualified. If we get two or three bids, obviously we would look at them all and award the contract to the lowest responsive, responsible offer.

We give the building contractors two bites of the apple. If they choose not to bid, that's their prerogative, but if after two opportunities they still have not bid, after the industry has shown its disinterest, if we still need the project done, we reserve the right to take some sort of expedited process. We would like to see this in NRS 338 just as it is in NRS 332, and for the same reasons. I might add that this only applies to bids over $100,000, because there is already an expedited process in NRS 338 for bids under $100,000.

The second change, which there's been some discussion and some concern about, is on page 13, Section 12. The essence of this section as now written is that if the State Public Works Board disqualifies a contractor or a subcontractor, the local governments cannot use that contractor or subcontractor. We've changed that for two reasons. The first is that when the bill was proposed that made this change last session, Mr. [Renny] Ashleman of the State Public Works Board testified that his bill and his changes were not to apply to local governments in any way. He was merely changing state public works procedures.

The second and more important reason is that any purchasing manager, under the principles of contract law and contracting procedures, has both the right and

the duty to qualify or disqualify his contractors and his own bidders. In most cases, we would not be foolish enough to use somebody that someone else had disqualified. However, we have both the duty and responsibility to make that decision ourselves, and there are exceptions. The same would apply in reverse to the State Public Works Board.

[James Keenan, continued.] So, the purpose of this change is twofold:

- The intent of previous legislation.
- Good purchasing procedure says that each purchasing manager makes his own decision whether to use or not use somebody who has been disqualified under an informal procedure. If they're barred by law, if they don't have a license, then there's no decision; it's been made for us. But it's on some of these subtle and informal issues where we just think each party—the State Public Works Board and local governments—should have the duty and the right to make their own decisions on qualification and disqualification.

Those are the only two issues in our cleanup bill that have generated questions. I don't think there was vigorous opposition, but certainly the questions were well-deserved. I hoped we answered them for all the parties concerned.

Chairman Parks:
Didn't we do a cleanup bill last session, too?

James Keenan:
It looks like we're doing a cleanup bill every session. Frankly, we have a few things to correct on this one.

Assemblyman Goicoechea:
I'm a little concerned about naming only the first-tier subcontractors. Typically, especially if it was on a big project, you could end up with a second or third tier, depending on how you're going to classify them, but you might end up with a subcontractor who had worked with you before and whom you didn't want. I guess I prefer seeing who the subcontractors are.

Justine Chambers:
In Carson City, we require that they meet the intent of the law, which is that bids have to be submitted at time of the bid response, and then there's the two-hour list that has to be submitted by 5:00. Then we also require a 24-hour list, which is every contractor who's going to be on the job, because we would like to know who's there.

James Keenan:
Each entity does things a little bit differently, but essentially, there are already some built-in protections. The Labor Commissioner gets a list of every subcontractor as soon as the contract is awarded. In addition, each local government, if the contract is over $100,000, begins receiving certified payroll reports that list every subcontractor and every one of his employees. The only thing we're changing here is the requirement for the list at the time of bid opening, because we found that some people were using it as protest material.

Assemblyman Goicoechea:
I'll agree with that, as long as it doesn't take the ability from local government to require a complete subcontractor list.

Assemblyman Hardy:
Does the municipality or entity have the ability, once they have the complete subcontractor list, to get rid of a subcontractor because they've had a prior bad experience?

James Keenan:
Yes, and there is even a provision currently in NRS 338 that allows a local government to tell a general contractor, "We do not want that subcontractor," for two reasons. The first would be that he's not qualified or doesn't have a license. The second is that, if we've just had a bad experience with him, we can still reject him, but then we must pay the cost for the general contractor to go to the next higher subcontractor who bid to him. It might well be worth it, and it may not be. I've done it both ways.

Gary Milliken, Legislative Advocate, representing the Associated General Contractors, Las Vegas Chapter:
I'm just speaking in favor of this bill. We worked with the local entities for 14 or 16 months on this bill, and we are in favor of it.

Danny Thompson, Executive Secretary-Treasurer, Nevada State AFL-CIO:
All these laws seem pretty mundane, and you make your decisions based on what you're told here at this table. For those of you from Clark County, I want to say three words to you: Regional Justice Center, the building that someday is going to have to be torn down before it's ever occupied, if it's ever going to be occupied. We built a 50-story hotel resort in the time that that 8-story building is being built. It's the biggest debacle in Nevada's history that I can think of. We offered a project agreement on that job and were turned down.

I would caution you on some of these changes about allowing disqualified contractors to work on these jobs. Look at that job down there. Section 12 flies

in the face of everything that's going on down there. There's a reason you disqualify somebody. You don't just get disqualified because someone doesn't like you.

[Danny Thompson, continued.] Local government should not be any different from the State. If somebody's disqualified, they're disqualified for a reason, and they should stay disqualified. The Regional Justice Center is a classic example of what can go wrong. It's the perfect storm, and everything went wrong. That building is a mess, to say the least. So, we're very concerned about these changes. In particular, I'm concerned about that one in Section 12. There are provisions of this bill that we oppose, and that certainly is one of them.

Paul McKenzie, Organizer, Operating Engineers Local Union No. 3, Reno, Nevada:

In general, we're in opposition to this bill for several reasons. Assemblyman Goicoechea's question raised another issue that I haven't thought of. On the first-tier contractors, the resolution to a disqualified subcontractor being on the bid list that wasn't disclosed on the day of bid would be that the public entity would disqualify that subcontractor and then pay the difference to the general contractor for the next low bid.

What happens if that brings that bid price above what the second low bidder was? There are many, many projects with $25,000 to $50,000 difference in bid price. That very well could change the outcome of the bid. If we don't know who this disqualified bid is until after it's been awarded, then the true responsive bidder was not awarded the bid. I'm in objection to that portion of the bill as well.

The next portion of the bill that raises concern is an issue that appears throughout the bill. It appears on page 10, line 4; page 12, line 2; page 18, line 18; and page 20, line 14. It says that if they don't get a responsive bidder, they can go through this expedited process to award the bid.

My concern with this issue is what we call the "brother-in-law syndrome." I propose a bid that is below what that project can be completed for. Nobody bids the project, so I resubmit the bid. There's a 7-day expedited process, and nobody submits a bid. Then I call my brother-in-law and say, "Okay, I'll let you do this project for this amount." There's nothing in here that says this cannot be awarded to anybody for higher than the estimate if there are no bidders. If the estimate is truly the reason people fail to bid, and you award it to somebody for higher than the estimate because you don't get a responsive bidder, that's where it becomes a case of brother-in-law syndrome.

[Paul McKenzie, continued.] I spent the first several years of my life working on ranches, and we had a saying: When you're working cows in the corral, if you don't want the cows to get out of the corral, you either shut the gate or stand in the gate. This opens the gate and lets the cows out.

The next issue I have with the bill is the elimination of all of the conditions for design/build and then lowering the limit to $5 million. Some of the provisions in place for design/build now may be overly restrictive and may forbid people from using that process, but to eliminate all of them, including the 5 percent bidder's preference for local contractors, and then lower the limit to $5 million for the total project—let me give you an example. If I'm doing a road project out here that is bid for $3 million, there's a good chance it will qualify under this, because the design feature of that project may be as high as $2 million, which would include the design of it, the overseeing of the project as it's being built, the testing and inspecting on that job, and the surveying associated with that job. So, the total project, which currently is being bid out at $3 million under a competitive bid system, goes to the design/build system, which, without all these other conditions, is another brother-in-law system.

Those are my main concerns with the bill. We talked with the parties throughout the process in the Senate. Several members of labor organizations brought some of these concerns to them, and they have addressed some of them. The major ones I brought up today are issues that are still out there.

Assemblyman Hardy:
I have a question about design/build. We did a design/build last session on transportation facilities, and I don't see this design/build language on transportation facilities. Does this change that part of the NRS? A transportation facility is like a road, so I don't know if this goes more to your road or to the building.

Paul McKenzie:
That was probably a bad example. Most of our work is with the highways, so I used that as an analogy, but the same thing would be in place with the building. The architecture on the building is included in design/build, the design of the engineering for the footings, the development of the site surrounding it for the landscaping, and everything else. All that development, before a spade of dirt is turned on it, is part of the design/build project. That's probably even more intense on a building than it is on a highway project. It desperately lowers the limit on what can be design-built, and a majority of a $5 million project may actually be the design portion of the project.

Assemblyman Hardy:
So, this doesn't really apply to the transportation facility, such as roads and highways. It doesn't change that part of the statute. [Mr. McKenzie responded in the affirmative.]

Assemblyman Goicoechea:
I just want to make sure we're both on the same page when we talk about a first-tier subcontractor. There's nothing in the language of this bill, as I read it, that requires you to award a contract before you've reviewed the complete subcontractor list. Do you agree with that?

Paul McKenzie:
I agree with that, but it also doesn't require that you have all those available before you award it, either. That would be my concern. As Jim said, we'll just pay the difference. If he had said that we would review the bid, and if that changed the outcome of the bid we'd award it to the next low bidder, then I could accept that procedure. However, he said that they would just go out and pay the difference. That's the problem I see in that.

Assemblyman Goicoechea:
Typically, the awarding body would not do that for that very reason. If you awarded the contract to someone and then found out that you had a subcontractor who either wasn't qualified or you didn't like, then to make that change, you end up paying, and you're on the hook. Having been involved in a number of these contracts over the years, I just wanted to make sure that there was nothing that would require you to reward the bid on first tier. I would hope the local governments would make sure they had a complete subcontractor list before they awarded the contract.

David Kersh, Government Affairs Representative, Carpenters/Contractors Cooperation Committee, Inc., Reno, Nevada:
We do have some concerns here. They have expressed by the two gentlemen here, but I will give some more explanation as to why we are concerned about this. First of all, in Section 7, regarding the public body allowing a contract without competitive bidding if no bids are received, we understand that they're taking this language from other sections of the purchasing language in regard to purchasing products or goods, but we're very concerned about having this language when you're dealing with workers and their livelihoods. I think, as was mentioned before, it does set up this brother-in-law situation, so we do have some concerns about that.

The other issue is also in Section 12, regarding having disqualified subcontractors being able to work. Right now we have, as a deterrent, the

disqualification of subcontractors on the State Public Works Board. This would basically allow these subcontractors who have already been disqualified, and you have to be pretty bad in order to be disqualified. Suddenly, you water it down because they're still able to work, and I think we're all going to suffer from having subcontractors who have been disqualified from being able to work on projects. The language in Section 12 is fine the way it is, and I don't think it should be changed.

[David Kersh, continued.] Just one last thing, which I did mention to the people from the Purchasing Commission: I know they tried to clean up all of the sections, but there are still some sections where they use the word "public body." My understanding is that they meant to use "local government." I know it was very cumbersome to go through the entire bill and make sure that "local government," "governing body," and "public body" were all aligned. However, there are still some areas where "public body" is used, and that should not be the term used.

James Keenan:
I apologize if I didn't explain something clearly enough. On the issue of not reporting below-first-tier subcontractors and the fact that it may ultimately cost the awarding body more money, I believe I said that we had two ways to replace a subcontractor. The first way is the one stated in law, that if we don't like that subcontractor for our own reasons—his poor performance in our entity—then we make an economic decision to replace him or not, whether or not we can get another one that is economical to the process. As I said, we've made the decision both ways. We've accepted a contractor who we didn't like because it would cost us more to replace him than it was worth for the project.

There is a second reason. If a general contractor or a subcontractor, or a sub of a sub, proposes a subcontractor who has been disqualified, lacks a license, or any of those types of issues, he is replaced without cost to the local government. So, there is more than one way to accomplish this purpose. I would just like to correct that for the record. I understand your concerns, but there is more than one procedure.

As far as using the State disqualification list or not using it—and perhaps I didn't give the right impression again—no purchasing manager I know, if he does his job properly, is going to use somebody with a bad record without considering that record. If that purchasing manager makes the wrong choice, there are a number of penalties and things that happen. Every purchasing manager I know considers that information, and all we're asking in statute is that it be our decision and not someone else's decision. The same principle would apply for the State Public Works Board.

[James Keenan, continued.] I might also add that, under NRS 332, we have very labor-intensive contracts—such as maintenance or custodial contracts—where it is all labor, yet this provision has worked satisfactorily for a number of years. I understand the concept about the brother-in-law concern. We share the same concern, but I would point out that elsewhere in NRS 338, it still requires us to award to the lowest responsive, responsible offer. Our expedited procedure that we've carried over into NRS 338 does not negate that. We still have that fundamental obligation.

If we only get one bid after our newspaper advertisement, then we'll still have to decide whether it is a responsive, responsible offer and whether our local government can afford it. If we get two or three bids in response to that newspaper announcement, then everything else follows beyond. We still have to make the same kinds of decisions we make now. I would also point out one other thing: some of us do not give estimates when we send bids out, so there would be no way for the bidders to know.

Chairman Parks:
Questions? Thank you very much. Is there anyone else who would like to make comment on S.B. 467? Not seeing any, we'll go ahead and close the hearing on S.B. 467. That concludes our agenda for today. We have a fairly full agenda for tomorrow. At this point, we are adjourned [at 10:50 a.m.].

RESPECTFULLY SUBMITTED:

_____
Michael Shafer
Committee Attaché

APPROVED BY:

_____
Assemblyman David Parks, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Government Affairs

Date: May 12, 2005 Time of Meeting: 8:15 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
SB 426	B	Paul Townsend / Legislative Counsel Bureau	Prepared Testimony and Statistics Regarding UNLV and UNR Energy Retrofit Projects
SB 426	C	Mary Walker / Carson City, Lyon County, Douglas County	Proposed Amendment
SB 389	D	Linda Ritter / Carson City, Nevada	Written Testimony in Support of Bill
SB 389	E	Dan Musgrove / Clark County, Nevada	Proposed Amendment
SB 389	F	Madelyn Shipman / The Mills	Proposed Amendment