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FIRST JUDICIAL DISTRICT COURT
IN AND FOR CARSON CITY, STATE OF NEVADA

ZENAIDA DAGUSEN, an individual; REPUBLICAN NATIONAL COMMITTEE; NEVADA REPUBLICAN PARTY; and DONALD J. TRUMP FOR PRESIDENT 2024, INC.,

Plaintiffs,

v.

FRANCISCO AGUILAR, in his official capacity as NEVADA SECRETARY OF STATE, DEMOCRATIC NATIONAL COMMITTEE, NEVADA STATE DEMOCRATIC PARTY,

Defendants,

Case No.: 24-OC-001531B
Dept. No.: 1

MOTION TO DISMISS

Under NRCP 12(b)(5), Defendants the Democratic National Committee and Nevada State Democratic Party by and through their counsel hereby file this Motion to Dismiss Plaintiffs' Complaint for Declaratory and Injunctive Relief.

This Motion is made and based upon the following Memorandum of Points and Authorities, all pleadings and papers on file, and any oral argument this Court sees fit to allow at

a hearing on this matter.

DATED this 3rd day of October, 2024.

By: 

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MEMORANDUM OF POINTS AND AUTHORITIES

Less than two months before election day, Plaintiffs demand that the Court order a drastic change to Nevada's voter registration system. They make this extraordinary request based on recycled allegations that some of the Plaintiffs made—and election officials rejected—after the 2020 election. *See* Compl. ¶¶ 63–64. Nothing has changed since then. Nevada's longstanding voter registration database statute does not secretly require election officials to investigate and then purge voters based on citizenship information from outdated and incomplete databases. Those databases have never before been used in Nevada for that purpose. And Plaintiffs have no constitutional right to burden Nevada voters (and election officials) by demanding the Court impose such a new, extra statutory requirement less than six weeks before election day. Deciding what voter information should be matched with what databases for what purposes is a complicated, technical problem to be resolved by legislatures and election officials—not by courts on the eve of a presidential election. The Court should dismiss the Complaint.

BACKGROUND

Plaintiffs filed this lawsuit on September 11, 2024, just 55 days before the November general election, and more than a month after the National Voter Registration Act ("NVRA") requires states to *cease* any systematic removals of voters from the rolls. *See* 52 U.S.C. § 20507(c)(2)(A). They allege that Nevada is failing to remove noncitizens from the state's voter list to their satisfaction, and they seek a permanent injunction ordering the use of particular data sources from the federal government, the Nevada courts, and the Department of Motor Vehicles to purge additional registered voters who Plaintiffs suspect may be noncitizens.

The Complaint alleges no actual evidence of a substantial problem with noncitizens voting in Nevada. And for good reason: Nevada law already includes robust protections against noncitizen voting. The first question on Nevada's voter registration form asks about citizenship and instructs noncitizens not to complete the form.[1] Applicants expressly swear or affirm their

[1] *Voter Registration Form*, Nev. Sec'y of State (last accessed Sept. 27, 2024), https://www.nvsos.gov/sosvoterregform/.

U.S. citizenship.[2] There is a specific procedure for challenging registered voters as noncitizens. NRS 293.535(1)(a). It is a state and federal felony for a noncitizen to vote or try to vote. NRS 293.775(1); 18 U.S.C. § 611. And noncitizens who register or vote render themselves permanently "inadmissible" under federal immigration law, 8 U.S.C. § 1182(a)(6)(C)(ii), (10)(D), which can lead to deportation and will prevent them from renewing a visa, becoming a naturalized citizen, or returning to the United States if they leave.

Instead of making a credible case that these safeguards are actually failing, Plaintiffs wave to past instances of Nevada officials investigating scattershot allegations of noncitizen registration and voting—investigations that concluded many of this limited number of voters may have been naturalized citizens after all. Compl. ¶¶ 56–63. Plaintiffs also point to instances of *other states* removing alleged noncitizens from their rolls, assuming without sufficient basis that the removals were accurate, and implying that Nevada must similarly have some noncitizens who could be removed. *Id.* ¶¶ 81–87. And they rely on methodology and commentary from individuals whose work related to noncitizen voting has been thoroughly discredited—Jesse T. Richman and Hans von Spakovsky, *id.* ¶¶ 88–89, 98–102. Not only have courts found their testimony on these subjects "confusing, inconsistent, and methodologically flawed," "disingenuous," "misleading," and ultimately worth giving "no weight," but Richman was broadly and publicly criticized by more than 200 political scientists and the architects of the data set upon which he originally based his conclusions about citizens voting. All were unmistakably clear: his work is simply not credible.[3]

STANDARD OF LAW

The Court must dismiss the Complaint under NRCP 12(b)(5) "if it appears beyond a doubt

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[2] *Id.*

[3] *Fish v. Kobach*, 309 F. Supp. 3d 1048, 1088, 1092, 1115-17 (D. Kan. 2018) (criticizing Richman), *aff'd sub nom. Fish v. Schwab*, 957 F.3d 1105, 1134 (10th Cir. 2020) (relying upon district court's finding Richman's testimony was "credibly dismantled"); *see also* 309 F. Supp. 3d at 1082 (giving "little weight" to testimony of von Spakovsky because it was "premised on several misleading and unsupported examples" and because he made "myriad misleading statements," presenting "as advocate and not as an objective expert witness"); Open Letter from B. Schaffner et al. (Mar. 2018), https://www.courthousenews.com/wp-content/uploads/2018/03/Kansas-Voter-ID-LETTER.pdf; Stephen Ansolabehere et al., *The Perils of Cherry Picking Low Frequency Events in Large Sample Surveys* (Nov. 5, 2014), https://cces.gov.harvard.edu/news/perils-cherry-picking-low-frequency-events-large-sample-surveys.

that [the plaintiff] could prove no set of facts" that, if true, would entitle the plaintiff to relief. *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 228, 181 P.3d 670, 672 (2008). In applying that standard, the Court may consider "matters of public record, orders, items present in the record of the case, and any exhibit attached to the complaint." *Breliant v. Preferred Equities Corp.*, 109 Nev. 842, 847, 858 P.2d 1258, 1261 (1993).

ARGUMENT

I. The Complaint fails to state a claim upon which relief can be granted.

Plaintiffs bring three constitutional claims, each premised on the theory that the Secretary of State unconstitutionally diluted Plaintiffs' and their supporters' votes by not removing *other* voters from the rolls, and one statutory claim. All fail to state a claim and should be dismissed.

A. Plaintiffs fail to state an equal protection claim.

Plaintiffs' equal protection claim is predicated on a fundamental misunderstanding of the law. "As courts have routinely explained, vote dilution is a very specific claim that involves votes being weighed differently and cannot be used generally to allege voter fraud." *Bowyer v. Ducey*, 506 F. Supp. 3d 699, 711 (D. Ariz. 2020).[4]

"[T]he Supreme Court has identified two theories of voting harms prohibited by the Fourteenth Amendment"; neither is adequately pled here. *See Moore v. Circosta*, 494 F. Supp. 3d 289, 310 (M.D.N.C. 2020). First, the equal protection clause protects against vote dilution, which "[c]ourts find [when] gerrymandering … has diluted … the one person, one vote principle and resulted in one group or community's voice counting more than another's." *Id.* (cleaned up). Plaintiffs make no allegation that the way in which Secretary Aguilar maintains Nevada's voter rolls results in their votes counting less, let alone that it results in their votes counting less than those of a particular subgroup of voters. Second, the equal protection clause protects against "arbitrary and disparate treatment" by the state that "values one person's vote over that of another." *Id.* (cleaned up). Here too, Plaintiffs fall short. They make no allegation the state is arbitrarily

[4] Defendants, like Plaintiffs, rely on federal cases interpreting the federal equal protection clause because it is coextensive with Article IV, Section 21 of the Nevada Constitution. *Rico v. Rodriquez*, 121 Nev. 695, 703, 120 P.3d 812, 817 (2005); Compl. ¶ 105.

discounting their votes relative to the votes of another person or group.

Courts have consistently rejected attempts like Plaintiffs' to launder speculation about voter fraud through the equal protection clause. Where, as here, there is no "allegation that Plaintiffs (or any … voter for that matter) were deprived of their right to vote," the case must be dismissed. *Bower*, 506 F. Supp. 3d at 711; *see also, e.g.*, *Partido Nuevo Progresista v. Perez*, 639 F.2d 825, 827–28 (1st Cir. 1980) (per curiam) (rejecting challenge to purportedly invalid ballots because "plaintiffs claim that votes were 'diluted' by the votes of others, not that they themselves were prevented from voting"); *Donald J. Trump for President, Inc. v. Boockvar*, 493 F. Supp. 3d 331, 343, 386 (W.D. Pa. 2020) (rejecting equal protection challenge based on vote dilution theory where challenged state election procedure did not burden fundamental right or discriminate based on suspect classification). Plaintiffs correctly explain the equal protection clause requires each vote be "counted at full value without dilution," Compl. ¶ 106, but ignore that this is actually a "right to have those votes counted without dilution *as compared to the votes of others*." *Boockvar*, 493 F. Supp. 3d at 383 (emphasis added) (quoting *Minn. Voters All. v. Ritchie*, 720 F.3d 1029, 1031 (8th Cir. 2013)); *see also Bowyer*, 506 F. Supp. 3d at 711–12 ("[V]ote dilution under the Equal Protection Clause is concerned with votes being weighed differently." (citation omitted)). Absent an allegation of differential treatment, a "veritable tsunami" of decisions have held that vote dilution does not even convey standing, much less provide a cause of action. *See O'Rourke v. Dominion Voting Sys. Inc.*, No. 20-CV-03747-NRN, 2021 WL 1662742, at *9 (D. Colo. Apr. 28, 2021) (collecting cases), *aff'd*, No. 21-1161, 2022 WL 1699425 (10th Cir. May 27, 2022).

B. Plaintiffs fail to state a substantive due process claim.

The standard to establish a standalone, substantive due process violation in the election context is exceedingly high.[5] As Plaintiffs acknowledge, they must show "the election process itself [has reached] the point of patent and fundamental unfairness." Compl. ¶ 114 (quoting *Curry v. Baker*, 802 F.2d 1302, 1315 (11th Cir. 1986)). Plaintiffs come nowhere near this standard.

[5] Defendants, like Plaintiffs, rely on federal cases interpreting the federal due process clause because it is coextensive with Article I, Section 8 of the Nevada Constitution. *See Southport Lane Equity II, LLC v. Downey*, 177 F. Supp. 3d 1286, 1290 (D. Nev. 2016); Compl. ¶ 113.

Substantive rights under the due process clause are implicated only in "exceptional cases where a state's voting system is 'fundamentally unfair.'" *Ne. Ohio Coal. for the Homeless v. Husted*, 837 F.3d 612, 637 (6th Cir. 2016) (quoting *Warf v. Bd. of Elections of Green Cnty.*, 619 F.3d 553, 559 (6th Cir. 2010)). Even "[g]arden variety election irregularities"—which Plaintiffs fail to allege here—would "not prove fundamental unfairness." *Id.* (quoting *Griffin v. Burns*, 570 F.2d 1065, 1076 (1st Cir. 1978)). And, indeed, courts nationwide "have uniformly distinguished between 'broad-gauged,' 'patent and fundamental unfairness that erode[s] the democratic process' and 'garden variety election irregularities' that do not give rise to a due process claim." *Lecky v. Va. State Bd. of Elections*, 285 F. Supp. 3d 908, 915 (E.D. Va. 2018). Generally speaking, "cases justifying [judicial] intervention have involved attacks 'upon the fairness of the official terms and procedures under which the election was conducted'" and have *not* required the … court to 'enter into the details of the administration of the election.'" *Id.* (emphasis added) (quoting *Griffin*, 570 F.2d at 1078). Yet that is precisely what Plaintiffs ask this Court to do now.

Under the "fundamentally unfair" standard, courts have held the following *insufficient* to state a due process claim: inaccurate tabulation of votes stemming from malfunctioning electronic voting devices, *Shannon v. Jacobowitz*, 394 F.3d 90, 91, 96 (2d Cir. 2005); alleged dilution of legal votes when election officials allowed non-Democrats to vote in a Democratic primary, *Powell v. Power*, 436 F.2d 84, 85–86, 88 (2d Cir. 1970); mistaken use of the wrong district map in assigning voters, *Harris Cnty. Dep't of Educ. v. Harris County*, No. H-12-2190, 2012 WL 3886427, at *7 (S.D. Tex. Sept. 6, 2012); and the inadvertent printing of ballots that failed to comply with statutory requirements, *Hendon v. N.C. State Bd. of Elections*, 710 F.2d 177, 182 (4th Cir. 1983). *See Lecky*, 285 F. Supp. 3d at 915–16 (collecting cases). The allegations in Plaintiffs' Complaint are even less compelling. Plaintiffs do not—and cannot—allege that any noncitizen impermissibly voted in the 2024 election, or that the safeguards currently in place do not meet statutory requirements or are failing. The Complaint thus falls far short of alleging the kind of "broad-gauged, patent and fundamental unfairness that erode[s] the democratic process" required to establish a due process violation. *See Lecky*, 285 F. Supp. 3d at 915 (internal quotation marks

and citation omitted).

Moreover, Plaintiffs' reliance on vote dilution is even more misguided here than with their equal protection claim. As discussed, vote dilution is a context-specific theory of harm used to show violations of the equal protection clause—*not* the due process clause.

C. Plaintiffs fail to state a right-to-vote claim.

Plaintiffs also try to mold election officials' purported list maintenance failures into a deprivation of the right to vote, alleging that these purported violations of state law diluted their votes. *See* Compl. ¶¶ 118–22. But again, vote dilution is a context-specific theory of constitutional harm premised on the federal equal protection clause,[6] not the Right to Vote. No Nevada court has ever recognized a vote dilution claim under Section I.

Article II, Section I of the Nevada Constitution guarantees that all eligible voters "shall be entitled to vote." For Plaintiffs, therein lies the problem. Plaintiffs do not allege that Defendants are unlawfully depriving or burdening their right to vote, or any eligible voters'. Indeed, Plaintiffs and their members have no difficulty accessing the franchise. *See* Compl. ¶ 12 (Ms. Dagusen intends to vote in the 2024 election). That is fatal to Plaintiffs' claim.

To the contrary, it is *Plaintiffs* who seek to burden and disenfranchise Nevada voters. Plaintiffs' proposed dragnet would both chill potential voters from registering in the first place *and* discourage already registered voters from casting ballots in the ongoing election. *Cf. Mi Familia Vota v. Fontes*, No. CV-22-00509-PHX-SRB, 2024 WL 862406, at *22 (D. Ariz. Feb. 29, 2024) (finding citizenship-verification rules, which may independently be inconsistent with law, also chill political participation by targeted populations).

D. Plaintiffs fail to state a claim under NRS 293.675.

Plaintiffs' final claim, that NRS 293.675(3)(i) requires the Secretary to compare the voter list to citizenship records, also fails. This claim relies entirely on NRS 293.675(3)(i)'s general statement that the statewide voter registration list must "[b]e regularly maintained to ensure the

[6] Or under Article I, Section 13 of the Nevada Constitution, which says "Representation shall be apportioned according to population."

integrity of the registration process and the election process." NRS 293.675(3)(i). But the statute then describes exactly how this maintenance will occur, and it never once mentions, much less requires, the citizenship checks Plaintiffs demand. The statute specifically requires the Secretary to enter into information-sharing agreements with the Registrar of Vital Statistics and the Department of Motor Vehicles ("DMV") (which must in turn also enter into its own agreement with the Social Security Administration), and it provides that the Secretary "*may* enter into an agreement with an agency of this State" for additional information "that the Secretary of State deems necessary to maintain the statewide voter registration list." NRS 293.675(5), (6), (8), (9) (emphasis added). It nowhere authorizes (much less requires) the Secretary to get information from the Department of Homeland Security, which maintains the SAVE system that Plaintiffs want the Secretary to consult, and it nowhere requires the Secretary to get information from the Nevada courts, which maintain the jury duty records. If the Legislature had wanted to require the Secretary to get information from those sources, it would have said so—just as it did for so many other sources. *See, e.g.*, *State v. Javier C.*, 128 Nev. 536, 541, 289 P.3d 1194, 1197 (2012) ("Nevada follows the maxim 'expressio unius est exclusio alterius,' the expression of one thing is the exclusion of another.").[7]

That leaves the DMV, but while Nevada law requires some information sharing between the Secretary and the DMV, it does not require the sharing of citizenship information. Nevada law specifically provides what the DMV must collect and share: name, residential address, date of birth, driver's license number, and political party affiliation if indicated. NRS 293.5742(1)(c), 293.5747. For good reason, the statute does not require the DMV to share citizenship information. DMV records will reflect, at most, the citizenship status of a voter when they last applied for a drivers' license or identification card. *See* NRS 483.290(7); NAC 483.050. But that may have been

[7] There is another problem with SAVE: it contains information *only* on immigrants and naturalized citizens, not on native-born citizens. *Mi Familia Vota*, 2024 WL 862406, at *6. Moreover, searching SAVE "requires an immigration number." *Id.* at *6, *38. Using SAVE to screen voter registration lists therefore discriminates against naturalized citizens, "who will always be at risk" of an outdated or erroneous result, while such errors "will never apply to native-born citizens" who cannot be searched in the database at all. *Id.* at *38, *41. Courts have therefore held that the use of SAVE for voter registration violates the NVRA and the Civil Rights Act. *See id.*

years ago, and the voter may have since become a naturalized citizen, as more than 10,000 Nevadans did in 2022 alone.[8] One of the first things many new citizens do is register to vote; Plaintiffs would have them purged immediately thereafter.

If any doubt remains, history eliminates it. The pertinent part of NRS 293.675 was enacted more than two decades ago, in 2003. 2003 Nev. Laws Ch. 382, § 3 (S.B. 453). It has never been interpreted to require the citizenship verification that Plaintiffs now ask the Court to impose. The legislative history contains no mention of citizenship verification; rather, the Deputy Secretary of State told a state senator in 2003 that "the purpose [of] the link to DMV was for identification provisions"—that is, to verify the voter's identity, as the just-enacted federal Help America Vote Act of 2002 required. *Nevada Senate Committee Minutes, April 9, 2003*, Nev. S. Comm. on Gov't Affs., 72d Sess. (Nev., 2003), attached as **Exhibit 1**. And while NRS 293.675 has been amended several times since 2003, the Legislature has never seen fit to add a verification of citizenship requirement—clear legislative acquiescence in election officials' continuous construction of the statute as not requiring such verification. *See Imperial Palace, Inc. v. State*, 108 Nev. 1060, 1068, 843 P.2d 813, 818 (1992) (holding that "legislative acquiescence in the State's reasonable interpretation of" a statute "indicate[d] that the interpretation is consistent with legislative intent").

II. Plaintiffs waited too long to sue.

A. The NVRA's 90-day quiet period bars relief before the 2024 election.

At a minimum, the NVRA bars the relief Plaintiffs seek before the 2024 election. Plaintiffs seek an injunction "requiring the Secretary of State to implement and conduct systematic list maintenance . . . before the November 2024 general election." Compl. at p. 22. The NVRA, however, prohibits "any program . . . to systematically remove" voters from the rolls within 90 days of an election. 52 U.S.C. § 20507(c)(2)(A). "[S]ystematic cancellation programs can cause inaccurate removal and eligible voters removed days or weeks before Election Day will likely not be able to correct the State's errors in time to vote." *Mi Familia Vota v. Fontes*, 691 F. Supp. 3d

[8] *See Profiles on Naturalized Citizens: 2022 State*, Office of Homeland Security Statistics (Feb. 12, 2024), https://www.dhs.gov/ohss/topics/immigration/naturalizations/profiles/2022/state.

1077, 1093 (D. Ariz. 2023) (cleaned up). The NVRA therefore prohibits "systematic removal programs . . . [during] the 90 days before an election because that is when the risk of dis[en]franchising eligible voters is the greatest." *Arcia v. Fla. Sec'y of State*, 772 F.3d 1335, 1346 (11th Cir. 2014). The 90-day quiet period for the November general election began on August 7—more than a month *before* Plaintiffs filed this suit. And the November general election is now only 32 days away. As such, the NVRA bars the pre-election relief Plaintiffs demand. Compl. ¶ 22.

B. Equitable considerations bar relief before the 2024 election.

The Nevada Supreme Court long ago recognized the danger of changing the rules governing elections with just a "few months remaining" before the general election. *See Tam v. Colton*, 94 Nev. 453, 459-61, 581 P.2d 447, 452-53 (1978) (explaining such a shift in election rules "would substantially impair … the stability of the political election process in this state").

This concern is consistent with the views of the U.S. Supreme Court and federal courts across the country, which regularly bar disruptive changes to voting and election procedures proposed, as here, too close to elections. The U.S. Supreme Court has cautioned that "[c]ourt orders affecting elections . . . result in voter confusion and consequent incentive to remain away from the polls," *Purcell v. Gonzalez*, 549 U.S. 1, 4-5 (2006), and thus has repeatedly warned that federal courts "should not enjoin state election laws in the period close to an election," *Merrill v. Milligan*, 142 S. Ct. 879, 879 (2022) (Kavanaugh, J., concurring); *see also, e.g.*, *Robinson v. Callais*, 144 S. Ct. 1171, 1171 (2024) (citing *Purcell* and granting stay in redistricting case six months before general election); *League of Women Voters of Fla., Inc. v. Fla. Sec'y of State*, 32 F.4th 1363, 1371 (11th Cir. 2022) (applying *Purcell* to stay injunction related to voter registration issued less than four months before election); *Thompson v. DeWine*, 959 F.3d 804, 813 (6th Cir. 2020) (per curiam) (applying *Purcell* where election was "months away" and other "interim deadlines" were imminent). Granting Plaintiffs' requested relief would affect elections well within the time period courts routinely view as too close to an election; early voting in the general election will begin on October 19, 2024, in less than three weeks.

Separately, Plaintiffs' requested relief is barred by laches. To determine whether laches

applies, courts consider "(1) whether the party inexcusably delayed bringing the challenge, (2) whether the party's inexcusable delay constitutes acquiescence to the condition the party is challenging, and (3) whether the inexcusable delay was prejudicial to others." *Miller v. Burk*, 124 Nev. 579, 598, 188 P.3d 1112, 1125 (2008). All three factors weigh against Plaintiffs.

First, the issue of timing is one entirely of Plaintiffs' own making. Instead of pursuing their claims months or years ago, Plaintiffs belatedly seek sweeping relief that would force Nevada election officials to divert their attention from the final stages of preparation for a high-interest presidential election. Election day is a mere five weeks away; the last day to register in Nevada—October 8—is next week; military and overseas ballots have already been sent; early voting begins in about two weeks; and election officials *will begin counting ballots in less than three weeks*. *See* Nev. Sec'y of State, *2024 Nevada Election Calendar* (last visited Sept. 27, 2024).[9] Plaintiffs filed their Complaint mere weeks before a presidential election with *nothing* to indicate this was the earliest that they could have raised such issues.

Second, Plaintiffs' failure to follow the established voter challenge procedures demonstrates their acceptance of the status quo. If Plaintiffs had sincere concerns about the validity of the registrations they now seek to investigate and potentially remove, they could have followed the challenge procedures rather than pursuing this far-fetched court-ordered end run.

Third, Plaintiffs' delay is undoubtedly prejudicial to virtually everyone involved in the upcoming election: Defendants, Nevada candidates, election officials, and all Nevada voters who rely on their county's well-established voter registration procedures and may end up in the crosshairs of Plaintiffs' requested relief.

CONCLUSION

For the reasons stated above, the Court should dismiss the Complaint.

[9] *Available at* https://www.nvsos.gov/sos/home/showpublisheddocument/12495/6385818856044 00000. The Court may take judicial notice of facts "not reasonably open to dispute" that are a "matter of common knowledge." *Sheriff, Clark Cnty. v. Kravetz*, 96 Nev. 919, 920, 620 P.2d 868, 869 (1980); *Engelson v. Dignity Health*, 139 Nev., Adv. Op. 58, 542 P.3d 430, 436 (Ct. App. 2023) ("[A]a court may properly consider matters of public record[.]" (cleaned up)).

AFFIRMATION

Pursuant to NRS 239B.030 and 603A.040, the undersigned does hereby affirm that this document does not contain the personal information of any person.

DATED this 3rd day of October, 2024.

By: _____

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Attorneys for Defendants Democratic National Committee and Nevada State Democratic Party

CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of October, 2024, a true and correct copy of this **MOTION TO DISMISS** was served via U.S.P.S. Mail, postage pre-paid, Las Vegas, Nevada as follows:

Brian R. Hardy, Esq. Harry L. Arnold, Esq. MARQUIS AURBACH 10001 Park Run Drive Las Vegas, Nevada 89145 bhardy@maclaw.com harnold@maclaw.com *Attorneys for Plaintiffs*	Laena St Jules Senior Deputy Attorney General 100 N. Carson Street Carson City, Nevada 89701 LStJules@ag.nv.gov *Attorneys for Defendant, Francisco V. Aguilar*
Julie Harkleroad Judicial Assistant to Hon. James T. Russell First Judicial District Court, Dept. I JHarkleroad@carson.org	

By: _____
Dannielle Fresquez, an employee of
BRAVO SCHRAGER LLP

INDEX OF EXHIBITS

Exhibit No.	Document	Pages
1	*Nevada Senate Committee Minutes, April 9, 2003*, Nev. S. Comm. on Gov't Affs., 72d Sess. (Nev., 2003)	19

EXHIBIT 1

EXHIBIT 1

NV S. Comm. Min., 4/9/2003

Nevada Senate Committee Minutes, April 9, 2003

April 9, 2003
Nevada Senate Committee on Government Affairs
Seventy-Second Session, 2003

The Senate Committee on Government Affairs was called to order by Chairman Ann O'Connell, at 2:00 p.m., on Wednesday, April 9, 2003, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412, 555 East Washington Avenue, Las Vegas, 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 Ann O'Connell, Chairman

Senator Sandra J. Tiffany, Vice Chairman

Senator William J. Raggio

Senator Randolph J. Townsend

Senator Warren B. Hardy II

Senator Dina Titus

Senator Terry Care

GUEST LEGISLATORS PRESENT:

Senator Michael (Mike) A. Schneider, Clark County Senatorial District No. 11

STAFF MEMBERS PRESENT:

Michael Stewart, Committee Policy Analyst

Scott Wasserman, Committee Counsel

Olivia Lodato, Committee Secretary

OTHERS PRESENT:

Renee Parker, Chief Deputy Secretary of State, Office of the Secretary of State

Larry Lomax, Registrar of Voters, Clark County

Bonnie L. Parnell, Lobbyist, League of Women Voter's Nevada

Giles E. Vanderhoof, Major General, The Adjutant General of Nevada, Office of the Military

Mark H. Fiorentino, Lobbyist, University and Community College System of Nevada, Lincoln County, and Vidler Water Company

Jane A. Nichols, Ph.D., Chancellor, System Administration Office, University and Community College System of Nevada

Steve G. Schorr, Lobbyist, Cox Communication Company

Terry McHenry, Lobbyist, Nevada Association of Land Surveyors

Ray Martin, City Surveyor, City of Sparks

Gustavo Nunez, Deputy Manager, Professional Services, State Public Works Board

Ivan R. "Renny" Ashleman, Lobbyist, Clark County, and Southern Nevada Homebuilders Association

Robert A. Ostrovsky, Lobbyist, Chairman, Commission for Cultural Affairs, Board of Museums and History, Division of Museums and History

James F. Nadeau, Lobbyist, Nevada Sheriff's and Chief's Association/North, and Washoe County Sheriff's Office

Ronald P. Dreher, Lobbyist, Peace Officers Research Association of Nevada

Alan Glover, Clerk/Recorder, Carson City

Michael R. Alastuey, Lobbyist, Clark County

Carole A. Vilardo, Lobbyist, Nevada Taxpayers Association

Colleen Wilson-Pappa, Lobbyist, Southern Nevada Homebuilders Association

Dan Musgrove, Lobbyist, Clark County

Chairman O'Connell opened the hearing on Senate Bill 453.

SENATE BILL 453: Authorizes electors to register to vote and cast ballots on election day under certain circumstances. (BDR 24-560)

Renee Parker, Chief Deputy Secretary of State, Office of the Secretary of State, stated the bill was originally introduced for election day voter registration. A proposed amendment deleted all the provisions relating to election day voter registration. She said the bill for the Help America Vote Act (HAVA) had been moderately changed from the version presented in the Assembly. The Assembly committee raised issues about defying the federal government and not complying with the Help America Vote Act, she said. Ms. Parker stated the federal government might tell the State of Nevada it had to comply with the act. At that time, the State would no longer be eligible for any federal funding. She said $10.7 million in federal funding was available for the State of Nevada. Ms. Parker said $5 million would be applied for as soon as the HAVA election fund passed out of the Assembly. The money would not require any state match. The remaining money was contingent on the Governor certifying the State would comply with HAVA. She said the bill being introduced would meet the deadline of April 11, 2003. The bill required voter-identification provisions, a statewide voter registration system, and provisional balloting to ensure the voter was not disenfranchised if an error were made by an election official. The federal act only required the above items for federal races, but the Secretary of State's office asked that the provisions be applied to State races also. The other provision in the bill, which was not required by the federal government to comply with HAVA, was a request that voter registration be extended by an additional 10 days. She said her office requested that during the additional 10-day period the voter be required to go to the clerk or registrar office to register in person.

Chairman O'Connell said the committee had a section-by-section discussion of the bill and a copy of the full amendment. She said Ms. Parker did not need to discuss S.B. 453 section by section.

Larry Lomax, Registrar of Voters, Clark County, stated Clark County fully supported S.B. 453. He said the HAVA was the biggest change to voting since 1993. He said early voting was very important to Clark County. He stated in the 2004 presidential election, Clark County would have over 400,000 voters. He said 200,000 of the voters would vote early. Mr. Lomax said Clark County did not have the voting machines or equipment to deal with 60,000 voters who might have to vote on election day if the early voting provisions in the bill were not allowed. He also stated early voting was the most popular program in Clark County.

Ms. Parker said she wanted to comment on the potential for moving the primary election. The clerks and registrars had met with her and one of the changes they made in the current bill was a requirement with respect to provisional balloting stating the county clerk had to determine the voter's eligibility. She said voters would have to provide evidence of eligibility to vote by Friday following election day. The move would eliminate any discussion of the need to move the primary date as of this date.

Bonnie L. Parnell, Lobbyist, League of Women Voters Nevada, said the goal of the League of Women Voters was to involve people in the system in Nevada. She said the league was especially supportive of the early voting schedule proposed by the Secretary of State. She said her organization also supported extending the registration 10 days as long as it was done in person, and additionally they were in support of the extended civil rights protections in HAVA relating to minorities and the disabled.

Senator Tiffany asked Ms. Parker about a section concerning storing and managing the list of voters. She asked Ms. Parker if the federal government was requiring one master list in the Secretary of State's office. Ms. Parker replied the official voter registration list in the state would be in the statewide voter registration system. She said each of the counties could print the list of registered voters for their county out of the system. A list of all the registered voters in the state would have to come from the Secretary of State's office. Ms. Parker stated the intent of the system was to be one system with all 17 counties linked into the system and with one vendor. Senator Tiffany also inquired about a cooperative agreement with the Department of Motor Vehicles (DMV). Ms. Parker stated the purpose for the link to DMV was for identification provisions.

Mr. Lomax stated the law required a statewide voter system where everyone was on-line. The identification system would be verified with DMV and a Social Security agency. He said until the systems were in place, the law stated if you registered by mail, you had to prove your identity the first time you voted. After the statewide system is in place verification would be an ongoing process. He said at this time no number or provision for further verification was required to register to vote. If a valid address were used for registration the information would be placed in the system.

Chairman O'Connell closed the hearing on S.B. 453 and opened the hearing on S.B. 306.

SENATE BILL 306: Revises provisions governing educational benefits provided to members of Nevada National Guard. (BDR 36-991)

Senator Care said he introduced the bill and stated it was to help provide education benefits for Nevada National Guard members. Senator Care said he submitted the bill draft request in October or November of last year. He said he had not seen the bill until the last day for introduction. The bill was not as he had intended. Senator Care said his idea was to establish a program whereby a member of the guard, upon approval of the adjutant general and the Board of Regents, would be allowed to attend the university or community college system tuition free. He said he discussed the bill with the adjutant general, and the first amendment to the bill came out of those discussions. Senator Care said further discussion with the Board of Regents led to the second amendment. He stated the regents would allow members of the guard in Nevada to attend the universities or colleges basically tuition free.

Senator Care said the bill would do what he had originally intended if the second amendment were adopted. He said if section 2 of the amendment were deleted and in section 5 the word "waiver" was substituted for the word "payments" the amendment would be worded the way he had first intended it to be. He said the entire bill could be deleted and the result would be the revised amendment to the second amendment.

Senator Tiffany asked Senator Care if the State would be required to pay the tuition. She said it was an impact on the college and she believed the bill should be in Senate Finance. Her second concern was the grade point average (GPA) requirement. She said the Millennium Scholarship GPA was going to be increased above the 2.0 GPA. Senator Care responded the 2.0 GPA might

have been modeled after a New York bill. He said he did not know if the 2.0 GPA was realistic and he was open to discussion concerning the GPA. He said he did not know what the impact, if any, would be on the colleges.

Giles E. Vanderhoof, Major General, The Adjutant General of Nevada, Office of the Military, stated he did not think the plan would be an increase to the State. He said the guard was funded $95,000 a year for tuition assistance. Guard members who attended a Nevada school, received a 2.0 GPA, and attended their monthly drill were reimbursed for the amount of their tuition. He said the bill would not add nor take away any money, but it would make the system more efficient. He stated the $95,000 came from the Legislature and passed to the guard members under the current law. Major General Vanderhoof said the benefit was the most important recruiting incentive for joining the guard. He said only 10 percent of the current 3000 guard members took advantage of the benefit. He stated Senator Care's bill was a much more efficient system.

Senator Raggio said the budget provided for education for guard members up to a certain fiscal limit. He asked Major General Vanderhoof what percentage of the money had been reimbursed in recent times. Major General Vanderhoof replied approximately 5 or 6 years ago, the guard was close to 50 percent. In recent years they were at approximately 47 percent. He stated statistics were skewed due to the war and mass mobilization. Senator Raggio said the guard student paid his or her own tuition and at the end of the year, within the limits available funding, was reimbursed. Senator Raggio said the bill would allow the Board of Regents to waive the tuition. He asked if the same amount of money was anticipated to be available to the university and college system for some reimbursement, or if they were planning to waive the tuition and not require repayment.

Mark H. Fiorentino, Lobbyist, University and College System of Nevada, said he was not sure he understood the financial issues involved. He said the amendment was acceptable to the Board of Regents because they would be granting waivers. Senator Raggio asked where the money would come from for the university and college systems for the cost of the waivers. Mr. Fiorentino stated it was explained to him that for the current budget cycle the money would have to be found within the existing budget and the money currently given to them. He said after students started taking classes, a certain percentage of refunds and credits from the federal government were given to the schools. He said he did not know the details of the arrangement. Senator Raggio stated his concern was where the future monies would come from. Mr. Fiorentino said he would get better information for the committee.

Senator Titus expressed her support of the bill and stated it was a significant way to show support for the troops.

Jane A. Nichols, Ph.D., Chancellor, System Administration Office, University and Community College System of Nevada, said if the bill passed, the $95,000 that had gone to the Nevada National Guard would no longer be necessary, and the Governor's budget could be reduced by $95,000. Dr. Nichols said the schools would absorb the cost.

Chairman O'Connell closed the hearing on S.B. 306 and opened the hearing on S.B. 354.

SENATE BILL 354: Revises provisions relating to approval of subdivision maps and granting of easements for use by community antenna television companies. (BDR 22-598)

Ivan R. "Renny" Ashleman, Lobbyist, Clark County, and Southern Nevada Homebuilders Association, spoke in favor of S.B. 354. He stated he had a new amendment to the bill.

Chairman O'Connell stated the current bill would be deleted and the amendment would be the new bill. Mr. Ashleman said the basic objective of both the telephone company and the community antenna television company would be for all utility servers to work together. He said when trenches were opened for easements, not all companies were informed. The amendment covered the areas covered by State law. He stated other areas might have to be covered through local ordinances.

Steve G. Schorr, Lobbyist, Cox Communications Company, stated his company worked with builders in southern Nevada. He said the issue was builders would erect a group of homes and the builder did not recognize Cox Communications Company and the requirement the company had to provide service to all residents. The homes were built, infrastructure was installed and all the trenches were closed. The requirement in his company's franchise stated the company must provide service. The company had to dig up the streets, sidewalks, and landscaping in order to install the cable to provide the service.

Chairman O'Connell asked if the bill would allow the communication company to go into all new areas and install their equipment ahead of time. She also asked him if all interested parties had signed off on the new amendment.

Mr. Ashleman stated everyone he could locate had signed off on the amendment. He also said the bill in some form was needed. He said they tried to make sure the bill did not add to the duties of local governments. The burden was left on the developers and utility companies.

Chairman O'Connell asked where the boxes were located. Mr. Schorr stated usually all dry utilities received the Nevada Power Company map of the area. He said each utility attempted to lay its lines in the same trench. He said his company had in-house designers who designed cable placement. He also said with new technology the pedestals were spaced further apart.

Terry McHenry, Lobbyist, Nevada Association of Land Surveyors, stated he had received the new amendment and his organization no longer opposed the bill.

Ray Martin, City Surveyor, City of Sparks, also said his organization was not opposed to the amended bill. He said there was some redundancy in the wording of the bill. Chairman O'Connell inquired if the redundancy could be handled in the bill. She asked him to be more specific. He stated in number 9, it said the final map must show any streets or easements the owner intended to offer for dedication. He added on the following page, paragraph 1 repeated the statement from number 9. He said he could assist Scott Wasserman, Committee Counsel, with the wording. He suggested number 9 be eliminated altogether. Mr. Wasserman said he would draft an amendment.

Chairman O'Connell closed the hearing on S.B. 354 and opened the work session with S.B. 491. Chairman O'Connell recessed the hearing at 3:03 p.m. and reconvened the hearing at 3:46 p.m.

SENATE BILL 491: Makes various changes regarding bidding on contracts for public works of this state. (BDR 28-487)

Senator Hardy said he was concerned about the criteria of presumptive prequalifying of a subcontractor. He said the ability to act on a written complaint concerned him. He would prefer language that addressed a violation. He suggested the language be tightened up to state the subcontractor had been found guilty of a violation.

Mr. Ashleman said he had no problem with a written complaint to bring a violation to the attention of the Public Works Board. He said the board would have to be able to address performance of the subcontractor too. He reiterated he had no problem with the written complaint to point out a violation. He said in section 1, subsection 3, paragraph (b) the language "but not limited to" could be deleted with no objection from the Public Works Board. Senator Hardy said if the phrase "but not limited to" is included, the other criteria might not be important. He said the other issue he wanted included was the Public Works Board, for purposes of disqualifying a presumptively qualified subcontractor, had to utilize the same criteria as was used for qualifying a subcontractor. He said he wanted the board to only look at the six criteria used for qualifying subcontractors to disqualify them.

Gustavo Nunez, Deputy Manager, Professional Services, State Public Works Board, said in section 1, subsection 2 the amendment stated the State Public Works Board may use criteria set forth in *Nevada Revised Statutes* (NRS) 338.1375 to qualify subcontractors. He said the board was stating they would only use the criteria Senator Hardy had requested. Mr. Wasserman said the existing language could be left in the amendment.

SENATOR HARDY MOVED TO AMEND AND DO PASS S.B. 491.
SENATOR TIFFANY SECONDED THE MOTION.
THE MOTION CARRIED UNANIMOUSLY.

Chairman O'Connell opened the work session hearing on S.B. 306.

Mr. Fiorentino said he was partially incorrect in his previous answers to the committee. He said the bill would have no impact on the current biennium. However, it did have a potential impact on future budgets and bienniums to the extent more people might come forward and ask for waivers under the bill than would currently be funded by the $95,000 to the National Guard. He said there were no federal funds that applied unless the person qualified under a separate federal regulation. Senator Raggio asked

if the bill was passed with the suggested amendment, was it the intent of the university and college system to grant waivers by the Board of Regents up to the authorized amount budgeted for this purpose for the military.

Dr. Nichols responded the current $95,000 in the Governors' budget would be cut. She said for this biennium the Board of Regents would authorize fee waivers. She further stated until the schools had operated the program they would not know the costs involved. She said for future biennia, they were unable to tell if the cost would exceed the $95,000.

Senator Raggio asked if the $95,000 utilized for this purpose would be included in future budgets.

Senator Tiffany asked if it were assumed the $95,000 was still available, would the schools have to absorb the remaining costs. Dr. Nichols said if the bill passed, the $95,000 that had gone to the Nevada National Guard would no longer be necessary, and that amount could be reduced in the Governor's budget. Senator Raggio said the schools would absorb all the initial costs. Dr. Nichols said when waivers are substituted for fees, the state budget office reduces in the budget the amount of student fees it expected to collect from students by the amount of the waivers. It becomes not expenditure, but a revenue loss. She said the State is still supporting the program. Senator Tiffany also had a question about the GPA. She said 2.0 was too low. Senator Raggio said this program could cost more in the future than it had currently due to the cap imposed by the Legislature being removed.

Senator Care said he was concerned about raising the GPA too much above a 2.0. He said the education benefit was a reward and the benefit needed to provide an incentive to encourage people to sign up for the National Guard. Senator Care stated the guard members were not necessarily scholars. They did not get into school because they won an academic scholarship. He said he did not know the appropriate GPA, but he did not think it should be too much above a 2.0.

Dr. Nichols said the average GPA today in colleges and universities was approximately 2.8. She said the Millennium Scholarship had been proposed to go to a 2.6 GPA. She said she agreed with Senator Care some of the best graduates started their freshman year with a 2.0 GPA. Dr. Nichols said she did not have an opinion as to what the GPA should be for National Guard members.

Chairman O'Connell asked Senator Care if he wanted to limit the bill to Nevada residents only. Senator Care replied it was only for Nevadans. He said they would have to be Nevadans to be members of the Nevada National Guard. He said the bill was not to be construed for use by anyone outside the State of Nevada.

Chairman O'Connell asked Senator Care if a 2.6 GPA requirement would be all right with him. He mentioned again the recruits were not scholars. Senator Titus said she did not believe the National Guard recruits should be compared to the millennium scholars. She said the millennium scholars received a $10,000 scholarship and they were supposed to be the best and the brightest. Senator Titus said she did not believe the GPA for recruits needed to be above a 2.0, but millennium scholars' GPAs could be as high as 3.0. She also said a 2.0 might be acceptable to enter school, but a 2.5 would have to be maintained to keep the waiver.

Senator Tiffany said the grants were tuition free. She believed a 2.0 GPA should not be acceptable at a university. She said a community college might accept that GPA, but she wished to see higher academic standards at the university level.

Senator Raggio said at the present time there was no law requiring a minimum GPA for recruits returning to school. He said it was a recruiting incentive and he said recruits should not be expected or need to be the same as a millennium scholar. Chairman O'Connell asked Senator Care if he wished to leave the GPA at 2.0 and he responded affirmatively.

SENATOR CARE MOVED TO AMEND AND DO PASS S.B. 306.

SENATOR RAGGIO SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR TIFFANY VOTED NO.)

Chairman O'Connell opened the work session hearing on S.B. 453. She said the present bill would be deleted and the HAVA amendment placed into the bill.

Senator Raggio said he wanted to state on the record the representation from the Secretary of State's Office was that if the bill were adopted with the amendment incorporating the provisions as indicated, there would not be any further need for the

provision for same-day election day registration or the need to move the primary election. He stated the amendment did allow up to 20 days before the election for registration. He said with that understanding he would move to amend and do pass the bill.

SENATOR RAGGIO MOVED TO AMEND AND DO PASS S.B. 453.
SENATOR TOWNSEND SECONDED THE MOTION.
THE MOTION CARRIED UNANIMOUSLY.

Chairman O'Connell opened the work session hearing on S.B. 114.

SENATE BILL 114:Revises provisions governing manner of determining prevailing rate of wages to be paid on public works. (BDR 28-401)

The proposed amendments, Senator Hardy said the first could be called 1A, would clarify the law that the labor commissioner could use additional information other than wage surveys if he saw fit, to determine prevailing wages. Senator Hardy said the second amendment would specify the labor commissioner could continue to do wage surveys. The third amendment would use the average rate of wages for calculating prevailing wage, he said. The fourth amendment removed the reference to "on or before September 1...." so the labor commissioner could use other information besides the wage survey.

SENATOR HARDY MOVED TO AMEND AND DO PASS S.B. 114.
SENATOR TOWNSEND SECONDED THE MOTION.
THE MOTION CARRIED. (SENATORS CARE AND TITUS VOTED NO.)

Chairman O'Connell opened the work session hearing on S.B. 165.

SENATE BILL 165: Authorizes State Arts Council to solicit and accept gifts, grants and donations to provide grants for creation of murals on highway sound walls. (BDR 18-821)

Senator Michael (Mike) A. Schneider, Clark County Senatorial District No. 11, said the bill concerned allowing the State Arts Council to accept grants to do the sound walls in Las Vegas along the highways. He said the bill would set it up so the council could do the sound walls to promote artistic works.

Senator Titus said she liked the idea of art on the sound walls. Senator Schneider said the bill was an effort to improve the appearance of the city. He stated Las Vegas had created concrete canyons on the freeways and roads. He said there was no fiscal note on this bill. Senator Schneider said the State Arts Council was unable to accept grants or to commission artists.

Senator Townsend asked why the bill should be limited to sound walls. Senator Schneider replied the bill addressed the issue that the State Arts Council was not expressly authorized to accept grants for this particular purpose. He said the bill was drafted to address only the sound barriers, but if the committee desired to broaden the scope of the bill it would be something they could do to broaden the use of the grants.

Chairman O'Connell asked if there was a cultural council that wrote grants. She asked Senator Schneider if there were other resources for funds. He replied the State Arts Council was unable to write or accept grants.

Senator Titus asked if the bill would cover private money and regrant money from the National Endowment of the Arts. Senator Schneider said the State Arts Council was not authorized to take private money and spend it as they chose.

Chairman O'Connell asked if Bob Ostrovsky was available to testify as chairman for cultural affairs. She said she wanted to discuss the possibility of funding for sound walls around the freeway.

Robert A. Ostrovsky, Lobbyist, Chairman, Commission for Cultural Affairs, Board of Museums and History, Division of Museums and History, said the foundation was set up with the assistance of state funding a number of years ago for the purposes of creating a vehicle for donors to give money to a foundation that would then flow to a state museum, for example. The foundation enabled donors to give to a nonprofit agency. He said the foundation was available and ready to accept funds, but he had not spoken to anyone on the State Arts Council concerning this bill.

Senator Schneider said he did not believe the way the State Arts Council was set up they could accept the grants and gifts. He said it was for funding different art things and the council needed a specific vehicle for the sound walls.

Chairman O'Connell said she wondered if the State Arts Council could apply to Mr. Ostrovsky's organization.

Senator Townsend said his concern was the language in the bill was too generic. He said the problem, as he saw it, was the bill only addressed a specific item and each different group would have to put into statute the individual project they wanted funded. He said this bill took the flexibility away from the arts council. He said they might not be able to do their next project. He asked Mr. Wasserman if his interpretation was too generic.

Mr. Wasserman said the issue was in section 2 where it further limited the expenditures. He said the language may be subject to some interpretation, but in section 2 of the bill it said the money in the fund could only be used to provide resources for developing the artistic, administrative, and financial stability of cultural organizations that serve and enrich communities throughout the state. He said if you could work with a cultural organization that then wanted to work on the sound walls it would be a way to interpret the existing language to allow it, but it would have to be done with the language that exists. He said section 2, subsection 1 paragraph (b) supported programs that provide residents and visitors of the state with access to a broad range of activities regarding the arts and humanities. He said unless it was possible to work with an organization through the first alternative, it would be necessary to specify the funds could be used for sound walls.

Senator Townsend said the intent of the bill was admirable but there had to be language that would not handcuff the arts council. He said he was afraid if the bill were narrowed too much various arts groups would have to come to the Legislature for every project they wanted.

Mr. Wasserman replied the bill would only allow money to be expended for sound walls. He said the bill could easily be drafted in a more general manner. Mr. Wasserman said the bill could state the funds were to be used to support art projects in the community. The sound walls would be included as art projects in the community and amendments would not be needed for a new type of project. He said the existing language was very specific and very narrow.

Senator Titus said she supported Senator Townsend's concerns, but she said the concern in the past had been the arts council money might go as stipends to individual artists for individual projects. She said she believed the language was specific in order to avoid that problem.

Mr. Ostrovsky said it was an existing fund. He said money that flowed into the fund could not be spent on sound walls unless it was established as a legislative priority. He stated if an individual gave a grant to the foundation and specified the money was to be spent on a specific project then the money would be given to the organization named in the grant.

Senator Townsend said the first part of the language in the bill was too generic and the second part of the bill was too tight and it created a problem. He said he would like to see the bill be less specific and more generic.

Senator Schneider suggested the bill be postponed until the next meeting. He said he would meet with Senator Townsend and attempt to address his concerns. He said if he were able to satisfy Senator Townsend's concerns he would be back to the committee with an amended bill.

Chairman O'Connell closed the hearing on S.B. 165 and opened the work session hearing on S.B. 335

SENATE BILL 335: Increases maximum amount that may be paid to redevelopment agency in small community. (BDR 22-1172)

Michael Stewart, Committee Policy Analyst, recapped the bill for the committee. He said it involved redevelopment in small communities. He said there were no formal amendments, but there were some issues to be discussed.

Senator Hardy said he had an amendment he would like to propose. He said he introduced the bill for the city of Mesquite. He said Mesquite used an old set of rules when they put together their redevelopment agency. He said the Legislature changed the law several years after Mesquite developed their agency. Senator Hardy said the amendment would change the population number from 50,000 to 35,000 and the request for the fiscal year from 25 percent multiplied by 20 percent instead of 25 percent.

SENATOR HARDY MOVED TO AMEND AND DO PASS S.B. 335.
SENATOR CARE SECONDED THE MOTION.
THE MOTION FAILED. (SENATORS O'CONNELL, RAGGIO, TOWNSEND AND TIFFANY VOTED NO.)

Chairman O'Connell opened the work session hearing on S.B. 354.

Senator Townsend said there was a proposed amendment to the bill. He wanted the amendment from Mr. Ashleman, Ms. Shipley and Mr. Gillespie included in the bill.

SENATOR TOWNSEND MOVED TO AMEND AND DO PASS S.B. 354.
SENATOR HARDY SECONDED THE MOTION.
THE MOTION CARRIED UNANIMOUSLY.

Chairman O'Connell opened the work session hearing on S.B. 360.

SENATE BILL 360: Revises provisions relating to eradication of racial profiling. (BDR 23-1201)

Mr. Stewart said the bill was in regard to racial profiling and there were several amendments proposed.

Senator Titus said she had heard police officers and the highway patrol say they wanted to take out the reporting, which was sections 1 through 6. She said she thought the reporting was necessary and did not want it to be listed as her amendment. She agreed the term "racial profiling" should be deleted and the phrase "bias based policing" substituted. Senator Titus said she wanted to delete the section with the requirement to include material for registration because she wanted to eliminate the fiscal note. She said she agreed with amendment 3, which stated the Department of Motor Vehicles would put the information on their Website.

Chairman O'Connell said another amendment had just been delivered. Senator Titus said as she understood the current bill would be placed in the DMV handbook, put on the DMV Website, an assessment would be made of existing police training to develop a course the police officers would be required to take, and change the language to reflect racial profiling. She said in addition the policemen wanted to delete the requirement for reporting.

James F. Nadeau, Lobbyist, Nevada Sheriff's and Chief Association/North, and Washoe County Sheriff's Office, said he was aware of the amendment, but did not know the full content of the amendment.

Chairman O'Connell asked Mr. Nadeau if the only thing the police department was not doing at this time was putting the information on the Website and developing a specific training course. Mr. Nadeau said there were segments in all police training that dealt with racial profiling. He said notification under the DMV portions of the bill was the only area not being currently used. Mr. Nadeau said the police were looking at how to hone in on the training and make it more specific.

Senator Raggio said it was the second bill the committee had heard on racial profiling. He said law enforcement had indicated they did not think the bill was necessary. Senator Raggio said he thought most of the items Mr. Nadeau had discussed could be covered by a letter of intent. He stated if the bill were processed it would become a vehicle of contention in the other House. Senator Raggio reiterated the problems could be addressed with a letter of intent to the agencies. He said there was a good law in place already that prohibited racial profiling. Senator Raggio stated the bill was not necessary.

Chairman O'Connell asked Mr. Nadeau how he thought the police department would feel about a letter of intent. He said the agencies were focusing on the problem and the intent of the committee was clear that there should be specific segments addressing the problems.

Senator Raggio restated he believed the committee should send a letter of intent expressing to police departments the Legislature's intent that racial-profiling problems must be looked at by all departments. Senator Raggio stated every law enforcement agency he had talked to said they had been doing a credible job to improve problems regarding racial profiling.

Ronald P. Dreher, Lobbyist, Peace Officers Research Association of Nevada, said he concurred with Senator Raggio. He said a problem existed but there were methods in place to take care of racial profiling. He said by sending a letter to the agencies asking what their training, procedures, and processes that were in place currently, and were achieving what the current laws required. He said the committee would get written responses from all the law enforcement agencies as to what had been done from individual agency's perspective to satisfy racial concerns. Mr. Dreher stated he knew from experience police officers were not choosing an individual person to arrest, but rather a vehicle that was violating the law. He said from the perspective of the police he believed the departments were already doing the things requested in Senator Titus' bill.

Senator Raggio stated in addition there were considerable fiscal notes on the bill that would have to be addressed. He said he wanted to avoid fiscal notes if possible. Senator Titus said the fiscal notes would go away if the reporting requirement was deleted from the bill. The representative from the DMV had stated there would be no fiscal note to put the racial-profiling statement in the handbook. She said she asked the two witnesses if they were opposed to putting the statement in the DMV handbook to let people know what racial profiling was or what recourse they might have if so subjected. She asked if they did not support even that gesture.

Mr. Nadeau said he supported the DMV aspect of the bill. Mr. Dreher said he also agreed to support the DMV portion of the bill, and he believed the definition of racial profiling should be modified. He said if a police officer stopped a vehicle and there was no suspect description, or a specific identifiable charge, the officer might be considered guilty of racial profiling. Mr. Dreher said he believed it should be changed if it was going in the DMV handbook. He said the way it was written now, all stops without a specific investigation being conducted, the officer would be committing racial profiling. Senator Titus asked Mr. Dreher if he was referring to the definition in existing law or the language in the S.B. 360. Mr. Dreher said the language in the new bill. He said it was his understanding the language had been part of an existing Assembly bill.

Mr. Wasserman said the existing definition stated racial profiling meant reliance by a peace officer upon the race, ethnicity, or national origin of a person as a factor in initiating action when the race, ethnicity, or national origin of a person was not part of an identifying description of a specific suspect for a specific crime. The language in the proposed bill, S.B. 360, appeared to be the same. Mr. Wasserman said it meant reliance by a peace officer upon the race, ethnicity, or national origin of a person as a factor in initiating an action. Senator Titus said the bill definition came from existing law. She asked Mr. Dreher if he thought the language in the existing law should be amended and then be put in the DMV handbook. Mr. Dreher responded he believed the language should be changed and there would be a better analysis of what racial profiling encompassed. He said if it were worded properly, then the people would know what action they may take.

Chairman O'Connell asked the committee what they would like to do. She mentioned the suggestion from Senator Raggio that the Legislature send a letter, in lieu of the bill, to the police departments. It had also been suggested by the testifiers and they both agreed, the definition should be put into the DMV handbook as well as on their Web site.

Senator Raggio suggested a draft of a letter of intent be prepared for the committee to review and to indefinitely postpone the bill.

SENATOR TOWNSEND MOVED TO INDEFINITELY POSTPONE S.B. 360.
SENATOR RAGGIO SECONDED THE MOTION.
THE MOTION CARRIED. (SENATORS CARE AND TITUS VOTED NO.)

Chairman O'Connell opened the work session hearing on S.B. 424.

SENATE BILL 424: Revises provisions relating to composition of membership of redevelopment agency. (BDR 22-1270)

Senator Townsend stated there were no amendments to the bill. The bill was presented on behalf of redevelopment agencies for expansion of members to serve on the redevelopment agency. The bill provided that at the time a legislative body of a city of

county adopted a resolution declaring the need for a redevelopment agency, the legislative body could appoint resident electors of the community or member of the legislative body, or a combination of both, to serve on the redevelopment agency. A total of 11 members could be appointed to the agency.

SENATOR TOWNSEND MOVED TO DO PASS S.B. 424.
SENATOR RAGGIO SECONDED THE MOTION.
THE MOTION CARRIED UNANIMOUSLY.

Chairman O'Connell opened the work session hearing on S.B. 445.

SENATE BILL 445: Revises provisions governing grants of money from Fund for the Promotion of Tourism by Committee for the Development of Projects Relating to Tourism. (BDR 18-510)

Mr. Stewart said the Commission on Tourism had discussed the bill on Monday as a housekeeping bill.

SENATOR TOWNSEND MOVED TO DO PASS S.B. 445.
SENATOR HARDY SECONDED THE MOTION.
THE MOTION CARRIED UNANIMOUSLY.

Chairman O'Connell opened the work session hearing on S.B. 446.

SENATE BILL 446: Authorizes State Treasurer to appoint and employ two Senior Deputies in unclassified service of State. (BDR 18-301)

SENATOR TIFFANY MOVED TO DO PASS S.B. 446.
SENATOR TOWNSEND SECONDED THE MOTION.
THE MOTION CARRIED UNANIMOUSLY.

Chairman O'Connell opened the work session hearing on S.B. 447.

SENATE BILL 447: Revises provision relating to investment by local governments and monitoring of collateral to secure certain deposits of public money. (BDR 31-302)

Senator Hardy stated the state treasurer had recommended some technical amendments to the bill. He said with those amendments he would recommend to amend and do pass the bill. The state treasurer's office had distributed an explanation of the proposed revisions to the amendment to S.B. 447. Exhibit C.

SENATOR HARDY MOVED TO AMEND AND DO PASS S.B. 447.
SENATOR TOWNSEND SECONDED THE MOTION.
THE MOTION CARRIED UNANIMOUSLY.

Chairman O'Connell opened the work session hearing on S.B. 448.

SENATE BILL 448: Revises authority of State Treasurer to invest money held in certain trust funds and to administer proceeds from certain settlement agreements and civil litigation between State of Nevada and tobacco companies and revises qualifications for millennium scholarships. (BDR 18-299)

SENATOR TIFFANY MOVED TO AMEND AND DO PASS S.B. 448.
SENATOR TOWNSEND SECONDED THE MOTION.

Senator Care said last session he had voted against a similar bill. He said he was going to vote for the measure, albeit with some reluctance. He said it was uncertain economic times. Senator Care said he did not know if Phillip Morris was bluffing with a threat of bankruptcy. He said he was increasingly uncomfortable with the State becoming a shareholder in big tobacco, which was what had happened.

Senator Raggio commented the Senate passed the bill last session. He said the treasurer had indicated he was not going to immediately implement the bill until he had studied the market situation. Senator Raggio said it was prudent to give the authority to the state treasurer now in order not to miss a window of opportunity.

THE MOTION CARRIED. (SENATOR TITUS VOTED NO.)

Chairman O'Connell opened the work session hearing on S.B. 451.

SENATE BILL 451: Revises provisions governing account established for acquisition and improvement of technology in office of county recorder and certain provisions regarding format of certain documents filed in office county recorder. (BDR 20-293)

Mr. Stewart said S.B. 451 was in regard to the county recorders. The county recorders proposed one amendment and the second amendment was proposed by Clark County. Mr. Stewart said a third amendment was also being proposed.

Alan Glover, Clerk/Recorder, Carson City, discussed his amendment. He said it was proposed to clean up some of the language in the bill. He stated section 1, line 2, page 20, added the types of documents that were exempt from the requirements of the bill. Mr. Glover said the exempt documents would include death certificates, military discharges, and tax documents issued by the United States Department of Treasury. The original language said any document that was presented by state, federal, or local government was exempt. He said that would "gut" the bill to use that language. He said the listed documents would not meet the requirements in the bill for 8½- by 11-inch white paper. Section 1, page 2, line 26, asked the new language be deleted and returned to the original language that there had to be a space 3- by 3-inches in the upper right-hand corner.

Chairman O'Connell asked Mr. Glover why the documents had to be so specific. He responded it was done in order to get a document that could be scanned and reproduced as a permanent record. The records would become more accessible to the general public if they were available on the Internet. He said 38 states had adopted some form of the standards. Mr. Glover said there would be a $25 fee for a nonstandard form. Chairman O'Connell asked him if the fee was per page. He replied it was for the entire document.

Mr. Glover continued to say in section 1, page 2, line 39 of the bill the language needed to be written to accommodate professional land surveyors. He said law required surveyors to sign across their seal. The last portion on page 2, lines 43 to 45 deleted new language and inserted "issued by local, state, or federal government."

Michael R. Alastuey, Lobbyist, Clark County, said his organization did not have any problems with the proposed amendments. He said he was replacing previously proposed amendments with a briefer version. The operative portion of Clark County's amendment was to leave the recorder in charge of initiating a fee should one be imposed and also impose the fee in official terms by ordinance as passed by the county commission. He said the recorder would agree because it compelled the county commission to implement the ordinance upon the request of the recorder. Mr. Alastuey said the amendment also removed the possibility a recorder could selectively apply the fee or impose and then rescind the fee after the county had encumbered the money for purposes of systems acquisition. Clark County's earlier proposal had to do with possible other uses of the fee and that proposal had been withdrawn. He said the recorders in the original bill had proposed they not be required to present an estimate of the proceeds or a proposal of expenditures to the county commission from the fee proceeds. He said the new proposal was to submit a list of expenses after the expenses had been incurred. Clark County proposed the existing language remain in place for the accountability that it offered.

Chairman O'Connell asked Mr. Glover if he agreed with the new amendments being proposed. Mr. Glover stated the recorders did not agree among themselves or with the amendments proposed. However, he said the amendments would not destroy the bill. He would argue if a county imposed the $3 fee, then had bonded or borrowed against the money, the county could say, in court, the statute said the county recorder could impose the fee, but it did not say anything about them being able to repeal the fee. Mr. Glover said he would have preferred the bill be passed as originally written.

Senator Tiffany asked Mr. Glover if he would prefer the county commission not be able to enact the fee. Mr. Glover said he was sensitive to Mr. Alastuey's concerns about what could happen once the fee was imposed and the revenue stream was borrowed against if a recorder then decided to repeal the fee. Senator Tiffany asked Mr. Alastuey why the county commission could not repeal the fee, also. Mr. Alastuey said an ordinance could be repealed, but it would require a majority vote of the county commissioners and only one vote by a recorder. Mr. Glover stated he could not imagine any county recorder ever repealing the

fees. Senator Tiffany asked if it would set precedence for county commissioners to set the recorder's fees. Mr. Glover replied all recorders' fees were statutory and only the Legislature could set those fees.

Senator Raggio said the discussion entailed a matter that was never going to happen. He said if a county recorder knew a fee had been encumbered he would not go against that action, especially since the county commissioners approved the recorder's budget.

SENATOR TOWNSEND MOVED TO AMEND AND DO PASS S.B. 451.
SENATOR TIFFANY SECONDED THE MOTION.
THE MOTION CARRIED UNANIMOUSLY.

Chairman O'Connell opened the work session hearing on S.B. 449.

SENATE BILL 449: Makes various changes to provisions governing questions appearing on ballot for general election. (BDR 24-250)

Chairman O'Connell asked Ms. Vilardo if an amendment had been proposed for S.B. 449. Carol A. Vilardo, Lobbyist, Nevada Taxpayers Association, replied various people in Clark County had reviewed the current amendment. The amendment had comments and suggestions from Clark County. Ms. Vilardo said she had no issues with the proposed suggestions, however, there was a policy issue of which the committee should be aware. She said sections 7 and 8 of the bill as written and in the amendment involved initiatives and referendums. Ms. Vilardo said the amendment had been qualified to state the fiscal notes were if there was a tax or an expense. She said an advisory question did not necessarily require a fiscal note.

Senator Tiffany asked a hypothetical question of Ms. Vilardo. She asked what would happen to an initiative petition to break up the Clark County School District and the initiative was statewide and statutory. She asked if a new school district were created and the district wanted to build new schools, would the district have to go to the people to raise property taxes. Ms. Vilardo replied statute existed that if facilities were needed by a school district the district had to go to the voters for a property tax increase. She said Senator Tiffany's example of breaking up a school district would almost always require agreements between the various entities as to who got what facilities and what equipment ahead of the breakup.

Ms. Vilardo said she had a concern on initiatives. She said she had seen initiatives make local ballot questions, which incurred an expense, and she said the voters had a right to be informed about the expense. She said she supported, at a minimum, an advisory question had to contain the same type of fiscal information that is required of a regular ballot question if it involved tax or expenditure. She stated that was good tax policy and a service to the voters.

Chairman O'Connell asked Ms. Vilardo if any expenditure included any fees as well. Ms. Vilardo said any tax, but it did not say fee, although she would say any expenditure. An advisory question could propose to expend money but have no identification of funding for the expenditure. She said voters had a right to know if at some point there was going to be a tax or fee to fund the proposal, or if a reduction of expenditures was required to fund the new expense.

Senator Titus asked Ms. Vilardo if an example of an advisory question with expenditure would be similar to Clark County's ballot questions concerning the Childrens' Hospital several years ago. Ms. Vilardo said that would be an example of what she had discussed. Senator Titus said she would have hesitation enacting the bill for initiatives because of the interpretation of expenditures. She said an individual making an interpretation of expenditure ran the risk of politics making the decision of the interpretation of the costs. Senator Titus said maybe for advisory questions she could support the bill but not for initiatives.

Senator Care asked Ms. Vilardo if under her amendment the opponents and proponents be allowed to review the fiscal note prior to writing their pro and con for the note. He said he could see a situation where someone for a particular issue might say to voters there was a fiscal note on a question but it was not true. Senator Care said they could not say such a thing unless they had a chance to review the fiscal note first.

Ms. Vilardo said she had sat on four ballot-writing committees and said what Senator Care had mentioned had happened. The district attorney said the language that had been written was inflammatory. Senator Care also asked about advisory questions. He said it seemed to him it was a way, at taxpayer's expense, to do polling. He said advisory questions were not binding. He

could see a reason for not having advisory questions. He said advisory questions were often misused. Ms. Vilardo said she tended to agree with Senator Care's statement. She said it was almost true when it came to a tax, fee, or expenditure advisory question. She said there were 15 or 16 advisory questions on the last election ballot. Nine of the advisory questions specifically had tax questions to them. She said her organization had been tracking advisory questions since 1988. There had not been an advisory question involving a tax or a fee that if it passed had not been specifically enacted. She said advisory questions might be left for non-tax raising or non-expenditure type questions.

Chairman O'Connell asked Senator Care if he wanted to amend the amendment to do away with advisory questions. Senator Care said his inclination was to not vote for the bill in any form, but he was interested in abolishing advisory questions.

SENATOR CARE MOVED TO AMEND THE AMENDMENT IN ORDER TO DO AWAY WITH ADVISORY QUESTIONS TO S.B. 449.

SENATOR TOWNSEND SECONDED THE MOTION.

THE MOTION FAILED. (SENATORS O'CONNELL, RAGGIO, TITUS, TIFFANY, AND HARDY VOTED NO.)

Senator Tiffany asked Mr. Wasserman if advisory questions were referred to in the Nevada Constitution as a right to petition government. Mr. Wasserman said there was not a constitutional issue requiring advisory questions be put on the ballot. Ms. Vilardo responded advisory questions are not normally initiatives. She said initiatives are usually comparable to a straight ballot questions. They are voted up or down and may appear a second time on the ballot. She said initiatives do not appear as advisory initiatives. Senator Tiffany asked if that was not called petitioning. Chairman O'Connell said there was no need to collect signatures for advisory questions. Senator Tiffany said the public in Clark County may petition advisory questions and put them on the ballot. Mr. Wasserman said they would not be addressing the initiative process. He said on a county basis advisory questions were put on the ballot pursuant to statutory provisions. He said it was still possible to petition through the initiative petition.

Senator Titus stated she would not support the amendment because she said the public might think it took away an opportunity to let elected officials know how the public felt about a certain issue.

Senator Raggio said he was in agreement with Senator Titus. He said in his opinion many of the advisory questions should not be aired, but the public had a right to be informed. Senator Raggio said he believed advisory questions were better than a poll. He said he was unable to support the deletion of all advisory questions.

Senator Hardy said he agreed with what Senator Care was talking about, however, he also agreed with the minority and the majority leaders. He said he would oppose Senator Care's motion.

Chairman O'Connell asked if there were further questions concerning S.B. 449.

SENATOR TIFFANY MOVED TO AMEND AND DO PASS S.B. 449.

SENATOR HARDY SECONDED THE MOTION.

Senator Raggio said he did not understand the motion. He did not know if the population threshold was included or if smaller counties should have to go through procedures. He also said there were several other sections where the population threshold was removed. Ms. Vilardo referred Senator Raggio to page 3, section 7, subsections 1 and 5 of Exhibit D, which gave an explanation on threshold issues for counties. She said page 4, section 8, subsections 1 and 5 had the same issues raised for cities. Senator Raggio said in section 7 the suggestion was the population threshold might be 40,000 and in section 8 a threshold of 10,000 for cities. Senator Tiffany confirmed those suggestions were included in the motion.

Senator Titus said she could not support the suggestions. She said the counties and smaller cities also needed to know the same information as larger counties and cities. She also asked if the amendment would apply to initiatives as well as advisory questions. Ms. Vilardo said page 4 of the suggested amendments under section 8, subsections 6 through 8 stated there would be no change and there would not be fiscal notes on the initiatives, only on advisory questions.

THE MOTION CARRIED. (SENATOR CARE VOTED NO.)

Chairman O'Connell opened the hearing on S.B. 452.

SENATE BILL 452: Revisions provisions governing enterprise funds for building permit fees. (BDR 31-838)

Mr. Stewart said he requested Colleen Wilson-Pappa discuss the bill and the amendment. Mr. Stewart said he had a handout about Western Urban Nonseasonally Adjusted CPI, Exhibit E.

Colleen Wilson-Pappa, Lobbyist, Southern Nevada Homebuilders Association, stated an enterprise fund operated more like a business than the county's general fund. An enterprise fund received no general fund support, and no tax dollars to support the operation. Ms. Wilson-Pappa said a building permit enterprise fund would operate solely by user fees. She said the building permit enterprise fund was the best law Nevada had for enterprise funds. She said it was very fiscally responsible. It was enacted in 1987. She said when Clark County began to go through its development services reorganization, there were only two things that needed to be included in the enterprise fund. Those additions were encroachment permits for work within the public right-of-way related to the building permit and barricade fees. She said the bill should have been very simple, but when the language came out it was very broad. Ms. Wilson-Pappa said both Clark County and the Southern Nevada Homebuilders Association were concerned the bill would jeopardize the health of the existing building permit enterprise fund. She said there was also concern it would have an effect on the level of services. She said Clark County submitted a new amendment that deleted everything that was in the bill. The amendment showed only encroachment permits and barricade fees.

Ms. Wilson-Pappa said the City of Henderson had based their proposed amendment to the bill as the bill was first introduced. She said the first line on the City of Henderson's amendment to add subdivisions was no longer appropriate to the bill because that section of the bill had been deleted. The second amendment concerning the Western Urban Nonseasonally Adjusted Consumer Price Index was acceptable to Clark County.

Chairman O'Connell asked Ms. Wilson-Pappa if when the enterprise fund was first established, was the object of the fund to protect some of the money from collective bargaining. She asked if the money was protected. Ms. Wilson-Pappa responded the money was not protected. The salaries paid to the employees within the building permit enterprise fund were paid the same as any employee under the county general fund. The employees are covered under the same collective bargaining agreement she said. However, because the employees are under the enterprise fund structure, they are able to respond to the market and the needs of the consumer more quickly.

Senator Tiffany asked if the building permit employees received a 7 percent raise when Clark County received a raise. Ms. Wilson-Pappa said the employees received the same raise as everyone from the other departments under the general fund.

Dan Musgrove, Lobbyist, Clark County, said the funding for the employees was self-generated through the enterprise fund versus the employees who worked in the general fund departments. Mr. Musgrove said the funds were user fees and not tax dollars.

SENATOR TOWNSEND MOVED TO AMEND AND DO PASS S.B. 452 WITH THE AMENDMENTS FROM CLARK COUNTY, THE SOUTHERN NEVADA HOMEBUILDERS ASSOCIATION, AND THE CITY OF HENDERSON, DELETING SUBDIVISION AND INSERTING THE WESTERN URBAN NONSEASONALLY ADJUSTED CONSUMER PRICE INDEX.

SENATOR HARDY SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

Chairman O'Connell opened the work session hearing on S.B. 462.

SENATE BILL 462: Creates Division of Minority Health within Department of Human Resources. (BDR 18-1061)

Mr. Stewart stated the bill created a division with the Department of Human Resources and also established an advisory committee to the Division of Minority Health. He said Senator Rawson had suggested one amendment to the bill. He said the amendment was in regard to reporting by the administrator of the division.

Senator Townsend said a commission had been established for minority issues that could deal with the exact issues in the bill. The commission was able to present to the appropriate agencies, the Governor, and the Legislature, any issues, not just health issues, for any or all minority populations. He said he did not see a need for this bill.

SENATOR TOWNSEND MOVED TO INDEFINITELY POSTPONE S.B. 462.
SENATOR TIFFANY SECONDED THE MOTION.
THE MOTION CARRIED. (SENATOR TITUS VOTED NO.)

Chairman O'Connell opened the discussion on S.B. 487.

SENATE BILL 487: Authorizes certain smaller counties to enter into certain agreements relating to acquisition, development and distribution of water resources. (BDR 20-1312)

Mr. Stewart said the bill concerned the board of county commissioners of certain smaller counties which would allow them to enter into various agreements. The bill also provided for the reimbursement of money and the sharing of proceeds in regard to such agreements.

Senator Hardy said he had an amendment to S.B. 487, Exhibit F. He said his concern with the bill was setting up in law a competitive environment for one company that did not exist for other holders of private water rights. He said the law would allow the company to get around the current Nevada water laws. He said the state engineer referenced a prior filing by a private sector water holder that had been denied, as the applicant went after the water in the hope of selling it to someone else for a profit. The application was denied on the grounds that it was speculative. Senator Hardy said the state engineer noted the Legislature had become increasingly concerned over applications filed for speculation where the sole intent of the application was to provide profit from the sale of water to interested parties.

Senator Hardy said the only reason the water application was approved was because Lincoln County was involved as a partner. He said state water law allowed more latitude in considering future water usage to governmental agencies. He said S.B. 487 proposed to legitimize agreements between private sector and a local government. Senator Hardy said the net effect was to allow the water holder to get around long-standing Nevada water law. He stated the state engineer as saying by joining with Lincoln County, Vidler Water Company had avoided the appearance of speculation, because Lincoln County was attempting to plan for providing water resources to lands within the county that had begun to go into private hands. Senator Hardy said by passing S.B. 487, it allowed Vidler Water Company to have an advantage over every individual private water holder in the State, unless they entered into an agreement with a local government entity.

The amendment Senator Hardy proposed said it would provide safeguards to the public that were required of all other governmental entities and utilities that were in private/public partnerships. He said his amendment would make all counties subject to the state's open meeting law. The second part of the amendment would make all records and other documents open to public inspection. The third part of the amendment would place on a governmental agency that had entered into an agreement with a private sector company for the sale of water resources outside of their jurisdiction, that the agency was subject to the same limitations that the return on investment must not exceed 10 percent of the amount invested. Senator Hardy said he would be open to the Public Utilities Commission of Nevada determining if the 10 percent was a fair and reasonable return on the investment. If it were determined it was not the entity could receive more return. He said the above were the limits governmental entities had to abide by, and he said a water district could not sell or purchase water for a price in excess of 10 percent over what had been invested.

SENATOR HARDY MOVED TO AMEND AND DO PASS S.B. 487.
THE MOTION FAILED FOR LACK OF A SECOND.
SENATOR TIFFANY MOVED TO DO PASS S.B. 487.
SENATOR TOWNSEND SECONDED THE MOTION.

Senator Care said Senator Hardy had raised an issue concerning a governmental agency entering into a contract with a private company and were the documents subject to public scrutiny. He also wondered about the issue of the meetings being open to the

public. He said he wanted an answer about the public scrutiny of documents. Mr. Wasserman said he was not familiar enough with the background of the specific documents to answer the questions. He said if the committee wanted to specify in the bill the documents should be public it could be made applicable.

Mr. Fiorentino said the above-mentioned requirements already existed in Nevada open meeting law. For example, if you were interested in the contracts the Clark County airport had with different advertisers on billboards, the contracts were a matter of public record.

Chairman O'Connell said the committee could vote on the motion, and hold the bill until they received the information Senator Care inquired about from Mr. Wasserman at the following meeting.

THE MOTION CARRIED. (SENATOR HARDY VOTED NO.)

Senator Titus asked if the state engineer would have to approve any plan Lincoln County had to sell water. Mr. Fiorentino said the state engineer had to approve all sale applications. Chairman O'Connell said she believed Lincoln County already had agreements with Clark County. Mr. Fiorentino said Lincoln County had agreements with the Southern Nevada Water Authority and the Las Vegas Valley Water District. Senator Titus asked if the state engineer had approved the agreements. Mr. Fiorentino replied the state engineer had not approved the agreements, but any water appropriated pursuant to the agreements would have to be approved by the state engineer.

Senator Hardy said he wanted to speak for the record that his Virgin Valley constituents did not have a problem with the Southern Nevada Water Authority agreement. He said the agreement took care of the concerns he had raised. He said his concern was for the impact the bill would have on State law. Senator Hardy said in regard to Senator Titus's question the state engineer did not have a great deal of latitude in these matters. He said there were specific requirements that had to be met and if they were met the state engineer had to grant the application.

Chairman O'Connell said there were two more issues to address before adjournment. She asked Mr. Wasserman about S.B. 144. She said the committee had made a motion on S.B. 144 to do pass and re-refer the bill to the Finance Committee. She asked if the motion needed to be rescinded.

Senator Raggio stated the Fiscal Division had reviewed the bill and said it did not need to be re-referred to Finance. He said the motion could be do pass without reference to re-referring it. Chairman O'Connell asked if the committee needed to rescind the motion to re-refer. Senator Raggio said it would make it clearer if the motion were rescinded.

SENATOR TOWNSEND MOVED TO RESCIND THE PREVIOUS ACTION TAKEN ON S.B. 144.

SENATOR RAGGIO SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

Chairman O'Connell asked if there was another amendment on S.B. 144 from State Parks. She asked Mr. Wasserman to interpret the amendment for the committee. He said the amendment in subsection 2 stated the fee would be based on the direct cost attributed to the one position indicated as a grants administrator. The amendment in the first subsection clarified for each grant there would only be one fee imposed per grant. Mr. Wasserman said grants were sometimes administered in parts, but there would only be a one-time fee imposed.

Chairman O'Connell asked if 10 percent was still the amount the State Parks would receive from the grant money. Mr. Wasserman said the amendment deleted the specific reference to 10 percent and said the fee would be based on direct costs.

SENATOR TOWNSEND MOVED TO AMEND AND DO PASS AS PREVIOUSLY DISCUSSED ON S.B. 144.

SENATOR RAGGIO SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

Mr. Fiorentino and Senator Hardy asked for clarification of the vote on S.B. 487. Chairman O'Connell said the vote was recorded and the questions would be answered that were posed by Senator Care for the record. The bill would be discussed at the next meeting. Mr. Fiorentino asked Chairman O'Connell if he could do some research on the open meeting law and point out sections that he believed applied to the bill. Chairman O'Connell stated that would be very helpful to legal counsel.

As there was no further discussion, Chairman O'Connell adjourned the meeting 6:21 p.m.

RESPECTFULLY SUBMITTED:

_____

Olivia Lodato,
Committee Secretary

APPROVED BY:

_____

Senator Ann O'Connell, Chairman

DATE: _____

NV S. Comm. Min., 4/9/2003