

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

**Seventy-third Session
April 20, 2005**

The Senate Committee on Government Affairs was called to order by Chair Warren B. Hardy II at 2:37 p.m. on Wednesday, April 20, 2005, in Room 2149 of the Legislative Building, Carson City, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Warren B. Hardy II, Chair
Senator Sandra J. Tiffany, Vice Chair
Senator William J. Raggio
Senator Randolph J. Townsend
Senator Dina Titus
Senator Terry Care
Senator John Lee

GUEST LEGISLATORS PRESENT:

Assemblyman Lynn C. Hettrick, Assembly District No. 39
Assemblyman David R. Parks, Assembly District No. 41
Assemblywoman Debbie Smith, Assembly District No. 30

STAFF MEMBERS PRESENT:

Linda J. Eissmann, Senior Research Analyst
Kim Guinasso, Committee Counsel
Michael Stewart, Committee Policy Analyst
Carol Simnad, Committee Secretary

OTHERS PRESENT:

Terry L. Johnson, Deputy Director, Department of Employment, Training and Rehabilitation
Ted Olivas, Chairman, Commission to Study Governmental Purchasing; Acting Director, General Services, Clark County
Dayton Blaine, President, Blaine Equipment Company, Incorporated

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Rose E. McKinney-James, Clark County School District
James E. Keenan, Commission to Study Governmental Purchasing; Purchasing Agent, Douglas County
Dan Musgrove, Clark County
Stan Olsen, Las Vegas Metropolitan Police Department
David Noble, Assistant Staff Counsel, Public Utilities Commission of Nevada
Craig C. Steele, Manager Safety and Quality Assurance, Public Utilities Commission of Nevada

CHAIR HARDY:

I will open the discussion on Assembly Bill (A.B.) 164.

[ASSEMBLY BILL 164](#): Amends Charter of City of Sparks to increase term of office of Municipal Judges. (BDR S-963)

ASSEMBLYWOMAN DEBBIE SMITH (Assembly District No. 30):

Assembly Bill 164 will amend the City of Sparks Charter to increase the term of office for municipal judges. Sparks is the last municipal entity to do this.

CHAIR HARDY:

What is the current process in Sparks, and do they have a Charter Committee?

ASSEMBLYWOMAN SMITH:

There is a Charter Committee in Sparks. During the interim, it reviews legislative issues and makes recommendations.

I would like to submit the testimony of Tom Lean, Chairman of the Sparks Charter Committee, in support of A.B. 164 ([Exhibit C](#)).

SENATOR LEE:

Is Assemblyman Anderson in agreement with you in support of A.B. 164?

ASSEMBLYWOMAN SMITH:

Assemblyman Anderson is not in accordance with our support of A.B. 164.

CHAIR HARDY:

Was the vote of the Sparks Charter Committee unanimous for this bill?

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ASSEMBLYWOMAN SMITH:

The vote for support of A.B. 164 is unanimous in the Sparks Charter Committee.

CHAIR HARDY:

There being no further testimony, we will close the hearing on A.B. 164.

We will now open the hearing on Assembly Bill 28.

ASSEMBLY BILL 28 (1st Reprint): Makes various changes regarding administration of Rehabilitation Division of Department of Employment, Training and Rehabilitation. (BDR 18-386)

TERRY L. JOHNSON (Deputy Director, Department of Employment, Training and Rehabilitation):

Assembly Bill 28 reorganizes the Rehabilitation Division, which is an entity within our Department, and it clarifies the responsibilities of the head of that Division. Assembly Bill 28 transfers primary authority to the head of the Rehabilitation Division which had been previously held by the respective bureau chiefs. This bill gives the administrator of the Rehabilitation Division the authority to adopt regulations and assert other functions necessary to run the Division. Assembly Bill 28 clarifies that this Division is the designated State unit for administering independent living programs established by federal law. This legislation is in response to a request by the federal government to initiate such a procedure when the Legislature next convened. With this bill, we will centralize most of the responsibilities and authority into the administrator's position.

CHAIR HARDY:

Will you be abolishing the position of bureau chief of Services to the Blind and Visually Impaired and putting these responsibilities into another position?

MR. JOHNSON:

The bureau chief titles will be abolished. They will be deputy administrators, assisting the administrator in overseeing the entire Division, instead of bureau chiefs over narrow jurisdictions.

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CHAIR HARDY:

Are there any budgetary changes contemplated in the *Executive Budget* regarding these changes?

MR. JOHNSON:

There is no fiscal note to A.B. 28. The budget has been closed for the Division in regard to these two positions. There will be no additional fiscal impact.

We will offer no further amendments on A.B. 28, and we do not know of any opposition to this bill.

SENATOR RAGGIO:

What is the amendment that was added to the original bill?

MR. JOHNSON:

The amendment clarified the Rehabilitation Division as the designated State unit to administer independent living programs, as stipulated in federal law. We received correspondence from the federal government regarding the need for this clarification after the original bill was written.

CHAIR HARDY:

There being no further testimony, we will close the hearing on A.B. 28.

We will reschedule the hearing on Assembly Bill 26 for a later date.

[ASSEMBLY BILL 26 \(1st Reprint\)](#): Revises provisions relating to management and operation of veterans' homes. (BDR 37-271)

We will open the hearing on Assembly Bill 39.

[ASSEMBLY BILL 39 \(3rd Reprint\)](#): Makes various changes to provisions governing purchasing by state and local governments. (BDR 27-560)

ASSEMBLYMAN DAVID R. PARKS (Assembly District No. 41):

Assembly Bill 39 is a language cleanup for *Nevada Revised Statutes* (NRS) chapter 332 with regard to purchases made by state and local governments.

I would like to introduce Ted Olivas. He is the chairman of the Nevada public purchasing study commission. He will inform you of the need for this bill.

TED OLIVAS (Chairman, Commission to Study Governmental Purchasing; Acting Director, General Services, Clark County):

Over the last three Sessions, the Nevada public purchasing study commission (NPPSC) has brought bills before this Committee in order to change NRS 332, which is local government purchasing, and NRS 338, which defines our public works bidding process. This group was created in 1975 and is a nonprofit, unfunded, statewide group; our charter is included in NRS 332.215. Our primary objective is to study practices in governmental purchasing and related laws. We then make recommendations with respect to those laws in the next regular session of the Legislature. When the Legislature is not in session, we meet on a monthly basis to discuss purchasing-related laws and how we can reduce barriers to doing business with the local government jurisdictions.

Assembly Bill 39 is a reflection of the work the NPPSC has done over the last two years. It is the clean-up bill for NRS 332.

Section 1 of A.B. 39 provides a new protest provision. This has not been part of NRS 332 in the past. *Nevada Revised Statute 333*, which is for State purchasing, and NRS 338, which is for public works purchasing, have provisions for how the protest process works. The Commission looks at those laws which relate to local government purchasing; we do not get involved in State purchasing. This bill will make all the purchasing systems consistent in their procedures.

Section 2 clarifies that the governing body or the authorized representative may not request bids from the community. This authority is delegated to an outside source to ensure fairness in the bidding process.

Section 3 makes the advertising requirements consistent with NRS 338 and NRS 244.

Section 4 describes the process whereby bids may be submitted online, but not exclusively online, to facilitate fairness in the bidding process.

Section 5 relates to trade secrets and proprietary information, in particular, what kind of proprietary information shall not be disclosed. The wording has been changed to stipulate that proprietary information, along with trade secrets, is confidential.

A new criterion has been added to section 6 for determining the lowest responsive and responsible bidder. We added "such other criteria as may be set forth by the governing body or its authorized representative in the advertisement or request for bids, as applicable, that pertains to the contract." The reason for this wording was to make sure the bidding public knew whatever criteria we were going to use to determine the lowest responsive, responsible bidder was in the document. The key to this section is that the bidders know, up front, what the criteria of the bid will be.

Section 7 is a change to NRS 332.115. This relates to contracts not adaptive to competitive bidding. We have added an item associated with communication systems. We have had Homeland Security contracts that have compatibility issues between radio systems. Also, an issue is the complexity of trying to take bids in a low-bid format; it is virtually impossible to identify every item that goes into a communication system. What we will do in these situations is a request for proposal. We would ask the communications industry to give us proposals that define the things they can offer and why they are the best. We then can adequately evaluate those things and see what is in the best interest of the local government.

Section 8 clarifies that the State can use local government purchasing contracts and local governments can use the State's contracts. Although NRS 333 already allows this in it, we want it clarified in NRS 332.

SENATOR RAGGIO:

In section 7 of A.B. 39, you indicated you would add, as items not covered by competitive bidding, design of equipment and services associated with systems of communication. You would handle this by a request for proposal (RFP). Should the law require you to do an RFP? Is there some danger that you, as the administrative agency, would not have to have competitive bids from some vendors?

MR. OLIVAS:

In all of the sections covered by NRS 332.115, we always have the option of doing an RFP. Whether or not we require an RFP depends on what is purchased. If the Nevada Commission on Homeland Security decided to buy a certain communication system and there was a compatibility problem with the remainder of its programs, we would want the ability to negotiate with the vendor to obtain the best deal. As you can see, even though you do an RFP, it

does not serve that much of a purpose. It really does depend on what the agency is buying. This RFP law has allowed some flexibility. Most jurisdictions agree that we try to use the most conservative approach when we are buying communication systems. The most important reason for this is to maximize the competition. The bidding system is our first choice in any purchase contract. We then use the RFP system in any of these exceptions. The RFP system allows us flexibility; it is not a one-size-fits-all procedure in purchasing matters.

SENATOR LEE:

Section 11 of A.B. 39 states that any emergency service under \$10,000 does not need a bid. If I called a plumber to fix a broken water pipe in a governmental office, would I be making an oral contract?

CHAIR HARDY:

I would also like to ask about section 6, which states that a Legislator cannot pursue one of these contracts.

MR. OLIVAS:

This area was added by amendment. This was not put in the original bill by the NPPSC. We, too, have concerns about sections 6, 10 and 11. To answer your question, Senator Lee, a purchase order is a contract.

SENATOR CARE:

What precipitated the amendment to this bill?

ASSEMBLYMAN PARKS:

The third revision to the bill was a result of a floor amendment. Due to this process, there was no committee discussion on this issue.

DAYTON BLAINE (President, Blaine Equipment Company, Incorporated):

I have a concern that NRS 332 will be conjoined with NRS 333.

MR. OLIVAS:

Mr. Blaine is concerned with section 1 of A.B. 39. The protest process that the local governments use is when bids are open, you send out a notice of the bids to the bidders, allow them some time to review the bids, and once we make a recommendation, give the other bidders some time to see if our decision is agreeable. We do not award a contract until we have allowed the bidders to review the process and the direction we are heading on that award. Mr. Blaine's

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concern is in NRS 333, which is in State purchasing, where the bidders' review happens after the contract is awarded. Mr. Blaine wants to make sure that the bidders' review happens before the contract is awarded, not as in NRS 333 where it happens after. The answer to Mr. Blaine's concern is no; currently, the stipulations from NRS 332 are not conjoined with NRS 333. The only way this could happen would be by amendment.

MR. BLAINE:

I will support this bill as long as no further amendments will be added.

MR. OLIVAS:

The NPPSC would not support an amendment to section 1 that changed the process consistent with NRS 333. Our processes are different in local governments' awarding of contracts.

ASSEMBLYMAN PARKS:

One of our discussions in Assembly Government Affairs dealt with the possibility of consolidating NRS 332 and NRS 333 into one chapter and applying the same requirements to both the State and local governments as far as their purchasing goes. We did not do it for this bill. We want the NPPSC organization to study this matter.

ROSE E. MCKINNEY-JAMES (Clark County School District):

We are in support of A.B. 39. I want to raise one question in regard to section 1, subsection 7. In dealing with expenses, what comes under those expenses in the rejected protest process?

CHAIR HARDY:

Do you mean the section which states, "if the protest is rejected, a claim may be made against the bond or other security by the governing body or its authorized representative in an amount equal to the expenses incurred by the governing body or its authorized representative because of the unsuccessful protest"?

MS. MCKINNEY-JAMES:

Yes, you are correct.

MR. OLIVAS:

This is enabling legislation by the wording of "may be made against the bond" to recover those costs. These expenses would be the costs incurred by the city attorney's office or the district attorney's office for the time they spent defending against the protest.

CHAIR HARDY:

Would these expenses just be related to the protest?

MR. OLIVAS:

Yes, you are correct.

SENATOR CARE:

What does the wording mean by saying that if the protest of a denied contract is rejected, a claim may be made? What is your criterion for making a claim?

MR. OLIVAS:

The intent of the language is to allow some flexibility, depending on the nature of the protest. With this language, we will be able to review these protests on a case-by-case basis.

SENATOR CARE:

Is there a time limit for the length of a protest prior to the awarding of the contract?

MR. OLIVAS:

These protests do not go on beyond 30 days because we have an obligation to get the contract awarded as quickly as possible.

JAMES E. KEENAN (Commission to Study Governmental Purchasing; Purchasing Agent, Douglas County):

In the Douglas County bids, we specify three, five or ten days for the protest by the bidder to be resolved by the purchasing manager, and to be appealed to the board of commissioners. The decision of whether it is three, five or ten days depends on the nature of the work. If it is a public work and winter is coming, we have to hurry up before the bad weather. Before the bidding process begins, the commission decides how many days the bidders will have to protest and appeal. This time limit is stated in all Douglas County bidding requests.

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CHAIR HARDY:
Do you find bidders who routinely protest?

MR. KEENAN:
Yes, this is what prompted our group to work on a protest bond procedure.

SENATOR CARE:
Does the protest have to be based upon some error in law?

MR. KEENAN:
The word law, in our interpretation, includes the contents of the bid document. The protestor must have some legal, contractual or procedural basis for the protest. The protestor must state specific facts of the error in the bidding process.

SENATOR CARE:
Yes, the protest must have some merit before proceeding.

MR. KEENAN:
You are correct. Our intent in constructing this procedure was to prevent frivolous protests. With this stated procedure, frivolous protests have decreased.

SENATOR CARE:
When you have a protestor who posts a bond against the decision, when and how do you proceed against the bond?

MR. KEENAN:
We only proceed against the bond if the protestor loses his appeal and we, as a local government, incurred major expenses. These expenses are actual damages only, and they must be provable.

CHAIR HARDY:
We will now close the hearing on A.B. 39.

Assembly Bill 39 will be sent to a subcommittee chaired by Senator Tiffany with Senator Care and Senator Hardy as members.

We will open the hearing on Assembly Bill 49.

ASSEMBLY BILL 49: Authorizes issuance of revenue or general obligation bonds to finance capital costs of improving Marlette Lake Water System. (BDR 27-309)

ASSEMBLYMAN LYNN C. HETRICK (Assembly District No. 39):

Assembly Bill 49 came from the Legislative Committee for the Review and Oversight of the Tahoe Regional Planning Agency (TRPA) and the Marlette Lake Water System. You have before you some of my testimony this afternoon regarding Assembly Bill 49 ([Exhibit D](#)). The Marlette Lake Water System provides the water to Virginia City, Gold Hill and Silver City. It was first constructed in 1873, to provide water from the Carson Range of the Sierra Nevada west of Carson City to the mining towns on the Comstock some 21 miles to the east. It is an inverted siphon. It has 800 pounds of pressure in the pipeline at the bottom of the siphon. Water trickles back out at the top into Virginia City. It has been in operation since 1873. Some of the pipe in the system is over 100 years old. The pipe that was put in 40 years ago is failing, although the original pipe is still functioning.

The problem with the Marlette Lake Water System is that it is too small to fill the need for water to the areas it services and it is breaking down and is in need of repair. The State of Nevada owns about 3,000 acre feet of water out of Marlette Lake. Today, most of the water provided by the Marlette Lake Water System to Carson City, Gold Hill, Silver City and Virginia City only comes from Hobart Reservoir, utilizing the pipeline and inverted siphon originally constructed in the 1870s. Hobart Reservoir is a shallow body of water and not a reliable water source in dry years. Therefore, pumping from a diesel generator and pump is required from Marlette Lake over a drainage divide into the Hobart Reservoir drainage. During periods of pumping, State personnel must monitor the diesel generator and pump on a 24-hour basis. Environmental considerations must also be addressed due to the location of Marlette Lake within the Lake Tahoe Basin and jurisdiction under the Tahoe Regional Planning Agency.

The current diesel-pump water delivery system has been found to be seasonal, expensive, environmentally risky and unreliable as you can see in the pictures in [Exhibit D](#). A study commissioned in 2000 by the Carson Water Subconservancy District evaluated various alternatives to this supplemental pumping from Marlette Lake.

The existing law, NRS 331.160, requires that all money generated by the purchase of water from Marlette Lake must be used to serve that water system. It does not provide for the issuance of bonds. We have had to fix this pipeline over the years in a problem-by-problem method. This will not work any longer. To remedy this problem, section 6 of A.B. 49 says that the director of the Department of Administration may request the State Board of Finance to issue State general obligation bonds or revenue bonds in an aggregate principal amount not to exceed \$25 million to finance the capital costs of improving and modernizing the Marlette Lake Water System. These bonds cannot be issued until it is determined there is enough money to pay for the bonds. This will have no impact on the General Fund. All the money from the bonds goes into the enterprise fund and can be used for nothing else; it can only be used to take care of this water system. The reason A.B. 49 allows the issuance of both general obligation bonds and State revenue bonds is that this ruling will add flexibility to use the least expensive bond.

SENATOR TIFFANY:

Since this system was developed in 1873, does it still make sense to take water from Marlette Lake? Is there another source or method that could be used?

ASSEMBLYMAN HETTRICK:

We have not determined any evidence of a closer water source or a different method of obtaining the water. Today, the largest purchaser of water from the Marlette Lake Water System is Carson City. Carson City has no other method to replace the water purchased from the Marlette Water System.

SENATOR TIFFANY:

Is the piping system used to provide water for Carson City the same system used for Virginia City, Gold Hill and Silver City?

ASSEMBLYMAN HETTRICK:

Yes, the water cuts down the hill, flows into Hobart Reservoir, and then into one pipe. It comes down just above Carson City and goes into a splitter there. Some water comes down to Carson City, and the rest goes to Virginia City.

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LINDA J. EISSMANN (Senior Research Analyst):

I was the policy analyst for the TRPA-Marlette Lake Water System Oversight Committee. If any member of this Committee has a question about the handout ([Exhibit E](#)), please let me know.

CHAIR HARDY:

We will close the hearing on A.B. 49.

We will open the hearing on Assembly Bill 16.

ASSEMBLY BILL 16: Changes date by which metropolitan police departments must submit budgets to governing bodies of participating political subdivisions. (BDR 22-329)

DAN MUSGROVE (Clark County):

Assembly Bill 16 is a consensus bill of the three entities that are involved in the Las Vegas Metropolitan Police Department (Metro) funding, as well as the Metro Fiscal Affairs Committee. You have before you the "Fiscal Year 2005/06 Budget Timeline" ([Exhibit F](#)). The top time line of [Exhibit F](#) reflects what is currently in statute, as well as some internal county processes. The bottom time line shows how A.B. 16 would change the current process. The history behind this bill is that by statute, April 1 is when Metro submits its final budget to the Metro Fiscal Affairs Committee. Many of the other governmental agencies submit their budgets much later in the year. This date conflict makes it hard for the elected officials to accept this budget when they do not know where the other budget needs will be. In A.B. 16 we are requesting this April 1 deadline be moved back to May 1 to make submission dates for all budgets consistent.

STAN OLSEN (Las Vegas Metropolitan Police Department):

Assembly Bill 16 is a consensus bill. The Las Vegas Metropolitan Police Department is in support of this bill.

MR. OLIVAS:

The City of Las Vegas supports A.B. 16.

CHAIR HARDY:

We will close the hearing on A.B. 16.

We will open the hearing on Assembly Bill 125.

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[ASSEMBLY BILL 125 \(1st Reprint\)](#): Revises provisions to clarify role of Public Utilities Commission of Nevada in approval of certain proposed subdivisions. (BDR 22-653)

CHAIR HARDY:

We have no representatives here from the Public Utilities Commission of Nevada, so we will hold this bill until contact is made with the Commission.

Committee, I would like your vote on Assembly Bill 16.

SENATOR TIFFANY MOVED TO DO PASS A.B. 16.

SENATOR TOWNSEND SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

CHAIR HARDY:

Committee, I would like your vote on Assembly Bill 28.

SENATOR TIFFANY MOVED TO DO PASS A.B. 28.

SENATOR TOWNSEND SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

CHAIR HARDY:

Committee, I would like your vote on Assembly Bill 49.

SENATOR TIFFANY MOVED TO DO PASS A.B. 49.

SENATOR TOWNSEND SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR HARDY:

Committee, I would like your vote on Assembly Bill 164.

SENATOR LEE MOVED TO DO PASS A.B. 164.

SENATOR TOWNSEND SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

VICE CHAIR TIFFANY:

We will reopen the hearing on Assembly Bill 125, since we now have proponents here who wish to testify.

DAVID NOBLE (Assistant Staff Counsel, Public Utilities Commission of Nevada):
Assembly Bill 125 proposes to bring into line both NRS 278.335 and *Nevada Revised Statute 704.6672*. Pursuant to NRS 704.6672, the Public Utilities Commission of Nevada (PUCN) is charged with reviewing subdivision maps which, in effect, create new, regulated public utilities, water and sewer utilities. The threshold for a water and sewer utility to come under our jurisdiction is 25 or more customers and/or gross revenues of \$5,000 or more. Currently, under *Nevada Revised Statute 278.335*, when planning commissions receive subdivision maps they think will fall under these criteria, they forward those maps to us for our review. The problem that has come up is some subdivisions of the specified size have been passed without our review. During the review, we look and find that many of these subdivisions are developer-owned utilities, not investor-owned utilities.

The PUCN has been trying to minimize the number of developer-owned utilities primarily created due to their instability. Operating utilities are not the developers' main occupations, selling homes is. Everything from operating procedures to rates and tariffs to capitalization of utilities is lacking with developer-owned utilities. Our staff is spending a great deal of time helping these small utilities.

What we have requested in A.B. 125 is to be part of the review process for both the tentative and final map approvals. We would receive tentative maps of subdivisions that would fall under NRS 704.6672. This would be mandatory.

We would then do a 15-day review to see if it would create a jurisdictional water utility. If it does not, there will be no further need of review by the Commission. If it does create a jurisdictional water utility, we would alert the developer as to how to apply for a Certificate of Public Convenience and Necessity to operate as a regulated water utility in the State of Nevada. This is a learning process for the developers. We work with them to make sure they are in compliance with all regulations. The intent is when the developer leaves the utility organization can stand by itself and provide adequate, ongoing sewer and water services to the customers. These are our reasons for requesting passage of A.B. 125.

VICE CHAIR TIFFANY:

What will be the increase in the number of maps for review to your Commission upon the passage of this bill?

MR. NOBLE:

We currently get 15 to 20 maps. We expect an increase to 20 to 25 maps per year. The only subdivision maps in this bill are those that create a jurisdictional water utility. I do not anticipate a drastic increase in subdivision maps that we will have to review.

CRAIG C. STEELE (Manager Safety and Quality Assurance, Public Utilities Commission of Nevada):

It is a full-time job managing some of the small, nonviable water utilities. It can be difficult for the customers as well as the owners of these utilities. In the passage of A.B. 125, we are requesting the opportunity to obtain and start new investor-owned utilities off on the right foot. Most subdivisions will be exempt. They will either be single-family, one-acre units, where they may have individual wells, or they may be subdivisions within existing, certificated service areas for investor-owned utilities where they would not require our review or approval. The intent of this bill is to enable us to have an opportunity, early in the process, to ensure that these proposed subdivisions will be adequately served in the long run by their utility organizations.

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VICE CHAIR TIFFANY:

There being no further business, the meeting is adjourned at 3:45 p.m.

RESPECTFULLY SUBMITTED:

Carol Simnad,
Committee Secretary

APPROVED BY:

Senator Warren B. Hardy II, Chair

DATE: _____