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**TESTIMONY OF THE NEVADA ASSOCIATION OF COUNTIES
BEFORE THE SENATE COMMITTEE ON GOVERNMENT AFFAIRS
ON ASSEMBLY BILL 539
MAY 7, 2003**

Introduction. AB 539 addresses situations where a Board of County Commissioners seeks to enter into a contract with a Board member for the provision of goods or services. Whether such agreements are legal is a subject of conflict among five sections of the Nevada Revised Statutes (NRS). The Nevada Ethics in Government Law (1993) states that such contracts are legal, as do provisions related to county officers and employees and provisions related to the powers and duties of cities. However, such contracts are not legal pursuant to the Local Government Purchasing Act (1978). Conflict also exists between an opinion issued by the Commission on Ethics, CEO 99-27, dated March 8, 2000, which states that such contracts are legal, and AGO 2001-19, which states that such contracts are illegal. AB 539 will amend five sections of the NRS to clarify that such contracts are legal, valid, and enforceable, provided that seven requirements are met. NACO believes that AB 539 will strengthen the Nevada Ethics in Government Act, provide for additional openness in the local government contracting process, provide additional flexibility to local governments, and save taxpayer dollars.

The Effect of Assembly Bill 539. Assembly Bill 539 amends five sections of the Nevada Revised Statutes to clarify the legality of contracts between Board Members and Boards of Commissioners provided that all the following seven requirements are met. These seven requirements, and their current location in the NRS, are as follows:

1. The board member discloses his pecuniary interest in the contract (NRS 281.501);
2. The contracting process is controlled by rules of open competitive bidding, if applicable (NRS 281.230 and NRS 281.505);
3. The sources of supply are limited (NRS 281.230 and NRS 281.505);

4. He has not taken part in developing the contract plans or specifications (NRS 281.230 and NRS 281.505);
5. He will not be personally involved in opening, considering, or accepting offers (NRS 281.230 and NRS 281.505);
6. A 2/3 vote in the affirmative is made by the Board (NRS 281.555, NRS 245.075, NRS 268.384); and
7. The public notice of the meeting specifically mentions that such a purchase or contract would be made (NRS 281.555, NRS 245.075, NRS 268.384)

Assembly Bill 539 Section by Section. The following information details how Assembly Bill 539 amends separate sections of the Nevada Revised Statutes to assure that these requirements are met.

- Section 1 of the bill amends the Local Government Purchasing Act (NRS 332.155) to allow such contracts provided that all of the preceding requirements are met. This Act currently prohibits such contracts.
- Sections 2 and 3 of the bill amends provisions related to county officers and employees (NRS 245.075) and the powers of cities (NRS 268.384) to allow such contracts only if all of the preceding requirements are met. These provisions currently allow such contracts (via cross references to NRS 281.555), but only the last two of the preceding seven elements are required.
- Sections 4 and 5 of the bill amends provisions of the Ethics in Nevada Government Act (NRS 281.230, NRS 281.505), which currently allows such contracts if the second through fifth elements are met, to clarify that full disclosure, the first of the proceeding seven elements, is also required by the law.

Justification for the Bill. Assembly Bill 539 provides clarification on the types of contracts previously mentioned. Clarification is necessary to strengthen the Ethics in Government Act and assure that elected officials can continue to earn a living at their chosen professions while engaging in public service. Testimony submitted by Commissioner John Milton of Humboldt County and Commissioner Spencer Hafen of Lincoln County will define these situations and their impact in greater detail. AB 539 is of the highest priority to the Nevada Association of Counties. We ask for your prompt consideration and passage of this bill.

April 3, 2003

Government Affairs Committee
Seventy Second Session, 2003
Nevada Legislature

Dear Chairman Mark Manendo and members of committee;

My name is Spencer Hafen, I am a self employed land surveyor in Lincoln County, I am also a County Commissioner. I moved to Lincoln County in 1996 and opened a surveying office in Pioche. Before I was elected County Commissioner in 2000 I contracted with Lincoln County to perform surveying services. Upon being elect to that position I found that I would no longer be able to contract with the County for those services. This has caused me to have to look outside of Lincoln County for work to support my family and keep my business running. There have been several jobs that my firm has not had the opportunity to bid on because of current N.R.S. In a result these jobs were given to companies that reside outside of Lincoln County. Chairman Manendo and members of the committee, I would ask for your support in recommending SB 539 for passage. It would help members of rural communities that serve as elected officials continue to make a living in there full time occupations. I thank you for your considerations and help.

Sincerely,



Spencer W. Hafen
Lincoln County Commissioner
The Owens Surveying Outfit, Inc.